

AIR RESOURCES COUNCIL
MINUTES OF ONLINE MEETING #276
05/09/2022

MEMBERS PRESENT: Chairman Robert Duval, Jay Leduc, Elizabeth (Lynn) Tillotson, David Cribbie, J. Ryan Bielagus, Kris Blomback, and Rudy Cartier Jr.

MEMBERS PRESENT BY PHONE: Mark Lambert and Georgia Murray.

NHDES – ARD PERSONNEL: Director Craig Wright, Asst. Director Mike Fitzgerald, Cathy Beahm Gary Milbury, Sheila Rydel, Karla McManus,

OTHERS PRESENT: Shelley Marshall

MEMBERS OF

THE PUBLIC PRESENT: John Tuthill

Call to Order:

Chairman Robert Duval called meeting #276 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday May 9, 2022. Chair Robert Duval announced that the council had a quorum present.

Approval of Minutes:

A motion to approve the minutes of meeting #275 moved by J. Ryan Bielagus and seconded by David Cribbie. All were in favor, motion passed.

Division Activities and Legislative Update:

Chairman Robert Duval introduced Director Craig Wright of the Air Resources Division (ARD), who updated members of the ARC regarding issues relative to the ARD, including:

1. EBC New Hampshire Webinar: Efforts to Address Environmental Justice in NH-Update from March 14, 2022 Air Council meeting:

On April 19, 2022, Karen Craver, the Administrator of DES Environmental Health Program, participated in the NH Environmental Business Council webinar on Environmental Justice in New Hampshire. This webinar introduced participants to environmental justice leaders from the EPA, the NH DES, and from local organizations and institutions. The goal of the meeting was to explore how federal; state and Community groups are currently taking action to advance and promote environmental justice. The webinar had approximately 60 attendees, and the EBC has asked us to partner with them again in the future.

2. Updates to Chapter Env-A 1400, *Regulated Toxic Air Pollutants*:

Changes to Env-A 1400, *Regulated Toxic Air Pollutants* were most recently adopted on February 3, 2022. Sources subject to the air toxics rule have 90 days from adoption (until May 3rd, 2022) to evaluate their compliance status and demonstrate that their emissions comply with the revised rule, or if necessary, apply for a new permit or permit revision. To date, we have received submittals from approximately 12 facilities that either need to obtain/amend a permit or have requested determinations from the Department regarding the application of the recent rule revisions.

3. Volkswagen Update: DES has ranked the project and will begin the G&C process to approve the

contracts. DES will provide further information at our upcoming Air Council meetings.

4. **NEVU Update:** DOT is the lead, will have \$17M in federal money for EV infrastructure over 5 years. DES is assisting with the corridor designations and will be assisting with public outreach. In effort to coordinate with DOT and the DES VW funds the lead DOT staff person was on the DES VW RFP scoring committee.
5. **Permit Fee Update:** DES held the fee consistent with the 2021 fee rate Emission report were due April 25, 2022. DES will provide further information at our upcoming Air Council meetings.
6. **Regional HZE SIP:** NHDES Air Resources Division submitted the periodic comprehensive revision to the NH Regional Haze State Implementation Plan (SIP) for the second planning period to EPA on May 5, 2022. The plan was due July 31, 2021. This SIP update represents the culmination of years of technical work performed in partnership with states, tribes, stakeholders, EPA and Federal Land Managers. On April 7, 2022, EPA announced its intent to make findings that certain states have failed to submit regional haze implementation plans for the second planning period. The EPA intends to issue these findings by August 31, 2022, however States that submit their second planning period SIPs by August 15, 2022, may avoid inclusion in the findings of failure to submit.

Rules:

Env-A 600, *Statewide Permit System*

Karla McManus, Planning and Rules Manager

Env-A 600, *Statewide Permit System*, is due to expire on September 1, 2022. The purpose of this chapter is to implement the permitting requirements of RSA 125-C and RSA 125-I to regulate the operation and modification of new and existing stationary sources, area sources and devices in order to achieve and maintain the ambient air quality standards established pursuant to RSA 125-C and Env-A 300; and the ambient air limits for regulated toxic air pollutants established pursuant to RSA 125-I and Env-A 1400. This chapter applies to each stationary source, area source, and device that is required by RSA 125-C:11 to possess a temporary permit or operating permit.

The Air Resources Division (ARD) is readopting this rule without any changes. ARD has spent the past two years working with permitting staff on changes that need to be made to make the rule clearer for sources and to make sure the rule is in compliance with federal laws. The details of the language are still in process and need more time. Since Env-A 600 is the cornerstone of ARD and our State Implementation Plan, we need input from the United States Environmental Protection Agency and from our stakeholders before we move ahead. Therefore, we are proposing to readopt the current rule without any changes so that it doesn't expire while we are working on re-writing Env-A 600.

Several ARC members expressed concern that the public may be misled by this re-adoption without changes is interim in nature and will soon be followed by substantive changes. DES agreed to inform the public of this intent. Council member Elizabeth Tillotson moved to start the 15-day clock, seconded by Kris Blomback; the motion passed unanimously.

Readoption of Env-A 2400, *Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations*

Karla McManus, Planning and Rules Manager / Sheila Rydel, NSR Program Manager

Env-A 2400, *Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations*, is due to expire on April 23, 2023. The purpose of this chapter is to establish emissions standards for particulate matter and visible emissions from ferrous and non-ferrous foundries, smelters, and investment casting operations.

The Air Resources Division is readopting this rule without any changes except for the deletion of Part 2405, *Affirmative Defenses for Violations of Visible Emission Standards*. This part is being deleted because on September 17, 2014, the EPA issued a supplemental notice of proposed rulemaking (SNPR, 79 FR 55920) amending its February 22, 2013 (78 FR 12459) proposed rule made in response to a petition for rulemaking that the Sierra Club filed with the EPA. At issue was whether the EPA can allow an affirmative defense for excess emissions from a permitted source during start-up, shut-down, or malfunction (SSM) of equipment because, as asserted by the Sierra Club the EPA's policy with regard to SSM can "undermine the emission limits in SIPs and threaten states' abilities to achieve and maintain the NAAQS, thereby threatening public health and public welfare..." Subsequent to EPA's issuance of the February 2013 proposal, a federal court ruled, based on a case brought by the NRDC, that CAA sections 113 and 304 preclude EPA authority to create affirmative defense provisions in the Agency's own regulations imposing emission limits on sources, because such provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. Therefore, the EPA is requiring states to remove any affirmative defense language from existing rules and not include them in future rules.

After a discussion between the Council and ARD; ARD decided to withdraw this rule at this time and hold additional meetings with stakeholder groups to discuss SSM policy.

Readoption of Env-A 2700, *Hot Mix Asphalt Plants*

Karla McManus, Planning and Rules Manager / Sheila Rydel, NSR Program Manager

Env-A 2700, *Hot Mix Asphalt Plants*, is due to expire on February 16, 2023. The purpose of this chapter is to establish standards for regulating visible emissions, particulate matter emissions, and fugitive emissions from hot mix asphalt plants. The Air Resources Division is readopting this rule without any changes.

Council member Rudy Cartier moved to start the 15-day clock, seconded by Elizabeth Tillotson; the motion passed unanimously.

Readoption of Env-A 200, *Procedural Rules*

Karla McManus, Planning and Rules Manager

ARD is proposing to readopt Env-A 200, *Procedural Rules*, with minor changes because it is due to expire on September 25, 2022. Minor edits were made for purposes of clarity.

Council member David Cribbie moved to start the 15-day clock, seconded by J. Ryan Bielagus. Motion passed with all members voting yes, except member Rudy Cartier Jr., who was opposed.

New Business:

Chair Robert Duval advised the council that Rudy Cartier Jr. has volunteered to serve as Vice Chair for the Air Council. Chair Duval expressed thanks to member Cartier for his willingness to take on this role and asked if the ARC would endorse Mr. Cartier for this position to the Governor and Council. Motion by Kris Blomback and second by J. Ryan Bielagus. The motion passed unanimously.

Public Commentary: None at this time

Adjourn:

Having no further business to discuss, a motion to adjourn was moved by Elizabeth (Lynn) Tillotson, and seconded by J. Ryan Bielagus. All were in favor motion passed. Meeting #276 of the Air Resources Council adjourned at 10:21 am on May 9, 2022.