

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #179
06/08/09**

MEMBERS PRESENT: Chairman Robert Duval, Vice-Chairman David Collins, William Smagula, Ryan Bielagus, Raymond Donald, Debra Hale, Terry Callum, Steven Walker, Robert Hickey, Linda Thomas, Georgia Murray (via conf. call)

MEMBERS NOT PRESENT:

NHDES – ARD PERSONNEL: Robert Scott, Anne Keach, Michael Fitzgerald, Thomas Fargo, Jeffrey Underhill, Andrew Bodnarik, Charles Martone, Amy Samson

OTHER INTERESTED PARTIES: Atty. Arthur Cunningham, Atty. Anthony Blenkinsop; Atty. Evan Mullholland, Atty. Andreas Gilmenakis, Atty. Gregory Smith, Atty. Jonathan Peress, Atty. Barry Needleman, Atty. Melissa Hoffer, Atty. Linda Landis, Catherine Corkery, Kenneth Colburn, Vika Kovalenka

Call to Order:

Chairman Duval called Meeting #179 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, June 8, 2009 and announced that a quorum was present.

Approval of Minutes:

Terry Callum entered a motion to accept the minutes of meeting #178. William Smagula seconded the motion. All present were in favor. The minutes of meeting #178 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

- 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.
- Director Scott reported that the Air Resources Division expects approximately \$500,000 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.

Woodstove Changeout Program, Keene, NH

The City of Keene will potentially be in non-attainment for PM_{2.5}, 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. The City of Keene

has received a \$45,000 award from the USEPA. Next steps include meetings with municipal officials of the City of Keene and stakeholders to develop the establishment of the Woodstove Changeout Program.

New USEPA Assistant Administrator, Office of Air and Radiation

Director Scott informed members of the ARC that Gina McCarthy has been confirmed the new Assistant Administrator of the USEPA's Office of Air and Radiation. Ms. McCarthy formerly served as Commissioner of the Connecticut Department of Environmental Protection.

Federal Clean Energy Legislation

Director Scott announced that the draft bill is sponsored by Representatives Henry Waxman and Edward Markey (known as the "Waxman Markey Bill"). The Bill aims to cut U.S. greenhouse-gas emissions by 83% compared to 2005 levels by 2050. The house bill sets more aggressive short-term targets, such as a 20% reduction by 2020 and a 42% cut by 2030.

The cap-and-trade bill would require power companies and steel mills to obtain permits to cover their emissions. After 2020, the bill would make even smaller industrial operations subject to the cap. Companies emitting fewer than 25,000 tons of greenhouse gases will also be affected. The bill will require emissions reductions in other ways, such as through direct regulation by the EPA.

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.

NHDES Press Release – Striped Bass and Bluefish Consumption Advisory

Director Scott reported that the NHDES in coordination with the New Hampshire Fish and Game Department and six other east coast states, issued a fish consumption advisory for large bluefish and striped bass caught in New Hampshire coastal and estuarine waters. According to state health officials, large bluefish and striped bass (larger than 25 inches) contain polychlorinated biphenyls (PCBs) at levels of potential concern to the general public, especially for pregnant women and young children.

American Recovery and Reinvestment Act (ARRA – Diesel Emission Reduction Act (DERA) Program

Director Scott introduced Thomas Fargo, DERA Program Manager of the Air Resources Division, Technical Services Bureau. Mr. Fargo provided members of the ARC with the following overview of the DERA Program Activities to date:

Background

- Original DERA Program established by Energy policy Act of 2005
- Under ARRA, the DERA Program receives supplemental appropriation of \$300 million.
 - \$88.2 million to states
- NH DERA budget: \$1.73 million
 - 15% to administration (NHDES hired a DERA Program Manager)
 - \$1.5 million to grant recipients
- NH DEARA Program Goals
 - Promote economic recovery
 - Create and/or preserve jobs
 - Reduce diesel emissions

Timeline

- Announcement of ARRA Fund Grants – February 2009
- Public Information Meeting – February 2009
- Solicitation of Proposals Released - March 2009
- Initial Applications Due - March 13, 2009
 - 53 Applicants proposed 545 projects totaling \$10.6 million
- Application Evaluation – March – May 2009
 - 42 eligible applicants proposed 234 projects totaling \$6.5 million
- Final Project Selection – June 2009

Environmental Benefits

- Reduced emissions of 35.5 tons per year of NOx, Particulate Matter, and Hydrocarbons
- Average equipment lifetime emission reduction of 281 tons of NOx, Particulate Matter, and Hydrocarbons

Job Creation

- 42 jobs created
 - 20 in vehicle manufacturing nationwide
 - 22 in local vehicle retrofit sector

Chairman Duval stated his concern that the project seems to reward owners of diesel fleets that have put off modernization. Chairman Duval asked if under the DERA Program a revolving loan fund could be established to ensure that a greater number of businesses are able to share in receiving the benefits of the Program.

New Hampshire Regional Haze State Implementation Plan (SIP) Revision:

Chairman Duval introduced Charles Martone of the Atmospheric Science and Analysis Program. Mr. Martone provided members of the ARC with the final version of NH's SIP and the following overview of the Regional Haze SIP Revision which was filed with the USEPA on May 22, 2009.

Mr. Martone reported that this document revises New Hampshire's State Implementation Plan (SIP) to meet requirements of the Clean Air Act related to protection of visibility. SIPs are dynamic documents describing the state's statutory and regulatory (i.e., enforceable) emission control measures that will be implemented to ensure compliance with National Ambient Air Quality Standards and goals. SIPs must be reviewed and updated periodically to stay current with administrative requirements, changing air quality conditions, and new or amended federal programs. The terms "SIP" and "SIP revision" are sometimes used interchangeably in reference to new or revised portions of a state implementation plan. Regional Haze SIP, or Regional Haze Plan, refers specifically to that portion of the State Implementation Plan which addresses visibility improvement.

In 1999, the Environmental Protection Agency (EPA) issued regulations to improve visibility in 156 national parks and wilderness areas across the United States. The affected areas include many of our best known natural places, including the Grand Canyon, Yosemite, Yellowstone, Mount Rainier, Shenandoah, the Great Smokies, Acadia, and the Everglades. In New Hampshire, the two affected areas are Great Gulf Wilderness and Presidential Range - Dry River Wilderness.

These regulations address visibility impairment in the form of regional haze. Haze is an atmospheric phenomenon that obscures the clarity, color, texture, and form of what we see. It is caused primarily by anthropogenic (manmade) pollutants but can also be caused by a number of natural phenomena, including forest fires, dust storms, and sea spray. Some haze-causing pollutants are emitted directly to the atmosphere by anthropogenic emission sources such as electric power plants, factories,

automobiles, construction activities, and agricultural burning. Others occur when gases emitted to the air (haze precursors) interact to form new particles that are carried downwind.

Emissions from these activities generally span broad geographic areas and can be transported hundreds or thousands of miles. Consequently, regional haze occurs in every part of the nation. Because of the regional nature of haze, EPA's regulations require the states to consult with one another toward the national goal of improving visibility – specifically, at the 156 parks and wilderness areas designated under the Clean Air Act as mandatory Class I Federal Areas.

The Regional Haze Rule calls for each state to establish *reasonable progress goals* for visibility improvement and to formulate a *long-term strategy* for meeting these goals. These requirements apply to any state having a Class I area as well as any state that contributes to visibility impairment at any (downwind) Class I area. The visibility goals must be designed both to improve visibility on the haziest days and to ensure that no degradation occurs on the clearest days.

A state's long-term strategy must include enforceable emission reduction measures designed to meet reasonable progress goals. The first long-term strategy covers the 10-15-year period ending in 2018, and subsequent revisions are to be issued every 10 years thereafter. In identifying the emission reduction measures to be included in the long-term strategy, states should address all types of manmade emissions contributing to visibility degradation in Class I areas, including those from mobile sources; stationary sources (such as factories); smaller, so-called "area" sources (such as residential wood stoves and small boilers); and prescribed fires.

In developing their plans, states can take into account emission reductions attributable to ongoing air pollution control programs at the state, regional, or national levels. For most states and regions of the country, however, additional emission control measures beyond those already on the books will be necessary if national visibility goals are to be achieved. In addition, the Regional Haze Rule mandates that control measures be implemented for certain existing sources placed into operation between 1962 and 1977. This portion of the rule is known as *BART*, for *Best Available Retrofit Technology*. Because CAIR formed the regulatory underpinnings for most of the emission reductions that were to produce visibility improvements in mandatory Class I areas, the vacatur of CAIR would have represented a major difficulty for the individual states in attempting to comply with the Regional Haze Rule. While all eastern states have depended in varying degree on CAIR in the preparation of their regional haze SIPs, some Southeast states have relied almost entirely on CAIR to demonstrate compliance with the rule. As a major ramification, the vacature would have immediately invalidated EPA's determination that CAIR satisfied the requirements of BART.

The U.S. Congress and EPA are considering a number of possible short and long-term regulatory or legislative fixes to improve CAIR. It is too early to know when this process will reach a conclusion and what the outcome will dictate for regional haze planning. There may be some short-term slippage or loss in projected emission reductions as a consequence of the Court's July 11, 2008, decision. Over the longer term, New Hampshire anticipates that future emission control requirements meeting the provisions of a reauthorized Clean Air Act, or its successor, will be at least as stringent as CAIR originally would have obtained. As to the validity of the already-completed planning components, a number of mitigating circumstances apply:

- Application of BART provisions where the old CAIR previously might have sufficed is likely to yield even greater emission reductions from BART-eligible facilities.
- New Hampshire and many other states have instituted their own emission reduction programs through multi-pollutant legislation and other means. New Hampshire applauds the efforts of other states and encourages them to follow through with the implementation of laws, consent decrees, and other measures that would complement emission reductions from CAIR.
- Strict adherence to the spirit of the Clean Air Act in future national initiatives will probably result

in emission reductions exceeding those previously projected for CAIR. A major limitation of the original CAIR was that it relied on interstate emissions trading and did not respond to the specific language of the Clean Air Act, Section 110(a)(2)(D), which prohibits *any* source or activity within a state from impairing the ability of another state to meet national air quality standards or visibility requirements. CAIR was only one tool, not an all-purpose remedy, for addressing the problem of interstate transport of pollutants.

For these reasons, the NHDES believes that future emissions and air quality levels under new-CAIR scenarios are not likely to be vastly different from values predicted by MANE-VU's completed modeling, even though that modeling was based on implementation of CAIR as it was before the remand. Consequently, the reasonable progress goals and long-term strategy developed for New Hampshire's regional haze SIP still represent a defensible position from which to go forward with measures to improve visibility at MANE-VU's Class I Areas.

Mr. Martone announced that a public hearing has been scheduled for June 24, 2009 at 10:00 a.m. in conference room 111 at 29 Hazen Drive to receive public comments regarding NH's Regional Haze SIP Revision. Mr. Martone invited members of the ARC to attend the hearing.

A brief discussion among members of the ARC followed regarding the CAIR vacature, Best Available Retrofit Technology (BART), and the designated non-attainment areas in New Hampshire.

Status of Appeals:

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

Docket # 09-18 ARC, Appeal of Public Service of New Hampshire

Terry Callum entered a motion to continue to table the Notice of Appeal filed by Public Service of New Hampshire.,. Raymond Donald seconded the motion. All present were in favor. Motion carried.

Docket # 08-39 ARC, Appeal of Gregory and Cheryl Kindrat

Terry Callum entered a motion to approve the Decision and Order to deny the appeal as written on June 3, 2009. Raymond Donald seconded the motion. All present were in favor. Motion carried.

Docket # 09-03 ARC and 09-04 ARC , Appeal of Mink Hills Center for Sustainable Development

Presiding Officer Duval granted the continuance and a hearing has been scheduled for 7/13/09 at 10:00 a.m. per the parties request.

Docket #08-48 ARC, Appeal of Russell Thomas (Administrative Order No. WMD 08-033)

An Assented to Motion to Stay was granted by Presiding Officer Collins. Work continues to be conducted on site to comply with the Assented to Motion to Stay.

Other Business:

Chairman Duval set the next date of the ARC to be held on July 13, 2009 at 9:00 a.m. in conference rooms 112 and 113.

Linda Thomas stated for the record that she believes that issues of standing before the Air Resources Council are restrictive to the public and potential appellants and that by narrowing the ability of appellants to meet the standard of standing may have a negative impact on the health and welfare of the general public. Ms. Thomas stated that in addition to public hearings, the public should have the ability to be heard by the ARC in matters concerning appeals of decisions.

Ms. Thomas further stated that she is concerned about the limitation of diversity and representation in matters before the ARC due to instances of members recusal due to potential or perceived conflict of interest.

Chairman Duval stated in regard to the second point, that the general standard is whether a reasonable person would conclude that an individual cannot be impartial. However, each individual member of the ARC must first decide his/her own impartiality on matters before the ARC in accordance with Env-AC 200.

Chairman Duval reminded all members of the ARC that the rules for standing as set forth in law and regulation require that a specific harm or effect be involved, greater than a general effect on the entire public. This is equitable because of the substantial cost to individual parties of making or defending an appeal. For general concerns affecting the public at large, the public does have an opportunity to participate in the following venues:

- New Hampshire Law
- Legislative Process
- Rulemaking Process
- Public Hearings for Permit Applications

Adjourn:

At 10:45 a.m. Terry Callum entered a motion to adjourn the regular meeting of the ARC except for matters involving Docket #s 09-10 ARC, 09-11 ARC, and 09-12 ARC. Mr. Callum requested that all sitting members hearing the matters involving Docket #s 09-10 ARC, 09-11 ARC, and 09-12 ARC return in fifteen minutes to take up these pending matters. William Smagula seconded the motion. All present were in favor. The following members left the meeting:

William Smagula
Robert Duval
David Collins
Debra Hale
Linda Thomas
Georgia Murray (end of conference call)

Reconvened Special Session Regarding Docket Nos. 09-10 ARC, 09-11 ARC, and 09-12 ARC:

At 11:20 a.m., Presiding Officer Donald reconvened the ARC meeting with the following members present:

Steven Walker
J. Ryan Bielagus
Robert Hickey
Terry Callum

Docket No. 09-10-ARC - Appeal of NH Sierra Club, et. al.

Terry Callum entered a motion to grant the appellants standing. Steven Walker seconded the motion. All present were in favor. Motion carried.

Robert Hickey entered a motion to deny the appellants' request to Voir Dire the Air Resources Council. Terry Callum seconded the motion. All present were in favor. Motion carried.

Terry Callum entered a motion to deny the request for Expedited Review of Appeal and Objection. Steven Walker seconded the motion stating that the appellants' reasons for the expedited review were not adequate. All present were in favor. Motion carried.

Steven Walker entered a motion to deny the appellants' request for Stay of Operation of Permit and Expedited Hearing request on Motion for Stay. J. Ryan Bielagus seconded the motion. All present were in favor. Motion carried.

Docket No. 09-11 ARC – Appeal of Conservation Law Foundation

Terry Callum entered a motion to deny the request to Stay Permit and Request for Expedited Review of Appeal and Objections thereto files by PSNH and the NHDES. J. Ryan Bielagus seconded the motion. All present were in favor. Motion carried.

Terry Callum entered a motion to deny the request to Dismiss for Lack of Standing. Steven Walker seconded the motion. All present were in favor. Motion carried.

Docket No. 09-12 ARC – Freedom Logistics & Halifax-American Energy

Steven Walker entered a motion to deny the appeal because the appellants failed to establish standing in the matter. J. Ryan Bielagus seconded the motion. All present were in favor. Motion carried.

Presiding Officer Donald informed members of the ARC and interested parties that a pre-hearing conference has been scheduled for June 22, 2009 at 10:30 a.m. in conference room 110, 29 Hazen Drive.

Atty. Hoffer, representing the Conservation Law Foundation (CLF), asked Presiding Officer Donald if the ARC would consider bifurcation in order to address procedural deficiencies.

Presiding Officer Donald stated that he intends to follow the procedural process in order to avoid confusion.

Presiding Officer Donald recognized Atty. Arthur Cunningham. Atty. Cunningham stated that he is representing the NH Sierra Club in their appeal before the ARC. Atty. Cunningham stated for the record his objection to J. Ryan Bielagus' decision to remain a sitting member of the ARC to hear the appeals concerning the Temporary Permit issued to PSNH.

Atty. Melissa Hoffer, also objected to Mr. Bielagus' decision to hear the appeal concerning the PSNH permit issuance.

Adjourn Special Session of ARC Meeting:

Having no further business to discuss, Terry Callum entered a motion to adjourn. Robert Hickey seconded the motion. All present were in favor. Meeting #179 of the ARC adjourned at 11:40 a.m. on June 8, 2009.