

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #178
05/11/09**

- MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins, William Smagula, Ryan Bielagus, Raymond Donald, Debra Hale, Terry Callum, Steven Walker
- MEMBERS NOT PRESENT:** Robert Hickey, Linda Thomas, Georgia Murray
- NHDES – ARD PERSONNEL:** Robert Scott, Anne Keach, Joanne Morin, Michael Fitzgerald, Todd Moore, Amy Samson
- OTHER INTERESTED PARTIES:** Atty. Arthur Cunningham, Atty. Anthony Blenkinsop; Atty. Evan Mullholland, Atty. Gregory Smith, Atty. Barry Needleman, Atty. Melissa Hoffer, Atty. Linda Landis, Catherine Corkery,

Call to Order:

Chairman Duval called Meeting #178 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, May 11, 2009 and announced that a quorum was present.

Approval of Minutes:

Terry Callum entered a motion to accept the minutes of meeting #177. Ryan Bielagus seconded the motion. All present were in favor. The minutes of meeting #177 were accepted by the ARC.

Division Activities & Legislative Update:

Chairman Duval introduced Robert Scott, Director of the Air Resources Division (ARD). Director Scott provided members of the ARC with the following update regarding ARD activities and related legislation.

Funding

- Director Scott reported that the Air Resources Division expects approximately \$350,000 in funding from the Section 105 Grant. This amount represents a decrease in previous years as the Section 105 grant monies are now being distributed to an increased number of states designated as being in non-attainment.
- HB 2 – Relative to state fees, funds, revenues, and expenditures. Establishes a new motor vehicle air pollution abatement fund and increases the motor vehicle inspection sticker fee from \$2.50 to \$3.00. Half of the fee increase (\$0.25) would be directed to the new fund to support NHDES programs and staff dedicated to reducing emissions of air pollutants from motor vehicles as well as greenhouse gas reductions. The remainder of the increase is allocated to the Department of Safety.

Woodstove Change Out Program, Keene, NH

The City of Keene will potentially be in non-attainment for PM2.5, therefore a woodstove change out program is being developed in cooperation with the City of Keene, the Hearth, Patio and Barbeque Association and the U.S. EPA (and other stakeholders) whereby residents who are replacing a non-certified woodburning stove or insert with a natural gas, propane, pellet stove or EPA certified wood stove may qualify for a rebate.

Site Evaluation Committee

Proceedings before the Site Evaluation Committee (SEC) continue concerning the Granite Reliable Power Wind Farm proposed for Woodsville and Dummer, NH. More information to follow as SEC proceedings continue.

Director Scott provided members of the Air Resources Division with an overview of the following legislative activities related to the Air Resources Division:

Legislative Issues

SB 68 – Relative to the use of state vehicles. This bill allows the Department of Administrative Services to update the minimum mileage requirements using the latest cost data for each budget cycle. The current 12,000 mile requirement is outdated and significantly over-estimates the mileage that justifies operating a state vehicle using current costs. This bill would allow agencies to assign vehicles based on fuel efficiency for longer trips instead of meeting a mileage requirement. HB 68 passed in the Senate and is expected pass in the House later in May 2009.

HB 229 – Relative to clarifying the eligibility for Class IV renewable energy generating facilities. The NHDES worked with legislators, stakeholders and the PUC on HB 873 establishing minimum renewable standards for energy portfolios, which passed and was adopted as RSA 362-F. This bill makes clear that eligible hydroelectric facilities are those that have a total nameplate capacity of 5MWs and have installed both upstream and downstream fish passages.

HB 189 – Relative to enabling municipalities to establish energy commissions with specific powers, thus formalizing their role and mission, and enables them to obtain resources such as energy efficiency funding to support their efforts. This legislation is consistent with the recommendation by the Governor's Climate Change Policy Task Force for cost-effective actions government can take to reduce greenhouse gases that contribute to climate change.

HB 2 – (Line 24) Relative to the proposed nomination of presiding administrative hearings officer for appointment by the Governor with the consent of the Executive Council, shall hold office for a term of four years. A presiding administrative hearing officer shall be assigned to all administrative adjudications conducted by certain state agencies including the Department of Environmental Services.

Members of the ARC discussed this proposed legislation and agreed to prepare testimony in opposition of this section of HB 2. Terry Callum entered a motion to prepare testimony to be submitted to the Senate Finance Committee. Steven Walker seconded the motion. All present were in favor. Motion carried. Chairman Duval agreed to draft testimony on behalf of the ARC for the members' approval and submission.

PSNH Title V Permit

Director Scott reported that the notice of intent to issue the Final Title V Permit for PSNH Merrimack Station in Bow, New Hampshire will be posted in July, and a public hearing will be scheduled for September 2009.

Draft Rules for Rock Crushing Operations

Director Scott announced that rules relative to rock crushing operations are currently being developed with particular focus on operation site movement (e.g., John J. Paonessa operation in Windham).

Steven Walker commended the ARD for promulgating rules concerning rock crushing operations and added that the ARD should focus on education and outreach efforts such as an operator certification program.

Nomination for Reappointment of Air Resources Division Director

Robert Scott announced that his re-appointment is approaching and requested the ARC's support of his nomination. Members of the Air Resources Council voiced their support for Director Scott's nomination to serve another term. Terry Callum entered a motion to nominate Director Scott for reappointment. Steven Walker seconded the motion. All present were in favor. Motion carried. Chairman Duval agreed to prepare a letter supporting Director Scott's nomination for submission to the NHDES Commissioner, Thomas S. Burack.

NH Climate Change Action Plan

Director Scott introduced Joanne Morin of the Air Resources Division, Technical Services Bureau. Ms. Morin announced that the first meeting of the NH Climate and Energy Collaborative (NHCEC) will meet on May 14, 2009. Ms. Morin explained that the NH Climate and Energy Collaborative will consist of:

- Six members from the business and industry sector
 - Kendall Buck, NH Home Builders Association
 - Sandi Hennequin, New England Power Generators Association, Inc.
 - Gary Hirshberg, Stonyfield Farm
 - Gary Long, Public Service of NH
 - Jim Roche, NH Business and Industry Association
 - Steven Walker, New England Wood Pellet

- Six members from the public sector
 - Thomas S. Burack, NHDES
 - Clifton Below, PUC
 - George Campbell, NHDOT
 - Donnalee Lozeau, Mayor, City of Nashua
 - Nicholas Toupas, DHHS
 - Ann Marie French, Local Government Center

- Six members from the education and nonprofit sectors
 - Will Abbott, Society for the Protection of NH Forests
 - Rick Minard, NH Community Loan Fund
 - Janet Campbell, University of New Hampshire
 - Dana Nute, Community Action Program
 - Dick Ober, NH Charitable Foundation
 - Cliff Sinnott, Rockingham Planning Commission

Ms. Morin explained the NHCEC's scope of work as follows:

- Inventory activities already occurring
- Identify barriers and gaps to successful implementation
- Guide efforts toward implementation
- Serve as a clearinghouse of actions
- Track and report annually
- Interact and coordinate with other states

Chairman Duval requested that Ms. Morin send members of the ARC NHCEC status updates via e-mail. Ms. Morin agreed to do so.

Rules Update

Ms. Morin announced that no rules are currently before the ARC for review. She provided members of the ARC with a revised rulemaking milestone chart which lists approximate dates to proposed filing and formal rulemaking timelines.

Status of Appeals

Ryan Bielagus renounced his recusal from hearing the appeals before the ARC concerning the scrubber installation at the PSNH Merrimack Station. Mr. Bielagus submitted the following statement for the record: *"In the past, my company, Grubb & Ellis/Coldstream has done work for PSNH pertaining to real estate. I have had no personal involvement in any PSNH assignments. I am not aware of any current assignments between my company and PSNH and my company has not been involved in the Merrimack Power Station.*

I do not believe I have a conflict of interest. I have not prejudged the facts of this case and hold no ill will towards any of the parties to these appeals. Therefore, I will be an impartial adjudicator and will sit as a council member should these appeals be accepted."

Debra Hale recounted her recusal and provided the following statement for the record: *"National Grid does not own any generation in New Hampshire; however, to eliminate any appearance of conflict of interest, I remain recused."*

Chairman Duval announced that the sitting members of the ARC to hear the appeals concerning the PSNH Merrimack Station are; Ryan Bielagus, Steven Walker, Terry Callum, Robert Hickey, and Raymond Donald who has been selected as the presiding officer in matters concerning PSNH before the ARC.

Amy Samson, Appeals Clerk provided members of the ARC with the following status of appeals before the ARC:

Docket No. 09-10-ARC - Appeal of NH Sierra Club, et. al, TP-0008-PSNH Merrimack Station. Ms. Samson informed the ARC that they must:

- Accept or deny Notice of Appeal
- Review pending motions
- Schedule a pre-hearing conference

Docket No. 09-11 ARC – Appeal of Conservation Law Foundation, TP-0008-PSNH Merrimack Station. Ms. Samson informed the ARC that they must:

- Accept or deny Notice of Appeal
- Review pending motions
- Schedule a pre-hearing conference

Docket No. 09-12 ARC – Appeal of Conservation Law Foundation, TP-0008-PSNH Merrimack Station. Ms. Samson informed the ARC that they must:

- Accept or deny Notice of Appeal
- Review pending motions
- Schedule a pre-hearing conference

Ms. Sampson provided members of the ARC with a copy of Docket No. 09-18 ARC - PSNH's Notice of Appeal from the NHDES Final Response to Requests for Bonus Carbon Dioxide Allowances for the Northern Wood Power Project and the Smith Hydro Project, and for Bonus Sulfur Dioxide and Nitrogen Oxide Allowances. Ms. Sampson stated that the appellants have requested that the ARC hold the Appeal in abeyance until the NHDES takes the opportunity to reconsider the Decision.

Chairman Duval agreed to hold the Appeal in abeyance until a further motion is filed (date uncertain).

Docket No. 09-03 & 09-04 ARC – Mink Hills Center for Sustainable Development & Katherine Lajoie, Decision to Approve the Application & Issue a Proposed Title V Operating Permit to Wheelabrator Concord Company, LP. Ms. Samson stated that on 4/13/09, the ARC dismissed Katie Lajoie's appeal.

A hearing was scheduled for today, however the parties Assented -To a Continuance. Presiding Officer Duval granted the continuance and the hearing has been scheduled for 7/13/09 per the parties request.

Docket No. 08-39 ARC – Appeal of Gregory and Cheryl Kindrat, FP-T0160 issued to John J. Paonessa Co., Inc. Ms Samson stated that a hearing was held on January 26, 2009. The ARC deliberated on March 9, 2009. A written decision is being finalized and will be issued to the ARC to review and approve at the next meeting on June 8, 2009.

At 10:10 a.m. on May 11, 2009, Chairman Duval conferred the duties of presiding officer over to Raymond Donald.

Chairman Duval, Vice-Chairman Collins, William Smagula, and Debra Hale left the meeting in order for Docket Nos. 09-10 through 12 to be taken up by the remaining sitting ARC members. Raymond Donald, Presiding Officer announced the following Appeals of TP-0008, PSNH Merrimack Station before the ARC:

Docket No. 09-10 ARC – Appeal of New Hampshire Sierra Club, et al.
Docket No. 09-11 ARC – Appeal of Conservation Law Foundation
Docket No. 09-12 – Appeal of Freedom Logistics & Halifax-American Energy

Terry Callum entered a motion to accept the appeal of the New Hampshire Sierra Club, et al., Docket No. 09-10 ARC. Ryan Bielagus seconded the motion. All sitting members present were in favor. Motion carried.

Terry Callum entered a motion to accept the appeal of the Conservation Law Foundation, Docket No. 09-11 ARC. Ryan Bielagus seconded the motion. All sitting members present were in favor. Motion carried.

Terry Callum entered a motion to accept the appeal of Freedom Logistics and Halifax-American Energy, Docket No. 09-12 ARC. Ryan Bielagus seconded the motion. All sitting members present were in favor. Motion carried.

Terry Callum entered a motion to consolidate the Appeals of the Conservation Law Foundation, Freedom Logistics and Halifax-American Energy, and the NH Sierra Club et al. Ryan Bielagus seconded the motion. All sitting members present were in favor. Motion carried.

Raymond Donald stated that all other pending motions relative the appeals of TP-0008 PSNH Merrimack Station will be taken up at the ARC meeting on June 8, 2009. Raymond Donald announced that a pre-hearing conference has been scheduled for June 22, 2009, 29 Hazen Drive, Concord, New Hampshire, Room 110 at 9:00 a.m.

At 10:25 a.m. on May 11, 2009, Chairman Duval resumed the duties of presiding officer and members Collins, Smagula, and Hale returned to their seats.

Other Business

Chairman Duval set the next date of the ARC to be held on June 8, 2009 at 9:00 a.m. in conference rooms 112 and 113.

Adjourn

Having no further business to discuss, Terry Callum entered a motion to adjourn. William Smagula seconded the motion. Motion carried. Meeting # 178 of the ARC adjourned at 10:26 a.m. on Monday, May 11, 2009.