State of Utah

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DIVISION OF AIR QUALITY
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Michael Smith
Karma M. Thomson
Kathy Van Dame
Bryce C. Bird,
Executive Secretary

UTAH AIR QUALITY BOARD MEETING
July 2, 2014 – 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, Michael Smith, Tammie Lucero, Kathy Van Dame, Erin Mendenhall, and Karma Thomson (attendance by phone)

Excused: Robert Paine and Amanda Smith

Executive Secretary: Bryce Bird

II. Date of the Next Air Quality Board Meeting: August 6, 2014

III. Approval of the Minutes for June 4, 2014, Board Meeting.

Karma Thomson enters the meeting by telephone.

Two edits were made by adding EPA's teleconference call in number and noting on page three that DAQ staff will participate in the call, and changing "site" to "side" on page five.

Erin Mendenhall enters the meeting.

- Kathy Van Dame moved the Board approve the minutes as corrected. Kerry Kelly seconded. The Board approved unanimously.

IV. Propose for Public Comment: Amend R307-202. Emission Standards: General Burning. Presented by Mark Berger.

Mark Berger, Environmental Planning Coordinator at DAQ, stated that Native American tribes conduct ceremonial burning that involves heating stones in a fire and transferring the hot rocks to a sweat lodge. This ceremonial ritual cannot be conducted under the current rule during restricted burning days. Native American tribe members have requested an exemption from the burning rule

restrictions so they can conduct this religious ceremony when conducted by a "Native American spiritual advisor," which is a new definition in this proposed rule. DAQ worked closely with Shirlee Silversmith, Director of the Division of Indian Affairs, in the development of the draft rule. Staff recommends the Board propose R307-202, Emission Standards, General Burning, for public comment.

In discussion, staff responded that no complaints have been received about sweat lodges during existing wood burn control programs. The concern was brought up because these individuals did not want restrictions to count when ceremonies are performed. The exemption is a statewide rule from the requirements of R307-202-4(2). The exemption will not modify the nonattainment areas and ceremonial burning will be exempt in both the attainment and nonattainment rules. There are currently no rules that would define when or with what frequency a ceremonial burn can take place but this change does qualify the exemption because you would have to meet the new definition of "Native American spiritual advisor."

Marianne Romney, citizen, added that sweat lodge ceremonies are a religious practice and are based upon need; therefore, to define how often they occur is fairly difficult, but one every other week has actually been quite normal. She added that the Veteran's Administration Hospital in Salt Lake City made a change to make sweats available for the veterans at the veterans' request. The reason for their anticipated increase is that it's being treated more as a religion rather than physical therapy. Sweats are such a spiritual ceremony that even the ashes are taken and carefully treated in a spiritual way that honors the ancestors, and so there is no other way to heat the rocks for what has been going on for centuries for the Native Americans.

- Michael Smith moved that the Board propose for public comment to amend R307-202, Emission Standards, General Burning. Kathy Van Dame seconded. The Board approved unanimously.

V. Propose for Public Comment: Amend R307-335; R307-342 through R307-350; and R307-352 through R307-355. Presented by Mark Berger.

Mark Berger, Environmental Planning Coordinator at DAQ, stated that EPA has indicated that it cannot approve many of the Air Quality rules as Reasonable Available Control Technology (RACT) rules as part of Utah's $PM_{2.5}$ State Implementation Plan (SIP) until the rules are amended to clarify that the capture and control efficiency of add-on control devices in each rule is based on the entire system and until the inspection and recordkeeping requirements of the rules are expanded. DAQ has worked closely with the EPA to revise the existing rules to include these parameters, and EPA has reviewed them and indicated that they are approvable as currently drafted. The amended overall capture efficiency values for each rule are based on either EPA guidance documents or other comparative rules. Staff recommends the Board propose for public comment R307-335, R307-342 through 350, and R307-352 through 355 for public comment.

In discussion, staff responded that only the American Coatings Association (ACA) commented that they prefer no limits or regulations for coatings. Other than the ACA's comment, there is no specific input from the industry associations that would modify the language being proposed today. If approved by the Board, the final effective date of the rule could be as early as October 2, 2014. It was noted that if a source was going to show compliance with the limits in Table 1, by deleting the recordkeeping in R307-335-9 it eliminates the requirement to keep a record of volatile organic compound (VOC) limits. Staff agreed to add that section back into the rule going out for public comment and also change its reference to R307-335-7(2). Finally, the reason the capture and control efficiency in R307-343 reduced to 85% rather than 90% is because the percentage is not

only based on EPA's Control Technology Guideline but in each case the capture potential was looked at along with the type of operation involved. In other words, what we had before was 90% for the engineering control and then it went to 85% for the overall system efficiency. The 85% capture and control efficiency would produce a 90% or greater emission reduction.

- Kerry Kelly moved the Board propose for public comment amended R307-335, R307-342 through R307-350, and R307-352 through 355 with the corrections made by the Board today. Erin Mendenall seconded. The Board approved unanimously.

VI. Informational Items.

A. $PM_{2.5}$ State Implementation Plan Subpart 4 Update. Presented by Bill Reiss.

Bill Reiss, Environmental Scientist at DAQ, updated that EPA had signed its deadlines rule which classifies each of our nonattainment areas as moderate $PM_{2.5}$ nonattainment areas and sets the deadlines both for SIP submittals and for attainment dates. The SIP submittals are due December 2014 and the attainment dates we need to address in those SIPs will be December 31, 2015. As we work on those SIPs, the control strategies will be unchanged from what was previously approved by the Board. Subpart 4 allows for showing that it is impractical for a moderate area to show attainment by the attainment date, which in our case will apply to Salt Lake City and Provo. These areas will become reclassified as serious nonattainment areas, at which time we will have to go back to the SIP drawing board and do a serious area SIP where the attainment dates will be 2019. DAQ is on track to finish the revisions on time and in order to meet the December 2014 deadline for SIP submittal, those revisions will need to be presented to the Board this September. In addition, all of the controls that were adopted through the Board are in place as state rules and we are enforcing them as such. Finally, we still have not seen EPA's proposed new implementation rule for $PM_{2.5}$ which should give us more clarity as we go forward, in particular with our serious area SIPs, but it will also point out what we did wrong in our moderate area SIPs.

In discussion, Mr. Reiss responded that there are two pathways for the timeline going from moderate to serious. The first is a mandatory redesignation (i.e., by operation of law) pathway that gets set into motion as soon as we reach our attainment date, in which case we would be given 18 months to complete our SIP. The second is a discretionary pathway. If EPA and the state choose this pathway, the earliest it could happen would be the date on which our SIPs are due, and it would give us 4 years from when the redesignation occurs to complete our SIP. In talking with EPA headquarters, it is their recommendation that each state work with their region to find the most prudent pathway. With regards to $PM_{2.5}$ offsets for permitting, the policy that DAQ is following is to use the SIP date adopted from the Board. From that date forward, the emission credits in the bank that are either $PM_{2.5}$, SO_2, NOx, or VOC will not be available for offset use in permitting for major sources, nor will they be available for major modifications.

B. Title V Fee Restructuring. Presented by David Beatty.

David Beatty, Operating Permit Section Manager at DAQ, stated that due to a projected large decrease in chargeable pollutant emissions for 2015, the fee for fiscal year 2015 will need to be increased to $72.84 per ton of emissions, a $13.78 increase. Currently we charge each Title V source a dollar-per-ton fee per each ton of emissions up to 4,000 tons per each pollutant. The restructured fee would allow for variable fees to be charged for

different pollutants, raise the fee cap to 7,000 tons per each pollutant, and provide for a minimum fee to be charged for small Title V area sources. The new fee structure would allow the criteria pollutant fee to be reduced by $1.00 to $2.00 per ton, and still maintain full program funding. This new structure would necessitate a statute change where we would clean up old language, charge a different fee per pollutant, add a minimum fee for those sources that fall below the line, change the fee cap, and exempt greenhouse gas from the cap. A stakeholder meeting will be held on July 14 from 1:00 to 3:00 p.m. in which all Title V major and area sources and industry groups have been notified, as well as public notice given for input on the restructuring.

In discussion with the Board, it was commented that PacifiCorp and Intermountain Power Project are the two companies that currently have caps that reach the 4,000 cap level. The restructured Title V fee will fully fund the permitting program, including the compliance and monitoring of the program. Since this will require a statute change, DAQ will run the fiscal year 2016 fee increase of $72.84 per ton of emissions on a parallel track with the statute change requested at the 2015 legislative session.

C. Water Heater Low NOx Analysis. Presented by Patrick Barickman.

Patrick Barickman, Technical Analysis Section Manager at DAQ, stated that Envision Utah's Clean Air Advisory Team (CAAT) requested an analysis from DAQ on the use of low NOx water heaters for their work on land use planning. Mr. Barickman presented the results of the analysis and the effects to the area source inventory. The data were pulled from the work that was done on the area source rule for the $PM_{2.5}$ SIP. The reason requiring low NOx burners was not included in the SIP was because the ability to sell those water heaters in Utah was limited and the phase-in period is from seven to ten years, which does not fit within our timeframe for the SIP. The analysis for Envision Utah was done with the assumption there was no phase-in period and all water heaters in the nonattainment area would be equipped with low NOx burners in the 2019 inventory. The results showed about a 20% reduction in NOx in the area source NOx inventory, especially to Salt Lake, Utah, Davis, and Weber counties. This is a significant reduction for one control strategy. Next, they looked at what would be the effect of removing that amount of NOx on the concentration of $PM_{2.5}$. The result showed less than half a microgram reduction of $PM_{2.5}$. This result was not unexpected given the nature of precursor emissions and their ultimate effect on the production of $PM_{2.5}$. Staff then responded to questions from the Board. At some point, the CAAT may petition the Board for rulemaking on this issue, following which DAQ would begin the administrative rule process, including outreach to affected stakeholders for their input.

D. Utah Association of Realtors Response to Wood Burning Stoves. Presented by Kreg Wagner.

Kreg Wagner, Associate Legal Counsel for the Utah Association of Realtors (UAR), addressed the Board on UAR's position regarding point of sale regulations on wood burning stove change-outs during a real estate transaction. He emphasized the organization's support of improved air quality in Utah, understanding that the state's air quality has direct effect on quality of life and the strength of the real estate market. But they feel that point of sale regulations on wood burning stoves during real estate transactions is not a workable solution for Utah's air quality program. There is a long history of not creating regulation at the point of sale for real estate transactions and introducing this type of regulation would be unprecedented in the state of Utah. Mr.

Wagner presented examples of public policy and legal concerns on this type of regulation. Any point of sale regulation has the potential to further delay real estate transactions which in turn slows the real estate market and increases the likelihood of unsuccessful transactions. In closing, Mr. Wagner stated that in Utah, we value property rights for individuals and their right of alienation and that any point of sale regulations infringes on these rights and has some serious public policy and legal ramifications for all parties involved. The UAR supports clean air and innovative ideas to addressing cleaning the air but they do not support regulations and rules that seek to use the point of sale as a means of enforcement.

E. Air Toxics. Presented by Robert Ford.

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

G. Monitoring. Presented by Bo Call.

Bo Call, Monitoring Section Manager at DAQ, updated and answered questions from the Board on monitoring information noting that Rose Park had data that was flagged as an equipment malfunction. EPA's proposed new ozone standard is due December 2014 and the final due October 2015.

In response to further questions, Mr. Call responded that EPA passed a rule requiring near road monitoring of NOx and had money available for a brief time to pay for equipment but they did not provide money to pay for operation of the instruments. In addition, the data that would be received does not appear to be useful because many of the near road monitoring in other areas deal with residences built right up against the road which Utah has less of. It was noted that in 2010 EPA awarded the University of Utah $1.2 million to conduct a near road monitoring study. Mr. Call then gave a status update that the Fort Herriman site was in place, the Smithfield site has been prepped, a replacement location for the Vernal monitor has been made, and the Copperview Elementary School monitoring site was just approved. These monitors will all be multi-pollutant monitors.

H. Other Items to be Brought Before the Board.

Ms. Van Dame commented on her concern of the matters Sarah Fields of Uranium Watch presented to the Board on EPA's proposed rule that would eliminate monitoring of radon at the White Mesa uranium mill. She would like to see some sort of accounting for the cost of monitoring. In addition, the reasons why the work practices are considered adequate for control of the new cells when consultant predictions showed that the radon emissions will continue to rise as the existing cells continue to be dewatered. In response, Mr. Bird stated that EPA has proposed a modification to Subpart W which is one of the National Emission Standards for Hazardous Air Pollutants (NESHAP) provisions under DAQ's authority. As EPA has developed this rule they are only focusing on this facility as it is the only such facility in the country. This facility was already in operation before the original 1989 rule came out. EPA had jurisdiction over the program until 1996 and under the existing rule they were aware of the issues that the existing tailings cells were not meeting the requirement of the rule. With the proposed rule EPA is acknowledging that again and that as they enter closure they are no longer subject to the radon emission standard. DAQ was inspecting this facility in the 1990's and portable radon monitoring showed ambient concentrations between the two cells was very minimal.

Ms. Mendenhall suggests DAQ create some sort of inventory or list for reporting wood burning households both within and outside of the season to address sole source households with conversions. She feels there are more households that could have qualified for sole source but were unaware they could qualify or had no idea they needed to get on an exemption list. Mr. Bird responded that as part of DAQ's research funding projects, the University of Utah will be doing some micro-scale inventory work of residential wood burning which will help us decide what the next step will be. Funding for the sole source change out program is just being developed.

Meeting adjourned at 3:31 p.m.

Minutes approved: August 6, 2014