

UTAH AIR QUALITY BOARD MEETING
December 7, 2011 – 1:30 p.m.
195 North 1950 West, Room 1015
Salt Lake City, Utah 84116

FINAL MINUTES

I. Call-to-Order

Steve Sands called the meeting to order at 1:37 p.m.

Board members present: Nan Bunker, Darrell Smith, Craig Petersen, Steve Sands, Kerry Kelly, Robert Paine, Michael Smith, Joel Elstein, Kathy Van Dame, and Dale Ipson

Excused: Amanda Smith

Executive Secretary: Bryce Bird

II. Date of the Next Air Quality Board Meeting: January 4, 2012

III. Approval of the Minutes for October 5, 2011, Board Meeting.

Ms. Van Dame submitted a written request to insert the following language, “a Board member outlined an alternative fee structure, with hazardous air pollutants (HAPs) valued 10 times higher than criteria pollutants. The proportion has basis in the Title V rules, which give the threshold for requiring a Title V permit, 100 tons per year (tpy) criteria pollutant, 10 tpy individual HAP, or 25 tpy cumulative.”

- Robert Paine moved to approve the minutes with the addition requested by Ms. Van Dame. Craig Petersen seconded. The Board approved in favor with Michael Smith, Joel Elstein, Kathy Van Dame, and Dale Ipson absent.

IV. Appointment of Alternate Executive Secretary. Presented by Chris Stephens.

Chris Stephens from the Attorney General’s Office and Counsel for the DAQ stated the DEQ Executive Director has authority to make policies and take other actions for the administration of the Department and the conduct of its employees. There is a newly created Deputy Director position in DAQ. Executive Director, Amanda Smith, has appointed the Deputy Director to temporarily act as the Executive Secretary if the Executive Secretary for some reason is unable to act. Pursuant to the Utah Air Conservation Act this appointment requires the approval of the Board and it’s requested that the Board put this appointment to a vote.

- Craig Petersen moved that the Board accept this proposal. Nan Bunker seconded. The Board approved in favor with Michael Smith, Joel Elstein, Kathy Van Dame, and Dale Ipson absent.

Michael Smith, Joel Elstein, Kathy Van Dame, and Bryce Bird enter the meeting.

There was a brief disruption of the meeting at this time by a group of individuals voicing their displeasure to the Utah Air Quality Board of the Board's actions on air quality issues.

Dale Ipson enters the meeting.

V. Final Adoption: R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit. Presented by Mat Carlile.

Mat Carlile, Environmental Planning Consultant at DAQ, stated that on July 6, 2011, the Board proposed for public comment, amendments to R307-121. This proposal was necessitated by revision to the statutes that govern the clean fuel tax credit and a request from the Board to clarify some requirements found in the rule. A public comment period was held October 1 through 31, 2011. A hearing was held on October 25, 2011. No comments were received. Staff recommends the Board adopt the amendments to R307-121 as proposed.

- Nan Bunker moved for final adoption of R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit. Darrell Smith seconded. The Board approved unanimously.

VI. Five –Year Review: R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit. Presented by Mark Berger.

Mark Berger, Environmental Planning Consultant at DAQ, stated Utah Code Title 63G-3-305 requires each agency to review and justify each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review. DAQ has completed the five-year review of rule R307-121. Besides recent amendments to R307-121 no other amendments have been made to the rule since the last five-year review. No additional comments have been received since the last five-year review. Staff recommends the Board continue this rule by approving the five-year notice of review and statement of continuation form.

- Kathy Van Dame moved to approve continuation of rule R307-121. Joel Elstein seconded. The Board approved unanimously.

VII. Propose for Public Comment: Amend R307-415-2. Permits: Operating Permit Requirements. Authority. Presented by Mark Berger.

Mark Berger, Environmental Planning Consultant at DAQ, stated that when reviewing R307-415 it was noted that the rule incorporates various sections of the Code of Federal Regulations (CFR) without referencing which version of the CFR is being incorporated into the rule. To clarify which CFR version is incorporated into the rule DAQ is proposing an amendment to R307-415-2 to add language that states that all references to 40 CFR in R307-415, except when otherwise specified, are effective as of the date referenced in R307-101-3. R307-101-3 is the state rule that specifies which version of the CFR is incorporated throughout the R307 rules. Staff recommends the Board propose the amended R307-415-2 for public comment.

- Kerry Kelly moved to propose for public comment to amend R307-415-2 Permits: Operating Permit Requirements. Authority. Nan Bunker seconded. The Board approved unanimously.

VIII. Propose for Public Comment: Amend R307-101-3. General Requirements: Version of Code of Federal Regulations Incorporated by Reference. Presented by Mark Berger.

Mark Berger, Environmental Planning Consultant at DAQ, stated that R307-101-3 incorporates by reference the version of the CFR used in many of the rules adopted by the Board. This allows rules that reference R307-101-3 to update the incorporation date with only one rule amendment. The most current version of the CFR for environmental regulations has been updated to July 1, 2011. Therefore, it has become necessary to amend R307-101-3 to incorporate the July 1, 2011, version of the CFR. The Board received a list of changes to 40 CFR that affect rules that reference R307-101-3. The summary of changes list is comprehensive of all the state rules that incorporate R307-101-3 and lists the sections of the CFR affected by that incorporation. Staff recommends the Board propose the amended R307-101-3 for public comment.

- Darrell Smith moved to approve amendments to R307-101-3 go out for public comment. Nan Bunker seconded. The Board approved unanimously.

IX. Propose for Public Comment: Revised Utah State Plan for Implementation of Emission Controls for Existing Designated Facilities: Plan for Hospital, Medical, Infectious Waste Incinerators [HMIWI] Implementation of 40 CFR 60 Sub-part Ce [60.30e - 60.39e]; and Amend R307-220-3. Emission Standards: Plan for Designated Facilities. Section II, Hospital Medical Infectious Waste Incinerators. Presented by Jon Black.

Jon Black, Environmental Engineer at DAQ, stated that the Utah State Plan for implementation of emission controls for existing designated facilities, plan for hospital, medical, infectious waste incinerators, implementation of 40 CFR 60 Sub-part Ce has been revised. The proposed revisions to this document include lowering emissions limits for regulated pollutants which are reflected in Tables 1A, 1B, 4A, and 4B. In addition, it is proposed to amend R307-220-3. This update will revise the adopted date by the Board. Staff recommends the Board approve the amendments to the revised Utah State Plan for hospital, medical, infectious waste incinerators and that amendments to R307-220-3 go out for public comment.

In answer to questions, Mr. Black responded that Stericycle is the only facility operating in Utah that is subject to this plan and rule. The emission limits for the plan were generated based upon specific hospital waste incinerator operation and is particular only for the burning of hospital medical waste incineration. Other incinerators that may burn solid waste or other types of operations that exist have different emission levels and would be subject to different standards.

- Michael Smith moved that the revised Utah State Plan and amended R307-220-3 go out for public comment. Joel Elstein seconded. The Board approved unanimously.

One of the requirements of the Clean Air Act (CAA) is that a public hearing be held for the above item. Staff inquired if a member of the Board would like to act as the hearing officer for a hearing on February 7, 2012, or if they would like staff to act as the hearing officer.

X. Propose for Public Comment: Amend R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste. Presented by Jon Black.

Jon Black, Environmental Engineer at DAQ, proposes that R307-222 be amended for the incorporation of the new emission guidelines and new source performance standards requirements promulgated by EPA on October 6, 2009. Staff recommends the Board propose amendments to R307-222 for public comment.

- Kathy Van Dame moved to propose for public comment to amend R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste. Robert Paine seconded. The Board approved unanimously.

XI. Informational Items.

A. State of Utah 110(a)(2) State Implementation Plan Infrastructure Elements for Lead. Presented by Mark Berger.

Mark Berger, Environmental Planning Consultant at DAQ, stated in 2008, EPA promulgated new National Ambient Air Quality Standards (NAAQS) for lead. Section 110(a)(2) of the CAA requires each state to develop and submit a plan known as an “infrastructure state implementation plan” to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS. Staff has reviewed our state implementation plan (SIP) and determined that no revisions are necessary to meet these requirements. This document was due to the EPA on October 15, 2011. EPA published final guidance for this document on October 14, 2011. This infrastructure document shows where the required elements of Section 110(a)(2) are located in our existing SIP and demonstrates that Utah has the regulatory authority and has the infrastructure in place to implement, maintain, and enforce the 2008 lead NAAQS. This document has been published for public comment in the Utah State Bulletin and on the DAQ website.

In answer to questions Mr. Berger responded that this plan is an administrative requirement, which does not require Board action. Under the CAA whenever a standard is revised the state needs to review their current authority to make sure the state can still implement the standard. DAQ has done the analysis and found it does have authority to implement this new revision to the standard under the CAA and they are submitting the paperwork to EPA.

In addition, DAQ was required to start source specific monitoring in 2010 for lead, specific to Kennecott as an emission source for lead. A problem with quality analysis checks was discovered when DAQ began this monitoring. The problem had to do with the calibration of equipment due to air pressure and elevation. Those issues have been rectified. DAQ is working with EPA to see if the data can be included in the national data system with some sort of flag or comment indicating the problem with the data.

Finally, a source of lead at airports is with aviation fuel for older airplanes and it is something the state does not have the authority to regulate. EPA is looking at this on a nationwide basis with pilot studies being done at busier airports to see if there is a problem. It would be up to EPA as to how to address this issue since they regulate the fuel content for aviation fuel.

B. PM10 State Implementation Plan Update. Presented by Bill Reiss.

Bill Reiss, Environmental Scientist at DAQ, stated that EPA had proposed to disapprove Utah's petition to redesignate areas for PM₁₀ and basically disapprove most of what was in the maintenance plans. EPA was under legal obligation to take final action on the proposal by December 1, 2011. DAQ had been working with EPA during the interim period to work out differences over the plans. As time wore on we realized that we were at an impasse and withdrawal of the plans made the most sense. On October 7, 2011, Governor Herbert sent a letter to EPA Region 8 requesting they withdraw from consideration the PM₁₀ maintenance plans DAQ prepared and the accompanying request to redesignate the areas back to attainment for PM₁₀.

The maintenance plans were submitted at the discretion of the Governor and were not required amendments to the SIP. We have two federally approved SIPs on file with the EPA, one for Salt Lake County and one for Utah County, so we are not under obligation at this time to produce another PM₁₀ SIP. When the Board approved the maintenance plans they became state law and will remain state law, we are not withdrawing the maintenance plans from state law. The DAQ feels that the maintenance plans are protective of public health and that a reduction of PM₁₀ during the winter months to levels below the NAAQS has been achieved and they will be as protective of PM₁₀ throughout the remainder of the year as practicable.

It's DAQ's intention to go back and readdress PM₁₀ at the conclusion of the work on PM_{2.5}. There are similarities in the winter situation and the DAQ feels the measures taken to address PM_{2.5} during wintertime cold pool episodes will also benefit us in terms of the concentrations of PM₁₀ that we will subsequently measure. At the same time the DAQ will be taking a more comprehensive approach to the off season, summertime, fugitive issues and will continue to work with the EPA to address the remainder of their concerns.

In answer to questions on windblown dust events and disturbed land issues that contribute to dust episodes, staff responded that besides the fire management practices there are dust control plans and fugitive dust rules in place to make sure sources are operating with best management practices. DAQ is also attempting to reach those who may not be aware of problems that arise from disturbed areas. The best documentation for dust episodes is the exceptional events documentation. It has been found that the source of disturbed lands dust is most often playa lake beds in the west desert. They are completely natural lands but because of freeze thaw cycles the cycle loosens up the surface and then high wind events come across and it becomes airborne. This past summer the Division has been working with EPA in review of our current rules to see what is missing and then coming up new dust rules to strengthen our rules. As far as preventing dust in the large west desert areas, it's a difficult problem and something we are not addressing as this point.

DAQ has been working with EPA to address issues that led to the impasse on PM₁₀ rules and how those differences will affect discussions on PM_{2.5}. The PM_{2.5} SIP has a specific deadline of when it is required to be submitted to EPA. The plan is to look at an alternative maintenance plan or redesignation at some point after the PM_{2.5} SIP has been submitted. PM₁₀ includes a cold pool wintertime temperature inversion driven component and we feel the PM_{2.5} SIP addresses that issue. Also, there are times of the

year that we have fugitive dust issues. We will look at PM10 in its entirety in the new Maintenance SIP.

There is difficulty in compliance for sources when we have a PM SIP that is approved by EPA and a different set of state rules. One of the issues is having alignment with a completed Title V permit. Title V permits are not subject to the citizens' provision of the CAA. If anyone has a complaint about a Title V permit they give EPA notice and EPA can take action on enforcing the permit. Governor Herbert's withdrawal letter doesn't change the situation as it existed before we submitted the maintenance plan. We hope that the requirements in each of the regulatory documents produced and enforced will be in alignment.

The withdrawal will have an effect on emission limits. The Board has had authority to make changes to emission limits and has done so over the years. One of our intentions with the maintenance plan was to update all of the emission limits so they reflected all the action taken by the Board over the years and then codify them into a federally approved SIP which would have brought about alignment. With the withdrawal of the maintenance plan this will not be the case but it also does not change the situation. As far as the PM_{2.5} SIP and older emission limits we will be looking for basically the same thing, cold pool formation of secondary particulate, that went on with PM₁₀ in the 1990's. We anticipate we are going to have emission limits for those precursors that are important to the formation of the secondary particulate matter. Should the limits become more stringent than what lies on the books with PM₁₀ we would then force the more stringent of those levels. Our intention is to visit PM₁₀ at the conclusion of the work with PM_{2.5}.

The Board has imposed various changes over the years and the maintenance plan was simply bringing those changes together in codifying that it was not providing more stringent standards than the Board had previously approved. The emission standards are not loosened by withdrawing the maintenance plan and there are no schedules that we are missing because of the maintenance plan withdrawal. There are no plans to do any alignment of the rules coming out of the maintenance plan now that the plan has been withdrawn.

C. Air Toxics. Presented by Robert Ford.

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

Jay Morris, Minor Source Compliance Manager at DAQ, explained the large settlement with Spectrum Press was penalty for stack testing, monitoring, and record keeping violations in four out of five of their last inspections.

E. Monitoring. Presented by Bo Call.

Bo Call, Monitoring Section Manager at DAQ, updated the Board and answered questions on the monitoring graphs.

Denise Chancellor of the Utah Attorney General's Office and Counsel for the Board was asked to update the Board on legislation being proposed by Senator Margaret Dayton that will affect the Board.

The DEQ Board Adjudicative Proceedings bill deals with how adjudication on permits will be conducted and makes it more like a trial-type proceeding. Anyone wanting to challenge a permit will first have to submit specific comment during the public comment period to allow the Division the chance to correct any deficiencies in the permit. If a permit is challenged it goes through a record review proceeding which is how the EPA conducts all of its permit adjudicatory proceedings. Under the bill the Board will no longer address adjudicative proceedings because those decisions will go to the Executive Director. The idea of removing adjudications from the Board was to free the Board up to have discussions on policy and be more involved at the early stages of permitting actions. Boards will still maintain their rulemaking authority and settlement of civil violations.

The major change with the DEQ Board Revisions bill is that all DEQ Boards will be comprised of nine Board members, including the Executive Director. As the DAQ Board has eleven members, the new legislation would reduce this Board by two members. Some requirements for members are that they must be knowledgeable in the subject matter, regularly attend meetings, comply with ethics and conflict of interest rules, and be a resident of the state. Under the draft bill the Executive Director has authority to nominate Board members. The bill also will no longer use the term "Executive Secretary" except for ministerial functions that the Executive Secretary conducts for the Board. There is now specific authority that is given to the Division Director to implement all of the things the Division does, such as issue permits, issue notices of violations, contract with third parties, cooperate and coordinate with other units of government, the public, etc.

It was mentioned that change in the language will also help the public understand the differences in what the Boards and the Divisions do. For instance, Boards don't vote on permits. It is the Division Director who signs off on the permits.

Mr. Petersen stated at the Division's last PM_{2.5} SIP meeting in Cache County staff presented proposed control strategies. One of which was an inspection/maintenance program with impact projections. The air pollution situation in Cache Valley is highly episodic because of the short number of days during the wintertime. His concern is that staff developed year-round strategies that may not directly address short-term episodes. Strategies listed in the "other" column, such as vehicle miles traveled, might be most effective but because the periods are so short we are limited in terms of how much credit EPA will allow. Mr. Petersen ask that maybe staff could go back and see if other strategies, such as vehicle miles traveled, might have a greater impact in terms of the SIP.

It was suggested that for future Board meetings an agenda item be established for the opportunity for citizens to address the Board. It was noted that there is a policy and procedure in place where a person who wants to address the Board fills out a comment card prior to the meeting which is then given to the Chairman. Ideally individuals who wish to address the Board will follow procedure and will use the established opportunity to address the Board.

Meeting adjourned at 2:48 p.m.

Minutes approved February 1, 2012.