

UTAH AIR QUALITY BOARD MEETING
March 4, 2009 – 1:30 p.m.
168 North 1950 West, Room 101
Salt Lake City, Utah 84116

FINAL MINUTES

I. Call-to-Order

Ernie Wessman called the meeting to order at 1:33 p.m.

Board members present: Jim Horrocks, Ernest Wessman, Kathy Van Dame, Steve Sands, Joel Elstein, Wayne Samuelson, and Craig Petersen (attendance by phone)

Excused: Stead Burwell, Nan Bunker, Darrell Smith, and Bill Sinclair

Executive Secretary: Cheryl Heying

II. Date of the Next Air Quality Board Meeting: May 6, 2009.

Ms. Heying informed the Board that currently there are no action items to come before the Board for the April 2009 meeting. Fred Nelson of the Attorney General's Office also stated that today's request for agency action is a procedural matter that can be handled without a Board meeting. After discussion, the April 1, 2009, Board meeting was canceled and the next Board meeting will be on May 6, 2009.

III. Approval of the Minutes for February 4, 2009 Board Meeting.

Ms. Van Dame made a correction to a sentence on page three, the fourth paragraph under item B the word "reductions" should be inserted in the second sentence after "emissions."

- Joel Elstein moved to approve the minutes with the correction. Jim Horrocks seconded. The Board approved unanimously.

IV. Request for Agency Action, Jack McIntyre, Issuance of Notice of Further Proceedings. Presented by Fred Nelson.

Fred Nelson stated that the Board received Mr. McIntyre's request for agency action asking the Board to consider the decision of the Executive Secretary as far as certification of the tax credit on a vehicle conversion. The process under the State Administrative Procedures Act requires the Board to first acknowledge receipt of the request and then issue a notification of further proceedings. The notice of further proceedings states that the Board will go forward and will establish a schedule to hear this matter. Mr. Nelson has drafted a standard notice which has been given to each party. The provisions of the notice include the fact that because there are no parties that need to be granted intervention, the Board go straight to hearing on this matter. While the hearing schedule hasn't been established yet, the Board rules that parties establish a schedule agreeable to each party then come to the Board and propose a schedule for hearing the matter. The notice also suggests that Mr. Wessman be appointed as the presiding officer who could handle an approval of a schedule, if a schedule is agreed upon by the parties. If an agreed

schedule cannot be reached, Mr. Wessman could establish the schedule for hearing the matter. If the Board approves this order today, rules require the Executive Secretary to file a written reply to the submittal by Mr. McIntyre within 30 days of the time this order is issued and the case will then proceed.

In reviewing the request for agency action, it did not seem to Mr. Nelson that there were a lot of disputed factual issues. It was pretty much questions of how the rules were applied and how the state and federal laws apply. If that is the case, this matter could possibly go forward quickly with just briefing the parties, but if there are factual issues that need some discovery the matter may delay when the Board hears it. That could be decided when the schedule is established and after the parties have had a chance to confer. Mr. Nelson recommends the Board approve the notice of further proceedings for issuance and then he will come back to the Board with a schedule for the Board to make a decision on it.

Mr. Nelson clarified for the Board members that the presiding officer simply rules on procedural issues and establishes a schedule. If after the parties confer, a hearing officer could be appointed by the Board to hear the matter and then bring it back to the Board. If later on it is determined that there are not factual issues, an additional decision the Board could make in this particular case is to just consider the matter anyway and then look at the briefs and then make a decision.

In addition, Senate Bill 70 is currently being considered by the Legislature that would require when these kinds of requests come before any of the Environmental Boards, the Board would initially refer the matter to an administrative law judge. The administrative law judge would consider the matter, hold the hearing, and then bring to the Board a recommended decision with the record. If Senate Bill 70 passes, it will alter the process of the Board because it's not a discretionary referral by the Board and would require the Board to refer it to an administrative law judge. Right now, the Air Quality Board is proceeding on the matter today on the assumption that the law has not passed.

Mr. Wessman added that he does not have any conflicts of interest or other issues that would require him to be recused from this action.

- Jim Horrocks moved to approve the notice of further proceedings as prepared by Mr. Nelson, including identifying Mr. Wessman as the presiding officer. Joel Elstein seconded. The Board approved unanimously.

V. Propose for Public Comment: Amend R307-101-2, General Requirements. Definitions. Presented by Steve Packham.

Steve Packham, Toxicologist at DAQ, stated that this proposed action deals with general definitions that are found in R307-101-2, and specifically with definitions used later in R307-410-4 entitled Documentation of Ambient Air Impacts for Hazardous Air Pollutants. The DAQ often refers to this rule as the toxics modeling rule. The toxics modeling rule establishes toxics screening levels by reference to a publication by the American Conference of Governmental Industrial Hygienists (ACGIH). Today's proposed action would update the references in the definitions which would also update it in the toxics modeling rule to reflect the most current ACGIH threshold limit values, the time weighted averages and ceilings. Staff recommends that the Air Quality Board propose for amendment R307-101-2 for public comment.

Mr. Packham further explained that the rule update received by the Board today was to update the reference throughout the rule from the 2008 version to the 2009 version. The ACGIH could not guarantee a publication date for 2009 before the packets were mailed to the Board members. Since that time, the 2009 reference is now available and staff wanted to make it current. Also to Mr. Packham's knowledge, there are no substantial differences between the 2008 and 2009 versions. The ACGIH maintains a list of all compounds that are being considered and has several committees that review those lists. The updates are done annually so this rule presumably would be updated on an annual basis.

- Steve Sands moved to propose for public comment the changes to R307-101-2, General Requirements. Definitions. Wayne Samuelson seconded. The Board approved unanimously.

VI. **Informational Items.**

A. **Las Vegas Pipeline Project to the West Desert. Presented by Terry Marasco.**

Terry Marasco, resident of Baker, Nevada and Salt Lake City, Utah, presented to the Board information he has gathered concerning the Las Vegas pipeline project in Nevada. Mr. Marasco stated that the affected underground water flow for this project comes from the mountains in the Snake Valley and travels to the Great Salt Lake. Interruption of this water flow will have the greatest impact in Utah. According to the Utah Geological Survey, the 50,000 acre feet of water that the project will take out at the border will drive the water table down over a relatively short period of time. This will destroy the phreatophytic communities in the West Desert over a period of time as the water flow toward the Great Salt Lake is interrupted by this project. As the vegetation changes, communities of plants will change from the native plants that held the soils together before the pumping, to non-native grasses which have a whole different nature to them contributing to more dust generating qualities. Mr. Marasco refers to the dust storms in the Owens Valley in California due to groundwater pumping and expresses his concern that Utah will experience the same types of dust storms. In addition, there are studies on changes in the snow pack of the Colorado Plateau because of human activity and dust generation. It is Mr. Marasco's intent to inform agencies in Utah on this project because he feels that air quality issues are not being adequately discussed in the agreement to share water between Utah and Nevada. In addition, future legal actions around these impacts could be huge such as those filed in California. The Board should use all opportunities to submit comments to the state engineer in Nevada on this pipeline project to be sure that air quality is part of the agreement.

Mr. Wessman asked about what is the level of inclusion of air quality issues in the environmental impact statement (EIS) for this proposal. Steve Erickson representing The Great Basin Water Network answered that it is his understanding the EIS will be released sometime in late summer, early fall. The Nevada state engineer's comment period is scheduled to begin September 29th and last through October. Also, the EIS will only assess air quality impacts from construction of the pipeline, not from long term groundwater pumping and the possible depletion, so Utah needs to look at the long term impacts. Mr. Erickson continued that Governor Huntsman has promised he will allow public comment

on the agreement between Nevada and Utah before it is ratified, so agencies will have an opportunity to submit comments or data for the record.

Mr. Horrocks commented that in terms of the cumulative impact section of the EIS air quality may only be addressed from a construction standpoint. Cumulative impact would have to address the long term degradation which Mr. Marasco and Mr. Erickson are talking about.

Ms. Heying added that the Utah DAQ has been involved in the process. DAQ has discussed air quality issues and concerns in Utah with Mike Styler and the Department of Natural Resources and with John Harja the public lands coordinator in the Governor's office. These agencies recognize that air quality is a concern and want to make sure that as this project moves forward air quality is addressed and that ground water is not drawn down to the point of where there would be negative degradation. Also, there is current legislation being heard to include a representative from DAQ to be involved in the process.

Ms. Van Dame commented that she would like to see the Air Quality Board be proactive and make sure that the Board insert comment at every opportunity as custodians of the air quality policy in the State of Utah and that the Board consider this to be a critical issue.

After discussion, the Board has asked that DAQ give updates on this project as events progress so that the Board can monitor the status of the project.

B. Air Toxics. Presented by Robert Ford.

C. Compliance. Presented by Jay Morris and Harold Burge.

Jay Morris, Manager of the Minor Source Compliance section at DAQ, commented that recent large settlements that the Board has seen over the last few months happened about the same time, but settlement negotiations have caused these to be spread out over months.

In addition, the Sunroc Santaquin pit and Geneva Rock Park City pit settlements in today's packet were the results of a production exceedance of a permit for both companies. Economic benefit was collected as part of Sunroc's settlement and almost \$11,000 of the settlement went towards the supplemental environmental project which would include the school bus project. In addition, the Geneva Rock Park City pit settlement was self-disclosed so there was no penalty but it was all economic benefit based upon their production exceedance and DAQ's calculations. Geneva Rock paid \$44,000 towards the clean school bus project as part of their supplemental environmental project.

In an effort to reduce future violations, DAQ has met with different sand and gravel owners throughout the state and have come up with a solution of putting together a database tracking system. Environmental Management Systems has developed a data management system that tracks the different requirements, puts it in the database to be handled through different production levels, and makes the calculations up front.

D. Monitoring. Presented by Neal Olson.

Bowen Call was introduced as the new manager at the Air Monitoring Center followed with an update to the Board of monitoring data by Neal Olson.

Mr. Nelson was asked to respond to Mr. Wessman's inquiry about how Board members should respond to correspondence they receive relating to something that may come before the Board as a request for agency action. Mr. Nelson stated that most issues that come before the Board are policy, rulemaking, or program issues that do not involve the Board acting as a judge in an adjudicative matter. Occasionally, there will be circumstances where a pending action of the Executive Secretary and a decision by the Executive Secretary will be reviewed and considered by the public. If the public steps outside the submittal of comments to the Executive Secretary and they come directly to Board members, each member of the Board would need to recognize that should the matter eventually come to the Board in an adjudicative matter you don't want to be involved and take positions or take actions, if you want to serve as the judge and participate in the process. It is Mr. Nelson's suggestion that when such correspondence is received, that Board members first decide if there is a potential that it could be an adjudicative matter. If it is decided that the matter could come before the Board, Board members should respond politely thanking them for their submittal and advising that this may be a matter that is presented to the Board in an adjudicative manner and the best way to handle this is to submit comments to the Executive Secretary as part of the process.

Meeting was adjourned at 2:28 p.m.

Minutes approved: May 6, 2009