



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF AIR QUALITY
Bryce C. Bird
Director

Air Quality Board
Stephen C. Sands II, *Chair*
Kerry Kelly, *Vice-Chair*
Alan Matheson
Erin Mendenhall
Robert Paine III
Arnold W. Reitze Jr
Michael Smith
William C. Stringer
Karma M. Thomson
Bryce C. Bird,
Executive Secretary

UTAH AIR QUALITY BOARD WORKING LUNCH

March 2, 2016 – 11:30 a.m.

Four Corners Conference Rooms – 4th Floor

195 North 1950 West

Salt Lake City, Utah 84116

FINAL MINUTES

Board members present: Steve Sands, Alan Matheson, Erin Mendenhall, Robert Paine, Arnold Reitze, Michael Smith, William Stringer, and Karma Thomson

Excused: Kerry Kelly

A working lunch was held to conduct annual Open and Public Meetings Act training, provide a brief member orientation, and a SIP/rulemaking overview. No Board action items were discussed.

Craig Anderson, Chris Stephens, and Marina Thomas of the Environment Section of the Utah Attorney General's Office were introduced and gave an overview and answered questions of applicable law, the requirements of the ethics act, and conflicts of interest as they pertain to Board members.

Mark Berger, Air Quality Policy Section Manager at DAQ, discussed and answered question on the state implementation plan (SIP) development process. He explained that EPA promulgates a new standard for a criteria air pollutant and then promulgates an implementation rule for a SIP development process. EPA will then make a designation no later than two years following promulgation. Once an area is designated as nonattainment the state has three years to write and submit a SIP. In addition, any amendment to a SIP that has been submitted to EPA is a time consuming process, such as with the Subpart 4 PM2.5 SIP amendment which took one year. Mr. Berger also discussed with Board members Utah's SIP development schedule, included as a handout, and also a tentative 2016 schedule of rules planned to come before the Board for consideration.

Ryan Stephens, Environmental Planning Consultant at DAQ, went over the rulemaking process. He explained the Board has rulemaking authority under the Utah Air Conservation Act and its rulemaking authority is limited to certain types of air quality related rules, but is fairly expansive. Generally, the Board can adopt rules regarding the control, abatement, and prevention of air pollution from all sources and established air quality standards. Additional specific rulemaking powers can be found in statute. Mr. Stephens then gave a brief description of two ways rules are brought to the Board, rules proposed by staff and public petitions for rulemaking.

Minutes approved: May 4, 2016



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UTAH AIR QUALITY BOARD MEETING

March 2, 2016 – 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: Steve Sands, Kerry Kelly, Alan Matheson, Robert Paine, Arnold Reitze, Michael Smith, William Stringer, Karma Thomson, and Erin Mendenhall

Executive Secretary: Bryce Bird

II. Date of the Next Air Quality Board Meeting: May 4, 2016

The April 6, 2016, meeting was canceled.

III. Approval of the Minutes for February 3, 2016, Board Meeting.

A correction was made on page two under agenda item five to add “no” into the sentence that states, “EPA can longer....” The corrected wording is, “EPA can no longer....”

- Arnold Reitze moved to approve the minutes with the correction. William Stringer seconded. The Board approved in favor with Erin Mendenhall absent.

IV. Final Adoption: Amend R307-101-2. Definitions. Presented by Ryan Stephens.

Ryan Stephens, Environmental Planning Consultant at DAQ, stated that R307-101-2 was amended to reflect the date of the new PM₁₀ Maintenance Plan and to remove a reference to the Clean Air Act (CAA) as “amended in 1990.” The rule has been changed to reference the federal CAA as “found in 42.U.S.C. Chapter 85.” A 30 day public comment period was held, no comments were received, and no public hearing was requested. It was noted that the enactment or last substantive amendment date listed in the rule will be administratively changed by the Division of Administrative Rules to the date the rule amendment is adopted. Staff recommends that the Board adopt the amendments to R307-101-2, Definitions, as amended.

- Robert Paine moved for final adoption of R307-101-2, Definitions. Michael Smith seconded. The Board approved in favor with Erin Mendenhall absent.

V. Final Adoption: Amend R307-104. Conflict of Interest. Presented by Ryan Stephens.

Ryan Stephens, Environmental Planning Consultant at DAQ, stated that R307-104 satisfies Section 128(a)(2) of the CAA, which lays out provisions regarding conflicts of interests involving heads of executive agencies and certain state boards. DAQ staff worked with the Utah Attorney General's Office and the EPA to develop the language in this rule. There was a 30 day public comment period for this rule, no comments were received, and no hearing was requested. Staff recommends that the Board adopt new rule R307-104, Conflict of Interest.

- Arnold Reitze moved for final adoption of R307-104, Conflict of Interest. Kerry Kelly seconded. The Board approved in favor with Erin Mendenhall absent.

VI. Utah Physicians for a Healthy Environment, Western Resource Advocates, and HEAL Utah's Petition for a Rule Change. Presented by Petitioners and Ryan Stephens.

David McNeill, Planning Branch Manager at DAQ, stated that staff recommendation to deny the petitions is based on some of the constraints put upon the petition process by statute, which include issues of timing, format, and lack of evidence of need contained in the petitions. DAQ does recognize the tremendous effort the Petitioners put into developing these proposed rules and the importance of this process to help us all arrive at our common goal of clean air.

Erin Mendenhall enters the meeting.

Matt Pacenza, Executive Director of HEAL Utah, stated they challenge the assessment of DAQ that putting these rules out for comment would take months of research before DAQ could have the agency record and technical data needed to support these proposals. They feel that much of the work needed to put these proposed rules out for comment has already been done with the recent SIP work and they are unconvinced that months of additional labor would be required before comment can be gathered. They acknowledge that some additional work will be needed, in particular to the offset rule, but the work would not be wasted as was shown by the useful new information that was produced with just this process. In addition, DAQ has put out rules in the past that have not required such exhaustive analysis before they went out for public comment, for instance most recently with the water heater rule. The issues raised when the water heater rule was put out for public comment were pretty significant, which is an example of productive dialogue with stakeholders that could come as a result of putting these rules out for comment. Mr. Pacenza also stated as a stakeholder that has participated in both public processes, they are not convinced that evaluating these proposed rules within the context of SIP development is the correct process.

Joro Walker, with Western Resource Advocates, briefly commented on each of their proposed rules. If the standards that cover short terms are to be protected you need to limit emissions on a short term basis, which is the basis of their 24-hour rule. DAQ has said 24-hour averaging periods have been imposed on many of the SIP emission limits. This just shows that their proposed rule is reasonable and that it should be complied with. Their monitoring rule is an effort to ensure continuous compliance. This rule would take existing SIP limits and ensure that they are enforceable and frequent monitoring is necessary to show continuous compliance. DAQ stated that most of this work is being done and they have case-by-case justification where each of the monitoring regimes associated with the SIP sources is shown. The problem is that the public does not see that, and the public does have a role in these emission limits because they are part of a SIP.

Ms. Walker continued that their offset rule was essentially explored and rejected by DAQ as an alternative, and the public was not privy to the outcome of the analysis. In addition, DAQ has experience with a PM₁₀ offset rule and they would like to have DAQ address how the experience with the existing offset rule is relevant to their proposed offset rule. Finally, they do take economic development seriously but those concerns have to be based on data and they would like to see the data on that analysis. These petitions present a strong legal basis for their proposed rules. Their position is that they are required by the CAA. There is no dispute the next step to addressing air quality along the Wasatch Front is more restrictive, more expensive, and more complicated constraints and these rules are a good step in that direction.

Tim Wagner, Executive Director of Utah Physicians for Healthy Environment, stated that from a scientific and technical aspect these proposed rules are important, but another important component is the public's voice in all of this. The Petitioners to the Board today are just part of an effort to represent the public. They did a tremendous amount of outreach in the development of these proposals and have the support of a variety of different stakeholders who urge the Board to approve these rules for public comment.

Ryan Stephens, Environmental Planning Coordinator at DAQ, stated that rule petitions are allowed under the state rulemaking act. The rulemaking act gives an interested person the opportunity to request the making, amendment, or repeal of a rule. After the Board has received a petition, the Board has 80 days to act on a petition. The Board can either deny the request in writing or initiate rulemaking. In this case, the Board must act before April 4, 2016. The Petitioners have proposed three new rules that would amend or supplement existing rules applicable to the Salt Lake City, Provo, and Logan nonattainment areas. These proposed rules are: a 24-hour averaging period rule that would impose "short-term" emission limits and controls that are averaged over 24 hours or fewer on the stationary sources in the three nonattainment areas; a monitoring rule that would increase the frequency of the monitoring of emissions from individual sources in the three nonattainment areas; and an offset rule that would require a larger category of new and modified sources in the three nonattainment areas that seek to increase emissions of PM_{2.5} and PM_{2.5} precursors to obtain reductions in emissions from existing sources to offset these emission increases. DAQ has carefully reviewed the proposed rules and have provided a detailed analysis of each rule. Based on the reasons explained in the memorandum, staff recommends that the Board deny the petitions at this time, and that the Division work with the Petitioners to evaluate additional strategies in the context of SIP development.

After the presentations were completed, discussion on each of the proposed rules followed. The Board considered the language of the three petitions as submitted by the Petitioners and a memorandum from DAQ staff to the Board recommending denial of the petitions.

Some discussion on the 24-hour rule included that in regards to a general rule covering all sources, staff referred to the example in 1994 with the SIP at that time. In 1994 the general requirements were included in the SIP that could be updated in approval orders. EPA's current policy is that approval orders are not sufficient to establish SIP limits. This rulemaking process today, if approved, would add an interim step, but ultimately all of these proposed rules today would have to end up in a Part H requirement which is where emissions limits are established. Rulemaking on these proposed rules would probably delay the work planned this summer on the SIP because DAQ would be focusing efforts on implementing the rules first.

Discussion on the Monitoring rule inquired about how will there be 24-hour continuous monitoring when there is no technology and also what are the costs of doing this in relation to the environmental benefits. In response, the Petitioners stated that the monitoring rule would give the

Division Director a tremendous amount of discretion in determining that alternative mechanisms are adequate in order to demonstrate continuous compliance. The Division states they already do a case-by-case analysis. Petitioners responded that their proposed rule asks for that analysis to happen where the public can see it and at least allow an opportunity for the public to challenge one of those determinations. In addition, Petitioners were asked if there is any industry or sub-industry class identified that needs to have continuous emissions monitoring that doesn't already have that requirement built in the permitting system. Petitioners responded that they are not sure of a specific industry but they would like the opportunity to examine existing determinations to see if there's potential for additional monitoring and testing to gain public confidence. EPA research indicates that frequent monitoring does have the effect over time of reducing emissions. In discussion about what would be different if there was a separate rule that required a review versus the same analysis as is done as part of a SIP, it was stated that documentation is available for public review and if the public wanted to comment they could. Petitioners feel a separate rule would help public involvement with its reviews and comments by allowing a separate process outside of SIP development.

In discussion on the Offset rule, some points that were brought up were that the proposed Offset Rule views offsetting in the context of having market-based credits to offset an expansion above the threshold. There are currently zero offsets available in any air shed in the PM_{2.5} nonattainment SIP, even with the Petitioners suggested amendments to their proposed rule.

At the end of discussion, the Board chose to vote on each proposed rule separately. The voting resulted in denial of all three petitions. The Board will issue a written decision stating its reasons for denial which were based on the majority votes of the Board.

- Erin Mendenhall moved that the Board put the 24-hour Averaging Period Rule out for public comment. Robert Paine seconded. The Board denied the motion with four in favor (A. Reitze, E. Mendenhall, R. Paine, K. Kelly) and five against (M. Smith, S. Sands, K. Thomson, W. Stringer, and A. Matheson as tie-breaker).
- Erin Mendenhall moved that the Board put the Monitoring Rule out for public comment. Robert Paine seconded. The Board denied the motion with two in favor (E. Mendenhall and R. Paine) and six against (M. Smith, S. Sands, K. Thomson, W. Stringer, K. Kelly, and A. Reitze).
- Robert Paine moved that the Board deny the petition on the Offset Rule. Kerry Kelly seconded. The Board approved the motion unanimously.

VII. Informational Items.

A. Fugitive Dust Comment Cards. Presented by Mark Berger.

Mark Berger, Air Quality Policy Section Manager at DAQ, stated that for the last several months DAQ has received over 1,000 postcards asking the DAQ for a particulate monitor in Bluffdale and also to amend a portion of the fugitive dust rule, R307-309-5, which stems from concerns from emissions from gravel pit mining operations at point of the mountain. Mr. Berger explained that it is impractical for DAQ to place monitors at unique locations as requested. The monitor network is constrained by available resources, including staff time to run the instruments, and capital resources to pay for additional equipment. Utah's monitoring network currently meets federal requirements. Mr. Berger explained some concerns with the proposed language is that the rule does not outline how

to determine when wind speed requirements would be exceeded, the language added to contingency measures is too vague and unenforceable, and it is not clear if the rule is meant for active construction mining areas or for an entire site. In addition, currently R307-309 has been approved as part of the PM₁₀ State Implementation Plan as a reasonable available control technology (RACT) rule and current ambient monitors have not recorded any exceedances with the exception of exceptional events. Sources already have the option of ceasing or reducing dust operations and making this a requirement goes beyond RACT and therefore is not justifiable. Staff is currently in consultation with EPA regarding its submittal of the fugitive dust rule under the PM_{2.5} SIP. So as this rule is going to be reconsidered shortly, DAQ will make sure to include those interested parties who submitted comment cards in the pre-rule development process, which will include the consultation process with EPA.

B. Update on the National Air Toxics Monitoring Program Annual Report. Presented by Roman Kuprov.

Roman Kuprov, Environmental Scientist at DAQ, gave an update of EPA's 2012 annual toxics report summary as it relates to Utah. Currently, there are 64 monitoring stations across the nation that monitor hazardous air pollutants (HAPs). Utah's HAPs monitor was established in 2002 in Bountiful. This site is operated by the state but all of the analysis is done by the EPA. It was explained that two metrics, one in one million cancer risk and non-cancer risk, are associated with exposure to HAPs and also that in 2012 Utah had 21 HAPs that triggered one of the risk thresholds. Mr. Kuprov summarized the pollutants of interest with emphasis on the top five and their risk approximation and trends for Utah.

Currently, there are two toxics studies underway to better understand HAPs distribution and trends across the Wasatch Front and identify the emission sources. One is a Utah toxics study in which the Legislature awarded \$110,000 for research to determine the distribution, seasonal patterns, and the current levels of gaseous HAPs along the Wasatch Front. The study was for one year ending on January 1, 2016, during which toxics data was collected at three different locations. The data is expected to better clarify impacts from local large and small industries, transportation, and other urban activity on the detection frequencies and on the levels of HAPs. DAQ is processing and analyzing the data from this study and a report should be available in a few months. The second study is the result of a \$355,000 federal grant and is being done in collaboration with the University of Utah and Brigham Young University. They will be looking at the distribution of a wide array of real-time pollutants and HAPs on an hourly basis. The first phase of the study went from December 2015 to February 2016. The second phase will cover June to August 2016. The data from the wintertime air toxics composition will be compared with the summertime air toxics composition.

C. Air Toxics. Presented by Robert Ford.

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

E. Monitoring. Presented by Bo Call.

Bo Call, Air Monitoring Section Manager, updated the Board on monitoring graphs. There were high ozone levels in the Uinta Basin during February in which the standard was exceeded. There were some episodes in January when the PM_{2.5} standard was exceeded, and in February there was a period of time when an inversion hit the Wasatch

Front from about February 6 to February 16 and serious high values were recorded. Mr. Call also demonstrated with charts of Cache Valley and Hawthorne data beginning in 2004 through 2015 that we have increased the number of good days by a lot and by these charts it shows that the air has gotten a lot better over time, the plan works.

F. Other Items to be Brought Before the Board.

It was mentioned that in February, Kerry Kelly and Robert Paine gave a presentation at the University of Utah S.J. Quinney College of Law titled, "From Particles to People: Why Utah Struggles With Air Quality and How This Affect Human Health."

Meeting adjourned at 4:39 p.m.

Minutes approved: May 4, 2016