

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #217
08/19/13**

MEMBERS PRESENT: Chairman Robert Duval, Vice-Chairman David Collins, Georgia Murray (via conf. call), Deborah Chabot, Raymond Donald, William Smagula, Debra Chabot, Debra Hale (via conf. call)

MEMBERS NOT PRESENT: Carmela Amato-Wierda, Ryan Bielagus

NHDES – ARD PERSONNEL: Craig Wright, Barbara Hoffman, Michele Roberge, Gary Milbury, Felice Janelle, Gary Milbury, Michael Fitzgerald

OTHERS PRESENT: Linda Winmill, Winmill Equipment Company, Inc., Anne Keach, Paula Scott

Call to Order:

Chairman Duval called Meeting #217 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, August 19, 2013. Chairman Duval announced that a quorum of the ARC was present.

Approval of Minutes:

Raymond Donald entered a motion to accept the minutes of meeting #216. William Smagula seconded the motion. All were in favor. The motion carried. The minutes of ARC meeting #216 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 briefly updated members of the ARC on legislative and budgetary issues relative to the Air Resources Division.

Legislation

Mr. Wright reported that the Air Resources Division (ARD) is developing potential legislation for the upcoming 2014 session and will report back to the ARC once draft legislation is available. He added that the House deadline for LSRs is September 30, 2013, and October 25 for the Senate.

Budget

Mr. Wright informed members of the ARC that the ARD is preparing its FY 2014-15 Budget. The Budget must include \$25 Million in budget cuts across all funds. The NHDES share is approximately \$1.5 Million in general, federal and other funds.

Mr. Wright stated that the ARD is currently working on a commitment plan with the EPA in preparation of the expected October 1, 2013, 8% cut in federal funds

Env-A 4100, Consumer Products

Karla McManus, Planning and Rules Manager; Michael Fitzgerald, Administrator of the Technical Services Bureau; and Felice Janelle, Mobile Source Section Supervisor, presented members of the ARC with revisions to Env-A 4100, *Consumer Products*.

Mr. Fitzgerald explained that Env-A 4100 is due to expire on September 24, 2013. The ARD is proposing to readopt Env-A 4100 with changes that reflect amendment to the Ozone Transport Commission (OTC) Model Rule upon which the chapter is based.

The purpose of this chapter is to limit emissions of volatile organic compounds (VOCs) by requiring reductions in the VOC content of consumer products that are sold, supplied, offered for sale, or manufactured by any person in New Hampshire, as required by NH Laws of 2004, 175:1,I.

After discussing the amendments to Env-A 4100, including the process for alternative products under the variance procedure; Raymond Donald entered a motion to commence the ARC's fifteen-day review of the revised rules. 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

Paula Scott, Appeals Clerk presented the statut of appeals before the ARC as follows:

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.

William Smagula stated that the parties have made good progress and are finishing details with the ARD. Mr. Smagula expects the status report will be forthcoming on 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 for Information. A continued hearing on the matter was held on August 12, 2013. The hearing will resume on September 11, 2013 at 11:00 a.m.

Docket No. 13-4 ARC – Winmill Equipment Co., Inc. regarding Administrative Order No. 13-009 ARD issued on May 30, 2013. The ARC received the Notice of Appeal on July 1, 2013. On July 2, 2013, the ARC issued an insufficient appeal letter. On July 15, 2013, the ARC received a revised Notice of Appeal. On July 22, 2013, the ARC issued a receipt of the Revised Appeal.

After review of the Revised Appeal, David Collins entered a motion to accept the Appeal of Winmill Equipment Co., Inc. Raymond Donald seconded the motion. All were in favor.

Ms. Scott stated that she will contact the Office of the Attorney General to request an appointment of a Hearing Officer in the matter.

New Business

Raymond Donald inquired about the appointment of a Director of the ARD. Acting Director Wright reported that Governor Hassan has nominated him to be the Director of the ARD and the Executive Council will take up his confirmation as Director at a future meeting of the Governor and Executive Council.

Other Business

Chairman Duval set the next meeting of the Air Resources Council to be held on September 16, 2013.

Public Commentary

Linda Winmill of Winmill Equipment Co., Inc. was present for the duration of the ARC meeting. Ms. Winmill stated that she attended the meeting in order to gain further knowledge of the procedures of the ARC.

Adjourn

Having no further business to discuss, Deborah Chabot entered a motion to adjourn. William Smagula seconded the motion. All were in favor. Meeting #217 of the Air Resources Council adjourned at 9:30 a.m. on August 19, 2013.