

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #189  
06/14/10**

- 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
- MEMBERS NOT PRESENT:** Ryan Bielagus, Terry Callum
- NHDES – ARD PERSONNEL:** Craig Wright, Anne Keach, Amy Samson, Barbara Hoffman, Anthony Blenkinsop, Joseph Fontaine, Karla McManus, Michele Roberge, Christa Ellis, Gary Milbury, Michael Fitzgerald, Joseph Tristaino, Michael O'Brien, Kenneth McHugh, Karla McManus, Michele Roberge
- OTHER INTERESTED PARTIES:** Atty. Linda Landis, Adrian LaRoche, Atty. Arthur Cunningham, Tim Fortier, Catherine Corkery

**Call to Order:**

Chairman Duval called Meeting #189 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, June 14, 2010. Chairman Duval announced that a quorum was present.

**Approval of Minutes:**

Linda Thomas entered a motion to accept the minutes of meeting #188 with corrections to page 5 to indicate her opposed vote regarding Docket Nos. 09-03 and 09-04 ARC. Steven Walker seconded the motion. David Collins and Raymond Donald abstained. All others were in favor. The minutes of meeting #188 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.

**Transportation and Climate Summit**

Mr. Wright reported that Director Scott was attending the Transportation and Climate Summit in the State of Delaware, which is an historic gathering of transportation, energy and environmental officials to discuss cooperative efforts to reduce mobile greenhouse gas emissions in the Northeast Region. The Delaware Department of Transportation (DelDOT) and the Delaware Department of Natural Resources and Environmental Control (DNREC) served as hosts for the gathering, coinciding with meetings of the Northeast Association of State Transportation Officials (NASTO) and the states encompassing the Regional Greenhouse Gas Initiative (RGGI).

**Legislation**

HB 1: Mr. Wright reported that the budget (HB1) passed in special session which includes the transfer of dedicated funds to general funds from sixteen different funding sources; six of which are from NHDES programs including \$90,000 from the NOx Fund (out of \$120,000), which will be eliminated in 2014. Mr. Wright added that thirteen vacant positions in the NHDES will remain unfunded, and additional reductions from the general fund will be made in FY 2011.

SB 480: Mr. Wright explained that this bill creates the position of hearings officer to assist the councils that hear appeals relating to decisions made by the NHDES. The hearings officer is designated to be someone experienced in administrative proceedings who will handle the procedural issues, assist with deliberations, rule on questions of law and issue the written decision. The councils will continue to deliberate and rule on questions of fact. The committee of conference made several minor changes to the bill as passed by the House. It clarified that the council may request revisions to the decision drafted by the hearings officer as long as it does not extend the 90-day deadline to issue a decision. It also clarified the extent and limits of the authority of the hearing officer to issue subpoenas. It specified that the Attorney General will provide a report on the appeals process and any suggested modifications by April 1, 2011 to the Speaker, the Senate President, and to the chairs of relevant policy committees. In addition, the effective date and grammatical language revisions were made.

#### Permitting Activities

Laidlaw Berlin BioPower, LLC, Berlin, NH – Mr. Wright informed members of the ARC that the Draft Permit and Preliminary Determination is available on the NHDES website and that a public hearing has been scheduled for July 1, 2010 in Berlin to seek public comments concerning the proposed draft permit to operate a 70 MW biomass power plant at the former Fraser Paper site. Mr. Wright reminded members of the ARC 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.

#### ARD Staffing Changes

Mr. Wright reported that the Environmental Health and Permitting Bureau has back-filled vacant positions through staff promotions, leaving a permit engineer position vacant.

#### Regulatory Changes

Mr. Wright informed members of the ARC that the following standards will be revised:

- National Ambient Air Quality Standards (NAAQS)
- SO<sub>2</sub> Standard
- NO<sub>2</sub> Standard
- CO<sub>2</sub> Standard
- PM Fine Standard

Linda Thomas asked what impact the transfer of NOx funds will have on the Air Resources Division. Mr. Wright responded that the NOx Fund has not generated the amount of revenue as originally planned, and transferring the funds will have no impact on the operations of the ARD.

#### **Env-A 1300, Nitrogen Oxides 9NOx) Reasonably Available Control Technology (RACT)**

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 1211* (to be redesignated as *Env-A 1300*), *Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT)*.

##### 1) Editorial changes:

The ARD is proposing to make a number of editorial changes throughout the rule to improve the clarity of the requirements and reorganize some sections of the rule to make them easier to follow and understand. All of the RACT procedural requirements have been moved to one part, *Env-A 1315*, for better readability.

##### 2) Control Requirements and Emission Limits for Emergency Generators that have Stationary Internal Combustion Engines with Electronic Timing:

Various companies have discussed with the ARD the fact it is not possible to manually adjust the timing of their stationary combustion engines, as required in *Env-A 1211.11*, because their engines have electronic timing. When this rule was originally adopted, few if any engines had electronic

timing. Most engines manufactured now do have it, so ARD is proposing to create two sections for control requirements, one for engines with electronic timing and one for engines without electronic timing. The requirements for those without electronic timing would remain the same, while the requirements for those with electronic timing would not mandate manual timing adjustments.

3) RACT (Reasonably Available Control Technology) Procedures:

The ARD is proposing to collect all of the RACT procedures in one part, Env-A 1315, for easy reference, and to add three new rules to that part. One is the Testing, Recordkeeping and Recording for RACT Compliance rule, which refers the source to the appropriate rules for testing, recordkeeping and recording. The second contains a clarification that compliance with NOx emission standards specified in this part may be achieved through the purchase of NOx allowances that are converted to and used as Discrete Emission Reductions (DERs) in accordance with the provisions of Env-A 3100. The third is in the Procedure for Issuance of a RACT order, Env-A 1316, where the criteria for a public notice to be published, and the response to a request for public hearing, are clearly described.

4) Numbering Changes:

The NHDES Legal Unit has suggested that the NOx RACT and VOC RACT rules be divided into their own chapters due to their length. Thus, the VOC RACT rules, currently in Env-A 1204, will be renumbered to become chapter Env-A 1200, and the NOx RACT rules will be renumbered to become chapter Env-A 1300. The latter chapter number was previously used for the toxics program that existed prior to the current Regulated Toxics Air Pollutant program, which is codified in Env-A 1400. The prior toxics program was formally repealed on February 28, 2002.

Raymond Donald entered a motion to accept the proposed amendments and redesignation of Env-A 1300. Linda Thomas seconded the motions. 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.

(9:35 a.m. – Debra Hale joined ARC meeting via conf. call)

**Other Business:**

Chairman Duval stated that he understood that the language and intent of SB 480 was not improved in committee and informed members of the ARC that he contacted the Governor's Office to request that Governor Lynch veto the bill.

**Status of Appeals:**

Docket Nos. 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. The ARC also denied Mr. Caplan's Motion for Reconsideration regarding the Decision and Order on May 17, 2010. Ms. Samson stated that the Decision and Order needs to be finalized for these two items.

Docket No. 09-43 ARC – Public Service of New Hampshire (PSNH) regarding the December 3, 2009 Final Response s to Requests for Bonus Carbon Dioxide Allowances (amended by the NHDES, December 2009). The ARC accepted the appeal on May 17, 2010. A pre-hearing conference is scheduled for June 29, 2010 at 3:00 p.m.

Docket No. 09-40 ARC – Katherine Lajoie and Tony Caplan regarding the October 23, 2009 NHDES Final Title V Operating Permit for Wheelabrator Concord Company. The appellants originally filed an insufficient appeal. The appellants filed the necessary supplements to the original filing. On March 22, 2010, the NHDES filed a Motion to Dismiss the Appeal. On March 29, 2010, Mr. Caplan and Ms.

Lajoie filed an Objection to the Motion to Dismiss. On May 26, 2010, Ms. Lajoie filed Supplemental Information for Appeal.

Chairman Duval instructed Ms. Samson to notify parties of the correct procedure which is to file a citizen's objection with the US EPA within 60 days of the issuance of the Title V Permit.

Michele Roberge, Administrator of the Permitting and Environmental Health Bureau informed members of the ARC that the parties were notified of this procedure when the Title V permit was issued.

Docket Nos. 09-10 and 09-11 ARC – NH Sierra Club, et al and Conservation Law Foundation regarding the March 3, 2009 Temporary Permit TP-0008-PSNH Merrimack Station. Ms. Samson reported that a hearing is scheduled for July 2, 2010 at which time the ARC members hearing the appeal will take up CLF's Motion to Recuse Presiding Officer Donald based on new evidence filed by Atty. Hoffer.

Docket No. 10-06 - NH Sierra Club et al regarding the Proposed Title V Operating Permit to PSNH Merrimack Station, Facility ID No. 3301300026. The ARC tabled the appeal at the last meeting on May 17, 2010. The copy of the permit was excluded in the original appeal which was filed on May 17, 2010.

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. Dr. Hickey reaffirmed that the following members have recused themselves from the matter and would not participate in the following deliberations:

Robert Duval  
Debra Hale  
David Collins  
William Smagula

Linda Thomas asked Raymond Donald if he felt that there was anything that would color the public's perception of his decision not to recuse himself.

Raymond Donald stated that rules require him to recuse himself only if a conflict exists and he reiterated that a personal conflict does not exist in this matter. Mr. Donald further explained that his pension is paid from Northeast Utilities-Seabrook, not PSNH.

Mr. Donald entered a motion to accept the appeal of the NH Sierra Club et.al. Georgia Murray seconded the motion. All non-recused members of the ARC were in favor of accepting the appeal.

The remaining members held a brief discussion regarding the additional two motions:

1. Motion for Disqualification filed by Atty. Cunningham
2. Consolidate with Pending Appeal filed by Atty. Cunningham

Linda Thomas entered a motion to table the motion for disqualification until the next meeting of the ARC. Steven Walker seconded the motion. Raymond Donald abstained. All others were in favor. The motion carried.

Linda Thomas entered a motion to table the Motion to Consolidate until the next meeting of the ARC. Raymond Donald seconded the motion. All were in favor. The motion carried.

Linda Thomas instructed Ms. Samson to advise the parties that if the matter is removed from the table at the next meeting of the ARC, the council may consider granting oral arguments to be heard at the next meeting of the ARC.

After conclusion of the above deliberations, Mr. Duval resumed the Chair and the recused members returned to their positions.

**Adjourn:**

Having no further business to discuss, Chairman Duval set the next meeting of the ARC to be held on July 19, 2010 provided that rulemaking necessitates a meeting be held on that date. If there are no rules before the ARC in July 2010, then the next meeting of the ARC will be held on August 16, 2010. Raymond Donald entered a motion to adjourn. Steven Walker seconded the motion. All were in favor. Meeting #189 of the ARC adjourned at 10:55 a.m. on June 14, 2010.