

**Minutes
Regular Meeting
of the
Louisville Metro Air Pollution Control Board
January 17, 2007**

The regular meeting of the Louisville Metro Air Pollution Control Board (Board) was called to order on January 17, 2007, at 10:02 a.m. in the Board Room of the Louisville Metro Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky, by the Chair, Dr. Karen Cassidy. Other Board members present were Lee Howard, Barbara Sexton Smith, Dr. Nadir Al-Shami, Vanessa Ruffin, Dr. Robert Powell, and Ronald Thomas. A quorum was present.

The following Louisville Metro Air Pollution Control District (District) staff members were present: Art Williams, Jon Trout, Cynthia Lee, Terri Phelps, Jesse Goldsmith, Matt Stull, Art Chang, Tua McDermott, Eva Addison, Matthew King, Donald Fountain, Steven Gravatte, Corey Ryan, Steve Taylor, Jenny Rhodes, Billy DeWitt, Martha Gammons, Michelle Stites, and Monica Little. Also present were Assistant County Attorneys Lauren Anderson and Stacy Fritze, and County Attorney staff Allison Grant and Tammy Brown.

The following guests were present: Bruce Gaylord, KEC; Dennis Conniff, GLI & AQTF; Tim Corrigan, GLI; Brad Dillon, GD&M; Chris Dolan, URS; Carolyn Embry, American Lung Association; Arnita Gadson, WJCCTF; Amarjit Gill and Regina Henry, Cemex; Shannon Graves, SMG; Corinne Greenberg, ADS; Barbara Hall, Ford Kentucky Truck Plant; Tom Herman, Zeon Chemicals; Tim Hooker, LFI; Carl Horneman, Wyatt, Tarrant & Combs; Paul Howard, TTEMI; Wallace McMullen, Sierra Club; Jonathan Miller, DuPont Performance Elastomers; Peter Raymond, Alcoa-LLP; Rich Robinson, ASRC; Sarah Scheetz, E.ON US; Larry Schumer; and Paige Mosser Theriac, TECI.

Approval of Minutes

The minutes of the December 13, 2006, regular Board meeting were approved as distributed.

Public Comment

Mr. Dennis Conniff, on behalf of the Greater Louisville, Inc., Air Toxics Task Force (Task Force), said that the Task Force had provided written and oral comments regarding the three regulatory amendments being proposed for Board approval. These comments, in particular, supported the use of the U.S. Environmental Protection Agency's (EPA's) human exposure model, which is recognized in the EPA's Air Toxics Risk Assessment Reference Library, as a method for determining compliance in the STAR Program. He said that the District's response in the comment/response document did not adequately explain why the District was not including the use of this model for compliance determinations.

New Business

A. Amendment to Regulation 5.01 *General Provisions*, Version #6, Draft #5 - Proposed, October 28, 2006

Mr. Williams, Director, provided a brief review on the process of revising the three STAR Program regulations. Last year, the STAR Implementation Advisory Group (IAG) began a process to review the STAR Program regulations and recommend changes to clarify the requirements or facilitate implementation. A list of 50 to 60 issues for study was developed and prioritized. The three proposed amended regulations address the first group of issues. He said that the STAR IAG continues to meet to review the other issues, and that it is likely that there will be two additional sets of recommended changes over the next four months. Mr. Williams stressed that the District and the STAR IAG are striving to make the right decisions on each of the issues. Input from businesses, citizens, and the community were all taken into consideration with the goal of preserving the important health protection that the STAR program established.

Mr. Trout, Assistant Director, explained the two significant changes in Regulation 5.21: (1) clarify the applicability of the de minimis provision for information from a Material Safety Data Sheet (MSDS) and (2) add a de minimis provision for emissions from the combustion of natural gas. He indicated that there is disagreement regarding the MSDS de minimis provision. Comments made during the Public Review process, echoing comments made at the STAR IAG meetings, suggested that the MSDS de minimis provision should be expanded to include manufactured materials as well as purchased materials. Mr. Trout stated the District's intention is to clarify the original intent of this provision, not to expand it. He noted that comments made at the STAR IAG meetings expressed opposition to this provision, as currently written, because the treatment as de minimis is not based upon a determination that all such emissions would meet the environmental acceptability goals.

Mr. Trout said that the District recommends that the Board adopt Regulation 5.01 *General Provisions*, Version #6, Draft #5 - Proposed, October 28, 2006, as proposed.

Motion: [Main Motion] Mr. Thomas moved the adoption of Regulation 5.01 *General Provisions*, Version #6, Draft #5 - Proposed, October 28, 2006, as proposed.

Mr. Trout provided additional explanation on the rationale for adding the words "purchased" and "only" in the MSDS de minimis provision. He said that the original intent was not to require a company to undergo the expense of doing a complete chemical analysis of every material that it purchases but instead could rely on the information on the material's MSDS. However, if the company has knowledge of the composition of the material, then the more appropriate de minimis provision is the one in section 1.6.4, because that de minimis provision is based on the toxicity of the individual chemicals. He explained that the reason for clarifying the MSDS de minimis provision in the regulation is that the District became aware of this provision being misinterpreted and believed that additional clarity should be added to the regulation.

Mr. Howard said that he believed that a chemical should not be treated differently depending upon its specific circumstance and therefore suggested that the proposed amended regulation be amended by removing the words "purchased" and "only" from Section 1.6.1.

Motion: [Secondary Motion] Mr. Thomas moved to amend the main motion by removing the words "purchased" and "only" from the proposed language in section 1.6.1 of

Regulation 5.01.

Dr. Powell stated he did not agree with removing the words from the regulation because the de minimis levels allowing for non-disclosure on the Material Safety Data Sheet do not take the toxicity of individual chemicals into account, potentially allowing for increased risk to public health.

The secondary motion, an amendment to the main motion, did not carry; two in favor, five in opposition.

The main motion passed; six in favor, one in opposition.

B. Amendment to Regulation 5.21 *Environmental Acceptability for Toxic Air Contaminants, Version #2, Draft #7 - Proposed - Revision 1, December 12, 2006*

Mr. Trout highlighted several of the changes proposed for Regulation 5.21. A provision specifically allows the use of an EPA-approved human exposure model as part of the request for modification of an environmental acceptability (EA) goal. The timeframe for re-evaluating best available technology for toxics (T-BAT) and requiring implementation of a revised T-BAT was modified. Opportunities for public review and comment on submitted EA demonstrations were added. The direct costs related to providing notice of the opportunity for public review and comment would be assessed by the owner or operator of the stationary source.

Mr. Trout said that, as a result of the comments made, the District recommends making several changes to the definition of “industrial property,” modifying the reference to landfills and adding rail lines. He identified the unresolved issues raised during the public comment period and public hearing and explained the District’s rationale for not making the suggested changes. These issues include: (1) adding to the definition of T-BAT a direct reference to the federal best available control technology (BACT) determination guidance, (2) accepting BACT or lowest achievable emission rate (LAER) as T-BAT, (3) adding docks and related areas for receiving and shipping materials via the Ohio River to the definition of “industrial property,” (4) adding an EPA-approved human exposure model as a Tier 5 model in Regulation 5.22 to demonstrate compliance with the environmental acceptability goals, (5) the publication of legal notices, and (6) the party to bear the expense for the post card notices to first- and second-tier property owners for environmental acceptability demonstrations.

Mr. Trout said that the District recommends that the Board adopt Regulation 5.21 identified as Version #2, Draft #7 - Proposed - Revision 1, January 11, 2007, which includes changes from the proposed regulation.

Motion: [Main Motion] Dr. Al-Shami moved to adopted amended Regulation 5.21, Version #2, Draft #7 - Proposed - Revision 1, January 11, 2007, as recommended by the District.

Mr. Howard asked whether the District and GLI had reached an agreement on the use of a human exposure model, because there seems to be controversy on the issue. Mr. Trout

responded that the District agrees that the use of a human exposure model is one way to evaluate risk, but the District believes that it is appropriate to use a human exposure model within the context of the review of a request for a modification of an EA goal, not as a sole method for determining compliance with an EA goal.

Mr. Howard asked whether the District will consider the results of a human exposure model. Ms. Smith asked why the District would not entertain, as another method for compliance, the EPA's methodology of using a human exposure model, because it is a more refined model, providing an in-depth analysis. Mr. Williams responded that the STAR program adopted by the Board has a basic principle that focuses on the maximum concentration off of the emitting company's property. The four tiers of modeling identified in the STAR Program are based on the maximum off-property concentration. This principle was integrated into the STAR Program because it is the most protective of human health. Although the human exposure model is federally approved, its use does not focus on determining the maximum ambient concentration. The Board has adopted factors to be taken into consideration when reviewing a request to modify an EA goal. The District has recommended that the regulation specifically state that a company may submit the results of an EPA-approved human exposure model and, if submitted, the District would be required to consider the results.

There was discussion on the proposed revision to require companies to be responsible for the direct costs for providing notice to the public of opportunities for public review and comment relating to company-specific STAR Program actions. Mr. Trout stated that currently not all costs related to publishing a legal notice are paid for by the District, such as for permit actions. Mr. Williams stated that the intention of the change is for the company to pay for the direct costs instead of the public. He indicated that he could not obligate the District to cover an expense that is not in the District's approved budget, which runs through June 30, 2007.

Ms. Smith recommended that an amendment be made to the motion to amend Regulation 5.21, section 5.3 to not require the companies to pay for the costs of the post card notices, pursuant to section 5.2.2, to first- and second-tier property owners after June 30, 2007.

Motion: [Secondary Motion] Mr. Howard moved to amend the main motion by adding language in section 5.3 indicating that the companies would not be responsible for the costs of the post card notices to first- and second-tier property owners after June 30, 2007.

The secondary motion, an amendment to the main motion, passed; six in favor, one in opposition.

The main motion, including the amendment, passed; six in favor, one in opposition.

C. Amendment to Regulation 5.22 Procedures for Determining the Maximum Ambient Concentration of a Toxic Air Contaminant, Version #2, Draft #3 - Proposed - Revision 1, December 10, 2006

Mr. Trout explained that the only change to Regulation 5.22 pertains to the meteorological data set used for Tier 4 modeling and the methodology for using the modeling results. He said that the District believes that the change will have no effect to only a minimal effect on the modeled concentration. He said that a consensus of the STAR IAG was reached on this issue, but the District did receive one comment raising concern that this change would understate the maximum modeled concentration. Another comment received during the public comment period suggested that the December 31, 2006, notification deadline be changed to March 31, 2007, because the proposed regulation change that added this notification deadline had not been adopted before December 31, 2006. Mr. Trout said that the District agrees with changing the notification deadline.

Mr. Trout said that the District recommends that the Board adopt Regulation 5.22 identified as Version #2, Draft #3 - Proposed - Revision 1, December 10, 2006, which includes changes from the proposed regulation.

Motion: Mr. Howard moved to adopt amended Regulation 5.22 Version #2, Draft #3 - Proposed - Revision 1, December 10, 2006, as recommended by the District.

The motion passed; six in favor, one in opposition.

Committee Reports

A. STAR 5.30 Stakeholder Group

Mr. Trout reported that the STAR 5.30 Stakeholder Group met December 14, 2006, and January 11, 2007. At the December meeting, the Stakeholder Group reviewed the second report of the West Louisville Air Toxic Study and approved criteria for a screening evaluation of potential strategies for reducing air toxics emissions. In addition, Karen Scott of the Louisville Regional Airport Authority provided a report of current and future activities at the airport. At the January meeting, Ann Nash of Highland Cleaners reported on the current and future activities at dry cleaners and Kirsten Morell of UPS reported on current and future activities at UPS.

Ms. Smith, who also co-chairs the STAR 5.30 Stakeholder Group, reported on several comments and questions shared with her by Stakeholder Group members: (1) The issues are very complicated and making decisions will be a challenge. (2) Would implementation of every recommendation result in emission reductions? (3) What risks would exist if there were no industry emissions? (4) It is very important to set realistic and achievable goals. (5) The Stakeholder Group should not make all easy choices. Ms. Smith encouraged the other Board members to attend the Stakeholder Group meetings.

B. STAR Implementation Advisory Group

Mr. Trout reported that the STAR Implementation Advisory Group (IAG) met December 15, 2006. The next set of issues under discussion generally relate to the issues of determining, implementing, and reviewing best available technology for toxics (T-BAT). Another regulation revision package is expected to be ready for presentation to the Strategy Committee within the next few weeks. The next meetings are scheduled for January 26, 2007, and February 2, 2007.

Staff Reports

A. Director

Mr. Williams said that the District has an outstanding education and outreach program, Kentuckiana Air Education (KAIRE), which raises awareness about the relationship between transportation issues and air quality. KAIRE has been in operation for many years with three full-time staff members assigned to the program. A survey was conducted by the Paul Schultz Agency to determine if KAIRE messaging causes a change in a person's understanding of air quality issues and behavior to implement emission-reduction measures. The survey found that KAIRE is a very effective program. The program currently receives funding from the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ). Unfortunately, the Kentucky Transportation Cabinet has made a decision not to provide CMAQ funding for KAIRE after this fiscal year. Mr. Williams said that the District staff is developing a strategy to re-approach the state to reconsider funding KAIRE. Mr. Williams said that the funding request had the support of the community and the Kentuckiana Regional Planning and Development Agency (KIPDA). The District will continue to seek funding from other sources and will keep the Board informed of any changes.

B. Air Quality Data

Mr. Williams reported that the EPA has still not taken a formal action to redesignate the Louisville area to attainment for the 8-hour ozone standard. He noted that on December 22, 2006, the U. S. Court of Appeals for the D.C. Circuit overturned some key elements of the EPA's 8-hour ozone implementation regulation. Mr. Williams said that he is not sure what effect, other than delay, the court decision will have on the Louisville redesignation. He noted that EPA Region 3 and Region 5 have recently taken final actions to approve redesignations. The District is following up with EPA Region 4 on Louisville's redesignation.

Mr. Williams reviewed the air quality report. Louisville is closer to achieving the federal annual PM_{2.5} standard of 15.0 µg/m³. During the years 2004-06, the annual design value for the Louisville area was 15.4 µg/m³, which is considerably lower than the first monitored three-year period, 2000-2002.

On December 20, 2006, Mr. Williams chaired the first meeting of the Louisville Climate Change Committee. This committee was formed as a result of Mayor Abramson's implementation of the climate protection agreement, which more than three hundred

communities have also signed. The agreement obligates communities to begin to address greenhouse gas emissions and to determine strategies to reduce emissions.

Mr. Williams reported that the District received a very favorable audit report from the EPA on the District's ambient monitoring program. He commended Cynthia Lee, Art Chang, and the entire monitoring staff for excellent work.

The air quality monitoring reports were submitted for filing. A copy of each report is attached to the official minutes.

C. Enforcement Status

The *APCD Enforcement Status 1/9/07* report was submitted for filing. A copy is attached to the original minutes.

D. Excess Emission Reports

The *Excess Emission Reports December 2006* was submitted for filing. A copy is attached to the original minutes.

E. STAR Program Tracking Report

The *STAR Program Projects* report, dated January 9, 2007, was submitted for filing. A copy is attached to the original minutes.

F. STAR Program Regulation 5.30 Progress Report

The *Regulation 5.30 Program Status Report*, dated January 16, 2007, was submitted for filing. A copy is attached to the original minutes.

G. Permit Program Report

Mr. Williams reviewed the Permit Program Report. The goal is to reduce the amount of time it takes to issue permits and to make the process more efficient.

Ms. Smith asked whether additional staff in the engineering section would alleviate the permit backlog. Mr. Goldsmith responded that additional staff would help reduce the permit backlog and that some steps to issue a permit have been eliminated, which will reduce the time to process a permit. He cautioned, however, that assigning additional staff to process permits would not mean a dramatic reduction in the backlog until the entire 24-month improvement plan has been completed.

Mr. Goldsmith reported that the number of outstanding permit applications has increased slightly on the Permit Application Log, which is due to Title V renewals being included.

Mr. Williams reported that the District has updated the Permit Improvement Plan as

requested by the Board at the December 2006 meeting. He said that there are still several 0-6 month projects that need to be completed. Target dates for the 12-18 and 18-24 month projects were not included in the report, which listed the 0-6 and 6-12 month projects.

The permit program report and the APCD Permitting System Improvement Plan, dated January 16, 2007, were submitted for filing. A copy of each report is attached to the original minutes.

G. *Lawn Care for Cleaner Air Awards*

The list of this month's *Lawn Care for Cleaner Air Award* recipients was submitted for filing. A copy is attached to the original minutes.

Next Meeting

The next Board meeting is scheduled on Wednesday, February 21, 2007, at 10:00 a.m.

Adjournment

The meeting adjourned at 12:38 p.m.

Dr. Karen Cassidy
Chair

Jonathan L. Trout
Secretary-Treasurer