

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #201
10/17/11**

- MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins, Debra Hale, William Smagula, Ryan Bielagus, Georgia Murray
- MEMBERS NOT PRESENT:** Raymond Donald, Steven Walker, Deborah Chabot, Terry Callum
- NHDES – ARD PERSONNEL:** Robert Scott, Anne Keach, Paula Scott, Thomas Niejadlik, Michele Roberge, Karla McManus, Gary Milbury, Elizabeth Nixon
- OTHER INTERESTED PARTIES:** Atty. Barry Needleman, McLane PA; Atty. Sarah Knowlton, PSNH; Atty. David Conley, PO, Docket No.11-10 ARC

Call to Order:

Chairman Duval called Meeting #201 of the Air Resources Council (ARC) to order at 9:12 a.m. on Monday, October 17, 2011. Chairman Duval announced that a quorum was not present and asked Director Scott to provide an update on Air Resources Division activities and relevant legislation until a quorum of the ARC is present for voting purposes. Georgia Murray arrived at 9:15 a.m., which comprised a quorum of 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.

National Ambient Air Quality Standards

Director Scott stated that the current standard of 75ppbs will remain in effect until the standard is revised again in 2013 which will allow New Hampshire to retain its attainment status.

Air Toxics

Director Scott introduced Thomas Niejadlik, Administrator of the Environmental Health Program. Mr. Niejadlik informed members of the ARC that the Air Resources Division (ARD) will be proposing changes to Env-A 1400, Regulated Toxic Air Pollutants after discussing the proposed revisions with stakeholders and the New Hampshire Business and Industry Association.

Mr. Niejadlik explained that in cooperation with the American Conference of Governmental Industrial Hygienists, the ARD annually updates regulated toxic air pollutants. This year, the ARD proposed to de-list approximately ninety-five chemicals which do not cause long-term health effects in the Class III category. No chemical from Class I and II will be de-listed. The de-listing of these chemicals which are classified as irritants, will save time for sources in their demonstration of Env-A 1400 compliance.

Chairman Duval asked if the proposed de-listing was divergent from the federal program. Mr. Niejadlik responded that the Air Toxics Program is a state-only program. If a source is regulated on the Maximum Achievable Control Technology (MACT) Standard, the chemical is already controlled.

Georgia Murray stated that if the chemicals are irritants at certain concentrations, then perhaps the concentration level be changed instead of de-listing the chemical. Mr. Niejadlik clarified that the

ACGIH sets the concentration levels, and there have been no permitted sources in New Hampshire emitting the de-listed chemicals in the last fifteen years.

Mr. Niejadlik stated that the revisions to Env-A 1400 will be presented to members of the ARC at the next regular meeting on November 21, 2011.

Permit By Notification (PBN)

Director Scott introduced Michele Roberge, Administrator of the Permitting and Environmental Health Bureau. Ms. Roberge stated that PBNs are currently on-line for emergency generators and general state permits (GSPs). Approximately nineteen new sources have taken advantage of this streamlined permitting process. The next phase of the project is slated to include PBNs for rock crushing facilities.

At 9:35 a.m., Chairman Duval announced that a quorum was present.

Approval of Minutes:

William Smagula entered a motion to accept the minutes of meeting #200. Debra Hale seconded the motion. All were in favor.

Changes to Rulemaking Process Overview

Chairman Duval introduced Karla McManus, Planning and Rules Manager for the Air Resources Division (ARD). Ms. McManus stated that effective September 11, 2011, changes to RSA 541-A, Changes to the Administrative Procedure Act became effective. Ms. McManus provided members of the ARC with an overview of the changes by contrasting the new law (SB161) with the former procedure as follows:

Old Law	New Law – eff. 9-11-11 (SB 161)
Rulemaking Notice (RMN) must contain a concise summary explaining the effect of the proposed rule.	RMN must contain a concise summary of the existing rules and any proposed amendments.
Director of Legislative Services may refuse to publish a RMN when there is “ significant noncompliance ”.	“ Significant noncompliance ” means there are one or more errors of such magnitude that a reasonable person would not be able to discern what rules are the subject of the rulemaking proceeding and/or what the agency is proposing to do.
Notice at least 20 days before rulemaking hearing by US Mail, electronically, agency bulletin/newsletter, public notice or publication of daily statewide circulation.	Same notice period of 20 days - Added other manners of communication reasonably calculated by the committee to inform licensees of the proposed rulemaking.
Not clear.	Director of legislative services may make editorial corrections to a rulemaking notice prior to publication.
Not clear.	The date of publication of the Rulemaking Register (RR) is the date it is available to the public. According to OLS, that day is each Thursday when the electronic RR is available online. The paper copy is published the following day.
Only paper copies sent upon request.	Director of Legislative services shall send paper or electronic copies of the rulemaking register to the clerk of each municipality in the state upon request and to any member of the general court. Electronic copies are presumed unless otherwise requested.
	The first time a rule is proposed to implement a

	<p>newly-enacted state authority, the agency shall send an electronic copy of the notice and proposed rule to the chair of each house and senate standing policy committee (SPC) for distribution. If there was no SPC involved, the electronic copy shall be sent to the speaker of the house and the senate president for distribution. If the SPC concludes that the proposed rule is not consistent with the intent of the authorizing legislation, the SPC shall send written notice to the agency, with a copy to the director of legislative services, identifying the provision(s) the committee believes to be inconsistent with legislative intent. Notice shall be sent to the agency so that it is received no later than the deadline for public comment. If no notice is received by the agency by the end of the public comment period, the agency may proceed. The text of the proposed rules shall not be changed prior to the public hearing.</p>
Deadline to receive public comments after a public hearing = 10 days	Public comments deadline = 5 business days
No draft final proposal	Draft Final Proposal – an agency may hold a public hearing or otherwise solicit comment on a draft final proposal that is annotated to show how the rules as initially proposed are proposed to be changed in response to comments received on the draft initial proposal. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.
Two copies of the final proposal of the rule and copies of the statutory authority for the rule must be submitted to Legislative Services.	Only one copy of the final proposal and no copies of the statutory authority are required to be submitted.
Incorporation by reference only to a (hard copy) document prepared by “any entity outside the agency.” Not allowed to incorporate by reference any document or internet content prepared by or on behalf of the agency.	Incorporation by Reference may be cited to a document or Internet content prepared by an unrelated third party.
N/A	If the agency incorporates internet content by reference, it must make a read-only copy available by no later than the date of filing the incorporation by reference statement.
The agency must complete the rulemaking process and readopt the rule before the expiration of the existing rule.	<p>If an agency files a notice to readopt existing rules before the expiration date of the existing rules, the rules shall continue in effect until the proposed rules are adopted and effective.</p> <ul style="list-style-type: none"> ➔ If the agency fails to file a final proposal for these extended rules, the existing rules shall expire 30 days after such deadline unless the agency has obtained a waiver. ➔ If the rules are extended, the agency shall adopt the proposed rules no later than 30 days after the date on which

	<p>the agency is allowed to adopt the rules.</p> <p>→ And, the agency shall file the rules with an effective date that is not more than 60 days from the date of filing, unless a waiver is obtained.</p>
Rules are effective for 8 years	Rules are effective for 10 years
Emergency Rules can be adopted if imminent peril to the public health or safety could occur if the rules were not adopted with less notice than is required.	Emergency rules can be adopted if substantial fiscal harm to the state or imminent peril to the public health or safety...
N/A	The director of legislative services shall develop an expedited process for readopting rules which contain no changes or contain only minor changes. This report shall be provided to the JLCAR by November 1, 2012.
N/A	If a deadline is waived or time period extended, the director shall establish a new deadline.
A joint resolution by JLCAR shall be introduced in the general court within 10 business days of such vote.	...within 20 business days...

Status of Appeals:

Chairman Duval introduced Paula Scott, Appeals Clerk. Ms. Scott provided members of the ARC with an update regarding the following appeals before the ARC:

Docket No. 11-10 ARC – Public Service of New Hampshire (PSNH) regarding the NHDES Final Determination of Baseline Mercury Input. On August 22, 2011, the ARC accepted the Appeal. Ms. Scott reported that David Conley, Esq., has been appointed as presiding officer and a Pre-Hearing Conference is scheduled for October 17, 2011 at 11:00 a.m.

Docket No. 09-40 ARC – Appeal of Katie Lajoie and Tony Caplan regarding the issuance of the Final Title V Operating Permit TV-0032 for Wheelabrator Concord. Ms. Scott stated that on November 9, 2009 the appeal was received. After the related appeal on the Proposed Title V Permit was adjudicated, on June 14, 2010, the ARC discussed the Docket 09-40 appeal and determined that there was no basis for the appeal because the Final Title V permit was an EPA action, not a DES action. The ARC requested that Ms. Samson, the former Appeals Clerk, notify the parties that the correct process would be to file an objection with the EPA, not the DES. Georgia Murray pointed out that the related Docket Nos. 09-03 & 04 ARC were denied by the ARC. The Order denying the Appeal was issued on October 12, 2011.

Docket No. 09-43 ARC – Public Service of New Hampshire (PSNH) regarding DES' Final Responses to Requests for Bonus Carbon Dioxide (CO₂) Allowances as amended and dated December 3, 2009. The order granting the appeal, remand back to the NHDES and granted Assented-To Motion to Retain Jurisdiction was sent on June 27, 2011. Also, the Decision and Order on the Motion for Reconsideration by CLF was denied and sent to the parties on June 27, 2011. Ms. Scott reported that on September 14, 2011, a Joint Motion to Accept the Final Settlement Agreement Between the Parties and Close the Docket was received. A draft Order has been prepared for review. The Presiding Officer will issue the order.

Docket No. 10-13 ARC – Kalwall Corporation regarding payment of emission-based fees. Pamela Monroe, Administrator of the Compliance Bureau provided members of the ARC with a status report at the September 19, 2011 meeting. Negotiations continue. No action by the ARC is needed at this time.

Other Business

Chairman Duval introduced David Conley, Esq., Presiding Officer for Docket No. 11-10 ARC. Atty. Conley provided members of the ARC with a brief overview of his law practice since 1976, which included his work for the U.S. Department of Treasury, Sulloway and Hollis, PA, and tax work for Public Service of New Hampshire (PSNH) several years ago; which he offered to discuss further if the members wished him to do so.

Chairman Duval set the next meeting of the Air Resources Council to be held on November 21, 2011, and requested that an electronic meeting notice be sent to all members of the ARC in order to determine that a quorum will be present.

Adjourn

Having no further business to discuss, David Collins entered a motion to adjourn. William Smagula seconded the motion. All were in favor. Meeting #201 of the Air Resources Council adjourned at 10:50 a.m. on October 17, 2011. A Pre-Hearing Conference concerning Docket No. 11-10 ARC followed at 11:00 a.m.