

**UTAH AIR QUALITY BOARD MEETING**  
**April 6, 2011 – 1:30 p.m.**  
**195 North 1950 West, Room 1015**  
**Salt Lake City, Utah 84116**

**FINAL MINUTES**

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**I. Call-to-Order**

Craig Petersen enters the meeting by phone.

Ernie Wessman called the meeting to order at 1:31 p.m.

Board members present: Nan Bunker, Ernie Wessman, Kathy Van Dame, Steve Sands, Joel Elstein, Robert Paine, Craig Petersen (attendance by phone), Darrell Smith, Amanda Smith (attendance by phone), and Kerry Kelly

Acting Executive Secretary: Reginald Olsen

**II. Date of the Next Air Quality Board Meeting: May 4, 2011**

Darrell Smith enters the meeting and Amanda Smith enters the meeting by phone.

Due to an agenda item about the Kennecott Cornerstone Project State Implementation Plan (SIP) revision, a large crowd is expected and DAQ staff proposes and it is agreed to move the location of the next Board meeting to the State Office Building auditorium.

Dave McNeill, SIP/Rules Section Manager at DAQ, stated that on the DAQ web page there is a Kennecott Pit Expansion Project Information Page which includes information on the proposed approval order modification and proposed SIP amendments. The Board is encouraged to go to this site to review the documents. Also, before the Board packet is mailed an electronic copy of the summary of comments will be sent to Board members.

Kerry Kelly enters the meeting.

**III. Approval of the Minutes for February 2, 2011, Board Meeting.**

- Robert Paine moved to approve the minutes as submitted to the Board. Nan Bunker seconded. The Board approved unanimously.

**IV. Final Adoption: Amend Utah SIP, Section XX. Regional Haze; Amend R307-110-28. Regional Haze. Presented by Colleen Delaney.**

Colleen Delaney, Environmental Scientist at DAQ, stated that in January the Board proposed changes to the regional haze SIP to incorporate new regional milestones for SO<sub>2</sub> and to clean-up and clarify changes in other parts of the SIP. The Board memo contains a summary of comments and staff's response to those comments. Staff recommends several changes to Part K of the SIP to provide further documentation of the improvements that will occur in Class I areas outside of Utah. Staff recommends that the Board adopt the Regional Haze SIP with the changes as submitted in the packet.

Staff also recommends that the Board reserve comments that were received regarding the best available retrofit technology (BART) determination for NO<sub>x</sub> and PM that was finalized in 2008. The commenter's questioned the SIP's reliance on the presumptive BART limits in EPA's BART rule, and suggested that more stringent controls were justified. These comments are outside of the scope of the January proposal, and cannot be addressed through this current rulemaking.

The technical support document (TSD) supplements for the 2008 SIP is not part of the current rulemaking, but is included because it describes the BART determination that was completed in 2008. After the SIP was submitted in 2008, EPA was focused on the regional milestones and backstop trading program, and only recently began to look in detail at the remainder of the SIP. EPA had questions about the 5-factor analysis described in the SIP and the enforceability of the BART emission limits. DAQ staff prepared this supplement to the TSD for the 2008 SIP to explain in a more comprehensive manner the 5-factor BART analysis that was referenced in the SIP and to show how the emission limits in the permits for these units are practically enforceable. We did not do a new BART analysis, but instead pulled the pieces together from the TSD into a more comprehensive document.

The current SIP is the culmination of 20 years of work and has achieved the goals established in the Grand Canyon Commission's report and the regional haze rule for this first planning period. Sources in Utah made significant reductions as required by the plan. These reductions are real, and are benefiting our National Parks today. Visibility has steadily improved in our National Parks since 1990 and visitors to those parks see the results. The Division has now shifted its focus to other priorities, primarily the PM<sub>2.5</sub> SIP and the upcoming ozone standard. For this reason, staff does not recommend reopening the BART section of the SIP at this time. EPA will take action on Utah's SIP, and that action will help determine the next steps to take on this issue. It is important to note that controls have already been installed on three of the four emission units that are subject to BART, as required by the SIP, that meet the presumptive emission rates for BART established by EPA. Similar controls are scheduled to be installed on the remaining unit in 2014. The benefits of these reductions are real and are the direct result of Utah's Regional Haze SIP.

Staff recommends that the Board adopt the SIP with the changes that were made in response to comments, and adopt the changes to R307-110-28 as proposed in January. Staff also recommends that the Board reserve the comments that were submitted regarding the 2008 BART analysis for consideration at a later time.

Ms. Delaney further clarified that in January the Board was essentially asked to update the regional milestones for SO<sub>2</sub>. This was to incorporate changes due to a reduced number of states that were participating in the program as well as some other changes to incorporate new growth projections and some revised estimates for BART. In January, we recognized that the SIP presented to the Board was a compilation of things that have been done at different points in time. The majority of the SIP was completed in 2003 and was based on work that was completed years before. A lot of it was based on a 1996 inventory. There were additional portions of the SIP that were updated in 2008 and a lot of that work was completed in 2006 and 2007 based on a 2002 emission inventory. The piece that was presented in January was focused on the SO<sub>2</sub> milestones. Also, in January we clarified changes that didn't redo the analysis but supported it by providing different information.

On a separate track we were working to answer questions from EPA about the BART analysis that was completed in 2008. The supplement provided here was not part of the rulemaking. It was separate because we are still in the process of trying to work those issues out with EPA to answer their questions and it was not at the point yet of bringing any proposal to the Board. When we received the comments on the SIP we received comments on what had been done in 2008 and on this supplement to the TSD for 2008 as well as what had been proposed in January.

What is being recommended here is to finalize what we had started out to do in January, which is to update the SO<sub>2</sub> milestones and that part of the SIP as well as the clean up changes and to reserve these other comments for addressing at a later date because we can't really deal with them within this current rulemaking. It's outside of the scope of what was proposed. We don't have the time or the resources to address the comments but we also don't want to slow down the progress on the rest of the SIP.

In answer if approval by the Board on this item will be encumbered or be put at risk by the BART question raised, Ms. Delaney stated that approving what is recommended today would essentially be updating the SO<sub>2</sub> milestones and the trading program portion of our SIP, staying with what was adopted in 2008 for the BART section of our SIP, and staying with what was adopted in 2003 for the rest of the SIP. It would be continuing forward with what we have, which we believe and want to emphasize is a complete package that meets the requirements of the regional haze rule. This is further explained in the supplement to the TSD for 2008.

If the Board reserves comments on the BART analysis, Ms. Delaney explained the timeframe where a revision to our SIP would be required would be in 2018. We do have an update to a progress report on our SIP that's due in 2013. We will be coming back and looking at how well the SIP has worked and whether or not there were things that we did not estimate correctly at that point in time. At this point, we recommend reserving the BART comments for a later date without specifying exactly when that issue will be taken up again. The focus here is on getting this portion of the SIP completed and submitted to EPA. It's especially important with the regional trading program because there are three states and the City of Albuquerque that are joint members of this regional trading program. For the program to work and function it needs to be adopted in all of the SIPs and approved by EPA.

The next step is that we continue to work with EPA to answer their questions. Once a complete SIP has been submitted to EPA then they will, on their timeframe, be taking action on our SIP. We also recognize that it's been developed over time and some pieces of it are older than others and so that's just what we have. We have not started over again. We are essentially working with the framework of the SIP that was adopted in 2003 that we've made some adjustments to but what we are trying to do right now is get this to completion.

Amanda Smith added that because of the nature of this being a multi-state effort, this is something that she has been working on with our counterparts in New Mexico and Wyoming. It gets the EPA to move forward on this because we have other priorities at this point. We believe that progress is being shown and think that is an area that we ought to be looking forward on and not back. Ms. Smith supports what Ms. Delaney has presented to the Board.

- Kathy Van Dame moved to approve final adoption: amend Utah SIP, Section XX. Regional Haze; amend R307-110-28. Regional Haze. Joel Elstein seconded. The Board approved unanimously.

**V. Final Adoption: Amend R307-328. Gasoline Transfer and Storage; Repeal R307-342. Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks. Presented by Colleen Delaney.**

Ms. Delaney stated that in January the Board proposed revisions to R307-328, the Stage I vapor recovery rule, and also proposed to delete R307-342 that contains vapor testing procedures and contractor certification requirements. No written comments were received on this proposal, but the refineries identified one problem. The proposal increased the scope of the current rule by applying the vapor testing requirements for trucks tanks to all tanks, including railcar tanks. The rule has been changed to mirror the long-standing requirements in the maximum achievable control technology (MACT) and the new source performance standards (NSPS) that allow railcar tanks to be tested using alternate procedures established by the Department of Transportation. These procedures require more frequent testing of railcars using a simpler procedure, with a full vapor tightness test required every ten years.

We have also made one additional change to the rule that was not in the version that was mailed to the Board. R307-328-9(5) contains a compliance schedule for the revised vapor tightness standard. Because the rule proposed in January has been modified, the Division of Administrative Rules (DAR) requires a delayed effective date for the rule. The packet that was distributed to the Board today shows this new language that changes the compliance schedule from April 6<sup>th</sup> to June 7<sup>th</sup> to reflect the effective date of the rule.

Staff recommends that the Board adopt the changes to R307-328 as shown in the packet, and also recommends that the Board repeal R307-342.

Kimberly Kreykes, Environmental Planning Consultant at DAQ, clarified that the change of proposed rule will appear May 2, 2011. The proposed rule has to go out for a 30 day notice and seven days after the end of the 30 days the notice becomes effective, which is June 7, 2011, in this case.

- Kerry Kelly moved to amend R307-328 the gasoline transfer and storage and repeal R307-341. Steve Sands seconded. The Board approved unanimously.

**VI. Propose for Public Comment: Amend R307-204. Emission Standards: Smoke Management. Presented by Joel Karmazyn.**

Joel Karmazyn, Environmental Scientist at DAQ, stated that the smoke rule was originally developed by DAQ with input from a taskforce of fire experts from the Bureau of Land Management, National Forest Service, Bureau of Indian Affairs, National Parks Service, Fish and Wildlife Service, and Utah State Forestry. The rule was adopted by the Board on November 17, 2003, and submitted to EPA as part of the Regional Haze SIP in December 2003. Amendments to R307-204 were adopted by the Board on April 6, 2006, and submitted to EPA in May 2006. As part of a consent decree, EPA is required to take final action on both submittals by December 30, 2011. As part of EPA's review to meet the consent decree date, EPA identified a typographical error in the rule. DAQ staff and the Utah smoke management coordinator confirmed the error and further identified a

more serious error, as well as redundant language which we are proposing to delete. Subsequent discussions between DAQ and EPA resulted in further refinement of the rule.

In answer to the Board's question on the typographical errors found, Mr. Karmazyn referred the Board to page three of the rule correcting "50 acres" to "20 acres," and page four to include the phrase "or more per burn."

- Darrell Smith moved to approve the proposal for public comment to amend R307-204 Emission Standards: Smoke Management. Nan Bunker seconded. The Board approved unanimously.

#### **VII. Five-Year Review: R307-210. Stationary Sources. Presented by Joel Karmazyn.**

Mr. Karmazyn stated that DAQ completed the five-year review for R307-210 Stationary Sources. This rule adopts the provisions of 40 CFR Part 60 by reference. The rule was amended once since the last five-year review. No comments were received on this amendment. No oral or written comments were received within the last five-years. Staff recommends that the Board continue this rule by approving the filing of the rule with the DAR.

In answer to the Board's question, Mr. Karmazyn explained that the document associated with rule filing as stated on the form is in fact the actual DAR form itself.

- Robert Paine moved to adopt the five-year review of R307-210. Stationary Sources. Kerry Kelly seconded. The Board approved unanimously.

#### **VIII. Informational Items.**

##### **A. DEQ Business Assistance Programs. Presented by Paul Harding.**

Paul Harding, Environmental Scientist in DEQ's Planning and Public Affairs (PPA), explained in detail the business assistance programs administered out of the PPA office. They work closely with the Executive Director's Office and the six Divisions in assisting businesses in three principle areas of compliance, permitting, and other business resources. All of these resources can be accessed on the DEQ home web page. Mr. Harding highlighted some the programs such as the Compliance Assistance Advisory Panel and the Small Business Advisory Panel.

##### **B. Kaizen Update. Presented by Marty Gray.**

Marty Gray, Major New Source Review Manager at DAQ, updated the Board on the Lean Six Sigma Process which began in January 2011 and identified the key stakeholders and members represented in the process. In Kaizen the current permitting process was identified and then an implementation plan was developed to identify tasks that needed to be done. Weekly meetings are held to report back on work products. The implementation plan assures that everything identified in Kaizen will be addressed and it is the goal to have the plan fully implemented by mid-May.

This has been an excellent process in bringing both staff and those outside of the agency together to share ideas to improve our process. This process will allow

interested parties earlier and more effective input and developing the communication plan. From this process about 25 different documents were developed which will be available for those that are obtaining permits and also those interested in following the permitting process.

**C. Update of Greenhouse Gas Rule Changes. Presented by David Beatty.**

David Beatty, Operating Permits Manager at DAQ, stated that last fall the Board approved a change to our air permitting rules that incorporated the new federal green house gas tailoring rule. Out of the process came a request to further modify our rules to allow them to automatically terminate should certain EPA or court determinations cause the federal rules to be vacated or changed. The Board proposed that modification in January 2011. We've received no public comments favoring that rule change. It was pointed out that there were problems and concerns with the proposed language, and especially the lack of certainty as what events would trigger that rule to terminate. Therefore, the Division is withdrawing its recommendation regarding this rule. Without any action by this Board the rule making would simply lapse. The Board will not need to do any action to have this rulemaking lapse, it just goes away.

**D. Smoke Management Update. Presented by Dan Washington.**

Dan Washington, Inter-Agency Smoke Coordinator from the Bureau of Land Management (BLM) for the State of Utah, explained that the smoke management plan is designed to help agencies meet the requirements of Title R307, state administrative rule for air quality, Regional Haze Rule 40 CFR 51.309(d)(6), and the policies of EPA's Interim Policy. It is Mr. Washington's position to assist agencies in fulfilling these obligations. Throughout the past year there has been work on several issues which he considers successes, improving our ability to obtain and make use of smoke monitors much easier, and developing a tool in the wildland fire decision support system to help consider the risks of smoke management in the decision making process. Mr. Washington followed with a PowerPoint presentation further detailing his work with the agencies.

In answer to questions from the Board, Mr. Washington explained that we are gaining ground on the inventory of fuels on public lands. In the BLM State of Utah this year ½ million acres of treatment was reached using prescribed fire and several other methods, which is about 2% of the BLM lands within the State of Utah. The Forest Service had similar success on their projects which they tend to use more prescribed fire than some of the other agencies.

**E. Utah State Implementation Plan Submittals Update. Presented by Joel Karmazyn.**

Mr. Karmazyn explained that the SIP tracking log has been updated with input from EPA on its intended schedule for SIP actions this year. Green coded entries in the comment field have been added that represent EPA's current implementation schedule. Adding a second color code for EPA entries permits us to view historical progress. EPA is bound by consent orders to act on a large number of issues this year, thus it is only focusing on meeting those deadlines. Mr. Karmazyn then referred to the tables listing each section and giving a brief explanation and update on each section.

In answer to the Board's suggestion for an update on the PM<sub>2.5</sub> SIP at a later meeting, Mr. McNeill stated that DAQ is planning three stakeholder meetings on the PM<sub>2.5</sub> SIP beginning in May 2011. The meetings will be held in Salt Lake, Utah, and Cache Counties and the Board will be notified at a later date on these meetings.

**F. Air Toxics. Presented by Robert Ford.**

**G. Compliance. Presented by Jay Morris and Harold Burge.**

**H. Monitoring. Presented by Kevin Hart.**

Kevin Hart updated the Board on monitoring graphs. Staff stated that the annual air monitoring system review will be available on the DAQ web page with the dates for inspection included.

Mr. Wessman introduced Denise Chancellor of the Attorney General's Office and counsel to the Board, who wished to address the Board regarding the Board meeting in May 2011.

Ms. Chancellor clarified that the action before the Board with respect to the Kennecott project will be the SIP. The items in the Board packet will be a copy of the SIP, a copy of the technical support document (TSD), and because the TSD refers to information in the notice of intent (NOI) for the approval order, a copy of the NOI. In addition, there will be a memo, summary of comments, and a document that responds to public comment. The SIP, TSD, and NOI are all available currently on the DAQ web page Mr. McNeill referred to earlier. Any document posted as a public document, is okay for the Board to review.

The Board has asked what guidelines or recommendations they should follow when communication is sent directly to them by an individual or group on this issue, or would the Board's involvement in any part of the comments process cause them to have to recuse themselves. Ms. Chancellor answered that the record upon which the action the Board will take is the SIP, TSD, comments submitted on the SIP, response to comments, and the NOI. With respect to how the Board handles comments or information they receive, they should handle it however they do on any other Board matter. Also, if the comments are posted on the web site they are available for anybody to review, but that is not part of the record that will inform the Board's decision with respect to the SIP.

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Meeting was adjourned at 3:03 p.m.

Minutes approved: May 4, 2011