

**AIR RESOURCES COUNCIL
MINUTES OF MEETING #223
03/17/14**

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

MEMBERS NOT PRESENT: Debra Hale

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

OTHERS PRESENT: Anne Keach, Paula Scott, David Conley, Katherine Lajoie

Call to Order:

Chairman Duval called Meeting #223 of the Air Resources Council (ARC) to order at 9:05 a.m. on Monday, March 17, 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 221 and 222. 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.

Regional Greenhouse Gas Auction Results

Director Wright reported that the nine Northeastern and Mid-Atlantic states participated in the 23rd RGGI Auction on March 7, 2014. 23,491,350 CO₂ allowances were sold at the auction at a clearing price of \$4.00. The allowances sold include the 18,491,350 allowances offered for sale by the nine states and all of the 5,000,000 allocation year 2014 cost containment reserve (CCR) allowances.

The auction generated \$93.96 million for reinvestment by the RGGI states in a variety of consumer investment benefit initiatives, energy efficiency, renewable energy, and greenhouse gas abatement programs.

176A Petition

The 176A petition seeks to expand the Northeast Ozone Transport Region (OTR) to include the states of Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia and West Virginia. It alleges that the targeted upwind states have failed to fulfill all Clean Air Act requirements because their air pollution control programs do not require the installation of controls as stringent as required by the OTR and because air pollution from the upwind states is transported into the OTR, thus contributing to violations of the 2008 National Ambient Air Quality Standard for ozone within the OTR states. The Petitioners hope that the petition, if granted, will subject the targeted states to more stringent requirements in the form of revised State Implementation Plans for VOC and NOx

emissions, including but not limited to additional requirements for enhanced Inspection and maintenance of mobile sources, nonattainment New Source Review, and Reasonably Available Control Technology. Those opposed to Petitioners' action question the technical basis for the petition, noting that it relies so heavily on data published no more recently than 2005. The Administrator of USEPA has eighteen months to approve or disapprove of the petition.

Director Wright stated that the nine states petitioned have filed a response. Several states will be convening a discussion/collaborative initiative.

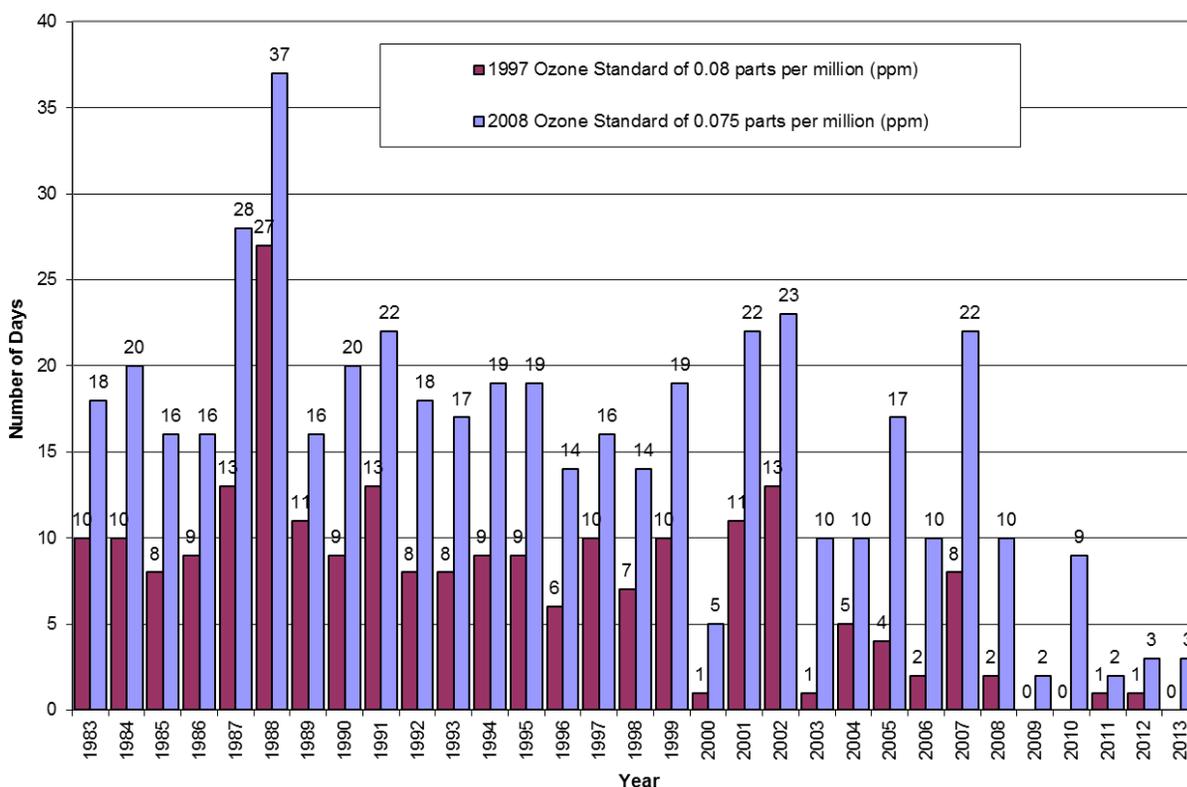
Tier 3 Fuel Standard

Director Wright reported that on March 3, 2014, the Environmental Protection Agency (EPA) set Tier 3 Motor Vehicle Emission and Fuel Standards. Beginning in 2017, Tier 3 sets new vehicle emissions standards and lowers the sulfur content of gasoline, viewing the vehicle and its fuel as an integrated system. Benefits of the Tier 3 Standard include:

- Decreased unhealthy levels of air pollution which are linked with adverse health impacts.
- Vehicle emissions standards combined with the reduction of gasoline sulfur content will significantly reduce motor vehicle emissions, including NO_x, VOCs, PM_{2.5} and CO.
- Gasoline will not contain more than 10 parts per million (ppm) of sulfur on an annual average basis by January 1, 2017.
- Emissions reductions will bring about air quality improvements to ensure state attain and maintain National Ambient Air Quality Standards (NAAQS).

Director Wright provided members of the ARC with the following chart, depicting the number of days the State of New Hampshire has exceeded the 8-Hour Ozone Standard.

Days Exceeding the 8- Hour Ozone Standard in New Hampshire



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

Chairman Duval introduced Karla McManus, Planning and Rules Manager and Todd Moore, Construction and Planning Manager. Ms. Mcmanus and Mr. Moore presented members of the ARC with proposed changes to the annual emission reporting and fee rules for sources with air permits. The changes are intended to address two issues:

1. Annual Emissions Reports For All Permitted Sources – Current Rules require all permitted sources to report to the ARD actual emissions of all regulated air pollutants and all regulated toxic air pollutants on an annual basis. The ARD has determined that we do not need all sources to report all emissions. The proposed rules set up a tiered system by which all sources report a limited subset of emissions, with additional pollutants required to be included only for sources that meet certain thresholds. This change will reduce the reporting obligations for many sources while still providing the ARD with the minimum required data.
2. Annual Emissions Reports and Fees for Emergency Generators Registered Under the General State Permit – Current rules require operating emergency use engines under the General State Permit (GSP-EGs) to submit an annual emissions report (the same report referenced above), and pay an annual emission-based fee. New Hampshire currently has over 300 such sources. The vast majority of GSP-EGs emit less than one ton of regulated pollutants per year and therefore pay the annual minimum fee based on one ton of emissions. The ARD has determined that, since the actual annual emissions from GSP-EGs do not typically vary (e.g., is usually less than one ton), we do not need GSP-EGs to file an annual emissions report. The ARD also proposes to switch from the current annual emission-based fee to a GSP-EG registration fee. The ARD proposes to set the registration fee at the ton/year multiplier times the number of years remaining in the permit term when the owner files the registration. Since most GSP-EGs currently pay based on the one ton minimum, this change is not expected to result in an increase in fees for GSP-EGs. The change will, however, eliminate state reporting obligations for GSP-EGs.

The ARD proposes to affect these changes by adding a new rule, Env-A 702.05, *General State Permit Registration Fee*, and amending Env-A 705.01, *Emission-based Fee*, and Env-A 907.01, *General Reporting Requirements*.

The current GSP-EG will expire in 2015 and the NHDES intends to re-issue it in the spring of 2015. The NHDES intends to coordinate the fee changes such that the new registration fee will become effective upon the reissuance of the GSP-EG in 2015.

Members of the ARC engaged in a discussion to ensure that that all general reporting requirements will be met under the revised rule. Raymond Donald entered a motion to accept the revisions to Env-A 702.05, 705.01, and 907.01. Vice-Chairman Collins seconded the motion. All present were in favor. Chairman Duval instructed members of the ARC to contact Vice-Chairman Collins with further comments regarding Env-A 500 within fifteen days.

Env-A 4200, Architectural and Industrial Maintenance Coatings

Chairman Duval introduced Felice Janelle, Supervisor of the Mobile Sources Section. Ms. Janelle and Ms. McManus presented members of the ARC with the proposed readoption of Env-A 4200, *Architectural and Industrial Maintenance Coatings*.

Env-A 4200, *Architectural and Industrial Maintenance Coatings*, is due to expire on July 27, 2014. The ARD is proposing to readopt Env-A 4200 with minor changes to clarify the rule. The Ozone Transport Commission (OTC) Model Rule, upon which the chapter is based, has not been updated since 2005, so there are no significant changes which need to be incorporated into our rules.

The purpose of this chapter is to limit emissions of volatile organic compounds (VOCs) by requiring reductions in the VOC content of architectural and industrial maintenance (AIM) coatings as required by NH Laws of 2004, 175:1, I. This rule differs from Env-A 4100, Consumer Products, in that it applies to coatings that are recommended by the manufacturer for field application to the surface of a stationary structure, portable building, pavement, or curb to protect, decorate, or serve some other function. Architectural coatings include many categories such as interior and exterior paints, traffic markings, sign paints, as well as industrial maintenance coatings.

Raymond Donald entered a motion to accept the proposed readoption of Env-A 4200. William Smagula seconded the motion. All present were in favor. Chairman Duval instructed members of the ARC to contact Vice-Chairman Collins with further comments regarding Env-A 500 within fifteen days.

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 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. On February 12, 2014 the ARC issued a letter regarding the acceptance of the Joint Motion to Close Docket.

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, 2013, 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.

On March 3, 2014, the ARC received a Motion for Reconsideration. On March 10, 2014, the ARC received an Objection by Wheelabrator to Appellants' Motion for Reconsideration. On March 14, 2014, the ARC received an Objection to Motion for Reconsideration filed by the NHDES.

Vice-Chairman Collins stated that the Appellants have provided no new evidence in the matter and entered a motion to deny the Request for Reconsideration. Raymond Donald seconded the motion. Georgia Murray and Carmela Amato-Wierda asserted clarifying comments and questions concerning specific data relevant to the issuance of the draft permit.

The ARC then voted on the motion to deny the Request for Reconsideration. Kris Blomback abstained; Georgia Murray voted not in favor, all others present were in favor. The motion carried.

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. On March 7, 2014 the ARC received a Motion to Continue. On March 12, 2014, the ARC received the Department's response to the Motion. On March 12, 2014 the ARC issued a letter denying Appellant's Motion to Continue the Pre-hearing Conference and on March 13, 2014, issued a second Pre-Hearing Conference with the third Pre-hearing Conference scheduled for May 20, 2014 and a Hearing scheduled for June 16, 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 April 21, 2014.

Public Commentary

Chairman Duval offered Katherine Lajoie an opportunity to address the members of the ARC. Ms. Lajoie alleged the NHDES received incorrect information from Wheelabrator-Claremont regarding the baghouse. She asserted that the source should have been cited for not filing a permit modification for years. No public comments were received by the ARC.

Chairman Duval encouraged Ms. Lajoie to bring her comments forward in the future if she is interested in revising existing rules concerning the permitting process.

Adjourn

Having no further business to discuss, meeting #223 of the Air Resources Council adjourned at 10:15 a.m. on March 17, 2014.