

UTAH AIR QUALITY BOARD MEETING
July 6, 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 1:30 p.m.

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

Excused: Amanda Smith and Michael Smith

Executive Secretary: Bryce Bird

II. Date of the Next Air Quality Board Meeting: August 3, 2011

III. Approval of the Minutes for June 1, 2011, Board Meeting.

Ms. Van Dame would like the minutes to include the question and answer on the two hour exemption discussion of the unavoidable breakdown rule. The minutes should also include that the informational item on the petition for greenhouse gas rule should include that the petition was specifically written for and tailored to Utah.

- Robert Paine moved to approve the minutes with the corrections requested by Ms. Van Dame. Joel Elstein seconded. The Board approved in favor with Darrell Smith absent.

IV. Final Adoption: R307-204. Emission Standards: Smoke Management. Presented by Joel Karmazyn.

Joel Karmazyn, Environmental Scientist at DAQ, stated that in April 2011 the Board approved amendments of the smoke rule for public comment. The amendments were posted for public comment from May 1 to May 31, 2011, and no comments were received. DAQ staff recommends that the Board adopt the amendments to R307-204.

- Kathy Van Dame moved to adopt R307-204 Emission Standards for smoke management. Nan Bunker seconded. The Board approved in favor with Darrell Smith absent.

V. Final Adoption: New Rule R305-6. Administrative Procedures for the Department of Environmental Quality. Presented by Laura Lockhart.

Darrell Smiths enters the meeting.

Laura Lockhart of the Utah Attorney General's Office stated that this change was initially proposed in all of the DEQ Board meetings in January and February 2011. The purpose for the new R305-6 was to consolidate all of DEQ's rules into one rule so that all of the Boards and Divisions use the same procedures. It also provides explicitly for using an Administrative Law

Judge which is required by statute. This rule went out for a 60 day comment period and a hearing was held on April 11, 2011. Comments were received and included in the comment response document. Ms. Lockhart requests the Board approve R305-6 with the proposed changes.

It was commented that there needs to be a more clear way to provide notification for interested parties to find out what is going on and also a system of notification of when documents are signed and starting. DAQ is committed to providing mechanisms to provide that public notification is made and DEQ is looking for ways to increase transparency in all of their activities.

- Kathy Van Dame moved to approve R305-6 with the proposed changes. Nan Bunker seconded. The Board approved unanimously.

VI. Final Adoption: Repeal and Reenact R307-103. Administrative Procedures; and Amend R307-120-8. General Requirements: Tax Exemption for Air Pollution Control Equipment. Appeal and Revocation. Presented by Kimberly Kreykes.

Kimberly Kreykes, Environmental Planning Consultant at DAQ, stated that the Board just approved changes and adopted a new Division rule R305-6. With those changes all of the requirements listed in the Division administrative procedures rule R307-103 are no longer needed. In addition, R307-120-8 references R307-103. There was a 30 day comment period and a hearing was not held. Comments received during the comment period were for the Department rule and forwarded to Laura Lockhart as they related to the Department rule change. No comments were received on these rules. Staff recommends that the Board adopt the amendments to R307-103 and R307-120-8 as proposed.

- Robert Paine moved to adopt the amendments to R307-103 and R307-120-8 as proposed. Darrell Smith seconded. The Board approved unanimously.

VII. Propose for Public Comment: Amend R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit. Presented by Mat Carlile.

Mat Carlile, Environmental Planning Consultant at DAQ, stated that there were a couple of changes to R307-121, which was to add the requirement that the Automotive Service Excellence (ASE) certification number be included as it was in other sections of the rule, and then additional corrections to some citations.

The Utah Legislature revised the statute governing the State's Clean Air and Efficient Vehicle Tax Credit during the 2011 legislative session. Senate Bill 226 amended the definition of "air quality standards" found in Utah Code to include plug-in electric drive motor vehicles that meet Tier II Bin 4 standards. However, Senate Bill 226 did not provide a fuel economy standard for plug-in electric drive motor vehicles, and without the fuel economy standard these vehicles would not be eligible for the air quality and fuel efficiency tax credit. Therefore, DAQ is requesting that the Board propose to add a definition of a plug-in electric drive motor vehicle and a fuel economy standard for these vehicles to R307-121. This section of the proposed rule amendment would apply to all vehicles purchased as of January 1, 2011, to be consistent with the Senate Bill 226.

It is also requested that the Board propose to add language that helps clarify the proof of certification requirements found in R307-121. This amendment is in response to a request from the Board for DAQ staff to review and clarify the proof of certification requirements found in R307-121. DAQ staff worked with EPA to streamline and expand its process to allow for intermediate and out of useful life vehicles to be converted to run on alternative fuels, such as

compressed natural gas. EPA finalized its rulemaking on April 8, 2011. This section of the proposed rule amendment would apply to all conversions as of April 8, 2011.

DAQ reviewed the rule for items that could be clarified and the clarifications are included in this proposal. DAQ staff recommends that the Board propose the amended R307-121 for public comment.

- Kerry Kelly moved to propose the amended R307-121 for public comment. Nan Bunker seconded. The Board approved unanimously.

VIII. Review and Recommended Response to Petition for a Rule Change to Develop a Greenhouse Gas Emissions Inventory and Adopt a Greenhouse Gas Reduction Plan. Presented by Dave McNeill.

Dave McNeill, SIP/Rules Section Manager at DAQ, stated that on May 4, 2011, the Executive Secretary received a petition on behalf of 19 Utah citizens requesting that the Board, as well as other state agencies, promulgate rules and take other actions to develop a comprehensive plan for preventing, abating, and controlling greenhouse gas (GHG) emissions. Under the Utah Rulemaking Act, within 80 days of receipt of the petition, the Board must either deny the petition in writing, providing the reasons for denial, or initiate rulemaking proceedings

Mr. McNeill then summarized DAQ's reasons for recommending the Board deny the petition and added that as the petition relates to climate change, global warming, and related anthropogenic impacts, all of which are the subject of national and global debate. An analysis of the scientific basis of that debate is beyond the expertise of the DAQ staff.

The petition requests that Utah compile information gathered through the "Mandatory Reporting and Verification Rule" and use that information in combination with modeling, estimates, and voluntary information to publish an annual GHG emissions inventory, and that the report be published no later than December 1 of each year. Additionally, the petitioners request that by January 1, 2012, the Board adopt a plan to reduce GHG emissions in Utah by 6% per year, and that by January 1 of each year, DAQ compile and publish an "Effectiveness Report," showing the actual GHG emissions by source category compared to the emissions targets established in the reduction plan. If the actual emissions are above the projected emissions, then the Board is to take "corrective action" to verify that Utah's emissions will return to 1990 levels by 2050.

DAQ agrees with the petitioners that §19-2-104(1)(a) of the Utah State Statute gives the Board broad authority to implement new programs that could result in cleaner air. However, over the past 30 years, whenever we had a significant new program, we have always worked with the Legislature to make sure that we actually were doing what they wanted to be done for the State of Utah. We also want to make sure the Legislature actually had considered the possibility of this new program when they adopted Utah Clean Air Act (CAA). So we worked with the Legislature to ensure that the Board has the authority to implement the new program, and to obtain the resources necessary to implement the new program. We've worked with the Legislature and with our stakeholders to make sure that we were implementing what was appropriate for the State of Utah, and because we worked with those people, we were able to get the authority to implement a program and we got the resources we needed to make sure that the program we developed met federal law and did what needed to be done in the State of Utah. With respect to the petition, the staff recommends the Board not embark on such a comprehensive and resource-intensive program unless there is specific legislative authority to do so.

Currently, we are in the process of developing a State Implementation Plan (SIP) for PM_{2.5}. A large portion of northern Utah has been found to be in violation of that standard, and we are well on the way to developing a SIP for that area. This process has absorbed inventory, modeling, and SIP development staff for over a year, and will continue to do so until the project is complete late in 2012. The PM_{2.5} SIP is also demanding a significant amount of work by the new source review engineers as they review each of the major industrial sources in and around the nonattainment areas for current and potential reasonable available control technology (RACT). Mr. McNeill gave a list of additional projects DAQ will be required to do to meet EPA regulations.

Based on the considerations listed in the DAQ memorandum to the Board, staff recommends the Board deny the petition.

In answer to questions from the Board, Mr. McNeill stated that an inventory was done in the 1990's for Governor Huntsman's BRAC, but it was not the normal inventory done by DAQ. Also, in regards to the SO₂ SIP whether we are nonattainment or not doesn't matter because the implementation rule requires modeling around all of the major 110 tons per year or more sources. This requires a 110 SIP that will demonstrate that all of those sources attain the standard, or will attain the standard by 2017 which will take an incredible amount of inventory and modeling and then control strategy development. The inventory part of the petition cannot be satisfied by simply adopting the EPA's inventory because we don't collect it. We have no control over EPA's inventory and we would have to accept whatever they have. When the inventory is published, we will announce it and have a link to it on our web page.

Mr. McNeill continued that the major issue is not whether DAQ has the resources, but that DAQ wants specific authorization and resources from the Legislature prior to embarking on this program. DAQ does not dispute the Board's authority, but in order to bypass any kind of possible litigation, we need to go to the Legislature and ask them if this is within their concept of the air quality program when they adopted the CAA. The GHG concept is an enormous unknown to us and we want the Legislature to say that this falls within their concept of the air quality program. So the next step, as with every newly implemented program of this magnitude, is to go through the Legislature and have them give us specific authority and resources to implement the new program.

Jamie Pleune, one of the attorneys who drafted the petition, clarified that there had been an inventory of Utah GHGs in the 1990's. The first GHG inventory was conducted in 1993 looking at emissions from 1990 through 1993 and then it projected forward. Based on that inventory the initial GHG reduction strategy report was published in 1996. Another GHG inventory was done in 2007 and based on that another report of GHG reduction strategies was produced.

Ms. Pleune continued that the first responsibility of the Board is to improve Utah's air quality. One of the things unique about GHG and about carbon dioxide in particular is that unlike any of these other criteria pollutants the only way to reduce carbon dioxide is to avoid combustion. If we reduce our carbon dioxide emissions by combusting less, we will automatically reduce every single one of the criteria pollutants that the DAQ is trying to reduce through SIPs. In that way the adoption of a GHG reduction plan would actually be consistent with what the DAQ is struggling to do right now. The reason the petition is worded very broadly is to give the Board the most amount of flexibility within its expertise to adopt something that is appropriate and specific for Utah. One of the ways to look at this request is like a policy recommendation to advise the DAQ as they adopt new SIPs and address criteria pollutants. In addition, reducing carbon dioxide emissions will also reduce ozone and PM_{2.5} emissions, even in localized areas. In addition, this does not conflict with what EPA is doing because they are only addressing a small percentage of sources of pollutants, the major and new sources, so everything else is unregulated. Things such

as land use planning and transportation plans fall very clearly within the traditional state regulatory measures and the state should have authority to control its emissions in those areas.

The Air Conservation Act gives the Board authority to set policy to control and abate air pollution and set rules that set the maximum quantity of air contaminants. Air contaminants is a term that is defined much broader than the way EPA has interpreted pollution, which indicates the Board has a broader grant of authority of more than what EPA is doing. The Board is also granted a wide range of powers that it may use such as issuing orders, preparing and developing comprehensive plans for abatement, securing cooperation between different levels of government, and asking for and producing studies. Carbon emissions fall within the Board's grant of authority. The recently adopted energy policy says that Utah will pursue energy conservation, energy efficiency, and environmental quality. In addition, Utah will have adequate reliable, affordable, sustainable, and clean energy resources. The Air Conservation Act says it is the policy of the State to achieve and maintain levels of air quality which will protect human health and safety. The petitioners acknowledge what they are asking the Board to do is courageous. The petition was submitted based on the latest science which says we have a ten-year window to act. Regardless of what happens on a national level, the buck is always going to stop here in Utah and the petitioners ask the Board to consider this petition.

Ms. Pleune then answered questions from the Board and agreed that what the petition is proposing will be resource intensive but the petition is flexible and the wording is that the Board would initiate rule making. This will be a longer term process that will involve a collaborative and thoughtful process and coordination among several agencies. In addition, the petitioners will pursue gaining support from the Legislature during the next legislative session. The idea of initiating a petition for rule making is consistent with the federal system, in which a rule goes out for comment and changes are made based on comments received. Although the Board does not have authority to tell other agencies what to do, the Board has authority to set policy because they are the most knowledgeable about air problems and air contamination problems in the state.

Mr. Sands invited public comments.

Cathleen Zick, a Utah resident, commented on the huge costs associated with not developing a plan. From an economic standpoint, if Utah remains dependent on carbon based fuels, Utah's economy will be at a competitive disadvantage for attracting new businesses because of the high energy costs. This in turn will harm Utahans' quality of life. She continued that the costs of no plan in terms of high quality jobs, loss of businesses coming to Utah, and lower quality of life are easy to discount because these are costs the state will face in the future. Ms. Zick urged the Board to work with the petitioners and DAQ staff to develop a sound plan to reduce GHG.

Bill Barron, a Salt Lake City resident and one of the petitioners, commented that he is a local group leader for the Citizens Climate Lobby who are lobbying for proposed federal legislation that would place a fee on carbon emissions. He believes that addressing GHG emissions must come from all angles and at all levels. By evaluating and implementing measures to achieve the 6% annual GHG emissions reduction in the state and providing an annual progress report shows leadership locally and will be proactive in addressing the climate change issue. Mr. Barron urged the Board not to deny the petition.

Mathias Sanyer, one of the petitioners, commented that he wants to hear that action will be taken to protect people's health by accepting a binding GHG reduction plan. The Board has the power to implement this plan and this is an opportunity for the Board to say they care more about people's health in this state than to worry if we have the resources or not.

Kathryn Albary, one of the petitioners, commented that we have a right to clean air and the GHG emissions are definitely endangering our health. She is concerned about the health of future generations and feels it is within the Board's authority to do something. Instead of worrying about permitting companies to pollute more, we should be applying fees to the emissions that those companies put out and use the fees to help monitor and make sure we have clean air in Utah. Ms. Albary asked for the Board's support of the petition and invited other agencies to join in cleaning up Utah's air.

Ryan Pleune, a teacher and community organizer, commented that he works with the I Matter campaign and he informs his students of the urgent crisis awaiting them and hopes they can figure a way to address it. It has been stated that the Board can advise, consent, and contract with other agencies and work on a partnership. Community organizing is an aspect of using resources that might not be within a budget, but that there are people willing to do the work. He believes the resources are out there and he urged the Board to address this task and encouraged the Board to take a humanistic view and make their decision on the petition based on that mode of operation.

Douglas J. Roberts, a Bountiful resident and one of the petitioners, commented that the global climate is warming and is being done with fossil fuel combustion. Climate science is solid as agreed among thousands of working climate scientists worldwide representing all major agencies and academics of science. It may seem overwhelming, but we must think globally and act locally for the sake of our children and reducing combustion is within the mission of the DEQ.

Kevin Uno, one of the petitioners, commented that for him the evidence for climate change is overwhelming and not debated in the scientific community anymore. He feels it is a challenge for the Board to make a decision on this petition because of the uncertainty. Uncertainty is not a reason to not act. Mr. Uno requests that the Board adopt the petition.

Cori Redstone, a Salt Lake resident, commented that her family is sick constantly and feels nothing is being done, primarily of the health consequences of our air quality. When GHGs and the causes of climate change are addressed, then we address the health problems within our community. She asked the Board to look out for our population and start thinking of the true numbers and costs of not taking care of our air. Ms. Redstone asked the Board to pass the petition and said the community will find a way to fulfill the needs to get it done.

Ashley Sanders, a Salt Lake resident, commented that the Board should base its decision of the petition on those who are affected by the bad air and are unable to breathe because of air quality. It is important to remember the DAQ is about improving air quality and stopping climate change. Ms. Sanders asked the Board to pass the petition because it is essential for our future and right to clean air. In addition, as a community organizer, she knows there are people willing to work with limited resources to make this pass.

Steven Wood, one of the petitioners, commented that the petition is worth approving for community health and economic reasons. If you really want to do something, you will find the resources. He sees leadership hugging fossil fuels thinking it's going to keep us ahead, but we'll be left behind. So let's act for ourselves and for the enjoyment of our lives doing something important and meaningful.

Larry Cerenze, a Utah resident, disputed the accuracy of the science data presented in this petition and gave background information and examples for his comments. Mr. Cerenze agreed that there is constant change in the atmosphere, but asks the Board not to implement regulations that are going to destroy jobs and the economy. Mr. Cerenze would like the Board to be aware that Utah is not running out of hydrocarbon resources when making their decision on the petition.

Stephanie Pace commented that we need to think beyond our self interest and think in communal relations. She refers to Germany's decision to completely end carbon dependency and that we need to also reduce our carbon fuel dependency.

A 10 minute break of the Board meeting was taken at this time.

Denise Chancellor of the Attorney General's Office explained options to the Board. The petition was submitted to various state agencies, but the Utah Air Quality Board was the only Board the petition was submitted to. A Board has 80 days in which to act on the petition from the date it was filed. The various state agencies had 60 days in which to act. The petition is a petition for rule making. The rule making act says the Board can deny the petition with reasons stated or initiate rule making within 80 days of the petition filing. It was mentioned the petition was broadly worded so the Board can give staff direction through policy, but a policy is not a rule. The Board does have authority to make policy but a rule is a specific regulatory requirement that imposes requirements. To say that the Board should develop a GHG reduction plan is more like a legislative mandate than it is a rule. If the Board approves the petition, then staff is directed to go forward and file a rule analysis form and decide the wording of the rule. If the petition is denied, then the Board will need to give reasons for the denial. Ms. Chancellor also responded that the Rulemaking Act does not specifically say the petition had to be denied or approved in its entirety, the Board could approve or deny parts of the petition, but the Board must specifically word the proposed rule the Board intends to approve today and staff would have to file it by July 26, 2011.

Before a motion was made, each Board member was asked to comment. Some concerns mentioned were feelings that it is premature to develop this type of requirement so quickly, concern with current workload of staff and not having resources assigned to support the work that may be involved, concern about legislative support and resources, concern about the appropriate way to implement some of these requirements, concern that the Board is being asked to vote when the terms of rule making are so narrow, and the view that other avenues need to be looked at besides just pushing ahead with rule making. It was also commented that from a political perspective, if the Board moves forward on this, it may precipitate a legislative backlash and may actually deter a remedy and a solution rather than enhance it. A suggestion was made to do a working lunch session of the Board to discuss this further.

- Darrell Smith moved that the Board deny the petition. Nan Bunker seconded. The motion carried to deny the petition with a vote of eight in favor (N. Bunker, C. Petersen, S. Sands, J. Elstein, K. Kelly, R. Paine, D. Ipson, D. Smith) and one opposed (K. Van Dame).

Based on the motion approved by the Board, Ms. Chancellor will prepare a document that describes how the petition got to the Board, the review that was conducted by the staff and the Board, and the denial of the rule making petition which will include reasons for the denial. The Board will then review the document and make corrections. The final document will be signed by the Board Chairman.

IX. Informational Items.

A. 2009 Sulfur Dioxide Milestone Report. Presented by Colleen Delaney.

Colleen Delaney, Environmental Scientist at DAQ, stated that Utah's Regional Haze SIP established regional milestones for sulfur dioxide. Each year, Utah, Wyoming, New Mexico, and the City of Albuquerque prepare a milestone report to determine whether the

milestone has been met for the most recent emission inventory. The draft milestone report for the year 2009 shows that the 3-year average of SO₂ emissions for the years 2007 through 2009 is below the 2009 milestone. Because the milestone represents a 3-year average for the years 2007 through 2009, the changes to the milestones in the most recent SIP revision will not be fully integrated until the 2010 milestone report. The 2009 emissions are 17% below this new milestone, and regional emissions have continued to decline since Utah's Regional Haze SIP was adopted in 2003. The draft milestone report is currently available for public comment. A hearing was scheduled for July 13, 2011, and the public comment period ends July 14, 2011.

Ms. Bunker commented that since a good job has been done keeping the sulfur out of the air, there is now an added cost to agriculture to put the sulfur back into the ground.

Dale Ipson was introduced as a new Board member representing the public seat on the Board. Mr. Ipson is currently employed by DATS Trucking, MST Trucking, and Overland Petroleum headquartered in Hurricane, Utah. He is also the current President of the Utah Trucking Association.

B. Overview of Board Responsibilities/Duties. Presented by Denise Chancellor.

Ms. Chancellor gave an overview and answered questions on the structure of the Board which included the powers and duties of the Executive Director and Executive Secretary and the Board's executive, legislative, and judicial functions. In addition Ms. Chancellor covered the adjudicatory hearings and review, Open Public Meetings Act, conflicts of interest, the Ethics Act, and identifying and handling conflicts.

C. Air Toxics. Presented by Robert Ford.

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

E. Monitoring. Presented by Bo Call.

Bo Call updated the Board on the monitoring graphs.

Meeting was adjourned at 4:38 p.m.

Minutes approved: October 5, 2011