

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #216
06/17/13**

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

MEMBERS NOT PRESENT: Debra Hale

NHDES – ARD PERSONNEL: Craig Wright, Joseph Fontaine, Barbara Hoffman, Michele Roberge, Gary Milbury, Thomas, Niejadlik, Anne Bailey, Michael Fitzgerald

OTHERS PRESENT: Atty. David Conley, Presiding Officer; Attys. Greg Smith, B. Needleman, and Carol Holahan, McLane P.A.; Atty. Evan Mulholland, AGO; Rebecca Schlenker, AGO; Anne Keach, Paula Scott, Katherine Lajoie, Rebecca Mackenzie, Don Davey, David Sussman, Claire Sussman, John Garrett, John Tuthill, William Gallagher

Call to Order:

Chairman Duval called Meeting #216 of the Air Resources Council (ARC) to order at 9:10 a.m. on Monday, June 17, 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). Due to the abbreviated meeting of the ARC, Mr. Wright briefly updated members of the ARC on legislative and budgetary issues relative to the Air Resources Division.

Env-A 4600, Carbon Dioxide (CO₂) Budget Trading Program

Env-A 4700, Carbon Dioxide (CO₂) Offset Projects

Env-A 4800, Carbon Dioxide (CO₂) Allowance Auction Program

Barbara Hoffman, SIP Planning and Rules Administrator and Joseph Fontaine, Emissions Trading Program Manager, presented members of the ARC with revisions to Env-A 4600, 4700, and 4800.

Mr. Fontaine stated that The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO₂ Budget Trading Programs in each of the nine RGGI participating states. Each participating state's CO₂ Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review. Amendments to the 2008 RGGI Model Rule have been made in response to the 2012 program review. In February 2013, revisions to the RGGI Model Rule were finalized.

In response to changes made to the RGGI Model Rule, the New Hampshire Legislature has amended its Laws, RSA 125-O:19-29. Governor Hassan is expected to sign this in June, 2013, and the amendments will go into effect on January 1, 2014. Major changes to the NH Law, and proposed amendments to our RGGI Rules, Env-A 4600, Env-A 4700, and Env-A 4800, are as follows:

- For 2014, NH's Base Budget was lowered from 8,620,460 to 4,749,011 allowances (close to current (2012) emissions), and the original 2.5% per year reduction was maintained for the years 2015 through 2020
- In order to "lock-in" emissions reductions to date and to address the surplus bank of allowances that accrued when the budget was much higher than emissions so that sources could not draw from their banks to increase emissions going forward, two additional budget adjustments will be applied
- In addition to the original 3-year compliance periods, annual "interim control periods" have been established for the first two years of each 3-year compliance period to address potential bankruptcy issues
- Cost Containment Allowances in Addition to the Budget will be offered if auction prices exceed certain trigger prices, and offset price triggers were deleted, in order to simplify and to add certainty
- The Forestry Offset Allowance Quantification Protocols were incorporated by reference

Model Rule citations for the major statutory changes and proposed regulatory changes are as follows:

- Model Rule section XX-5.1, *Size and Structure of Cap and Allowance Apportionment*, addressed by RSA 125-O:21, II and Env-A 4606.01, *NH's CO₂ Trading Program Base Budget*
- Model Rule section XX-5.3, *Budget Adjustments*, addressed by RSA 125-O:20, VII-a and XV-a and Env-A 4606.03 through Env-A 4606.07
- Model Rule sections XX-1.2, XX-1.5, XX-4.1, XX-6.5, and XX-7.2, *Interim Control Periods*, addressed by RSA 125-O:22, I and Env-A 4605.01
- Model Rule XX-5.3(c) and XX-9, *Cost Containment Reserve*, addressed by RSA 125-O:29 and Env-A 4803.04(c), Env-A 4602.37, Env-A 4602.38, and 4606.09
- Model Rule XX-1.2 and XX-10.3 *Offset Trigger Mechanisms*, addressed by RSA 125-O:8, I(f) and RSA 125-O:20, IV and Env-A 4703.04, Env-A 4605.04(b), Env-A 4602.68 and Env-A 4602.69
- Model Rule XX-10.2 and XX-10.5 *Forestry Offsets*, addressed by RSA 125-O:8, I(f) and Env-A 4700

After discussing the amendments to Env-A 4600, 4700, and 4800, and William Smagula's recommendation to meet with staff of the Air Resources Division to discuss refining the definitions, references, and language of the rules; David Collins entered a motion to commence the ARC's fifteen-day review of the revised rules on July 15, 2013. Ryan Bielagus seconded the motion to delay the ARC review until July 15, 2013. 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. The ARC received PSNH's status report on June 11, 2013. On June 13, 2013, the ARC granted the request to submit the status report by September 1, 2013.

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, Evan 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. On May 20, 2013 a hearing on the matter was held and recessed at 12:15 p.m., to resume on June 17, 2013 at 9:30 a.m. On June 5, 2013 the ARC received the Appellants' Response to Wheelabrator's Request for Information. On June 10, 2013 the ARC received Wheelabrator's Objection and Motion to Strike Exhibit A16 File Out of Order by the Appellants. On June 13, 2013, the ARC issued a ruling on the Objection and Motion to Strike. On June 14, 2013, the ARC received an Objection to Appellants' Request.

Ms. Scott added that a hearing on this matter is scheduled for this date at 9:30 a.m. following the regular meeting of the ARC.

New Business

No new business of the ARC was discussed.

Other Business

Chairman Duval set the next meeting of the Air Resources Council to be held on July 15, 2013.

Public Commentary

No members of the public in attendance provided comment.

Adjourn

Having no further business to discuss, David Collins entered a motion to adjourn. William Smagula seconded the motion. All were in favor. Meeting #216 of the Air Resources Council adjourned at 9:30 a.m. on June 17, 2013.

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

A hearing on this matter commenced at 9:45 a.m. David Conley, Esq. presided as the Hearing Officer and Paula Scott as the Appeals Clerk. 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 August 12, 2013, at 9:30 a.m.