

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #192
11/15/10**

MEMBERS PRESENT: Chairman Robert Duval, Vice-Chairman David Collins, Georgia Murray (via conf. call), Robert Hickey, Raymond Donald, Steven Walker, Terry Callum

MEMBERS NOT PRESENT: Debra Hale, William Smagula, Linda Thomas, Ryan Bielagus

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, Atty. Arthur Cunningham, Catherine Corkery, Atty. Anthony Blenkinsop

Call to Order:

Chairman Duval called Meeting #192 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, November 15, 2010. Chairman Duval announced that a quorum was present.

Approval of Minutes:

Raymond Donald entered a motion to accept the minutes of meeting #191. Terry Callum seconded the motion. All were in favor. The minutes of meeting #191 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.

Gorham Paper Mill, Gorham, NH

The facility is in the process of being sold to M&M Consulting and Contracting Company of New Jersey. The facility closed on October 13, 2010 and approximately 240 jobs were lost. Potential buyers will use natural gas, including natural gas from a nearby refuse disposal district. The Site Evaluation Committee is in the process of determining the jurisdiction of the natural gas pipeline and should render a decision by November 18, 2010.

Groton Wind Farm, Groton NH

The SEC will continue deliberation during the month of November 2010, regarding the application of Groton Wind, LLC for a Certificate of Site and Facility for a Renewable Energy Facility.

EPA's Guidance on Tailoring Rule

EPA released several tools to assist state and local air pollution agencies when greenhouse gas (GHG) permitting under the Clean Air Act begins January 2, 2011. The PSD and Title V Permitting Guidance Document provides information to aid permitting authorities in applying long-standing permitting requirements and processes under the Act's Prevention of Significant Deterioration (PSD) and Title V permit programs to GHG, including guidance for determining Best Available Control Technologies (BACT) for sources subject to PSD requirements for GHGs.

Turnkey Landfill, Rochester, NH

The ARD is preparing a public notice regarding the Temporary Permit application for the landfill expansion project. The notice will also incorporate conditions of the Administrative Order issues four years ago which included \$1.75 million for failure to control emissions. The facility will be required to apply for a Title V Permit.

Permit Fee Rule Briefing

Director Scott introduced Craig Wright, Assistant Director of the Air Resources Division. Mr. Wright provided members of the ARC with the following overview of the proposed fee structure for the ARD:

- Env-A 700 – permit Fee sunsets (expires in April 2011)
- Permitted sources are required to pay an annual emission-based fee for actual emissions
 - The emissions fee rate for calendar year 2009 was \$136.15/ton
 - Basic fee formula was set in 2003 and is adjusted annually by the CPI and ISF and was designed to generate \$3.4 million annually
 - Emission-based fees account for over 95% of the fees paid from permitted sources
 - In limited situations, new sources pay an application review fee of \$4,500 which equates to approximately \$50,000 annually
- Combined revenue for FY 10 was \$ 3.25 million
- Combined expenses for FY 10 was \$4.0 million or a one-year operating deficit of \$750,000 split between the two fee accounts
- The operating losses for FY 10 were absorbed by prior year carry forward funds (rollover balance)
- The rollover balances are down to \$1.1 million for State Permits and \$3.2 million for Title V permits
- Operating losses for FY 11 are expected to be similar to FY 10 despite cost saving efforts
- Immediate need is focused on balancing State permit revenues as the program will reach a zero balance in three years.
- Emission-based fees generally work fairly well for larger sources in terms of balancing the fees paid and general costs of implementing the program.
- There are approximately 600 sources of air emissions in NH. The top 45 sources are subject to federal permitting as a Title V source. Emission-based fees from Title V sources are effective at raising the necessary funds.
- The remaining 550 sources are subject to State Permits. Approximately 275 of these sources are very small and operate under General State Permits. Fees collected from sources total on \$80,000.

The ARD is considering several changes at this time with respect to the re-adoption of Env-A 700, the Permit Fee Rules:

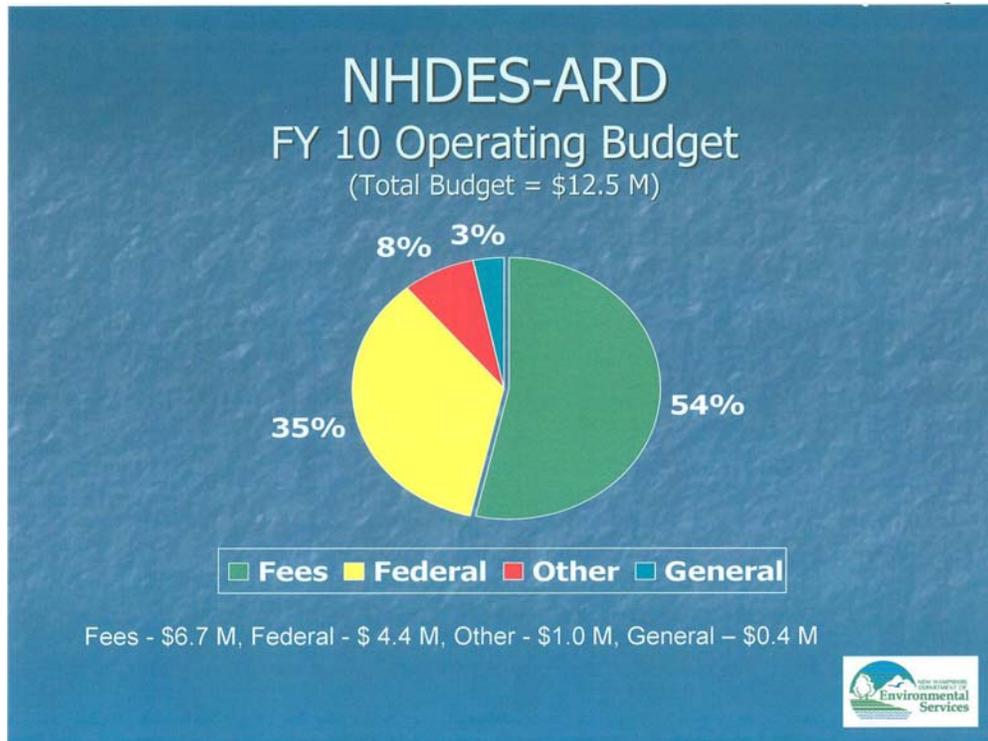
- Consideration of eliminating emission-based fees for sources operating under GSP – instead adopt an application renewal fee paid during the five year permit term.
- Consideration of raising the minimum fee paid by permitted sources from one ton/year to 5 ton/year – general program maintenance fees.
- Consideration of adopting application review fees in addition to emission-based fees – source specific functions (e.g., Construction Permits, Renewal Fees, Modification Fees)

Since 2003, new regulations have been adopted or proposed at both the state and federal level, including:

- State mercury standards for utility boilers
- Federal air pollution transport rules
- Federal regional haze requirements
- Federal GACT/MACT standards (60 new standards)

- Revised ozone NAAQS
- Revised VOC RACT standards
- Pending revised SO₂/NO₂ NAAQS
- Pending Federal GHG Permitting and Inventory requirements

Mr. Wright provided members of the ARC with the following chart depicting the ARD's FY 10 Operating Budget:



Vice-Chairman Collins asked to what degree the new standards are driven by science. Mr. Wright responded that the technical support documents are all science-based and the rate at which EPA issues standards has increased by over sixty new standards. Vice-Chairman Collins commented that ARD's proposal of fee increases could not be worse due to the economic and political climate.

Raymond Donald and Steven Walker voiced their concerns regarding the fee increases on small businesses in NH and cautioned the ARD to keep small businesses informed of the fee proposal.

Mr. Wright explained that the fee proposal presented is not a formal proposal, and was provided to the ARC as a courtesy in order to collect the ARC's input and guidance and that a formal proposal will be forthcoming.

Env-A 1000, Prevention, Abatement, and Control of Open Source Air Pollution

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 Env-A 1000, *Prevention, Abatement, and Control of Open Source Air Pollution*.

The ARD is proposing to readopt and amend Env-A 1000, *Prevention, Abatement, and Control of Open Source Air Pollution*. There are only a few amendments proposed for this rule.

Specifically, Env-A 1001, *Open Burning*, sets forth general open burning requirements, definitions, and a list of materials that are allowed to be burned in the state, and lists absolute prohibitions against the burning of certain types of materials, including the statutory ban (RSA 125-C:10-c) on burning the wood component of construction and demolition debris. Env-A 1002, *Fugitive Dust*, has been clarified to make sure that emissions generated by specific activities are covered and precautions for limiting fugitive dust are listed. Env-A 1003, *Firefighter Instruction and Training Activities*, still establishes the procedures for limiting the emissions of particulate matter and toxic air pollutants from firefighter instruction and training activities with only minor edits.

Chairman Duval suggested that the proposed rule be forwarded to the NH Fire Training Academy to include in the syllabus for training fire department staff.

Raymond Donald entered a motion to accept the amendments to Env-A 1000. Terry Callum seconded the motion. All present were in favor.

Env-A 1204, VOC RACT

Ms. McManus and Barbara Hoffman provided members of the ARC with the following outline summarizing the proposed amendments to *Env-A 1204, Volatile Organic Compounds (VOC), Reasonably Available Control Technology (RACT)*:

Env-A 1204, which requires the use of reasonably available control technology (“RACT”) by certain sources of volatile organic compound (“VOC”) emissions, is due to expire December 31, 2010, unless readopted prior to that date. Since we have received a lot of stakeholder response since the July 12, 2010 stakeholder meeting, we have decided to adopt an Interim Rule to allow the ARD six more months to readopt the regular rule.

The NHDES is proposing to readopt with amendments and renumber Env-A 1204 to its own chapter, Env-A 1200. In addition, DES is also proposing to incorporate recommendations contained in 9 of the 11 Control Techniques Guidelines (“CTGs”) issued in 2006, 2007, and 2008 by the U.S. Environmental Protection Agency (“EPA”) to reduce ozone in non-attainment areas. EPA is requiring that states in the Ozone Transport Region, which includes New Hampshire, complete this rulemaking prior to approving any further amendments to the states’ State Implementation Plans.

New source categories to be regulated pursuant to the CTGs are flat wood paneling, fiberglass boat manufacturing materials, and miscellaneous industrial adhesives. In addition, new subcategories are being proposed for flexible package printing, which is included in the rotogravure and flexographic printing category, and industrial cleaning solvent activities that were previously unregulated in the industrial cleaning solvent category.

New or modified standards are proposed for these existing categories: Paper-fabric-film-foil substrates coating, metal furniture coating, miscellaneous metal parts and products coating, miscellaneous plastic parts and products coating, and offset lithographic and letterpress printing.

In the CTGs we are proposing to implement, EPA has recommended an applicability threshold of around 3 actual tons of VOC emissions per year (“tpy”) before controls. The

existing rules establish thresholds based on a theoretical potential to emit from 10 tpy to 50 tpy VOC. Thus, these proposed amendments will cover more sources than the present rules do.

On July 12, 2010, the Air Resources Division held a stakeholder meeting here at DES. We invited more than 70 sources, consultants, and environmental groups, and approximately 30 stakeholders attended the meeting. Since then, we have met with two industry associations, have toured one facility, have talked to numerous people on the telephone, and have received written comments from several stakeholders. We want stakeholder input, so we have created a webpage for the proposed rule and rulemaking information at <http://des.nh.gov/organization/divisions/air/pehb/apps/voc-ract-rulemaking.htm> and will keep updating the page until the rule is adopted.

Vice-Chairman Collins articulated that the ARD may be pre-mature in adopting this interim rule because of the impact the rule revisions will have on nearly 1,600 sources in NH. Ms. Hoffman explained that formal rulemaking could take up to six months to complete. Vice-Chairman Collins asked how close the draft rule is to the formal proposal. Ms. Hoffman responded that the draft rule is very similar, however she is waiting to receive comments from EPA.

Director Scott stated that the ARD will present the rule revisions to the ARC again after the Joint Legislative Committee on Administrative Rules process is complete.

Chairman Duval asked what would happen if the ARC did not accept the rule.

Michael Fitzgerald, Administrator of the ARD Technical Services bureau explained that the interim rule needs to be accepted in order to move forward with State Implementation Plan Revisions, Redesignation, and Discrete Emissions Reductions.

Raymond Donald entered a motion to accept the interim rule, with the condition that proposed amendments to Env-A 1204 be presented to the ARC for approval after they are revised. Terry Callum seconded the motion. All present were in favor. The motion carried. 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 fifteen (15) days of acceptance of the rule.

Status of Appeals

The ARC took the following actions regarding the following appeals:

Docket No. 09-43 ARC, Public Service of New Hampshire

PSNH's Motion for Amendment to ARC Decision and Order Dated June 29, 2010 – Granted
Petition to Intervene of the Conservation Law Foundation – Denied

Docket #10-13 ARC, Kallwall Corporation

David Collins requested a status update from the parties at the December 13, 2010 ARC meeting. Terry Callum seconded the motion. Steven Walker abstained. All other were in favor. The Motion carried.

Docket No. 09-03 and 09-04 ARC – Mink Hills Center for Sustainable Development and Katherine Lajoie

A Decision and Order has been finalized and will be ready for the ARC's review at the next meeting on December 13, 2010.

The public hearing was suspended for non-public session at 11:00 a.m. and reconvened at 11:32 a.m. Terry Callum entered a motion to suspend Robert's Rules of Order and adjourn the regular meeting of the ARC and move Docket #09-43 to the forefront of ARC business.

Docket Nos. 09-10 and 09-11 ARC – NH Sierra Club, et. al and Conservation Law Foundation,
This matter is tabled until a Hearing Officer is designated by the NH Attorney General.

Docket No. 10-06 ARC, NH Sierra Club, et. al.

Presiding Officer, Steven Walker issued the following statement:

Pursuant to Senate Bill 480, which became effective this past September, New Hampshire Attorney General Michael Delaney has designated me as the Hearing Officer for this appeal. As the designated hearing officer under Senate Bill 480, it is my responsibility to decide all questions of law presented during the pendency of the appeals. The pending Motion to Dismiss, and Objection present such questions of law. As a result, it is my responsibility to decide on the Motion to Dismiss. I am in the process of reviewing the pleadings and will issue an order as soon as possible. While unlikely in the context of a Motion to Dismiss, if, during the course of my review, I determine that there are issues of fact that need to be determined, I will bring such issues before the entire Council. Furthermore, if it is determined that oral argument would assist me in deciding the Motion to Dismiss, I will schedule such argument and provide as much advanced notice to the parties as possible.

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, Terry Callum 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 12:20 p.m. on November 15, 2010.