

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #191
09/20/10**

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

MEMBERS NOT PRESENT:

NHDES – ARD PERSONNEL: Robert Scott, Anne Keach, Amy Samson, Barbara Hoffman, Michael Fitzgerald, Karla McManus, Elizabeth Nixon, Gary Milbury, Patricia North

OTHER INTERESTED PARTIES: Atty. Linda Landis, Atty. Barry Needleman, Cindy Reid, Atty. Arthur Cunningham, Catherine Corkery, Atty. Anthony Blenkinsop

Call to Order:

Chairman Duval called Meeting #191 of the Air Resources Council (ARC) to order at 9:00 a.m. on Monday, September 20, 2010. Chairman Duval announced that a quorum was present.

Approval of Minutes:

William Smagula entered a motion to accept the minutes of meeting #190. Linda Thomas seconded the motion with amendments to page 6, Docket No. 09-03 and 09-04 ARC, paragraph 3. All were in favor. The minutes of meeting #190 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.

Pilgrim Foods, Greenville, NH

The ARD held a public hearing in Greenville on September 13, 2010 regarding the issuance of a temporary permit to operate a vinegar manufacturing process including two new acetators and existing devices. Public concerns largely focused on the odor issues from the lagoons. NHDES staff of the Wastewater Bureau were also in attendance at the public hearing to answer questions concerning the lagoons.

Laidlaw-Berlin BioPower, LLC, Berlin, NH

Director Scott reported that the ARD technical review for the 70 MW bio-mass facility is complete. The Site Evaluation Committee plans to commence deliberations the week of 9/20/10.

Fraser Paper, Berlin, NH

Director Scott reported that a new potential buyer has been identified for the facility. More information will be forthcoming as details become available.

Groton Wind Farm, Groton NH

Director Scott reported that the SEC will begin deliberation during the first week in November 2010, regarding the application of Groton Wind, LLC for a Certificate of Site and Facility for a Renewable Energy Facility.

Environmental Council of the States (ECOS)

Director Scott reported that he attended the Annual ECOS meeting which was held in Whitefield, NH August 29-31, 2010. Attendees visited the air quality monitoring site on Mount Washington and witnessed results of elevated ozone at the site, which may have been caused by transport from regions in the Mid-West.

Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Pollutants

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 annual update of Env-A 500, *Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Pollutants*.

ARD is proposing to amend Env-A 500, *Standards Applicable To Certain New Or Modified Facilities And Sources Of Hazardous Air Pollutants*. Our delegation agreement with EPA, states that we will accept delegation of newly promulgated federal standards by annually updating our rule.

The existing rule incorporates by reference certain federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and NESHAP for specific source categories (also known as MACT, for Maximum Achievable Control Technology). These three groups of federal standards, codified at 40 CFR 60, 61 and 63, respectively, are currently in effect and applicable to numerous state sources.

By agreement with the United States Environmental Protection Agency (U.S. EPA), New Hampshire's rule is updated annually to incorporate new federal NSPS, NESHAP, and MACTs that have been promulgated since the last annual update. Since the last annual update, the U.S. EPA has not promulgated any new federal NSPS, NESHAP, or MACTs that necessitate incorporation. Thus, the proposed rule does not add any new standards. The Department is only updating the edition of the Code of Federal Regulations referenced in the rule from July 1, 2009 to July 1, 2010.

Terry Callum entered a motion to accept the amendments to Env-A 500. Raymond Donald seconded the motion. All present were in favor.

Env-A 1400, Regulated Toxic Air Pollutants

Ms. McManus provided members of the ARC with the following outline summarizing the proposed amendments to *Env-A 1400, Regulated Toxic Air Pollutants*:

The 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 made earlier this year.

- The following twelve compounds are proposed as new RTAPs:

Ethylamine; Dichloroacetic acid; Diquat dibromide, inhalable fraction; 2,4-Dimethylpentane; trans-1,2-Dichloroethene; 2,3-Dimethylpentane; 3-Methylhexane; 2,2-Dimethylpentane; 2-Methylhexane; Silica, Crystalline – Tripoli, respirable fraction; Diquat dibromide monohydrate, inhalable fraction; and Dinitrobenzene, mixed isomers.

- The following seventeen compounds are proposed to be deleted from the RTAP list:

Mineral Wood Fibers; Cyanide; sec-Butyl acetate; tert Butyl acetate; Nickel Sulfide Roasting (dust and fume); Zinc (as zinc oxide dust); Zinc (as zinc oxide fume); Silica, amorphous, fumed; Calcium sulfate, the anhydride, inhalable fraction; Lead arsenate; VM & P naphtha; Rubber solvent (naphtha); Calcium sulfate, the hemihydrate, inhalable fraction; Calcium sulfate, the dihydrate, inhalable fraction; Silica gel; Calcium sulfate, gypsum.

- The description, CAS number, 24-hr AAL, annual AALs, 24-hour *de minimis*, and/or annual *de minimis* values are proposed to be amended on 92 existing RTAPs (see enclosed rule for details).

In addition to a few editorial changes, ARD is also proposing that Env-A 1405.05, Adjusted In-stack Concentration Method, be amended so that the owner or operator can choose between demonstrating that uncontrolled emissions of each RTAP are equal to or below the AAL or actual emissions of each RTAP not subject to treatment or removal control equipment are 50% or less of the AAL.

Linda Thomas stated that she is concerned about the deletion of certain compounds from the RTAPs list and asked if the Department of Health and Human Services has reviewed the revisions to the RTAP list.

Patricia North, Environmental Programs Manager of the Air Toxics Program responded that DHHS has reviewed the revisions to Env-A 1400 and has no concerns with the proposed revisions. Ms. North asserted that the ARD is proposing to adopt amendments based on ACGIH changes made earlier this year in accordance with RSA 125-I:4. She also pointed out that the deletions are generally due to the same toxin being measured in a different form, not that the material is no longer being regulated.

Raymond Donald entered a motion to accept the proposed amendments to Env-A 1400. Steven Walker 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.

Resignation of Dr. Robert Hickey

Chairman Duval formally accepted the resignation of Dr. Hickey and thanked Dr. Hickey for his service on the ARC and his diligence and proven commitment in protecting New Hampshire's air quality for its citizens.

Raymond Donald asked Dr. Hickey if he would consider serving on the ARC until such time as a practicing health professional is appointed. Dr. Hickey declined due to pressing workload commitments.

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. 10-06.

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.

Terry Callum entered a motion to table the matter. William Smagula seconded the motion. Steven Walker abstained. All others were in favor. The motion carried.

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 hearing has been 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. The ARC also denied Mr. Caplan's Motion for Reconsideration regarding the Decision and Order on May, 17, 2010. A Decision and Order for each of these items is under review by the Attorney Generals Office and need to be finalized.

Other Business:

Director Scott invited members of the ARC to a Regional Greenhouse Gas Initiative (RGGI) Briefing at the Legislative Office Building on October 12, 2010. Director Scott stated that a written report concerning the briefing will be provided to members of the ARC.

Adjourn Regular Meeting of the ARC

Having no further business to discuss, Terry Callum entered a motion to adjourn the regular meeting of the ARC. Georgia Murray seconded the motion. The regular meeting of the ARC adjourned at 9:50 a.m. on September 20, 2010.

Re-Opened ARC Meeting

The ARC meeting reopened at 10:05 a.m. on September 20, 2010 in order to take up pending motions concerning Docket No. 10-06.

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.

Georgia Murray announced her recusal from hearing the matter on the basis that although she was encouraged to provide comments as the Staff Scientist for the Appalachian Mountain Club on the NH Regional Haze State Implementation Plan, and provided copies of her comments to members present; she does not want to create any potential detraction from the proceedings.

Linda Thomas stated that she does not intend, nor does she feel compelled to recuse herself in the matter of Docket No. 10-06. Ms. Thomas provided members of the ARC with the following memorandum outlining her impartiality concerning the matter:

Monday, September 20, 2010

To: Members ARC
From: Linda Garrish Thomas, Public At-Large ARC Member
Re: Air resource Division Appeal – Docket No.: 10-06; Recusals

At the June meeting of this ARC I believed that I had clarified sufficiently why I need not recuse myself from the aforementioned appeal deliberation. However, I would like to restate my reasoning for the record today.

In the Scrubber Appeal, Docket No. 09-10 last year, at the Appeal’s outset, I reluctantly recused myself, only at the Councils urging, to allay any possible public perception of prejudice because at that time I was a member of the Sierra Club. And at that time I stated that I was not an active member, that I only used their website as a public education tool, amongst many others on all sides of the energy and environmental debate. I also stated that I had not participated in any of the organization’s meetings, campaigns or activities nor had I been privy to any information about this Appeal. I did not renew membership this year in the Sierra Club to avoid any further ‘appearance’ of bias. Just recently, as a Candidate for the NH House, and for the same reasons, I did not fill out the NH Sierra Club’s candidate survey.

I have no prejudicial relationship with the Sierra Club and I feel that my position on the Council as an At-Large Member is valuable and essential to adjudicatory processes of the Council. As well, the very fact that I did not hear the Scrubber Appeal nor attend hearing sessions makes my participation in Docket No.: 10-06 uncolored by ANY deliberations on the Scrubber Appeal that could influence my consideration of the current Appeal. In fact, it brings to the table a fresh pair of eyes and ears and potentially fresh thinking on the issues at hand.

I restate that I do not intend, nor feel compelled in any way, to recuse myself from Docket No.: 10-06 nor do I believe anyone can logically say that there is any appearance of prejudice in this Appeal. *I believe I can be impartial in this Appeal*
Linda Garrish Thomas
Linda Garrish Thomas

Raymond Donald stated that he does not intend to recuse himself from hearing the matter of Docket No. 10-06. At 10:30 a.m., Mr. Donald left the meeting room in order for the ARC to take up the Motion for Disqualification of Council Member Donald.

Members of the ARC agreed unanimously that they were confident Mr. Donald would remain an unbiased member in hearing the matter of Docket No. 10-06 ARC ARC. Ryan Bielagus entered a motion to deny the Motion to Disqualify Raymond Donald. Terry Callum seconded the motion. All were in favor. Motion carried.

At 10:35 a.m., Linda Thomas left the meeting room in order for the ARC to take up the PSNH Motion for Disqualification of Council Member Thomas.

Members of the ARC agreed unanimously that there was no reason for Ms. Thomas to recuse herself and would remain an unbiased member in the matter of Docket No. 10-06 ARC. Terry Callum entered a motion to deny the motion for disqualification of Ms. Thomas. Ryan Bielagus seconded the motion. All were in favor. Motion carried.

Members of the ARC discussed the Motion of PSNH for Reconsideration of Council Decision.

Linda Thomas entered a motion to deny the Motion of PSNH for Reconsideration of Council Decision. Robert Hickey seconded the motion. All were in favor. The motion carried.

Terry Callum entered a motion to approved the Decision and Order as written. Robert Hickey seconded the motion. All were in favor of issuing the Decision. The motion carried.

Other Business:

Presiding Officer Walker stated that no further actions are before the ARC at this time and requested a motion to adjourn.

Adjourn:

Having no further business to discuss, Ryan Bielagus entered a motion to adjourn. Raymond Donald seconded the motion. All were in favor. The ARC meeting concerning Docket No. 10-06 ARC adjourned at 10:55 a.m. on September 20, 2010.