

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #188  
05/17/10**

- MEMBERS PRESENT:** Chairman Robert Duval, William Smagula, Steven Walker, Georgia Murray (via conf. call), Debra Hale, Robert Hickey, Linda Thomas (via conf. call)
- MEMBERS NOT PRESENT:** Vice-Chairman David Collins, Raymond Donald, Ryan Bielagus, Terry Callum
- NHDES – ARD PERSONNEL:** Robert Scott, Anne Keach, Amy Samson, Barbara Hoffman, Raymond Walters, Michael Fitzgerald, Joseph Tristaino, Michael O'Brien, Kenneth McHugh, Karla McManus, Michele Roberge
- OTHER INTERESTED PARTIES:** Atty. Linda Landis, Atty. Barry Needleman

**Call to Order:**

Chairman Duval called Meeting #188 of the Air Resources Council (ARC) to order at 9:13 a.m. on Monday, May 17, 2010. Chairman Duval announced that a quorum was present.

**Approval of Minutes:**

William Smagula entered a motion to accept the minutes of meeting #187. Robert Hickey seconded the motion. All were in favor. The minutes of meeting #187 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:

**On Board Diagnostics Program**

Director Scott reported that the New Hampshire Executive Council voted to renew the contract with Gordon Darby which allows for the continuance of the motor vehicle On-Board Diagnostics Program.

**Permitting Activities**

Laidlaw Berlin BioPower, LLC, Berlin, NH – Director Scott reported that a hearing has been scheduled for the end of June to accept public comments concerning the proposed draft permit to operate a 70 MW biomass power plant at the former Fraser Paper site. Director Scott added that the draft permit will be forwarded to the Site Evaluation Committee (SEC) for incorporation in the SEC's determination to issue a certificate for this source.

**EPA Greenhouse Gas Tailoring Rule**

Director Scott stated that on May 13, 2010, the U.S. Environmental Protection Agency (EPA) issued a final rule that establishes a common sense approach to addressing greenhouse gas emissions from stationary sources under the Clean Air Act (CAA) permitting programs. This final rule sets thresholds for greenhouse gas (GHG) emissions that define when permits under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are required for new and existing industrial facilities. The final rule "tailors" the requirements of these CAA permitting programs to limit which facilities will be required to obtain PSD and Title V permits and EPA will phase in the CAA permitting requirements for GHGs in two initial steps as follows:

- Step 1 (January 2, 1011 – June 30, 2011) - Only sources currently subject to the PSD permitting program would be subject to permitting requirements for GHG emissions. For these projects only GHG increases of 75,000 tpy or more of total GHG, on a CO<sub>2</sub> equivalency basis would need to determine the Best Available Control Technology (BACT) for their GHG emissions.
- Step 2 (July 1, 1011 – June 30, 2013) – PSD permitting requirements will cover for the first time new construction projects that emit GHG emissions of at least 100,000 tpy, even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing facilities that increase GHG emissions by at least 75,000 tpy will be subject to permitting requirements, even if they do not significantly increase emissions of any other pollutant.

Director Scott added that this change may necessitate rulemaking changes and may change the definition of a “major source” and will also affect the ARD’s permitting process, enforcement and compliance, and the ARD’s fee structure.

#### American Power Act

Director Scott summarized some of the key points to the bill as follows:

The legislation aims to cut emissions of carbon dioxide and other heat-trapping greenhouse gases by 17 percent below 2005 levels by 2020 and more than 80 percent by 2050.

For the first time, it would set a price on carbon emissions for large polluters such as coal-fired power plants. Rates initially would range from \$12 per ton of carbon emissions to \$25 per ton, depending on market prices. Restrictions would not take effect until 2013 for power plants and transportation fuels, and 2016 for manufacturers.

Allowances would be granted to local electricity companies, which would be required to use them to help rate payers. In addition, a separate consumer relief provision would provide rebates to eligible families.

The bill would exempt farms and most small and medium-sized businesses, concentrating efforts on the largest polluters.

#### American Clean Energy and Security Act (Waxman/Markey Bill)

Director Scott reported that this legislation passed in the House as amended and sets forth provisions concerning clean energy, energy efficiency, reducing global warming pollution, transitioning to a clean energy economy, and providing for agriculture and forestry related offsets. Includes provisions: (1) creating a combined energy efficiency and renewable electricity standard and requiring retail electricity suppliers to meet 20% of their demand through renewable electricity and electricity savings by 2020; (2) setting a goal of, and requiring a strategic plan for, improving overall U.S. energy productivity by at least 2.5% per year by 2012 and maintaining that improvement rate through 2030; and (3) establishing a cap-and-trade system for greenhouse gas (GHG) emissions and setting goals for reducing such emissions from covered sources by 83% of 2005 levels by 2050.

PSNH Merrimack Station, Bow, NH – Director Scott announced that the proposed Draft Title V Permit will be issued on this date (March 15, 2010). He explained that the permit is a compilation of eleven permits and a NOx RACT Order. The issuance of this permit begins the 10-day clock for concerned parties to file an appeal on the Draft Title V Permit.

Chairman Duval asked if this legislation is unrelated to RGGI. Director Scott responded that both bills will supersede RGGI.

Chairman Duval asked if the legislation addressed emissions from mobile sources. Director Scott responded that the legislation allows for offsets from mobile sources, but the threshold limits apply only to stationary sources.

### **Env-A 800, Testing and Monitoring Procedures**

Chairman Duval introduced Raymond Walters, Compliance Measurements and Data Programs Manager of the Air Resources Division, Compliance Bureau. Mr. Walters provided members of the ARC with the following outline summarizing the revisions to Env-A 800, *Testing and Monitoring Procedures*.

1) **Editorial changes:**

ARD is proposing to make a number of editorial changes throughout the rule to improve the clarity of the requirements, update references to federal testing and monitoring requirements specified in the Code of Federal Regulations, make some minor changes to definitions of terms, and reorganize some sections of the rule to make them easier to follow and understand.

2) **Cyclonic Flow check:**

ARD is proposing to require sources that have to measure the stack volumetric flow rate as part of a compliance test or as part of a recertification of a CEM system to follow the US EPA method of verifying that the stack flow is not cyclonic in nature and can be measured accurately by the reference method. The verification usually takes approximately an hour to perform and can be done during the day of test set-up without being observed by ARD personnel. This will verify that the flow measurement will be acceptable instead of finding out after the fact during the report review that a condition of cyclonic flow has invalidated the stack test, thereby necessitating a repeat of the stack test.

3) **Substitute emissions data:**

ARD is proposing to require sources with gaseous CEM systems that have periods of missing or invalid CEM data to provide substitute emissions values for those hours of data. The source will describe its data substitution method(s) in the CEM Monitoring Plan after it has been approved by ARD. The substituted data will be identified in the quarterly CEM emissions reports submitted to ARD. Acid Rain sources subject to 40 CFR 75 can use the missing data substitution subroutines specified in the federal rule. Those same methods can be used by the Acid Rain source for any non-Part 75 required CEM systems, or it can choose to use another non-electronic, less complex substitution method. Most NH CEM sources are already using a method of data substitution; however, those methods are not documented.

4) **CEM Data Availability:**

Currently, Env-A 800 requires sources with gaseous concentration and opacity CEMs to meet minimum data availabilities of 75% per month and 90% per quarter. The current rule doesn't specify minimum data availability for stack volumetric flow measurement for those sources required to install, operate and maintain a system to measure this parameter. Historically, all sources with CEM systems that include a stack flow monitoring system have calculated and provided the data availability for stack flow with the other data availability calculations. ARD is proposing to amend this rule to remove the redundant monthly data availability requirement and extend the coverage of minimum data availability to stack flow measurement. In addition, the current rule was written at a time when CEM systems were much less accurate and less robust. As currently written, the rule allows up to 13 months between the time the source fails to meet the minimum data availability and the time the source has to install and recertify a new CEM system. ARD is proposing to retain the minimum data availability requirements with the changes mentioned above, but not specify the corrective actions in the event the source fails to meet the minimum quarterly data availability. Instead, ARD will use its enforcement discretion to determine its response to the violation.

5) Air Pollution Control Equipment Monitoring Plan and Additional Monitoring Plan:

ARD is proposing to require a source with air pollution control equipment ("APCE") to submit with its permit application a plan that describes the APCE and any associated monitoring and maintenance. ARD is also proposing that a source that performs any additional monitoring of its permitted device or controls submit a description of the additional monitoring with its permit application. The permit conditions are established through review of the operations and generally require more information than is provided in the initial application. The monitoring plan will supplement the information contained in the application and be used to develop the monitoring conditions required by the permit. The requirements to submit the plan and/or description will be in Env-A 607, 608 or 609. The description of the information that is required to be contained in the plan will be included in Env-A 809. For sources that currently have APCE and permits, the monitoring plans must be submitted with the next application.

6) Deadlines for installation and certification of CEMs and criteria for recertification of CEMs:

Currently, Env-A 800 contains the requirements for the procedures for operating and certifying CEM systems. However, it does not specify the deadlines for when a new or existing source must install, begin operating, or initially certify a CEM system once it becomes subject to a requirement to monitor its emissions. ARD is proposing to add the deadlines to the rule that are specified in 40 CFR 60 and 40 CFR 75 as those requirements relate to the installation and certification of CEM systems. The deadlines are based on the startup of the device whose emissions are to be monitored by the CEM system. Also, ARD is proposing to clarify that some repairs, modifications, or component replacements performed by the source will invalidate the most recent system certification and require the source to recertify the CEM system.

Linda Thomas entered a motion to accept the amendments to Env-A 800. Debra Hale seconded the motion. All present were in favor of initiating the 15-day ARC review period. 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.

**Env-A 1211, NOx RACT:**

Chairman Duval requested that this item be tabled until the next meeting of the ARC because the NHDES Legal Unit has not completed their review of the rule revisions. William Smagula entered a motion to table this item. Debra Hale seconded the motion. All were in favor. Revisions to Env-A 1211, NOx RACT will be presented at the June 14, 2010 meeting of the ARC.

**Other Business:**

Chairman Duval informed members of the ARC that SB 48 relative to appeals of decisions by the Department of Environmental Services, ought to pass in the House with amendment and will be sent to the Senate for voting.

Chairman Duval called ARC members' attention to the ARC's April 12, 2010 response letter to Beverly Hollingworth, Executive Councilor, District 3, concerning her April 1, 2010 correspondence regarding her concerns relative to Raymond Donald's recusal in the matter of Docket #10-06 ARC.

Chairman Duval called for recusal of members present. The following members recused themselves from hearing matters relative to Docket # 10-06 ARC:

- Debra Hale
- William Smagula
- Robert Duval

**Status of Appeals:**

**Docket No 10-06 ARC** - NH Sierra Club et al regarding the Proposed Title V Operating Permit to PSNH Merrimack Station, Facility ID No. 3301300026.

Chairman Duval appointed Robert Hickey as presiding officer in order for the ARC to take action regarding the acceptance or denial of Docket #10-06 ARC, Notice of Appeal.

Because the status of this appeal was omitted from the *Status Report on Pending Appeals (5/17/10)*, Steven Walker asked Amy Samson, Appeals Clerk if the appeal was in order and filed properly. Ms. Samson stated that the appellants did not include a copy of the permit application with the filing and is therefore not complete. Linda Thomas entered a motion to table the item until the filing is considered complete. Georgia Murray seconded the motion. All non-recused members present were in favor. Docket # 10-06 ARC was tabled until the next meeting of the ARC.

**Docket No. 09-40 ARC** – Katherine Lajoie and Tony Caplan, 10/23/09 Wheelabrator Concord Final Title V Operating Permit.

Ms. Samson reported that the appellants did not include a copy of the permit. The appellants claimed they did not receive a copy of the notice of insufficient filing, which was resent by certified mail. The appellants have until June 2, 2010 to file a complete appeal.

**Docket No. 09-43 ARC**, Public Service of New Hampshire (PSNH) regarding the NHDES Final Response for Bonus Carbon Dioxide Allowances (amended by the NHDES; 12/09).

Chairman Duval stated that the issues contained in this appeal are unrelated to his recusal concerning Docket No. 10-06 ARC and that he was not recusing himself from hearing this appeal.

The following ARC members recused themselves from hearing matters related to Docket No. 09-43 ARC:

- William Smagula
- Debra Hale
- Georgia Murray

Steven Walker entered a motion to accept the appeal as it was sufficiently filed on December 31, 2009. Robert Hickey seconded the motion. All non-recused members were in favor. Docket No. 09-43 ARC was accepted by the ARC. Robert Duval stated that he will be the presiding officer, and will schedule a pre-hearing conference.

**Docket Nos. 09-03 & 09-04 ARC** , Mink Hills Center for Sustainable Development and Katherine Lajoie regarding NHDES' January 5, 2010 Decision to Approve the Application and Issue a Proposed Title V operating permit to Wheelabrator Concord Company, LP – Motion for Reconsideration for Lack of Standing.

William Smagula entered a motion not accept the appeal because there was no new information presented in the appeal to qualify the appellants standing. Georgia Murray seconded the motion. Linda Thomas (via conf. call) was opposed. All others present were in favor. The appeal of Mink Hills Center for Sustainable Development and Katherine Lajoie was not accepted by the ARC.

Michele Roberge, Administrator of the Permitting and Environmental Health Bureau explained that the correct procedure would be for the appellants to file a citizens' petition to EPA.

Steven Walker instructed Ms. Samson to notify and advise the parties of the correct procedure for filing a citizens' petition to EPA.

Docket #09-10 and 09-11 ARC, NH Sierra Club, et al. and Conservation Law Foundation regarding Temporary Permit TP-0008-PSNH Merrimack Station. Ms. Samson stated that a hearing on this matter has been scheduled for June 14, 2010 and Attys. Hoffer and Cunningham have filed a Motion to Reschedule the Hearing.

Steven Walker instructed Ms. Samson to provide members of the ARC with advance notice of appeals to be considered prior to each meeting to assist the ARC members in preparing for matters to be addressed concerning appeals before the ARC.

**Other Business:**

Having no further business to discuss, Chairman Duval set the next meeting of the ARC to be held on June 14, 2010, at 9:00 a.m. in conference rooms 112 and 113.

**Adjourn:**

Steven Walker entered a motion to adjourn. Robert Hickey seconded the motion. All were in favor. Meeting #188 of the ARC adjourned at 11:05 a.m. on May 17, 2010.