

**Minutes
Public Hearing
of the
Louisville Metro Air Pollution Control Board
December 13, 2006**

A public hearing of the Louisville Metro Air Pollution Control Board (Board) was called to order on December 13, 2006, at 10:06 a.m. in the Board Room of the Louisville Metro Air Pollution Control District (District), 850 Barret Avenue, Louisville, Kentucky, by the Board Vice-Chairman, Mike Howard.

General Statement, Rules, and Purpose

Vice-Chairman Howard read the opening announcement, rules, and purpose of the Public Hearing, which was to review a recommended Order regarding Elder Construction and Associates, Inc., Yana Elder Co., and Fred Radcliffe, Jr., and to review three proposed regulations.

1. Recommended Order with Elder Construction and Associates, Inc., Yana Elder Company, and Fred Radcliffe, Jr.

Lauren Anderson, County Attorney representing the District, provided background information regarding the recommended Order with Elder Construction and Associates, Inc., Yana Elder Co., and Fred Radcliffe, Jr. (Respondents). The District filed a petition for an administrative hearing, alleging that each of the Respondents participated in a renovation project in which asbestos was improperly removed at the Southland Terrace Shopping Center. The District initially sent a Notice of Violation to the Respondents, who contested the allegations. An administrative hearing was conducted by Scott D. Majors, a hearing officer with the Division of Administrative Hearings, Office of the Attorney General, on May 17 and 18, 2006. On October 5, 2006, the hearing officer issued his Findings of Facts, Conclusions of Law, and Recommended Order (Report). The Report affirmed the allegations contained in the District's Petition for Administrative Hearing, and adjudged the Respondents jointly liable for a civil penalty of \$57,000.

Ms. Anderson explained that KRS 77.310 provides that any party who disagrees with the Hearing Officer's Report may file exceptions. No exception was filed by any of the three Respondents or the District. Ms. Anderson further explained that KRS 77.310 provides that the Board shall consider the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order, along with any exceptions filed, and decide the case. Ms. Anderson said that the attorney for the Respondents would be given the same opportunity as the District's attorney to address the Board regarding this case.

Ms. Anderson recommended that the Board decide the case by adopting the Hearing Officer's Report.

Statements

Mr. Schuyler Olt, Attorney, stated that he represented two of the Respondents, Elder

Construction and Yana Elder Co. He stated that he no longer represented Fred Radcliffe, Jr. Mr. Olt said that he did not receive, or at least did not review, the Report. However, he acknowledged that he had received, from the District, notice of the present hearing on the Report six days previously. He admitted that he did not file a brief or exceptions on behalf of his clients. Mr. Olt said that his clients do not contest the fact that they disturbed asbestos, as found in the Report, but disagree with the extent of their responsibility and the penalty. Because he had not previously looked at the Report, Mr. Olt asked the Board to postpone action on the Report until the January 2007 Board meeting, which would allow him additional time to review the Report and proposed Order, confer with his clients, and address the Board.

Ms. Anderson pointed out that Mr. Olt had never formally withdrawn his representation of Respondent Fred Radcliffe, Jr. Ms. Anderson recommended that the Board not delay the matter by agreeing to Mr. Olt's request for a continuance because the record is officially closed and Mr. Olt, having not filed exceptions, may not bring up new arguments or evidence. She said that Mr. Olt does have one last option, which is to appeal the matter to the Jefferson Circuit Court.

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

Mr. Trout explained that the three regulations being proposed for amendment are related to the STAR Program. The STAR Implementation Advisory Group has begun a process to review STAR Program issues. Because some of these issues relate to the demonstrations of environmental acceptability that are required to be submitted by December 31, 2006, the District drafted regulation changes to address those issues. Mr. Trout said that written comments were submitted by Altugas (formerly Arkema), American Lung Association of Kentucky, Kentucky Resources Council, Greater Louisville Inc. (GLI), Rubbertown Emergency Action (REACT), and Ford Motor Company.

Mr. Trout explained that the amendments to Regulation 5.01 (1) clarify the applicability of the de minimis provision for information from a Material Safety Data Sheet, (2) update the Internet URL references, (3) add a de minimis provision for emissions from the combustion of natural gas, and (4) make minor changes for clarification or consistency. Mr. Trout said that the District does not intend to request that the Board take action at today's Board meeting.

Statements

Mr. Wallace McMullen, a member of the Sierra Club, said that he has concern about the Material Safety Data Sheet (MSDS) de minimis provision of section 1.6.1. Using the example of coal, he said that if a company uses a large enough volume of a mixture, exempting 1% of any individual toxic chemical in that mixture would result in a lot of that chemical being exempted.

3. Regulation 5.21 *Environmental Acceptability for Toxic Air Contaminants*, Version #2, Draft #6 - Proposed, dated November 8, 2006.

Mr. Trout explained that the amendments to Regulation 5.21 (1) modify the definition of "best available technology for toxics" (T-BAT) to include the phrase "and other costs" following the phrase "taking into account energy, environmental, and economic impacts," (2) modify the

definition of “industrial property” to include a solid waste landfill, railroad switch yard, and public airport, (3) specifically allow the results of an EPA-approved human exposure model to be used, and require the District to consider, in a request for modification of an environmental acceptability (EA) goal, the results of an EPA-approved human exposure model, (4) revise the timeframe for re-evaluating an approved T-BAT determination, (5) revise the timeframe for requiring the implementation of a revised element of T-BAT, (6) provide an opportunity for public review and comment on construction permit applications for which the 5.0 tons-per-year de minimis provision for surface coating processes is applicable, (7) provide an opportunity for public review and comment on all submitted demonstrations of EA and for the District’s determination of the approvability of the demonstration of compliance with the EA goals, (8) assess the cost of providing notice of the opportunity for public review and comment to the owner or operator of the stationary source, and (9) make minor changes for clarification or consistency. Mr. Trout said that the District does not intend to request that the Board take action at today’s Board meeting.

Statements

Ms. Eboni Neal Cochran, REACT, commented that although the STAR Program was adopted in 2005, many of the issues have remained the same for residents living near the chemical plants; odors are still present and residents still suffer from related illnesses. They have not seen the results of the July 2006 air monitoring. Ms. Cochran asked the Board to make decisions that are meaningful to residents of Rubbertown, to install monitors in additional areas, consider changing the time of the STAR Implementation Advisory Group meetings to evenings to enable residents to attend the meetings, and consider hiring a third-shift compliance officer. In closing, Ms. Cochran asked the District to be diligent in resolving the concerns West End residents have with the Rubbertown businesses. Regarding the proposed changes to Regulation 5.21, she supported the increased opportunities for public participation and requested that the materials developed for the public be geared toward the residents, most of whom do not have chemistry degrees or access to experts. She said that any changes to the STAR Program should be made to protect human health.

Ms. Sarah Lynn Cunningham, Kentucky Resources Council, supported expanded public notification and opportunities for public comment.

Mr. Steve Samuels, REACT, asked the District why there have not been any changes since STAR was implemented and whether the District was aware of the status of Arnita Gadson’s position at the West Jefferson County Community Task Force. Mr. Williams responded that Ms. Gadson’s position is funded through June 2007. Mr. Samuels asked whether Zeon Chemicals was fined for the 1,3-butadiene spill. Mr. Williams responded he was not aware whether Zeon had been assessed a fine. Mr. Samuels asked the District whether it was possible for Rubbertown businesses to notify residents of spills in a timely manner.

4. Regulation 5.22 Determining the Maximum Ambient Concentration of a Toxic Air Contaminant, Version #2, Draft #2 - Proposed, dated October 1, 2006

Mr. Trout explained that the amendments to Regulation 5.22 change the meteorological data set used for Tier 4 modeling from five, single-year meteorological data sets, with a calculated arithmetic mean of the five resulting maximum ambient concentrations, to a single, continuous 5-year meteorological data set, with the maximum concentration derived by the model. Mr. Trout said that the District does not intend to request that the Board take action at today's Board meeting.

Statements

Mr. Dennis Conniff, Greater Louisville, Inc., Air Toxics Task Force, commented on all three regulations. He said that the STAR Implementation Advisory Group had reached consensus on most, but not all, of the proposed amendments. The Air Toxics Task Force supports some of the proposed amendments but opposes some. He gave a summary of the written comments submitted by the Air Toxics Task Force. He added that in section 1.6.1.1 of Regulation 5.01, the added word "only" should be deleted.

Ms. Regina Henry, Cemex-Kosmos Cement, commented on two definitions in the proposed amended regulations. In Regulation 5.01, section 1.6.1, she said that the de minimis provision should include all products for which a Material Safety Data Sheet is required, not just purchased products. She said that the proposed new section 1.6.1.2 should be removed. She also agreed with GLI's suggested changes to the definition of "industrial property" to include all landfills, all rail lines, and loading and unloading dock facilities on the Ohio River.

Adjournment

The public hearing adjourned at 11:31 a.m.

Mike Howard
Vice-Chairman

Jonathan L. Trout
Secretary-Treasurer