

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #193
12/13/10**

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

MEMBERS NOT PRESENT: Georgia Murray

NHDES – ARD PERSONNEL: Robert Scott, Anne Keach, Amy Samson, Pamela Monroe, Craig Wright, Karla McManus, Todd Moore, Joseph Fontaine, Catherine Beahm

OTHER INTERESTED PARTIES: Atty. Linda Landis, Atty. Barry Needleman, Atty. Arthur Cunningham, Catherine Corkery, Leo Quinn

Call to Order:

Chairman Duval called Meeting #193 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, December 13, 2010. Chairman Duval announced that a quorum was present.

Approval of Minutes:

Raymond Donald entered a motion to accept the minutes of meeting #192. David Collins seconded the motion. Linda Thomas and William Smagula abstained. All others were in favor. The minutes of meeting #192 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.

Permitting Activities

A public hearing is scheduled for December 16, 2010 at 6:00 p.m. in the City of Rochester concerning the Temporary Permit for the Turnkey Landfill Extension Project which includes a leachate concentration system. Director Scott added that the source will be applying for a Title V Permit to permit the leachate flare, reciprocating engines/turbines, and the landfill gas project with the University of New Hampshire.

Rules

The Regional Haze Rules are on the Joint Legislative Committee on Administrative Rules for December 16, 2010.

Senate Bill 480 (2010 Session)

Director Scott informed members of the ARC that funding has been allocated to cover costs if the ARC wanted a hearing officer from the Office of the Attorney General appointed to hear appeals before the ARC.

Regional Greenhouse Gas Initiative (RGGI)

Director Scott reported that at the RGGI Auction in November the clearing price was at the reserve price of \$1.86 and not all allowances were sold. The RGGI allowance auction generated \$1.67 million for New Hampshire.

Director Scott provided members of the ARC with a list of Air Resources Division related Legislative Services Requests. He added that three LSRs have been filed to repeal the RGGI.

National Ambient Air Quality Standard (NAAQS) for Ozone

Director Scott informed members of the ARC that the Environmental Protection Agency announced that it won't be prepared to decide until next July (2011) whether to make the standard more stringent. The EPA proposed setting the air quality standard for ozone between 60 and 70 ppb, reduced from 75 ppb.

Director Scott explained that the Clean Air Act requires the ozone standard to be reviewed every five years and the level of the primary (health bases) NAAQS is to be determined based solely on protecting public health.

Maximum Achievable Control Technology (MACT) Rules

Director Scott announced that EPA has filed a motion with the Federal District Court to seek an extension of the current schedule for issuing the MACT rules which control the reduction of air emissions from large and small boilers and incinerators. The EPA has requested an extension of fifteen months in order to receive additional data through public comment. Director Scott added that current proposed rule classifies multi-fuel boilers as incinerators (including biomass) which would be subject to new emission limits for mercury, hydrogen chloride, particulate matter, carbon monoxide and dioxin.

Greenhouse Gas (GHG) Tailoring Rule

Director Scott stated that on December 10, 2010, the U.S. Court of Appeals denied motions to stay EPA's greenhouse gas regulatory program. The motions asked the Court to stay the appeals pending the Court's disposition of the numerous appeals of these regulations. The order means that the GHG regulation under Prevention of Significant Deterioration (PSD) and Title V programs will go into effect on January 2, 2011.

Env-A 600. Statewide Permit System

Karla McManus of the Compliance Bureau and Todd Moore of the Permitting and Environmental Health Bureau presented the re-adoption of Env-A 600, Statewide Permit System which is due to expire on April 26, 2011. They reviewed the following minor changes and clarifications as follows:

- Env-A 601.02 Statutory Applicability Requirements – clarified the types of permits included in accordance with the statute.
- Env-A 602.01 References – updated to the 2010 version of the code of federal regulations.
- Env-A 603.01 Permit Required – Confirm that sources for which the department has approved the applicants general permit registration are not required to obtain a temporary permit or individual operating permit.
- Env-A 605.02 Proof of Source Ownership or Permissible Use – added that a corporation needs to show proof of being registered and in good standing as required by the secretary of state.
- Rewording and clarification of Env-A 606.05(b).
- Deleted Env-A 607.01(q) because the method of implementation is being changed.
- Env-A 607.03 Application Procedures for Temporary Permits – added some clarifying language.
- Env-A 608 – Clarifying language added to certain sections.

- Env-A 609.06 Application Procedures for Title V Operating Permits – Added clarification that a compliance assurance monitoring plan (CAM) required by the code of federal regulations would suffice for control equipment monitoring plan required.
- Env-A 609.07 Timely Application – defined as at least 90 days prior to the designated expiration date of the temporary permit.
- Env-A 612.05 Minor Modifications: Title V Operating Permits
 - Deemed complete by the department within 60 days of filing.
 - Required to forward a copy to the EPA.
 - Department shall provide a summary to the EPA and a copy of the draft permit.

Raymond Donald entered a motion to accept the proposed amendments to the rule. William Smagula seconded the motion. All were in favor. The motion carried.

Env-A 700, Permit Fee System

Assistant Director, Craig Wright presented members of the ARC with the re-adoption of Env-A 700, Permit Fee System which will expire on April 26, 2011. Mr. Wright present a few clarifying changes to the rule as follows:

- The “Individual personnel testing and monitoring fee” definition in Env-A 704.01(b) is being clarified so that it includes “the review of the protocol and the protocol meeting.”
- The “Emission-based multiplier” definition in Env-A 705.03(a) is being clarified to include “regulated toxic air pollutant” in addition to “regulated air pollutant.”
- Deleting no longer applicable or relevant sections regarding the payment due date for emissions from the previous calendar year, Env-A 705.04(a).
- Revise the NOx emissions reduction fund fee to be due to the department until January 1, 2014.

William Smagula entered a motion to accept Env-A 700. Raymond Donald seconded the motion. All were in favor. The motion carried.

Env-A 1700, Permit Application Forms Rule

Cathy Beahm of the Permitting and Environmental Health Bureau presented members of the ARC with the proposed re-adoption of Env-A, Permit Application Forms Rule which will expire on May 3, 2011. Ms. Beahm explained that the following forms are being streamlined, clarified and updated to more accurately obtain data for regulatory applicability:

- Form ARD-1 General Information Required of Permit Applications
- Form ARD-2 Information Required for Permits for Fuel Burning Devices
- Form ARD-3 Information Required for a Permit for a Unit of Processing or Manufacturing Equipment

In addition, Forms ARD-4, ARD-5, and ARD-6 are being readopted without change. Form GSP-3, Nonmetallic Mineral Processing Plants, is being deleted because it is now covered by the Permit by Notification Process.

Chairman Duval suggested that Permits-By-Notification (PBNs) be referenced in the rule. Ms. Beahm stated that PBNs will be referenced by Chapter number in the rule.

William Smagula entered a motion to accept the rule with the revision concerning PBNs suggested by Chairman Duval. Raymond Donald seconded the motion. All were in favor. The motion carried.

Env-A 2900, Multiple Pollutant Annual Budget Trading and Banking Program

Joseph Fontaine of the Technical Services Bureau presented members of the ARC with the proposed re-adoption of Env-A 2900, *Multiple Pollutant Annual Budget Trading and Banking Program*, which is due to expire on May 13, 2011. Mr. Fontaine provided a summary of the changes as follows:

- Title and applicability changed from multiple pollutant to just sulfur dioxide and nitrogen oxides because the state law was amended to include separate mercury and carbon dioxide provisions.
 - All references to CO₂ in the rule were deleted and are now covered by Env-A 4600 (the RGGI rule).
 - Env-A 3200 covers seasonal NOx budget trading.
 - PSNH is installing a scrubber at Merrimack Station in accordance with the statute to control mercury emissions.
- The reference to the code of federal regulations was updated to the July 1, 2010 edition.
- A few definitions were deleted because they are not used anymore.

This rule was originally adopted after enactment of the NH Clean Power Act in 2002. Mr. Fontaine added that background on the program is posted on the DES website at http://des.nh.gov/organization/divisions/air/tsb/tps/aetp/clean_power_act.htm.

David Collins entered a motion to accept the rule. Linda Thomas seconded the motion. All 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. 09-10 & 09-11 ARC – NH Sierra Club, et. al and Conservation Law Foundation

Members Duval, Collins, Hale, Smagula, and Thomas recused themselves from discussion of this item. The remaining members of the Council voted to deny the Motion for Reconsideration and Rehearing. The motion was entered by Steven Walker and seconded by Ryan Bielagus. All were in favor.

Docket #09-43 ARC – Public Service of New Hampshire (PSNH)

Chairman Duval submitted a Draft Order for review to Atty. Anthony Blenkinsop of the Office of the Attorney General.

A hearing is scheduled for April 18, 2011 at 10:00 a.m.

Docket #10-13 ARC, Kalwall Corporation

David Collins requested a status update from the parties at the November 15, 2010 ARC meeting. Pamela Monroe, Administrator of the Compliance Bureau stated that the parties are continuing negotiations. The parties must file a status update by January 24, 2011 with the ARC.

Vice-Chairman Collins entered a motion to adjourn the regular meeting of the ARC. Debra Hale seconded the motion. All were in favor. The motion carried. The regular meeting of the ARC

adjourned at 9:48 a.m. on December 13, 2010, and recused members Duval, Collins, Hale, and Smagula left the room.

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

The ARC meeting of non-recused members reconvened for purposes of this appeal at 10:00 a.m. and Presiding Officer, Steven Walker called the meeting to order. The following actions were taken by the ARC:

1. The Council voted to accept the Decision and Order as drafted on the Motion to Disqualify Raymond Donald
2. The Council voted to accept the Decision and Order as drafted on the Motion to Recuse Linda Thomas.
3. The Council voted to accept the Decision and Order as drafted on the Motion to Reconsider Acceptance of Appeal.

A hearing is scheduled for February 14, 2011.

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 10:43 p.m. on December 13, 2010.