

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #202
11/21/11**

- MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins, William Smagula, Deborah Chabot, Steven Walker, Georgia Murray (via conf. call), Raymond Donald, Carmela Amato-Wierda
- MEMBERS NOT PRESENT:** Debra Hale, Ryan Bielagus
- NHDES – ARD PERSONNEL:** Robert Scott, Anne Keach, Paula Scott, Thomas Niejadlik, Michael Fitzgerald, Michele Roberge, Karla McManus, Gary Milbury, Elizabeth Nixon
- OTHER INTERESTED PARTIES:** Atty. Barry Needleman, McLane PA; Atty. Linda Landis, PSNH

Call to Order:

Chairman Duval called Meeting #202 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, November 21, 2011. Chairman Duval announced that a quorum was present.

Approval of Minutes:

Vice-Chairman David Collins entered a motion to accept the minutes of meeting #201. Robert Duval seconded the motion. Steven Walker, Deborah Chabot, Raymond Donald, and Carmela Amato-Wierda abstained. All others were in favor. The motion carried. The minutes of ARC meeting #201 were approved and accepted.

Chairman Duval introduced Dr. Carmela Amato-Wierda who was appointed to the ARC by the Governor and Executive Council on November 9, 2011, for a three-year term expiring December 6, 2014. Dr. Amato-Wierda provided members of the ARC with a brief biography of her career as a Chemical Scientist. She is currently a Materials Science Professor at the University of New Hampshire.

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.

Division Directors and Council Chairs Meetings

Director Scott reported that two meetings have occurred between the Commissioner, Division Directors and Council Chairs and Vice-Chairs in order to improve consistency between the Councils rules and functions. Director Scott announced that David Conley, Esq., has been appointed by the Attorney General as the designated hearings officer for each council. He added that the Councils also intend to revise law to accommodate hearings involving combined enforcement actions between the Divisions.

Cheshire County Air Quality Issues

Director Scott stated that an air quality trend began in October exceeding the health standards due to residential use of wood-burning stoves. Director Scott added that continuous monitoring in the City of Keene indicates that the geographical area lends itself to this type of problem during the colder months. Director Scott said that he will suggest voluntary no or low burning days for residential wood burning stoves and increase public education and outreach efforts for Cheshire County.

Redesignation of Ozone Standards

Director Scott reported that upcoming rulemaking revisions for New Source Review (NSR) and Prevention of Significant Deterioration (PSD) will provide more flexibility for affected sources in New Hampshire.

SO₂ Air Quality Standard

Director Scott stated that New Hampshire will be in non-attainment for SO₂, and that the new scrubber at PSNH-Merrimack Station should help improve SO₂ emission levels.

Georgia Murray asked if the rulemaking will reflect only what the EPA approves as attainment status changes and how will New Hampshire have more flexibility?

Director Scott responded that the changes in designation allows New Hampshire to change threshold limits.

Stage II Vapor Recovery Rules

Director Scott reported the Stage II Rules have been sent to the Joint Legislative Committee on Administrative Rules (JLCAR) and are on the Consent Calendar with no comments to allow New Hampshire to phase out of the Stage II Vapor Recovery Program.

Regional Greenhouse Gas Initiative

Director Scott explained that the Regional Greenhouse Gas Initiative (RGGI) is a market-based regulatory program to reduce greenhouse gas emissions. RGGI, Inc. conducts the auctions and oversees the analysis of these auctions. States sell nearly all emission allowances through auctions and invest proceeds in consumer benefits: energy efficiency, renewable energy, and other clean energy technologies.

Commissioner Thomas Burack and Joanne Morin of the Energy Office are NH's environmental and energy designees for RGGI. Director Scott reported that the RGGI contract extension through December 2012 is on the Governor and Executive Council agenda for November and expects it will be approved.

Env-A 1400, Regulated Toxic Air Pollutants

Director Scott introduced Thomas Niejadlik, Administrator of the Environmental Health Program. Mr. Niejadlik informed members of the ARC that the Air Resources Division (ARD) is proposing to amend Env-A 1400, *Regulated Toxic Air Pollutants*. The existing rule implements the Regulated Toxic Air Pollutant rule established under RSA 125-I. The purpose of this chapter is to prevent, control, abate, and limit the emissions of toxic air pollutants into the ambient air. The ambient air limits are intended to promote public health by reducing human exposure to toxic air pollutants.

Every year, as required by RSA 125-I:4, ARD proposes changes to the table of regulated toxic air pollutants (RTAPs) and their ambient air limits (AALs), based on changes made to the list of chemical substances by the American Conference of Governmental Industrial Hygienists (ACGIH). This year, we are proposing to adopt amendments based on ACGIH changes as follows:

- One compound, *Citral, inhalable fraction and vapor*, is proposed as a new RTAP.
- Ten chemical substances are proposed to have their AALs changed.
- Five chemical substances are proposed to have a name change.

In addition to the required annual updates, DES has made many changes to the list of RTAPs and to the rules over the years. These changes were made in order to utilize the latest scientific data, to streamline the compliance determination and permitting process, and to allow DES and businesses to concentrate efforts on those toxic chemicals that pose the greatest health risk to the public. This year DES is also proposing the following changes:

- De-list low toxic Class III RTAPs that are not expected to cause harmful health effects in the ambient air and de-list RTAPs that do not have an AAL due to a lack of scientific data.
- Exempt major stationary sources that are subject to a federal Maximum Achievable Control Technology (MACT) standard and meet the requirements of the rule through the operation of pollution control equipment.
- Exempt spray booths using commercially available paints or coatings for facility or equipment maintenance in order to be consistent with federal regulations.
- Exempt crematoriums. Numerous compliance determinations have shown that their emissions are well below all applicable AALs.
- Exempt sewage treatment facilities that do not accept industrial wastewater and process less than 200,000 gallons per day. Test data has shown that emissions from these facilities are well below all applicable AALs.
- Exempt devices that burn bio-fuels as defined in the Limited Electrical Energy Producers Act, RSA 362-A:1-a, I, I-a, and I-b (pending analysis of stack test data).
- Exempt the use of consumer products if those products are used in a manner consistent with how the general public would use them in order to be consistent with federal regulations.

Georgia Murray asked Mr. Niejadlik if he had reviewed the criteria for bio-fuels for devices to be exempt from the rule.

Director Scott responded that stack tests had been conducted at the sources.

Ms. Murray emphasized that this portion of the rule revision is troubling because the rule perpetuates a poor definition of “renewable fuel”. She added that although the term “renewable” is defined under the Renewable Portfolio Standard” (RPS), she would like the term removed from the proposed rule.

Carmela Amato-Wierda suggested adding the term “potentially” to the revision.

Chairman Duval entered a motion to accept the revisions to Env-A 1400. Deborah Chabot seconded the motion. All were in favor. Chairman Duval instructed members of the ARC to contact Vice-Chairman Collins with further comments regarding Env-A 1400 within fifteen days.

Status of Appeals:

Chairman Duval introduced Paula Scott, Appeals Clerk. Ms. Scott provided members of the ARC with an update regarding the following appeals before the ARC:

Docket No. 11-10 ARC – Public Service of New Hampshire (PSNH) regarding the NHDES Final Determination of Baseline Mercury Input. On August 22, 2011, the ARC accepted the Appeal. Ms. Scott reported that a Pre-Hearing Conference was held on October October 17, 2011 and a hearing

on the matter is scheduled for March 19, 2012. On October 31, 2011, the Appellant's Request for information was received. No action is required of the ARC at this time.

Docket No. 09-40 ARC – Appeal of Katie Lajoie and Tony Caplan regarding the issuance of the Final Title V Operating Permit TV-0032 for Wheelabrator Concord. Ms. Scott stated that on November 9, 2009 the appeal was received. After the related appeal on the Proposed Title V Permit was adjudicated, on June 14, 2010, the ARC discussed the Docket 09-40 appeal and determined that there was no basis for the appeal because the Final Title V permit was an EPA action, not a DES action. The ARC requested that Ms. Samson, the former Appeals Clerk, notify the parties that the correct process would be to file an objection with the EPA, not the DES. The Order denying the Appeal was issued on October 12, 2011. A Motion for Reconsideration was received on November 1, 2011. On November 7, 2011, the DES filed an Objection to Motion for Reconsideration and the applicant filed an Objection to the Motion for Reconsideration. On November 14, 2011 a Rebuttal to Wheelabrator and DES' Objections was filed.

Raymond Donald entered a motion not to reconsider the Decision and Order. David Collins seconded the motion. Carmela Amato-Wierda and Deborah Chabot abstained. All other were in favor. The Motion to deny the Motion for Reconsideration carried.

Docket No. 09-43 ARC – Public Service of New Hampshire (PSNH) regarding DES' Final Responses to Requests for Bonus Carbon Dioxide (CO₂) Allowances as amended and dated December 3, 2009. The order granting the appeal, remand back to the NHDES and granted Assented-To Motion to Retain Jurisdiction was sent on June 27, 2011. Also, the Decision and Order on the Motion for Reconsideration by CLF was denied and sent to the parties on June 27, 2011. Ms. Scott reported that on September 14, 2011, a Joint Motion to Accept the Final Settlement Agreement Between the Parties and Close the Docket was received. A draft Order has been prepared for review.

Steven Walker entered a motion to accept and issue the Order to accept the Final Settlement Agreement Between the Parties. Raymond Donald seconded the motion. Carmela Amato-Wierda abstained. All others were in favor. The motion carried.

Docket No. 10-13 ARC – Kalwall Corporation regarding payment of emission-based fees. Pamela Monroe, Administrator of the Compliance Bureau provided members of the ARC with a status report at the September 19, 2011 meeting. Negotiations continue. No action by the ARC is needed at this time.

Other Business

Chairman Duval set the next meeting of the Air Resources Council to be held on December 19, 2011, and requested that an electronic meeting notice be sent to all members of the ARC in order to determine that a quorum will be present.

Adjourn

Having no further business to discuss, Chairman Duval entered a motion to adjourn. Steven Walker seconded the motion. All were in favor. Meeting #202 of the Air Resources Council adjourned at 10:15 a.m. on November 21, 2011.