

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #190  
08/16/10**

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

**MEMBERS NOT PRESENT:**

**NHDES – ARD PERSONNEL:** Craig Wright, Anne Keach, Amy Samson, Barbara Hoffman, Joseph Fontaine, Karla McManus, Christa Ellis, Michele Roberge, Jeff Underhill, Charlie Martone, Michael Fitzgerald

**OTHER INTERESTED PARTIES:** Atty. Linda Landis, Atty. Barry Needleman, Atty. Jarrett Duncan, Atty. Arthur Cunningham, Catherine Corkery, Atty. Anthony Blenkinsop, Atty. Evan Mulholland, Melissa Fales

**Call to Order:**

Chairman Duval called Meeting #190 of the Air Resources Council (ARC) to order at 9:00 a.m. on Monday, August 16, 2010. Chairman Duval announced that a quorum was present.

**Approval of Minutes:**

Linda Thomas entered a motion to accept the minutes of meeting #189. William Smagula seconded the motion. All others were in favor. The minutes of meeting #189 were accepted by the ARC.

**Division Activities & Legislative Update:**

Chairman Duval introduced Craig Wright, Assistant Director of the Air Resources Division (ARD). On behalf of Director Scott, Mr. Wright provided members of the ARC with an update regarding the following issues relevant to the Air Resources Division.

**Laidlaw-Berlin BioPower, LLC, Berlin, NH**

Mr. Wright reported that the ARD technical review for the 70 MW bio-mass facility is complete. On July 26, 2010, the construction permit was issued and forwarded to the Site Evaluation Committee who have jurisdiction on this project. The SEC plans to issue a decision by September 2010.

**Fraser Paper, Berlin, NH**

Mr. Wright reported that the source has filed applications to permit a small wood-fired boilers at the facility, which will save the source several million dollars a year in fuel costs. Technical review has begun on the proposed project and will likely be completed soon.

**Budget**

Mr. Wright reported that the State of New Hampshire operates under a two-year budget cycle and that the ARD is currently developing its FY12-13 budget, which must be finalized by February 1, 2011 and include a 5% cut. Mr. Wright reported that the ARD has only one General Fund Account which equates to approximately 5-6% of the ARD Budget, and the ARD is planning on level funds with no increases to the General Fund for FY 12-13.

#### Annual Performance Partnership Agreement (PPA)

Mr. Wright reported that the NHDES is currently negotiating the PPA with EPA and expects the ARD will receive approximately \$1.4 million from EPA in 2011. The ARD is drafting the list of deliverables which equates to nearly sixty-five program deliverables, actions and commitments.

#### **Env-A 101 and Env-A 619.09, Greenhouse Gas Rules**

Chairman Duval introduced Karla McManus, Planning and Rules Manager of the Air Resources Division, Compliance Bureau. Ms. McManus provided members of the ARC with the following outline summarizing the proposed amendments to *Env-A 101 and Env-A 619.09, Greenhouse Gas Rules*.

The ARD is proposing to amend Env-A 101, *Definitions* and Env-A 600, *Statewide Permit System*. These amendments are intended to address recent changes made by the United States Environmental Protection Agency (EPA) that establish permitting requirements for Greenhouse Gas (GHG) emissions under the Prevention of Significant Deterioration (PSD) and Title V permitting programs.

#### Background

On June 3, 2010, EPA finalized a rule that will regulate greenhouse gas (GHG) emissions under the PSD and Title V permitting programs. New Hampshire has EPA-approved PSD and Title V permitting programs, so the ARD is responsible for issuing PSD permits and proposed Title V permits for major stationary sources in the state.

Currently, the PSD major source threshold is either 100 or 250 tons per year (tpy), depending on the type of regulated source. For the Title V program, the major source threshold is 100 tpy. These current thresholds are problematic in the context of regulating GHGs, which differ from most criteria pollutants as they are emitted at much higher quantities. Furthermore, for modifications under the PSD program, unless a "significant" net increase threshold is established for a regulated pollutant, *any* increase (i.e., more than one pound) of that pollutant resulting from a proposed modification would trigger the major modification provisions under PSD. As the EPA noted in the final rule for GHGs, if EPA applied these statutory PSD and Title V applicability thresholds to sources of GHG emissions; it would bring tens of thousands of small sources and modifications into the PSD program each year, and millions of small sources into the Title V program.

The EPA has addressed this issue at the federal level by establishing much higher applicability thresholds, specifically for GHGs. However, changes are also required to the current state rules because they do not reflect the higher thresholds necessary to effectively regulate GHG emissions under PSD and Title V. For the reasons explained above, unless the state rules are modified to establish separate, higher thresholds for GHGs, the ARD would not

be able to effectively administer the EPA-approved PSD and Title V programs, and the EPA would need to re-assume the responsibilities of these programs until New Hampshire could amend its PSD and Title V programs to narrow the quantity of affected sources and demonstrate that it has the resources to effectively administer these programs.

In order to address the above concerns, the ARD proposes the following rule changes:

1) Establish definition of “greenhouse gases”: The ARD proposes to establish a definition of “greenhouse gases” in Env-A 101, since this term will be used in establishing new major source and major modification thresholds for GHGs. The proposed definition is consistent with the definition in RSA 125-L and with the definition recently adopted by EPA.

2) Establish definition of “carbon dioxide equivalent emissions” (CO<sub>2</sub>e): GHGs (as contained in the proposed definition) are comprised of six different gases, each of which exhibits a different global warming potential (GWP). For example, one ton of methane emissions will have a substantially higher GWP than one ton of carbon dioxide emissions. For this reason, a standardized method of expressing GHG emissions is needed for comparison to the respective PSD and Title V program applicability thresholds. The proposed definition is consistent with the EPA definition contained in the final federal rule.

3) Amend current definitions of “major source”, “major stationary source”, and “significant”: The ARD is proposing changes to the definitions of “major source”, “major stationary source”, and “significant” where they are currently defined in Env-A 101 and Env-A 600. Specifically, the ARD is revising these definitions to clarify that, for purposes of GHG permitting, the major source threshold for PSD and Title V is 100,000 tpy CO<sub>2</sub>e, and the major modification threshold under the PSD program is a net emissions increase of at least 75,000 tpy CO<sub>2</sub>e. These thresholds are consistent with those recently promulgated by EPA.

Absent the above proposed changes, the ARD expects that hundreds (if not thousands) of small sources in New Hampshire would become new major sources under the PSD and Title V programs. By adopting the proposed rule changes, the ARD anticipates that the existing universe of major sources in New Hampshire would not change significantly.

Raymond Donald entered a motion to accept, with the inclusion of the Table A-1 to subpart A of 40 CFR part 98 in Appendix B (calculations for global warming potential) for the proposed amendments to Env-A 101 and Env-A 619.09. Terry Callum seconded the motion. All present were in favor.

### **Env-A 2300, Mitigation of Regional Haze Rules**

Ms. McManus provided members of the ARC with the following outline summarizing the proposed amendments to *Env-A 2300, Mitigation of Regional Haze Rules*.

ARD is proposing to adopt a new rule, Chapter Env-A 2300 *Mitigation of Regional Haze*. This rule establishes emission standards for sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and total suspended particulate matter (TSP) at certain fossil-fuel-fired power plants that contribute to regional haze.

### **Background**

Regional haze is defined as visibility impairment caused by the emission of air pollutants from

numerous sources located over a wide geographic area. Section 169A of the Clean Air Act provides for visibility protection for federal Class I areas, which include 156 national parks and wilderness areas in the U.S. The Class I areas most affected by emissions originating in New Hampshire are the Great Gulf and Presidential Range - Dry River Wilderness Areas and Acadia National Park.

EPA’s regional haze program requirements are established at 40 CFR 51.308. Among the requirements are provisions for Best Available Retrofit Technology (BART). New Hampshire’s proposed rule addresses the BART requirements. The proposed rule also addresses MANE-VU’s targeted EGU strategy.

EPA created the BART provisions to reduce emissions of visibility-impairing pollutants from large sources that, because of their age, were exempted from new source performance standards (NSPS). BART applies to units installed and operated between 1962 and 1977 with the potential to emit more than 250 tons per year of a visibility-impairing pollutant. Each affected unit must undergo a case-by-case analysis to determine whether new emission restrictions are appropriate to limit impacts on visibility at Class I areas. In evaluating technology options, five specific factors must be considered:

1. The costs of compliance,
2. The energy and non-air quality environmental impacts of compliance,
3. Any existing pollution control technology in use at the source,
4. The remaining useful life of the source, and
5. The degree of visibility improvement from the application of BART.

The targeted EGU strategy was developed by the MANE-VU states to reduce haze-causing pollutants from the largest category of emitters: fossil-fuel-fired power plants. Specifically, the strategy is designed to reduce SO<sub>2</sub> (aggregated) emissions by 90 percent from the 167 EGUs that contribute the most to visibility impairment at Class I areas.

New Hampshire’s Proposed Rule

Chapter Env-A 2300 *Mitigation of Regional Haze* would apply to any fossil fuel-fired steam generating unit having a maximum heat input rate of more than 1,000 million BTUs per hour that has either:

- Cyclone-firing, wet-bottom boiler fueled by coal or any combination of fuels using coal; or
- Tangential-firing, dry-bottom boiler fueled by oil or gas or any combination of oil or gas.

Sources subject to the rule include the three New Hampshire units on MANE-VU’s list of targeted EGUs (see table below). Two of those EGUs are also BART-eligible units. New Hampshire’s applicability criteria do not cover the entire realm of potential BART eligibility (the federal criteria apply to large sources in 26 different categories) but have the intended consequence of capturing all BART units in the state.

Unit	Rating (MMBtu/hr)	Boiler Type	Fuel	Targeted EGU	BART-Eligible
Public Service of New	1,238	Cyclone	Coal	x	

Hampshire Merrimack Station Unit MK1					
Public Service of New Hampshire Merrimack Station Unit MK2	3,473	Cyclone	Coal	x	x
Public Service of New Hampshire Newington Station Unit NT1	4,350	Tangential	Oil/Gas	x	x

The proposed rule establishes SO<sub>2</sub>, NO<sub>x</sub>, and TSP emission limitations consistent with BART requirements, and SO<sub>2</sub> emission limitations consistent with the targeted EGU strategy.

Units MK1 and MK2 will be capable of meeting these emission requirements with existing emission controls and with additional controls already under construction as required by state law.

Because Units MK1 and MK2 will exhaust through a common stack, the two units are linked as part of a compliance strategy for controlling TSP emissions. The proposed TSP emission limitations on both units are calculated based on the currently permitted limit for Unit MK1 and the presumptive BART limit for Unit MK2.)

Unit NT1 will be capable of meeting these emission requirements with existing emission controls and with reasonable adjustments to the sulfur content of its residual fuel oil and/or to the fuel oil/natural gas ratio used in combustion.

The emission limitations established by this rule would be effective on July 1, 2013.

William Smagula stated the explanatory memorandum from Craig Wright was helpful in defining terms and affected sources/equipment. He added that the requirements on PSNH facilities will cause significant cost to customers and operational restrictions.

Raymond Donald asked how many sources will be affected.

Jeffrey Underhill, Chief Scientist for the ARD responded that units constructed between the years 1962 and 1977 will be affected, which includes PSNH Units MK1 and MK2.

Georgia Murray reiterated that the Env-A 2300 must be adopted by January 2011, but will not be applicable until 2013 to allow sources time to come in to compliance. Ms. Murray asked what will happen with the FGD scrubber permit as a result of this rule revision.

Michele Andy, Administrator of the ARD Permitting and Environmental Health Bureau responded that the Temporary Permit will be rolled in to the Title V permit for PSNH after construction of the FGD scrubber is complete.

Steven Walker entered a motion to accept the proposed amendments to Env-A 2300. Linda Thomas seconded the motion. All present were in favor. 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 present before the ARC within fifteen (15) days of acceptance of the rule.

Ms. McManus provided members of the ARC with a rulemaking milestone chart which includes approximate dates of proposed filings for formal rulemaking.

### **Status of Appeals**

Chairman Duval suggested that Ms. Samson present updates on appeals which do not require recusals from members of the ARC before taking up the Docket No. 10-13.

Ms. Samson reported the following concerning pending appeals before the ARC: Docket No. 10-13 ARC – Kalwall Corporation, regarding payment of emission-based fees. The appeal was received on July 1, 2010. On July 20, 2010, Atty. Cheney sent a letter indicating that Kalwall and the NHDES are currently engaged in discussions in an attempt to resolve the matter. Kalwall has requested that the ARC delay taking action on any portion of the Petition for Appeal while the parties attempt to settle the matter.

Docket No. 09-43 ARC – Public Service of New Hampshire (PSNH), regarding the December 3, 2009 NHDES Final Responses to Request for Bonus Carbon Dioxide Allowances (amended by the NHDES December 2009). A Pre-hearing Conference was held on June 29, 2010, and a hearing is scheduled for October 18, 2010 at 10:00 a.m.

Docket Nos. 09-10 and 09-11 ARC – NH Sierra Club, et. al and Conservation Law Foundation, regarding Temporary Permit TP-0008 issued to PSNH on March 3, 2010. A hearing on the matter was held on July 2, 2010. A Decision and Order need to be finalized.

Docket No. 09-03 and 09-04 ARC – Mink Hills Center for Sustainable Development and Katherine Lajoie, regarding the January 5, 2009 Decision to Approve the Application and Issue a Proposed Title V Operating Permit to Wheelabrator Concord Company, LP. The ARC denied Ms. Lajoie's Motion for Reconsideration of Decision and Order to Dismiss for Lack of Standing on May 17, 2010. A Decision and Order need to be finalized. The ARC also denied Mr. Caplan's Motion for Reconsideration regarding the Decision and Order on May, 17, 2010. A Decision and Order need to be finalized.

Linda Thomas questioned the length of time it takes between when a Decision is rendered and the final Order is sent to the parties.

Chairman Duval stated that with the passage of Senate Bill 480, there will be a new appeals process moving forward, which will resolve the delay in the NHDES Legal Unit getting Decisions and Orders out in a timely fashion.

Terry Callum entered a motion to adjourn the regular meeting of the ARC so that recused members in the remaining appeals may leave. Georgia Murray seconded the motion. All were in favor. Before leaving, Chairman Duval asked Dr. Hickey to chair the discussion relating to the PSNH Merrimack Station appeals. At 10:20 a.m. on August 16, 2010, Debra Hale, Robert Duval, William Smagula, and David Collins left the meeting.

Docket No. 10-06-ARC - NH Sierra Club, et. al, regarding the March 15, 2010 Proposed Title V Operating Permit issued to PNSH Merrimack Station. Before taking up pending motions, the ARC voted to appoint Steven Walker as the Presiding Officer in this matter. The ARC tabled the Motion for Disqualification and the Motion to Consolidate on June 14, 2010. Mr. Walker requested that Ms. Samson notify the parties to schedule a pre-hearing conference after the ARC meeting on September 20, 2010.

Mr. Walker stated that pending motions in this matter will be taken up at the ARC meeting on September 20, 2010 and further stated that oral arguments will not be taken until after the Pre-hearing conference on September 20, 2010.

Having no further business to discuss, Terry Callum entered a motion to adjourn. Ryan Bielagus seconded the motion. All were in favor. The ARC meeting concerning Docket No. 10-06 ARC adjourned at 10:40 a.m. on August 16, 2010.