

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #200  
09/19/11**

**MEMBERS PRESENT:** Chairman Robert Duval, Debra Hale, William Smagula, Georgia Murray, Deborah Chabot, Terry Callum

**MEMBERS NOT PRESENT:** Vice-Chairman David Collins, Raymond Donald, Steven Walker, Ryan Bielagus

**NHDES – ARD PERSONNEL:** Craig Wright, Anne Keach, Peter Demas, Paula Scott, Barbara Hoffman, Michael Fitzgerald, Michele Roberge, Karla McManus, Gary Milbury, Pamela Monroe

**OTHER INTERESTED PARTIES:** Atty. Jarrett Duncan, McLane PA

**Call to Order:**

Chairman Duval called Meeting #200 of the Air Resources Council (ARC) to order at 9:12 a.m. on Monday, September 19, 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.

**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**

Director Scott informed members of the ARC that the Final Title V Permit for Public Service of New Hampshire (PSNH), Merrimack Station in Bow, NH was issued on September 7, 2011. Director Scott added that the 60-day opportunity for citizens to appeal the permit with the Environmental Protection Agency will end on November 7, 2011.

Director Scott asked Michele Roberge, Administrator of the Permitting and Environmental Health Bureau to explain the permit review process for members of the ARC. Ms. Roberge stated that once a proposed permit is issued to a source, citizens have ten days to file an appeal. At the same time, the EPA has forty-five days to provide comments to the NDHES on the proposed permit. If an appeal is received, then the NDHES requests a stay of EPA's forty-five day review period. Ms. Roberge added that a citizen's petition must be filed with the EPA within sixty days of the permit issuance.

**New Source Performance Standards (NSPS)**

Director Scott stated that NHDES staff will meet with the New Hampshire Business and Industry Association to consult with and determine whether or not NH takes delegation of NSPS.

### Generally Available Control Technologies (GCT) Boiler Regulation

Gary Milbury, Air Permit Programs Manager for the Permitting and Environmental Health Bureau, stated that because there is no minimum boiler size cut-off for this regulation, and New Hampshire has hundreds of small boilers, the NHDES will not take full delegation of the GACT standard, but has agreed to assist the EPA with outreach efforts to affected sources.

### National Ambient Air Quality Standards

Director Scott provided members of the ARC with a handout of President Obama's statement on the Ozone NAAQS of September 2, 2011. 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.

Georgia Murray asked if the standard is lowered in 2013, how will the NAAQS re-designation impact New Hampshire?

Director Scott responded that that a re-designation of NAAQS will impact rulemaking, permitting and State Implementation Plans.

Ms. Roberge added that the re-designation impact on rulemaking and permitting restrictions on thresholds for sources based on "serious non-attainment areas" and "moderate non-attainment areas" in New Hampshire will also necessitate a review of offset ratios.

### Legislation

Director Scott provided members of the ARC with a list of Legislative Service Requests (LSRs) which may impact the Air Resources Division including:

H-2017 – Repealing certain tax and fee increases and the regional greenhouse gas initiative (Sponsor: Jerry Bergevin)

H-2200 – establishing a committee to oversee the department of environmental services (Sponsor: Andrew Renzullo)

H-2419 – relative to a department of environmental services oversight and grievance committee (Sponsor: J. Brandon Guida)

H-2534 – relative to the NH sustainable electricity market (Sponsor: James Garrity)

H-2796 – relative to prior approval for the expenditure of funds for involving New Hampshire in planning, evaluating, implementing, or participating in any state, regional, or national low carbon fuel standards program (Sponsor: Frank Holden)

H-2168 – relative to public utilities commission orders concerning renewable portfolio standards (Sponsor: Neal Kurk)

H-2425 – relative to interstate compacts (Sponsor: Paul Mirski)

Director Scott discussed House Bill 248, which establishes a commission to study business regulation in New Hampshire passed in the 2011 Legislative session and became law (Chapter 263). This commission was established to study business regulation in New Hampshire, the impact they have on employment growth and business profitability, and the costs and benefits associated with the current regulatory environment. One of the goals for the commission is to review New Hampshire's business oversights that fall under the umbrella of environmental construction/permitting regulations. The members of the commission will include four members of the House of Representatives; three members of the Senate, and public members representing specific groups and interests to create a commission comprised from both the private and public sector. Director Scott stated that further information regarding the findings of this commission will be forthcoming.

(Break: 9:55 a.m. – 10:10 a.m.)

At 10:10 a.m. the ARC reconvened and Chairman Duval announced that a quorum was present.

### **Approval of Minutes:**

Terry Callum entered a motion to accept the minutes of meeting #199. Debra Hale seconded the motion. All were in favor of accepting the minutes of meeting #199.

### **Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollution**

Chairman Duval introduced Karla McManus, Planning and Rules Manager for the Air Resources Division (ARD). Ms. McManus stated that the ARD is proposing to amend Env-A 500, Standards Applicable to Certain New or Modified Facilities and Sources Of Hazardous Air Pollutants. 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.

Under our delegation agreement with the United States Environmental Protection Agency (U.S. EPA), New Hampshire's rule is updated annually to incorporate new and revised federal NSPS, NESHAP, and MACTs that have been promulgated since the last annual update. From July 1 of 2010 until July 1 of 2011, EPA promulgated one New Source Performance Standard, as codified in 40 CFR 60. It is Subpart LLLL, Standards of Performance for New Sewage Sludge Incineration Units. This federal standard is already in effect, so adopting it by reference into Env-A 500 will not impose new requirements on any source. It will, however, allow DES to perform certain administrative functions on behalf of the regulated entities, such as making applicability determinations and alternative monitoring decisions that are routine in nature.

No new MACT standards were adopted for major sources of hazardous air pollutants in the last year.

Debra Hale entered a motion to accept the revisions to Env-A 500 and to begin the fifteen day review period. Terry Callum seconded the motion. All were in favor. The motion carried. Chairman Duval instructed members of the ARC to contact Vice-Chair David Collins with any comments concerning the revisions to the rule.

### **Upcoming Public Hearings:**

Barbara Hoffman, State Implementation Development (SIP) Manager informed members of ARC that the ARD will hold the following public hearings:

- Lead Infrastructure SIP hearing will be held on October 3, 2011, comment period ending at 4:00 pm. On October 3, 2011.
- Stage II Rule hearing will be held on October 7, 2011, comment period ending October 17, 2011.

### **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. 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.

Since no formal action by the ARC had been taken at the June meeting, Terry Callum entered a motion to deny the appeal of Ms. Lajoie and Mr. Caplan since the ARC has no jurisdiction over the matter at this time. William Smagula seconded the motion. All present were in favor. Docket No. 09-40 ARC was not accepted.

Docket No. 10-13 ARC – Kalwall Corporation regarding payment of emission-based fees. Chairman Duval read the status report provided by Pamela Monroe, Administrator of the Compliance Bureau which stated:

On July 1, 2010, Kalwall filed a Petition for Declaratory Ruling, or, in the alternative, a “Notice of Appeal from NHDES’ Final Response to Request for Determination of the Legal Basis for Requiring Payment for Regulated Toxic Air Pollutant Emissions” (see Petition). On July 19, 2010, Kalwall filed a “Request for Delay in Scheduling” by the Air Resources Council of any decision on the Petition. The NHDES concurred with this approach.

Since the time of the filing of the Petition, the NDHES has met with Kalwall and its attorney and has engaged in confidential settlement discussion in an effort to settle this matter. In addition, through the ARC, the NHDES has proposed and subsequently adopted, revised emission-based fee rules (Env-A 700) to make clear its interpretation that the rules have always required payment of emission-based fees for regulated toxic air pollutants that are not either hazardous air pollutants or volatile organic compounds.

The NHDES is currently drafting a confidential written response to Kalwall in a further attempt to settle this matter and will complete this by mid-October. The NHDES continues to believe that these settlement discussions will ultimately result in resolution to this matter.

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 a presiding officer has not been assigned to this matter. Once a PO is assigned, a pre-hearing conference will be scheduled.

Docket No. 09-43 ARC – Public Service of New Hampshire (PSNH) regarding DES’ Final Responses to Requests for Bonus Carbon Dioxide (CO<sub>2</sub>) 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. Presiding Officer Duval ruled to accept the agreement as submitted.

### **Other Business**

Chairman Duval set the next meeting of the Air Resources Council to be held on October 17, 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, William Smagula entered a motion to adjourn. Terry Callum seconded the motion. All were in favor. Meeting #200 of the Air Resources Council adjourned at 10:30 a.m. on September 19, 2011.