

## MEMORANDUM

TO: Western North Carolina Regional Air Quality Agency Board of Directors

FROM: Betsy Brown, Air Quality Supervisor

RE: July 8, 2019

DATE: August 29, 2019

Enclosed, please find the **MINUTES** from the **Monday, July 8, 2019** Board Meeting. The next meeting of the WNCRAQA Board is scheduled for **Monday, September 9, 2019 at 4:00pm** in the meeting room located at the Buncombe County Permit Office at 30 Valley Street, Asheville, NC 28801.

The Western North Carolina Regional Air Quality Agency Board of Directors met on Monday, July 8, 2019, in the meeting room at the Buncombe County Permit Office located at 30 Valley Street, Asheville, N.C.

The attendance of the Board members was as follows:

**Members Present:**

*Britt Lovin  
Karl Koon  
Dean Kahl*

**Members Absent:**

*Joel Storrow  
Vonna Cloninger*

**Staff Present:** *David Brigman, Director; Ashley Featherstone, Air Quality Permitting Program Manager; Betsy Brown, AQ Supervisor; Mike Matthews, Senior AQ Specialist; James Raiford, Senior AQ Specialist*

**Others Present:** *Michael Frue, Attorney; Mike Plemmons, CIBO*

Mr. Lovin called the meeting of the Western North Carolina Regional Air Quality Agency Board of Directors to order on July 8, 2019 at 4:00 pm.

The order of business was as follows:

**I. Public Comment Protocol Announcement**

Mr. Lovin started the meeting by reading the announcement about the public comment protocol.

**II. Adjustment and approval of agenda**

Mr. Koon made a motion to approve the Agenda as modified. Dr. Kahl seconded. The motion passed 3-0.

**III. Consent Agenda:**

**A. Approval of minutes from May 13, 2019**

Mr. Koon made a motion to approve the minutes as written. Dr. Kahl seconded. The motion passed 3-0.

**IV. Director's Report:**

**A. Duke Energy Progress Update**

Ashley Featherstone said we have been talking about the permit modification request we got from Duke in February, Duke's request for plantwide applicability limits or PALs. They wanted to set the limits while the coal units were still operating. After they close down the coal units, this would leave them with pretty high emissions caps, and they would not have to go through a New Source Review analysis every time they wanted to make changes, as long as they can keep their emissions under the limits. We expect there will be public interest. We wanted the Board to know that we would be going to public notice and having a public hearing. Initially we looked to see if there was any reason why the limit should be adjusted downward. The coal burning units are required to be shut down according to our permit. The way the rule was written, there is specific mention about new standards coming into effect and adjusting the PAL downward. The rule has general language about any other applicable state or federal regulatory requirement the permitting authority knows about. We spoke with the EPA and the State. We wanted to know

whether the Coal Ash Management Act which is part of their cleanup agreement or our permit which dictated permit schedules and included a netting analysis were reasons to adjust the PALs downward. We did hear back from the State who had reviewed our previous permit. There are different types of netting analyses. The most compelling reasons to lower the limit was that the netting analysis in the current permit showed zero emissions going forward for those coal units. So the way we permitted it, they are required to shut down. They voluntarily made that choice to replace the coal fired units with gas fired units. We shared that with Duke and told them we would have to adjust the limits down, as such the limits would be lower than what they were requesting. Duke is going to come back with a counter proposal, possibly different from what we had anticipated concerning the baseline of the existing units that are not being shut down. We have not heard back from them yet. It does look like we will include lower permit emissions than we had initially planned. This is causing the process to take a little longer and we do not have a draft permit. We just wanted to give the Board an update on the project.

Mr. Brigman said that Duke might decide not to move forward with the PAL permit; they can still make changes to their permit and avoid PSD based on the emissions reductions. This would be more involved. Then the County would have those emissions available for other industry in the area. The emissions would not be earmarked for Duke. Duke has been planning to shut down the coal units, and part of their coal ash agreement required them to shut down those units. Part of their agreement with the Utilities Commission was that they would shut down those coal units as soon as the new units were up and running.

Ms. Featherstone said we do not bill permit fees based on permit limits but on actuals emissions. A higher threshold would not directly affect billable emissions. If they had the PAL with the higher limits it would give them flexibility to introduce new projects or make some changes without a complicated permitting process. Without a PAL permit, Duke would have to go through New Source Review and a netting analysis to determine if each project or change triggers a Best Achievable Control Technology (BACT) analysis. They could still subtract out the coal emissions without having a PAL permit, but it is more involved than the PAL they requested. It is beneficial to Duke to get the larger limits and have the permitting flexibility. This is a unique scenario that might have worked out differently if they had requested the limits prior to the modernization project modification..

Natural gas availability in Western North Carolina used to limit Duke's ability to switch to natural gas. A larger pipeline has been installed. This enabled the project at Duke and allowed the paper mill in Canton to update some of their boilers to run on gas rather than coal. The original proposal involved putting in the larger gas lines and additional transmission lines which was very controversial. The transmission lines portion of the proposal was withdrawn by Duke.

Mr. Brigman said that Duke's existing peaking turbines were also limited by natural gas. Now DEP will have two new boilers and two peaking turbines operating on natural gas. The PAL would enable them to run the existing peaking units more; currently they have a limited amount of run time. The existing peaking units can produce 324 megawatts of energy.

Mr. Lovin asked if we had an idea when we would go to public notice. Duke would like to have the permit modification by November. To do that we would have to go to public notice late September or early October. Duke would like to have the

permit modified before winter if possible. This new permit would change the limits they are bound by and they could run the peaking units more during the winter heating season. The permit has been delayed and we are now waiting on Duke to submit an amended application.

#### **B. Increase Title V Tonnage Fees**

The proposed changes were presented to the Board in the meeting packet, but further numbers were provided at the meeting time. David Brigman said that he went to the EPA Regional Directors meeting; Title V (TV) funding was discussed. We have been below the EPA recommended Title V fee for a while, but not by a lot. Our tonnage fee has been at \$49 per ton. The minimum TV tonnage fee set by the EPA is 52.81 per ton. One of the questions that EPA asks is, are you funding your Title V (TV) program adequately? Kentucky has fees of \$100 per ton. To meet their requirements, we propose to raise our TV tonnage fee to help support the TV program. The EPA has been doing TV audits and dinging agencies if not adequately funding their TV program. The handout will show where we are. At the bottom of the graph, the largest TV source (shown by facility number) and the largest increase would be for Duke, estimated at \$6,000. The Agency has had no fee increase on these sources since 2012. For most of our TV sources, the increase is only \$400. We do not want to get dinged for not charging enough. Duke's emissions are reducing but the time required by the Agency has not been reduced, and possibly has increased. So we would be receiving less revenue for the same work load. Most of this funding will be directed back to support our largest sources. The TV facilities require the most work. This will hit the two largest facilities the most, Duke and Flint Group, and they require the most time. The Board can approve to raise TV tonnage fees on a yearly basis. This is based on the facility's actual emissions. This does not affect the small sources. To change fees for other sources we would have to open the rules, go to public notice and have a public hearing. We would do a full fee analysis. Next year this increase may produce more income. Duke's emissions may be higher as they are burning off the coal on site. Duke's emissions can vary for several reasons, including weather conditions.

Mr. Koon made the motion to increase the Title V fee for Buncombe County FY2020 from \$49 per ton to \$53 per ton. Dr. Kahl seconded the motion. The motion passed 3-0.

We will look at our entire fee schedule in the future which will require a full fee analysis. Right now we will have two different tonnage fees, one for the smalls and synthetic minors, and one for the Title V sources.

#### **C. VW Settlement**

Ashley Featherstone gave an update on the Volkswagen Settlement Grant for NC. NC is receiving \$93 M to awarded for emission reducing projects in NC. VW had been cheating on their emissions testing. They had software that was designed to pass the emissions tests. The NC RFP (request for proposal) just came out. The first phase is \$24.5 M for government agencies and facilities. The focus will be on school buses and transit buses. There are government owned freight trucks that are also eligible. Also included is \$3.4 M to go toward infrastructure for electric vehicles. The State is having workshops all over the state. One is a week from today in Asheville at the Land of Sky Regional Council workshop for anyone who wants to apply. They will sit down with computers to assist. We offered to help, but they do not need us. They have 30 signed up so it looks like good participation. The City of Asheville, Henderson County and other local governments are signed up, but it

does not look like Buncombe County is signed up. Later there will be more electric vehicle charging station grants available. There is a lot of interest for this throughout the state.

The total is \$93 million. NC is doing this in phases and have a few years to award the funds. This RFP is \$24.5 M plus \$3.4 M so about \$28 M in the first round. Different states are doing different plans. Some states are only doing school bus projects. NC is doing a lot of school buses, but also transit buses, Class 4 local freight trucks, box trucks, off road equipment, port cargo equipment, and airport equipment. This is for diesel equipment like ferries, tugs and port authority equipment. Ms. Featherstone offered to forward the information for the workshop to the Board in an email. It is on July 15, 2019. The morning portion is for government vehicles and the afternoon for fast chargers. This is for repowering, like replacing buses; there is no funding for maintenance. If you replace a diesel bus with a cleaner diesel, alternative or electric bus, the cost is 100% eligible. There are certain stipulations. The bus has to be currently in use and have at least 3 years useful life remaining. The amounts eligible vary. The cost is 100% eligible for government. For non-government, 40% of the cost is eligible. Old engines have to be destroyed. You have to put a hole through engine block and take the engine out of commission. The Board requested that Ms. Featherstone send out email with information.

**V. New Business:**

**A. Legal Counsel Report**

Mr. Michael Frue said Mr. Brigman reported to the Board that Mr. Hodgins asked that the remaining fees and penalties of approximately \$1,100 be forgiven. For reason, Mr. Hodgins cites the death of his fiancé, having to close his business, and the legal fees of trying to keep his business open which was not successful. This Agency adopts most of the General Statutes. The decision letter from the Director was dated January 10, 2019 and a contract entered into with Mr. Hodgins on February 14, 2019. By the statute of the rule, he could have requested for a remission of his civil penalty, if he had made a request within 30 days. So regardless of his opinion of the spirit and intent with which the Agency tried to accommodate Mr. Hodgins with a long term easy payment plan, it may not have met with his requirement to request a remission. It looks like the Director would appear to have the authority to work with the violator to come to an agreement or a settlement. By statute of rule, he could have appealed. In the civil section it says a complete remission can only be applied if there has been no previous violation and there are no amounts still due. Monies may be due to pay for mitigation. There is probably some discretion for the Board. Mr. Hodgins' letter was dated in April, and he has paid \$200 out of \$1100. There is a 3 year statute of limitations to go after him for payment, and that clock is ticking. We try to use fines for compliance not for punishment. Mr. Frue said there was no clear yes or no. The rules that pertain to when complete remission applies do not appear to apply to this case.

Mr. Brigman said that Mr. Hodgins missed his 30 day opportunity to appeal. So we agreed to a payment plan so he could pay over time. He paid until he got the permit through this Board. In the meantime his neighbors sued and he agreed to shut down. Mr. Brigman did not see how we could completely forgive the penalty, and Mr. Frue agreed that said we do not have the authority to completely waiver the penalty but did think there was the authority to settle. Mr. Brigman said he would forgive the penalty if Mr. Hodgins gave up the old unit to be destroyed. The new one cannot be run, but it is there.

Mr. James Raiford said that Mr. Jefferies came by the office with a copy of the signed agreement with Mr. Hodgens stating he would not operate a crematory on that property. Mr. Jefferies has not seen Mr. Hodgens at the property in the last month or so. According to his current permit with us, he could run the old unit; but according to the lawsuit settlement, he cannot operate either unit. Mr. Hodgens has not paid the invoice for the new permit. The next thing will be to bring back to board for failure to pay. He could operate the crematories in another location in the county. However, he has not paid his fine for the penalty or his permit fees. He would need to settle both of those matters and start over. Whether the county or school board would go after him for collection is not our call. If he does not pay, the permit becomes invalid.

Mr. Raiford said that we would have something formally written up, perhaps in a memo.

Mr. Frue said the letter clearly gave him the 30 days notice to appeal.

**VI. Other Business:**

**A. Calendar**

Next regular scheduled meeting is September 9, 2019

**C. Announcements**

None

**VII. Public Comment**

None

**VIII. Adjournment**

Mr. Koon made a motion to adjourn. Dr. Kahl seconded. The motion passed 3-0. Adjournment was at 4:36 pm.