

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #215  
05/20/13**

**MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins, Georgia Murray, Deborah Chabot, Ryan Bielagus, Raymond Donald, Debra Hale, William Smagula Carmela Amato-Wierda

**MEMBERS NOT PRESENT:** Steven Walker, Debora Chabot (via Conf. Call)

**NHDES – ARD PERSONNEL:** Craig Wright, Karla McManus, Barbara Hoffman, Michele Roberge, Gary Milbury, Thomas, Niejadlik, David Larson

**OTHERS PRESENT:** Atty. David Conley, Presiding Officer; Attys. Greg Smith, B. Needleman, and Carol Holahan, McLane P.A.; Atty. Evan Mulholland, AGO; Anne Keach, Paula Scott, Katherine Lajoie, Rebecca Mackenzie, David Sussman, Claire Sussman, James Gruber, Joshua Raymond, Wiltrud Mottsmith, William Gallagher, James Contois, Rep. John Cloutier, Susan Swan, John Tuthill, Erica Pfister, Jennifer Wright, Vanessa Keith, Scott Nielsen, Nelia Sargent, Jaime Contois

**Call to Order:**

Chairman Duval called Meeting #215 of the Air Resources Council (ARC) to order at 9:07 a.m. on Monday, May 20, 2013. Chairman Duval announced that a quorum of the ARC was present.

**Approval of Minutes:**

William Smagula entered a motion to accept the minutes of meeting #215. Carmela Amato-Wierda seconded the motion. All were in favor. The motion carried. The minutes of ARC meeting #215 were approved and accepted by the ARC.

**Division Activities & Legislative Update:**

Chairman Duval introduced Craig Wright, Acting Director of the Air Resources Division (ARD). Mr. Wright updated members of the ARC on the following issues relative to the ARD:

**Legislation**

Acting Director Wright reported that legislative activity germane to the Air Resources Division is winding down. He reported the following concerning the budget and the RGGI legislation:

HB306 – relative to New Hampshire’s regional greenhouse gas initiative. Passed the House Science, Technology and Energy Committee 190-156, and has been referred to the Senate Energy and Natural Resources Committee. The full legislation will be heard by the full Senate on May 23, 2013 and ought to pass.

**Budget**

Acting Director Wright reported that Department of Environmental Services sustained a 5% cut in federal grants. The Air Resources Division’s Section 103 and 105 Grants have been reduced by \$65,000, which will cause the ARD to review the air quality monitoring network plan to meet these cuts and predicted future cuts to the program in 2015.

### Division Director Term

Acting Director Wright reported that his term as Acting Director for the ARD expires on July 1, 2013, and that the position vacancy has been posted nationally. He added that letters of interest in the position should have been filed by May 3, 2013, and the NHDES Administration is commencing the application review process.

Raymond Donald asked Mr. Wright if he submitted a letter of interest. Mr. Wright confirmed that he had done so.

Chairman Duval stated that he will be contacting Commissioner Burack regarding the appointment process for the position of Director.

### **Env-A 1400, Regulated Toxic Air Pollutants**

Karla McManus, SIP Planning and Rules Manager and Thomas Niejadlik, Environmental Health Manager presented members of the ARC with revisions to Env-A 1400.

Ms. McManus reported that 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 the Air Toxics Control Act (RSA 125-I:4), the Department of Environmental Services (DES) proposes changes to the list of regulated toxic air pollutants (RTAPs) and their ambient air limits (AALs). These changes are based on updates made to the list of chemical substances by the American Conference of Governmental Industrial Hygienists (ACGIH) and the US EPA's Integrated Risk Information System (IRIS).

This year we are incorporating ACGIH updates for both 2011 and 2012. As a result of changes made by ACGIH, six chemical substances have been added, two substances have been deleted, and four substances have had their Occupational Exposure Limit (OEL) changed which results in a change to the AALs. As a result of changes made by IRIS, four chemical substances had their annual AAL changed. One substance had both the annual and 24-hour AAL changed since the reference concentration is greater than the calculated 24-hour AAL.

In addition to the required annual updates, DES has made additional changes to the list of RTAPs and to the rules. These changes were made in order to utilize the latest scientific data, to streamline the compliance determination and permitting process, and to allow DES and businesses to concentrate efforts on those toxic chemicals that pose the greatest health risk to the public. This year DES is also proposing the following changes:

- De-list eleven low toxic Class III RTAPs that are not expected to cause harmful health effects in the ambient air.
- De-list eight RTAPs where an AAL can not be established due to insufficient data.
- Add language in both Env-A 1400 and Env-A 600 to clarify that if a vent is required to be "vertical and unobstructed" it must also vent emissions "above the roofline".
- Exempt the emission of RTAPs from certain major stationary sources that are subject to a federal standard, meet the requirements of the standard through the operation of pollution control equipment, and control RTAP emissions to the same degree of efficiency required to comply with the federal standard.

- Exempt automotive refinishing operations that are in compliance with 40 CFR Part 63, Subpart HHHHHH, have an exhaust stack that is vertical, unobstructed, and extends above the roofline, and use less than 500 gallons per year of commercially available paints and coatings.
- Exempt petroleum remedial systems that have a maximum concentration of gasoline vapor in the exhaust gas of 500 parts per million by volume, have an exhaust stack that is vertical, unobstructed, and extends above the roofline, and have a minimum exhaust velocity of 25 meters per second.

Chairman Duval asked Thomas Niejadlik if the proposed changes will affect Wheelabrator. Mr. Niejadlik responded that Wheelabrator would be exempt from Env-A 1400 if the proposed changes are adopted because Wheelabrator has installed controls under the federal Maximum Achievable Control Technology (MACT) Program.

After discussing the amendments to Env-A 1400, specifically the recommendation of William Smagula to consider an improved definition of Env-A 1402.02 (6) concerning exhaust stacks which are vertical, unobstructed, and extend above the roofline. Raymond Donald entered a motion to accept the amendments for review. William Smagula seconded the motion. All were in favor. The motion carried. Chairman Duval reminded members of the ARC to contact Vice-Chairman Collins with any comments concerning the proposed rules within fifteen days.

### **Status of Appeals**

Docket No. 11-10 ARC – Public Service of New Hampshire (PSNH), regarding the NHDES Final Determination of Baseline Mercury Input. The ARC adopted the draft decision and issued the Final Decision on December 17, 2012. On January 15, 2013, the ARC received the State's Request for Reconsideration and Clarification. On February 1, 2013, the ARC received the Objection to State's Request for Reconsideration and Clarification. The ARC received the State's Assent to PSNH Request to Defer Decision on Reconsideration and State's Motion to Strike. On February 12, 2013, the ARC received PSNH's Objection to State's Motion to Strike. PSNH filed their Status Report on February 27, 2013. On March 4, 2013, a letter was issued to the parties regarding the hearing officer's rulings. The status report was due by April 1, 2013. On March 29, 2013, the ARC received PSNH's status report. On April 1, 2013 the ARC granted the requested relief to submit status report by May 1, 2013. On April 29, 2013, the ARC received PSNH's status report. On May 1, 2013, the ARC granted the request to submit the status report by June 1, 2013.

Acting Director Wright reported that negotiations continue between the parties and the extension will allow the parties to continue their settlement efforts, and such efforts appear to be positive at this point.

Docket No. 12-11 ARC – Katherine Lajoie, Rebecca MacKenzie, et al. regarding the September 11, 2012 granting of the Title V Air Permit to Operate for Wheelabrator Claremont, Application #09-005. A Notice of Appeal was received on October 11, 2012. On October 18, 2012, a notice of insufficient filing was sent to the appellants. The ARC received an addendum to the Notice of Appeal on November 15, 2012. The ARC sent a receipt of the revised Notice of Appeal. The ARC accepted the Appeal on December 17, 2012, and a Hearing Officer will be appointed by the Office of the Attorney General. The Notice of Appeal Acceptance was sent to the parties on December 17, 2012. On January 8, 2013, Even Mulholland, Assistant Attorney General, filed an Appearance for the NHDES. On January 11, 2013, the ARC received the Appearance of Gregory Smith, and Jarret Duncan of McLane, Graf, Raulerson and Middleton P.A., for Wheelabrator Claremont Company L.P. On January 23, 2013, a notice was issued of the Pre-Hearing Conference scheduled for February 12, 2013 at 1:00 p.m. On February 7, 2013, the ARC received Objection to Motion to Dismiss and Request to Stay. The ARC issued the Pre-Hearing Order on February 12, 2013 with a hearing

scheduled for May 20, 2013, at 10:00 a.m. Wheelabrator's Reply to Appellant's Objection was received on February 19, 2013. On February 25, 2013, the ARC received the Appellant's Response to Wheelabrator's Reply to Appellant's Objection. On March 12, 2013, the ARC received a copy of the Department of Environmental Services' file and fifteen CDs of the file for ARC members. The hearing officer sent a draft decision to the ARC for review on March 22, 2013. On April 2, 2013 the order on the Motion to Dismiss was issued. On April 18, 2013 the ARC received a copy of the request for information from appellants to Wheelabrator's counsel and to Evan Mulholland, counsel for the NHDES. On April 22, 2013, the ARC received a copy of Atty. Smith's response to the Request for Information. On April 22, 2013, the ARC received the Appellants' Motion to Amend. On April 26, 2013 received the Withdrawal of Appearance for Jarrett Duncan and Appearance for Carol Holahan. On April 25, 2013, the Public Notice of Title V Appeal Hearing was published in the Union Leader newspaper. On April 26, 2013, the ARC received a Joint Objection to Motion to Amend Notice of Appeal. On April 29, 2013, the ARC received the Appellants' Response to Joint Objection to Motion to Amend Notice of Appeal and Appellants' Motion to Compel. On May 2, 2013 the ARC received Wheelabrator's Objection to Motion to Compel and Reply to Appellants' Response to Joint Objection to Motion to Amend Notice of Appeal. On May 3, 2013, the Hearing Officer issued an Order on Motion to Amend; which was granted. On May 3, 2013, the Hearing Officer issued an Order on the Motion to Compel; which was granted. On May 6, the ARC received the NHDES' Objection to Motion to Compel. On May 8, 2013, the ARC received Wheelabrator's Motion for Reconsideration or Clarification of Order Granting Appellants' Motion to Amend Notice of Appeal. On May 10, 2013, the ARC received a Motion to Enforce Hearing Officer's Ruling. On May 13, 2013, the ARC received Wheelabrator's, the NHDES' and Appellants' Witness and Exhibit Lists. On May 15, 2013, the Hearing Officer issued an Order on Appellants' Motion to Enforce Hearing Officer's Ruling and Order on Wheelabrator's Motion for Reconsideration or Clarification of Order Granting Appellants' Motion to Amend Notice of Appeal.

Ms. Scott added that a hearing on this matter is scheduled for this date at 10:00 a.m. following the regular meeting of the ARC.

### **New Business**

Chairman Duval informed members of the ARC that the ARC position representing the recreation industry remains vacant, and asked that if any member has a recommendation for this appointment to the ARC, to bring those recommendations forward.

Chairman Duval reminded Georgia Murray, William Smagula and Raymond Donald that their terms expire in October 2013. He added that he hopes these members will consider reappointment to the ARC and begin their reappointment process.

### **Other Business**

Chairman Duval set the next meeting of the Air Resources Council to be held on June 17, 2013.

### **Public Commentary**

No members of the public in attendance provided comment.

### **Adjourn**

Having no further business to discuss, Ryan Bielagus entered a motion to adjourn. Carmela Amato-Wierda seconded the motion. All were in favor. Meeting #215 of the Air Resources Council adjourned at 9:40 a.m. on May 20, 2013.

**Hearing – Docket No. 12-11 ARC, Appeal of Katherine Lajoie and Rebecca MacKenzie**

A hearing on this matter commenced at 10:00 a.m., David Conley presided as the Hearing Officer. The following Air Resources Council members were present:

Ryan Bielagus  
Georgia Murray  
Carmela Amato-Wierda  
David Collins  
Robert Duval  
William Smagula  
Raymond Donald

The hearing recessed at 12:15 p.m., and will resume on June 17, 2013 at 9:30 a.m.