

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #186  
02/08/10**

- MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins  
William Smagula, Linda Thomas, Steven Walker,  
Georgia Murray, Raymond Donald
- MEMBERS NOT PRESENT:** Terry Callum, Debra Hale, Robert Hickey, Ryan Bielagus
- NHDES – ARD PERSONNEL:** Robert Scott, Anne Keach, Amy Samson, Barbara Hoffman,  
Pamela Monroe, Gary Milbury, Erick Russell, Todd Moore,  
Raymond Walter, Karla McManus, Barbara Dorfschmidt
- OTHER INTERESTED PARTIES:** Atty. Linda Landis

**Call to Order:**

Chairman Duval called Meeting #186 of the Air Resources Council (ARC) to order at 9:07 a.m. on Monday, February 8, 2010. Chairman Duval announced that a quorum was present.

**Approval of Minutes:**

Linda Thomas entered a motion to accept the minutes of meeting #185. William Smagula seconded the Motion. All were in favor. The minutes of meeting #185 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 an update regarding the following issues relevant to the Air Resources Division:

**Woodstove Changeout Program, Keene, NH**

Keene is the first community in New Hampshire to have a woodstove changeout program, and its goal is to replace 100 woodstoves. To date, approximately seventy old woodstoves have been changed out and replaced by cleaner burning, more efficient new stoves. The program was originally planned to end in January 2010, however the program has been extended until March 12, 2010 in order to distribute the remaining vouchers.

Linda Thomas asked what the program coordinators planned to do with the remaining funds if the remaining vouchers are not issued.

Director Scott stated that officials from the City of Keene are exploring the possibility of applying any remaining funds towards assistance to low income residents.

**Permitting Activities**

- Laidlaw Berlin BioPower is preparing an air permit application for a 70 MW wood-fired power plant at the former Fraser Paper pulp mill site in Berlin, NH. Due to the facility's proximity to Class I areas, and because the facility is larger than 30 MW, the company needs to obtain approval from the New Hampshire Site Evaluation Committee (SEC). The facility submitted their application to the SEC in December.

This facility will be classified as a new major source under the New Source Review program, and as such will involve the office of the Federal Land Manager to ensure that any concerns with impacts to nearby Class I areas are addressed.

- PSNH Merrimack Station, Bow, NH – Final decision expected by March 8, 2010.

### Tax Exemptions

Director Scott announced that several sources have applied for tax exemptions for installing pollution control equipment. ARD staff are reviewing the application to determine applicability.

### Legislation

Director Scott provided members of the ARC with copies of Senate Bill 480, which proposes to require persons who are qualified to conduct administrative hearings be appointed from the Civil Bureau of the Attorney General's Office to serve as hearing officers for administrative appeals. Director Scott also provided members with a copy of the February 4, 2010 NHDES testimony letter supporting this legislation.

Chairman Duval stated that he does not support the legislation and prefers that the ARC continue to take exclusive jurisdiction in appeals before the ARC. He added that historically, the ARC has reached fair and impartial decisions in a professional and timely manner and that the NHDES' position is contrary to what was discussed regarding similar legislation last year.

Linda Thomas entered a motion to have Chairman Duval contact Commissioner Burack and notify him that the ARC will submit testimony in opposition to SB 480. Georgia Murray seconded the motion. All were in favor.

### Budget

Director Scott informed members of the ARC that the NHDES has been invited by the House Ways and Means Committee to discuss and defend its budget on Friday, February 12, 2010.

Linda Thomas asked if it would be helpful have a member of the Air Resources Council in attendance at the meeting. Director Scott declined the offer and explained that the discussions will be focused on NHDES expenses and revenues which will be addressed by Commissioner Burack and Chief Operations Officer, Susan Carlson.

### **Status of Appeals:**

Chairman Duval introduced Amy Samson, Appeals Clerk, NHDES Legal Unit. Ms. Samson provided members of the ARC with a status update concerning appeals before the ARC as follows:

#### Docket No. 08-48 ARC, Appeal of Russell Thomas

Ms. Samson presented members of the ARC with the Settlement Agreement whereby the Parties resolved all violations of New Hampshire Statutes and rules alleged in Administrative Order No. 08-033. Mr. Thomas agreed to pay the State of New Hampshire a total civil penalty of \$10,000.00 with \$2,500 of this amount suspended, for a period of three years, pending continued compliance with all waste management and air quality laws and regulations. David Collins entered a motion to accept the Settlement Agreement. Raymond Donald seconded the motion. All were in favor.

#### Docket #09-10 ARC and Docket # 09-11 ARD Appeal of NH Sierra Club et al., and Conservation Law Foundation

Ms. Samson reported that a Pre-Hearing Conference is scheduled for February 2, 2010 at 9:00 a.m., and a hearing on this matter is scheduled for March 15, 2010 at 9:30 a.m.

#### Docket Nos. 09-03 ARC and 09-04 ARC Appeal of Mink Hills Center for Sustainable Development and Katherine Lajoie.

Ms. Samson provided members of the ARC with a draft Decision and Order. By a unanimous vote of a quorum of the ARC the Appeal has been denied. William Smagula entered a motion to accept and issue the Decision and Order. David Collins seconded the motion. Linda Thomas opposed. All other were in favor. The motion carried.

Docket No. 09-40 ARC, Appeal of Katherine Lajoie and Anthony Caplan

This item was tabled until the next meeting of ARC on March 15, 2010.

Docket No. 09-43 ARC, Appeal of Public Service of New Hampshire (PSNH)

Ms. Samson stated that on December 3, 2009, the NHDES issued its amended response to Requests for Bonus Carbon Dioxide Allowances. Ms. Samson added that the ARC tabled this item at the meeting on January 25, 2010, and that the action required by the ARC is to accept or deny the Notice of Appeal which was sufficiently filed by PSNH on December 31, 2009.

Chairman Duval stated that with the approval of the parties and the ARC membership, he would like to appoint himself as the presiding officer in the matter.

Raymond Donald entered a motion to support approving Chairman Duval as presiding officer. William Smagula seconded the motion.

Linda Thomas stated that she would prefer that Chairman Duval recuse himself due to his business associations with the appellant. Chairman Duval stated that he believes he does not need to recuse himself from hearing this matter before the ARC.

The following members of the ARC recused themselves from hearing Docket No. 09-43 ARC:

Vice-Chairman David Collins

William Smagula

Georgia Murray

A brief discussion among the ARC membership ensued concerning the issue of recusal. Vice-Chairman Collins entered a motion to table Raymond Donald's motion to approve Chairman Duval as the hearing officer in this matter until the next meeting of the ARC on March 15, 2010. All present were in favor. The motion was tabled.

**Env-A 700, 900, 1700, and 2800 Rock Crushers and Permit by Notification**

Chairman Duval introduced Barbara Dorfschmidt, Senior State Permit Engineer, Permitting and Environmental Health Bureau. Ms. Dorfschmidt provided members of the ARC with proposed amendments to *Env-A 700, Permit Fee System, Env-A 900, Recordkeeping and Reporting Requirements, Env-A 1700, Permit Application Forms, and Env-A 2800, Sand and Gravel Sources, Non-Metallic Mineral Processing Plants and Cement and Concrete Sources.*

Ms. Dorfschmidt explained that the Air Resources Division is proposing to amend these rules in order to simplify the permitting and compliance requirements related to non-metallic mineral processing plants, commonly known as rock crushing plants. She stated that *Env-A 800, Testing and Monitoring Procedures*, is being amended to allow for the use of a Permit-by-Notification. The changes to that rule were informally presented to the ARC in January, and tabled until the April 19, 2010 meeting of the ARC.

Ms. Dorfschmidt provided members of the ARC with a table that compares the existing rule to the proposed rule.

## CRUSHING PLANTS RULE COMPARISON

| Requirement       | Current Rule   | Proposed Rule  |
|-------------------|--|--|
| Permit            | Temporary Permit (TP) required prior to construction at a new location (takes approximately 90 days from date of application to obtain the permit) | Permit-by-Notification (plant can begin construction as soon as notification information is submitted – just need to notify DES within 10 days of startup)                             |
|                   | Site Specific State Permit (SPO) to Operate or a General State Permit (GSP)  |  |
| Portable Plants   | New permit is required for each location   | Permit moves with the plant (just need to notify DES of new location within 10 days of move)   |
| Application Fees  | TP - \$2,000 application fee (for new sources)<br>TP and SPO – fee for public notice publication (\$300 - \$500)                                   | One-time registration fee of \$1000  |
| Permit Expiration | TP – after 18 months<br>SPO and GSP - Every 5 years  | Never  |
| Annual Fees       | Annual emission-based fees (range from \$130 to \$700 per year)  | None   |
| Visible Emissions | For equipment manufactured prior to 1983 < 20% opacity.<br>Newer equipment must meet the federal requirements of 40 CFR 60 Subpart OOO.            | All equipment, regardless of age, will be required to meet the requirements of 40 CFR 60 Subpart OOO   |
| Emissions Testing | Only equipment subject to Subpart OOO is required to be tested.  | All equipment will be required to be tested (existing equipment that has never been tested will need to have testing completed within one year of the effective date of the new rule.) |

Ms. Dorfschmidt summarized the changes to the applicable rules as follows:

### ***Env-A 700, Permit Fee System***

The application fee associated with the permit-by-notification will be \$1,000, which is less than the fee of \$2,000 for existing types of permits (e.g., Temporary Permits). In addition, rock crushers will not be subject to the annual emission-based fees. These reduced fees reflect the reduction in administrative and technical review required of the NHDES to process these notifications.

### ***Env-A 900, Recordkeeping and Reporting***

Env- 900 requires all permitted sources to track their actual emissions and report them annually to the ARD. The ARD uses this information to maintain an inventory of emissions from stationary sources. Actual emissions from rock crushers are low compared to other typical stationary sources (e.g.,

boilers, factories with processing equipment) and are fairly consistent among facilities from year to year. Accordingly, the ARD does not need actual emissions data from individual rock crushers to maintain an inventory of their actual emissions. The ARD is proposing to exempt rock crushers from the recordkeeping and reporting requirements listed in Env-A 900.

***Env-A 1700, Permit Application Forms***

The ARD currently has a General State Permit process for rock crushers. The ARD is proposing to replace this permit process with the Permit-by-Notification system, rendering the GSP-3 form unnecessary.

***Env-A 2800, Sand and Gravel Sources, Non-Metallic Mineral Processing Plants, and Cement and Concrete Sources***

These rules will contain the requirements for plants covered under the Permit-by-Notification. The rule details the application requirements, recordkeeping requirements, and notifications for changes, including moving a portable plant to a new location.

The information required for the application will be the same as that which is currently required for plants registering under the General State Permit. One difference will be that the source will be required to certify that municipality in which the facility operates will be notified.

Another section of this rule covers visible emissions and particulate standards for non-metallic mineral processing plants. The federal regulation, 40 CFR 60, Subpart OOO, requires rock crushers manufactured after 1983 to meet certain opacity limits and to conduct a one-time compliance test showing that the equipment is able to meet the standard. The ARD believes that devices older than 1983 can reasonably be expected to meet the requirements for new equipments. The ARD is proposing to require all rock crushing plants, regardless of age, to comply with the new source performance standards of 40 CFR 60, Subpart OOO.

Ms. Dorfschmidt also mentioned that there is one more rule change that is not related to rock crusher rules; **Determination of Actual Emissions**. The ARD is proposing to eliminate from *Env-A 800* the section of the rules that describes how actual emissions should be calculated. These calculations are primarily used for annual emissions reports and determining emissions-based fees, the latter of which is required in Chapter *Env-A 700, Permit Fee System*. The ARD is proposing to amend this section and move it to *Env-A 700*.

Linda Thomas asserted that the Permit-by-Rule process eliminates the public's right to provide comments concerning these operations.

Chairman Duval noted that the rule does require sources to notify municipalities, and that perhaps the rule could include language to compel municipalities to inform residents.

Raymond Donald entered a motion to accept the amendments to *Env-A 700, 900, 1700, and 2800*. William Smagula seconded the motion. All present were in favor of initiating the 15-day ARC review. Chairman Duval reminded members of the ARC to contact ARD rulemaking coordinators and Vice-Chairman Collins with any comments related to proposed revisions to rules presented before the ARC within 15 days of acceptance of the rule.

**Other Business:**

Having no further business to discuss, Chairman Duval set the next meeting of the ARC to be held on March 15, 2010, at 9:00 a.m. in conference rooms 212 and 213.

**Adjourn:**

Raymond Donald entered a motion to adjourn. William Smagula seconded the motion. All were in favor. Meeting #186 of the ARC adjourned at 11:20 a.m. on February 8, 2010.

