

**AIR RESOURCES COUNCIL  
MINUTES OF MEETING #222  
02/10/14**

**MEMBERS PRESENT:** Chairman Robert Duval, Vice-Chairman David Collins, Raymond Donald, Carmela Amato-Wierda, Georgia Murray (via conf. call), William Smagula, Kris Nils Blomback

**MEMBERS NOT PRESENT:** Debra Hale, Ryan Bielagus, Deborah Chabot,

**NHDES – ARD PERSONNEL:** Craig Wright, Jeffrey Underhill, Michele Roberge, Gary Milbury, Barbara Hoffman

**OTHERS PRESENT:** Anne Keach, Paula Scott, David Conley

**Call to Order:**

Chairman Duval called Meeting #222 of the Air Resources Council (ARC) to order at 9:10 a.m. on Monday, February 10, 2014. Chairman Duval announced that a quorum of the ARC was present.

**Approval of Minutes:**

David Collins entered a motion to accept the minutes of meeting #'s 220 and 221. William Smagula seconded the motion. All were in favor. The motion carried. The minutes of ARC meeting #'s 220 and 221 were approved and accepted by the ARC.

**Division Activities & Legislative Update:**

Chairman Duval introduced Craig Wright, 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 tracking and/or developing testimony to support or oppose the following legislation for the upcoming 2014 session:

HB 1305 – relative to the definition of asbestos abatement. A public hearing was held on January 14, 2014, and an Inexpedient to Legislate vote of 10-7 was made.

Mr. Wright provided NHDES Legislative Tracking Sheet, which includes tracking data for the following legislative items:

HB 1129 – establishing a committee to study energy efficiency  
HB 1192 – eliminating the threshold price on the use of proceeds from the regional greenhouse gas initiative program  
HB 1443 – relative to renewable portfolio standards  
HB 1385 – relative to changes and additions to energy facilities  
HB 1456 – relative to the issuance of certificate for energy facilities by the site evaluation committee  
SB 268 – relative to allocations from the energy efficiency fund  
SB 281 – relative to the siting of wind turbines  
SB 334 – relative to certification and licensure for mold assessment or remediation services  
HB 1532 – relative to notification of radon level prior to sale or lease of property

## Permitting

### Public Service of New Hampshire - Schiller Station, Portsmouth, NH

Director Wright stated that the NHDES will issue the Title V Operating Permit by the end of the March 2014. No request for a public hearing was made, therefore a public hearing was not held. He added that upon issuance, the thirty-day permit appeal period will commence.

### North Country Environmental Services (NCES), Bethlehem, NH

The NCES operates a solid waste landfill, which generates landfill gas that is extracted and combusted in one of two open flares, with the second flare serving as a backup control device in the event the first flare is temporarily offline for maintenance or repairs. The Title V Operating permit is intended to incorporate all applicable state and federal requirements relating to air emissions, including the requirements of existing temporary permits, into one operating permit. Director Wright added that the Title V Operating permit is also required for the landfill based on its capacity, pursuant to the Code of Federal Regulations, 40 CFR Part 60, Subpart WWW.

Director Wright reported that a public hearing was held on January 16, 2014, at 6:00 p.m. at Profile High School in Bethlehem, NH. The hearing was attended by approximately thirty individuals, some of whom provided oral and written testimony which is being reviewed by the Air Resources Division. Mr. Wright reported that a final decision to issue the NCES permit will be in mid-March, 2014.

### Five-Year (2010-2015) Strategic Plan

Director Wright stated that the senior staff and bureau administrators are currently reviewing the Strategic Plan in conjunction with the FY 2016-17 budget, and will share the Air Resources Division priorities with the ARC at the April 21, 2014 meeting.

### **176A Petition Presentation**

Chairman Duval introduced Jeffrey Underhill, Chief Scientist of the Atmospheric Science and Analysis Unit. Dr. Underhill presented members of the ARC with the following overview and key points of the 176A Petition to expand the Ozone Transport Region:

- Petition was filed on December 9, 2013, signed by governors of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and Pennsylvania
- The Petition requests that nine states be added to the current Ozone Transport Region
  - Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia
- These states should be included because
  - Prevailing winds bring pollution from these states into the current Ozone Transport Region.
  - EPA modeling indicates these states contribute “significantly” to nonattainment in downwind states.
  - Other attempts to get upwind emission reductions have been slowed, but downwind statutory deadlines to attain have not.
- The 176A Petition to EPA will establish a new very large ‘Eastern States’ Ozone Transport Region and levels the playing field for NSR, and RACT.
- Would require emission reductions in newly added states that current Ozone Transport Region states have required for years.

- Based on the same kind of significant contribution concept used in EPA's Cross-State Air pollution Rule (CSAPR).
- The pros and cons of the 176A Petition include:
  - Pros
    - CSAPR could be used as a good technical justification for the petition
    - Very daunting to non-OTR states and makes federal measures look reasonable
    - Legal
  - Cons
    - Could take years to resolve
    - Never attempted before
    - Would likely generate major push-back from non-OTR states
- Other State options include:
  - Voluntary cooperation – attempted with limited success
  - Section 126 Petitions – seek remedies for specific out-of-state sources
  - Civil suits
  - Good Neighbor Rule – EPA is currently working on a GNR which would set emission budgets for each state that significantly contributes to nonattainment

Director Wright stressed that the 176A Petition correlates to a serious economic issue for the Northeast, not just a public health issue.

Members of the ARC discussed how the science has changed since the Clean Air Act Amendments, and the need to address regional issues with alacrity.

#### **Env-A 702.05, 705.01, and 907.01, General Reporting and Fees Requirements**

David Collins entered a motion to table the amendments of Env-A 702.05, 705.01, and 907.01 *General Reporting and Fees Requirements* until the next meeting of the ARC. Carmela Amato-Wierda seconded the motion. All present were in favor. The item was table until March 17, 2014.

#### **Status of Appeals**

Paula Scott, Appeals Clerk presented the status 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 the 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. The ARC received PSNH's status report on September 5, 2013. On September 12, 2013, the ARC issued a letter granting the request. On December 4, 2014, the ARC received a Joint Motion to Close this Docket.

Raymond Donald entered a motion to to accept the Joint Motion to Close Docket No. 11-10 ARC. Carmela Amato-Wierda seconded the motion. David Collins and Kris Blomback recused themselves. All others were in favor. The Joint Motion to Close the Docket was accepted by the ARC.

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. On August 20, 2013, the ARC received the Appellant's Submittal of missing data from Exhibit A4. A hearing on the matter will resume on October 21, 2013 following

the regular meeting of the ARC at 10:00 a.m. Deliberations were held on November 18, 2013. A Decision will be issued within 90 days (2/16/14).  
Members of the ARC held a non-public session from 9:55 a.m. – 10:10 a.m.

David Collins entered a motion to accept the ARC's Decision and Order to Deny the Appellants' Notice of Appeal. William Smagula seconded the motion. A roll-call vote of William Smagula, David Collins, Carmel Amato-Wierda, Georgia Murray, and Robert Duval all voting aye was taken and recorded. The Decision and Order to Deny the Appellants' Notice of Appeal was accepted by the ARC.

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. On August 19, 2013, the ARC received a Notice of Appearance from Kerry Barnsley for the NHDES. On September 13, 2013, the ARC issued a Notice of Pre-hearing Conference scheduled for October 8, 2013 at 4:00 p.m. On September 24, 2013, the ARC issued notice of the Pre-Hearing Conference time change from 4:00 p.m. to 8:30 a.m. on October 8, 2013. The Pre-hearing Conference was held on October 8, 2013 and a Pre-Hearing Order was issued. The continued Pre-Hearing Conference is scheduled for January 14, 2014, at 8:30 a.m. On November 15, 2013, a notice of the rescheduled continued Pre-hearing Conference for January 13, 2013 was sent. On January 10, 2014, the ARC received an Assented to Motion to Continue. On January 10, 2014, the ARC issued a letter granting the Motion to Continue and rescheduling the PHC to March 13, 2014.

#### **New Business**

No new business was taken up by the ARC.

#### **Other Business**

Chairman Duval scheduled the next meeting of the ARC to be held on March 17, 2014.

#### **Public Commentary**

No public comments were received by the ARC.

#### **Adjourn**

Having no further business to discuss, meeting #222 of the Air Resources Council adjourned at 10:25a.m. on February 10, 2014.