

**Public Hearing Minutes
of the
Louisville Metro Air Pollution Control Board
June 15, 2011**

A public hearing of the Louisville Metro Air Pollution Control Board was called to order on June 15, 2011, at 9:30 a.m. in the Board Room of the Louisville Metro Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky, by the Chairman, Dr. Robert Powell.

General Statement, Rules and Purpose

The Chairman read the opening announcements, rules and purpose of the Public Hearing which was to review two Agreed Board Orders and eight amended regulations.

1. Proposed Agreed Board Order with Gaylor, Inc.

Ms. Terri Phelps, District Enforcement Manager, said the District alleged that Gaylor, Inc. violated District Regulation 5.04, asbestos requirements for demolition and renovation, and required the company to pay an administrative penalty. The company agreed to the terms of the order.

Ms. Phelps said in February 2011, the Board adopted an Agreed Board Order alleging that the University of Louisville had allowed lighting contractors to remove light fixtures that contained asbestos insulated wiring from two or more buildings on campus before the University had inspected and tested for the presence of asbestos. Gaylor was one of the two lighting contractors that removed fixtures before thoroughly inspecting for asbestos. The District notified a second lighting sub-contractor of the allegations, and expects to reach an agreement with the company in the next month.

Ms. Phelps said the District and Gaylor, Inc. agreed to a penalty of \$15,000 to resolve the case. She said the District would recommend that the Board adopt the agreed Board Order as proposed.

2. Proposed Agreed Board Order with Nuplex Resins, LLC

Ms. Phelps said the District alleged that Nuplex Resins, LLC, violated District regulations and directed the company to pay an administrative penalty and to take correction action. The company agreed to the terms of the order.

Ms. Phelps said Nuplex Resins operates a resin manufacturing plant pursuant to a District Title V operating permit and District regulations. The District alleged that the company failed to control objectionable odors from its facility and to report excess odors emitted from the plant.

Ms. Phelps said the company agreed to pay an administrative penalty of \$12,000 to settle the objectionable odor and reporting allegations. The company has also agreed to contract with an independent consultant to conduct a study of sources of odor from the facility and recommend actions the company can take to reduce odors. The District will recommend adoption by the Board of the Agreed Board Order as proposed.

STAR Regulations

Ms. Lauren Anderson, Executive Director, said the series of eight amended regulations was similar to the packet of STAR regulations discussed in May 2009 when the District presented them to the Board

and the public in an advance notice of proposed rulemaking on STAR. Ms. Anderson said there were a series of proposed changes. Ms. Anderson said an advisory group convened in the Spring of 2009 and, based on their recommendations, the District issued an advance notice of a proposed rulemaking. A series of amendments were proposed in March 2010 for informal comment. The District responded to the informal comments, made some changes to the regulations and released the revised amendments for formal comment in November 2010. The District responded to the formal comments, made some additional changes to the regulations and presented the current proposed amendments to the Board at the May 2011 Board meeting.

3. Regulation 1.02 *Definitions, Version 12 – Proposed, May 20, 2011*

Ms. Anderson said Regulation 1.02 was the District's general definition regulation. She said changes were made primarily to organize the definitions such that definitions used solely for the STAR program were moved to a new regulation. The District also clarified the term "stationary source, and updated the definition of "volatile organic compound" to be consistent with the EPA definition.

4. Regulation 5.00 *Definitions (Standards for Toxic Air Contaminants and Hazardous Air Pollutants), Version 1 – Proposed, May 20, 2011*

Ms. Anderson said Regulation 5.00 was a new regulation that consolidated definitions used solely in the STAR Program in Regulations 1.02, 5.01 and 5.21 into one new regulation. She said there were three major changes: (1) clarifying the definition of an "exempt stationery source" to define those dry cleaners that are exempt under the STAR program; (2) defining "Group 2 source" to delete sources with actual emissions of 25 tons per year; and (3) revising the definition of "new or modified process or process equipment" to be consistent with the District's interpretation.

5. Regulation 5.01 *General Provisions (Standards for Toxic Air Contaminants and Hazardous Air Pollutants), Version 7 – Proposed, November 17, 2010*

Ms. Anderson said Regulation 5.01 contained several definitions related to STAR that were moved to Regulation 5.00. This was the only major change. The general duty clause in Section 1 remains the focal point of the regulation and provides the District with the authority to address any process or process equipment that might emit a toxic air contaminant (TAC) in an amount or duration that is not protective of public health and the environment.

Public Comment

Mr. Tom FitzGerald of Kentucky Resources Council (KRC) said he understood the District's intent was not to change the general duty obligation under Regulation 5.01. However, he was concerned that the general duty clause, as originally adopted, applied to both TACs and hazardous air pollutants (HAPs.) The caption of Regulation 5.01, for example, identifies standards for both substances; however, the term "hazardous air pollutant" or "HAP" was deleted from the applicability section that preceded the general duty clause. Mr. FitzGerald said the District had indicated in its response to informal comments that the general duty continued to apply to both TACs and HAPs. Even so, it was unclear whether HAPS are TACs. To avoid any ambiguity, Mr. Fitzgerald urged the Board to include a specific reference to HAPS in the final regulation on the basis that "HAPs" was defined more broadly than "TACs".

6. Regulation 5.11 *Standards of Performance for Existing Processes and Process Equipment Emitting Toxic Air Pollutants, Version 4 – Proposed, November 17, 2010* and Regulation 5.12 *Standards of Performance for New or Modified Processes or Process Equipment Emitting Toxic Air Pollutants, Version 4 – Proposed, November 17, 2010*

Ms. Anderson said the Regulation 5.11, which applies to process and process equipment that was in place before 1986, and Regulation 5.12, which has not been applied to any new or modified source since 2005, were the District's former air toxics program. This former program was essentially ineffective and was the reason why a more stringent risk based toxic program, like the STAR Program, was necessary. The District proposed repealing any standards under Regulations 5.11 or 5.12, except those applicable to Category 1 and 2 TACs emitted by Group 1 and 2 sources. Those standards will not be repealed until replaced by a standard under the STAR Program.

7. Regulation 5.20 Methodology for Determining Benchmark Ambient Concentration of a Toxic Air Contaminant, Version 3 – Proposed May 20, 2011

Ms. Anderson said the major amendment to Regulation 5.20 provides a mechanism for determining that a particular TAC is not a carcinogen for the purpose of the STAR program. The District received several informal comments expressing concerns about the District making the decisions on its own and without adequate public review. Ms. Anderson said the proposed amendments for Regulation 5.20 would allow the Board, through rulemaking, to determine when a TAC is not a carcinogen. The District believes the change between the informal draft and the proposed draft provides important procedural safeguards and allows the District or a member of the public to propose that a particular TAC not be regulated as a carcinogen as a part of a rulemaking process. Ms. Anderson said the changes were made to provide for some necessary flexibility in the STAR program.

Public Comment

Mr. Tom FitzGerald, KRC, expressed concern that the proposed amendments to the regulation did not contain a standard to govern the Board's decision on whether to de-list a carcinogen since it provides that "notwithstanding any provision of Section 2.1, the Board may through rulemaking approve that a TAC is not a carcinogen for purposes of determining the BAC." He said that discretion should be bound in some manner so that if the Board proposed to take action in the future, it would be because there was a conflict among the entities listed in the regulation rather than saying more broadly that the Board could independently determine that, notwithstanding the fact that all of the agencies had listed something as a carcinogen, a TAC was not a carcinogen. KRC suggested that approval of Regulation 5.20 be deferred and that the language be revised to prevent such independent determinations.

Ms. Carolyn Embry of the American Lung Association (ALA) and a former Board member who served when the STAR program was passed, expressed concerns similar to those raised by KRC. In particular, while noting that her concerns were reflected in other general comments she planned to provide, Ms. Embry noted that changes made in Regulation 5.20, Section 2.3 give the Board a wider discretion in de-listing a carcinogen than may be advisable and may have unintended consequences or may be more far reaching than the Board intended. For that reason, some parameters should be built into the regulation for determining that a TAC is a non-carcinogen as opposed to simply relying on a study or a series of study that might be presented during a hearing process.

Mr. Jonathan Trout, a Jefferson County resident involved in the initial implementation of the STAR Program and whose spouse works near Rubbertown, expressed confusion with the various versions of the regulation. It was his recollection that the STAR Advisory Committee worked on the process of de-listing ethyl acrylate because everyone who had dealt with it had de-listed it. Mr. Trout said representation on the committee included industry, citizens, environmentalists and District staff. He said language was developed that allowed for the de-listing if the agency had listed a carcinogen, were withdrawing it, or anyone who had dealt with it came to the same conclusion. Mr. Trout didn't think all the agencies had to delist it because it was not likely to happen for several years. Mr. Trout said that

according to the version that was proposed and dated November 17, 2010, he believed the language was in the regulation but should have been deleted. Mr. Trout said the regulation was very focused on the decisions being made by the agency that had listed it since it was in the best position to determine whether a chemical could be called a carcinogen or not. He said the proposed regulation is open-ended and does not rely on any other agencies that have de-listed a chemical. Mr. Trout said every chemical has a support group and could bring their support group in and suggest to the Board that their chemical not be called a carcinogen. According to Mr. Trout, the Board does not have the expertise to make this decision. He said there are experts in the field and companies will bring in an expert to try to convince the Board to de-list a chemical. Mr. Trout gave an example of his experience where an expert said that chloroprene caused cancer in some animals and but not all animals; therefore, you should ignore the fact that it caused cancer in these animals and not call chloroprene a carcinogen. He said he thought it was important that there be a clear understanding and review of who is responsible for technical decisions and decisions the Board could make. Mr. Trout said the District also needed to make sure they had adequate resources to look into the issue and be able to make a scientific decision to de-list a carcinogen, including evaluating peer reviewed scientific evidence. He believes the previous regulation specified a process for de-listing. Mr. Trout said he agreed with Mr. FitzGerald and Ms. Embry that what was being proposed really opened the door for companies to come in without scientific peer review evidence to convince the Board to treat a chemical differently than other experts have.

Mr. Dennis Conniff, representing the Greater Louisville, Inc. Air Quality Task Force (GLI), responded to a comment made by Mr. Trout and addressed the Board to correct any misimpression that might have been raised by Mr. Trout's suggestion that, through one of the prior stakeholder processes, industry had agreed to do something different than what the District proposed in the regulation. Mr. Conniff said that Mr. Trout's suggestion was correct to the extent that they would be willing to agree to anything that would avoid inequity, but the prior version was never industry's preference. Mr. Conniff also responded to a suggestion by another commenter that the Board would act arbitrarily to de-list a carcinogen. He said that time had proven that where the STAR program is involved, the Board had always been very conservative in its approach and that in order for a carcinogen to be de-listed, whether it was the District's proposal based on information that had become available to them or whether it was from a petition from the emitter of the toxic air contaminant, the evidence to support the exemption would have to be virtually overwhelming and non-controversial. Otherwise, he said it was inconceivable to him that the Board would arbitrarily de-list something as a carcinogen. For that reason and in recognition of the high burden that would be involved in de-listing a carcinogen, GLI supports the version of the proposed amendment.

8. Regulation 5.21 *Environmental Acceptability for Toxic Air Contaminants*, Version 6 – Proposed, May 20, 2011

Ms. Anderson said Regulation 5.21 is the heart of the STAR regulation. It contains the environmental acceptability goals for companies to demonstrate their compliance. She said the proposed regulation looks different from the prior version; however, for the most part, the changes are not intended to be substantive, but primarily clarifications. Notable changes include: (1) clarifying the basis on how environmental acceptability can be demonstrated and when a new demonstration would have to be submitted, and the process when best available control technology (T-BAT) would have to be re-evaluated; (2) removing references to the New and Emerging Environmental Technology (NEET) database because EPA no longer supports the database; and (3) eliminating postcard notification requirements to first and second tier land owners when environmental acceptability (EA) demonstrations for nearby Group 1 and 2 sources were administratively complete. This last proposed amendment was based on the District's experience trying to identify first and second tier property owners during the first round of Group 1 sources submitting EA demonstrations for the Category I TACs. The District obtained addresses from the PVA and sent postcards to 1,800 landowners for Group 1 sources. Many of the first

and second tier landowners, especially in the Rubbertown area tended to be other chemical companies or institutional landowners like the Commonwealth of Kentucky, which owns a number of different parcels in the Rubbertown area.

The District is committed to public outreach and communication and works hard to develop other mechanisms for keeping people informed, including maintaining a listserv for anyone who wants to be informed of any actions related to STAR. In addition, Ms. Anderson said any permit actions that are taking at the larger Group 1 sources are public noticed independently of STAR.

Public Comment

KRC raised two issues with Regulation 5.21 unrelated to the postcard change: (1) the allowance of emissions of carcinogens in proposed Sections 2.1.1 and 2.5 as de minimis and (2) discounting the risk of multipliers for carcinogenic and non-carcinogenic risks for industrial properties and roadways. With respect to de minimis emissions, Mr. Fitzgerald stated that, based on the relatively infant state of scientific human toxicology in relation to chronic exposure, there was no safe level of exposure to carcinogens. On that basis, KRC asked that staff be directed in the future to re-evaluate and seek stakeholder input on whether any emission of a carcinogen should be considered de minimis and whether more detailed environmental acceptability analysis for these chemicals is warranted. With respect to the use of multipliers for carcinogenic and non-carcinogenic risks for industrial properties and roadways, KRC remains concerned that the use of multipliers may discount the amount of exposure and risk for workers who live in the community directly affected by air toxic emissions and who work at a plant in the area as well as residents who live in the immediate vicinity of a plant and also traverse public roadways to and from their homes. KRC also expressed concern that there were two areas that inadvertently weaken the protections afforded by Regulation 5.21. The first area, new Section 4, allows “environmental acceptability” to be demonstrated using an emissions standards, uncontrolled potential to emit, or a list of “alternative measures” including actual emissions, limited emissions, controlled potential to emit, or a throughput or production. KRC sought clarification on how the measures would be used. KRC reviewed the District’s comment response document and did not see a response indicating how those other measures would be utilized to determine environmental acceptability or be translated into an enforceable permit condition. The second area concerns demonstrating compliance for Category 3 or 4 TACs using the general duty clause which is Regulation 5.01. In order to opt out of making an environmental acceptability demonstration under the existing regulation, a company had to request staff approval to use an alternative measure. As proposed now, the applicant has the discretion to demonstrate compliance through Regulation 5.21 or to comply with the general duty clause. This is problematic because the general duty clause does not have a generally acceptable methodology and by allowing applicants to simply provide an alternative demonstration, he said staff would increase their workload rather than decrease it. There should be a gatekeeper function that the District uses when an applicant demonstrates compliance with the general duty clause to give substantive meaning to the general narrative and avoid harmful emissions. Accepting public comments alone may not be sufficient.

Ms. Anderson asked Mr. FitzGerald what section in Regulation 5.21 he referred to during his comments. He stated the sections were 5.21 and 4.11.

Ms. Embry, commenting on Regulation 5.21, Section 4, said that the District’s decision to revise the current regulation by removing specific timetables was another example of sacrificing specificity to achieve simplicity. She questioned the need and appropriateness of the proposed change, particularly since things were moved around considerably which made it very difficult to compare changes in the regulation to the former version.

9. Regulation 5.22 Procedures for Determining the Maximum Ambient Concentration of a Toxic Air Contaminant, Version 3 – Proposed, November 17, 2010

Ms. Anderson said Regulation 5.22 establishes the procedures for determining the maximum ambient air concentration of a TAC. The maximum ambient concentration is used with the benchmark concentration to determine environmental acceptability in Regulation 5.21. The District proposed two substantive amendments that (1) clarified the maximum ambient concentration of intermittent emissions and (2) established AERMOD as the preferred dispersion model to be used for Tier 4 demonstrations of environmental acceptability and clarified its use in the regulatory default mode. The preferred model when STAR was passed in 2005 was ISC3 and AERMOD had not been developed at that time. Since then, AERMOD has become a much more developed and sophisticated tool. Ms. Anderson said the District recognized that a number of sources modeled and made their demonstration of environmental acceptability based on ISC3. Therefore, a provision in the regulation allows the use of a model besides AERMOD with approval from the District.

Public Comments

KRC expressed concern about the use of intermittent emissions in Regulation 5.22. Specifically, it was unclear from Section 1.2 what length of time could be used to determine the “average emissions rate” for intermittent emissions and, perhaps more fundamentally, why an average rate -- however measured -- is used to determine the maximum ambient concentration of a toxic air contaminant. As KRC understands it, averaging of emissions to yield a measurement may potentially lower the maximum concentration, particularly if the source is allowed to include periods when the emissions rate is zero due to the intermittent nature of the release. Although the District responded to KRC’s formal comment by stating that “Any measure that is used to demonstrate the environmental acceptability of an emission, including intermittent emissions, is established as a new emission standard and incorporated into the permit for the process of process equipment,” this was true whether based on potential or actual emissions. The fact that it would be incorporated into a permit was not the issue but why was an averaging being used and what period is being averaged when the regulation requires a source to determine the maximum concentration of intermittent pollutants. Again, KRC requested that final action be deferred in order allow staff to consider and provide specific responses to that concern.

General Comments

GLI supports the proposed amendments to the STAR program. The task force believes that, within the proposed amendments, the District has committed to what it proposed to do during the STAR Advisory Group process. Importantly, the proposed amendments improve the STAR program in some significant ways, make the STAR program regulations easier to read and understand, and provide needed clarity regarding the application process of certain provisions. For example, the District clarified when a new environmental acceptability demonstration is required and when an existing facility must consider Category 3 and 4 toxic air contaminants in an environmental acceptability demonstration. This has been one the Task Force’s major concerns of when it did and did not apply. The amendments also allow for operational flexibility. For example, the proposed amendments will also allow changes in raw materials to be made without prior notice to the District under certain circumstances provided that the STAR program goals are not exceeded due to the change. He said flexibility is essential for industries that are competing in a global market.

GLI also believes that it is important to state that there were certain things that the amendments do not do. The proposed amendments do not alter or weaken the STAR program goals and standards. They also do not correct the scientific or technical deficiencies that the task force had identified in previous comments during the development of the STAR program. In particular, the amendments continue to

retain the arbitrary default values for calculating a benchmark ambient concentration for TACs that did not have URE or reference dose. GLI is also disappointed that certain things were not done as part of the amendments, including the completion of the District's list of benchmark ambient concentrations and de minimis values for all Category 4 TACs. The District had not amended the list of hazardous air pollutants to conform to the Federal Clean Air Act HAP list --- something which GLI has requested for the past seven years. These are matters that should be addressed. Finally, GLI hopes that the Board would note that the most significant improvement in air quality related to TACs had not been the result of the STAR program but resulted from the voluntary agreements to reduce 1,3-butadiene emissions that were made in the Fall of 2003, proposed to the Board in a Board Order in March 2004, approved by the Board as an enforceable Board Order in May 2004 --- all well before the STAR program was first proposed in September 2004 --- and due to the closure of the DuPont facility, which was the sole source emitter of chloroprene. GLI hopes that the Board recognizes that future improvements of air quality must take into consideration reductions in emissions of TACs from mobile sources. On behalf of GLI, Mr. Conniff asked that the Board approve the proposed amendments to the STAR program.

KRC, a non-profit environmental advocacy organization provides legal and technical assistance without charge to low-income individuals, community groups and, in some cases the local government, on a range of environmental and energy related issues. Its membership includes numerous individuals who are directly affected by emissions of air toxics into the Metro Louisville area and who have a direct and significant interest in the full implementation of the STAR program. KRC is very appreciative of the efforts of the Board and very dedicated District staff to administer and implement a program that most are aware has been identified by the General Accounting Office, the research arm of Congress, as a model program for addressing air toxics through a combination of technology and risk based strategies to reduce emissions and exposure to airborne hazardous compounds. As the proposed STAR amendments are reviewed, everyone is mindful that in the implementation of any regulatory program, there are changes that may be made as the program unfolds to reduce regulatory burden where there is no commensurate health benefits. There is no inherent right on the part of any emitter to utilize the public air to disperse and dispose of hazardous emissions. KRC has reviewed and participated in both the informal and formal proposed regulations, provided two sets of comments on the changes and many of its concerns have been addressed in the regulations. He said the council appreciated the revisions, diligence and thoughtful manner in which staff had approached making changes to the STAR program. However, for the reasons outlined earlier, KRC recommended that the Board defer approval of Regulations 5.01, 5.20, 5.21 and 5.22, and give further consideration to the comments that were submitted on the regulations.

As the nation's oldest non-profit health charity, the ALA has a longstanding interest and history of advocacy for strong clean air laws and regulations at all levels of government that protect the public from harmful air contaminants. The ALA considers the STAR program to be the District's crowning achievement over the past several decades. STAR was passed unanimously by the Board after a year and a half spent soliciting public comments, holding over 50 public meetings, conducting formal public hearings, and revising the regulations to address concerns raised by the regulated community and the public. Ms. Embry said it was considered, as Mr. FitzGerald said, a model program across the nation and in 2006 received the Environmental Protection Agency "Clean Air Excellence Award," an outstanding honor for the program, District and the Board. She said it was gratifying to witness major reductions in toxic air emissions that were achieved through STAR regulations, including lifesaving reductions and less illness and fewer deaths that were the result of the actions taken by the Board and the controls installed by the regulated community. By its very nature, the STAR program is a uniquely complex package of regulations and it is understandable that some minor changes to the regulatory language might be beneficial to simplify or clarify the existing language. However, the level of detail in the original package was intentional to ensure that the regulations were sufficiently comprehensive and flexible while providing a degree of certainty to the regulated entities.

The ALA commended the Board for its continued commitment to the STAR Program and was reassured knowing that the District was not intentionally proposing to make substantive changes to the regulations, amend the applicability of the general duty clause, change substantive requirements or alter the schedule for reductions in certain proposed language changes. However, the ALA remained concerned that the District's efforts may have more far reaching effects than intended. The ALA agrees with the comments made by Mr. FitzGerald that the regulations be deferred for action until a future meeting. As a former member of the Board, Ms. Embry adamantly believes that the Board should not take action on regulations on the same morning that the public hearing was held unless there were no comments on a given regulation and no controversy surrounding it. As a result, the Board should give more time to review the merits of some of the comments and take a second look at what the implications may be if some of the changes have unintentional consequences.

Finally, the May 20, 2011 Response to Comment document alludes in several places to future revisions of the STAR program. While there certainly may be justification for reopening the STAR program at another date when there is new science or new information that the Board might want to consider, the ALA urges the Board to avoid continually tinkering with this nationally acclaimed air toxics program that is making a tremendous contribution to the health and wellbeing of the citizenry.

Mr. Jonathan Trout expressed concern about Mr. Conniff's statement that the amendment relating to de-listing wasn't what industry wanted. Mr. Trout said he wanted to make sure that those members who were not on the Board at the time when STAR was adopted understood that the STAR program contained hundreds of compromises and it wasn't what anyone wanted, but everything that everybody could agree upon. According to Mr. Trout, the regulations are complicated because there is a lot of flexibility built into the provisions. Given the fact the regulations are complicated, a reasonable question is: has the process worked? Mr. Trout expressed his understanding that the Title V companies are, for the most part, in compliance with the STAR program for Categories 1 and 2. This demonstrates that the regulations are very successful and that the regulations work because people understand them to the point where they are in compliance and fulfilling all of their obligations. Mr. Trout said the District sponsored a number of workshops with the Title V companies and their consultants to ensure that the program worked.

Mr. Trout said the Board had delayed implementation of the STAR Program for the FEDOOP synthetic minor sources possibly because these sources couldn't understand the regulations. He was not aware of any workshops that the District had held for the FEDOOP companies. The District has an obligation to implement the regulations and ensure that sources are able to comply with them. Mr. Trout said the District may have intended to simplify the regulations, but what happened was the wording was simplified to the point that it has impacted the substantive requirements of the program. Mr. Trout gave some examples of the wording changes that were simplified that may affect enforcement of the program.

Adjournment

The public hearing adjourned at 10:52 a.m.

Robert W. Powell, M.D.
Chairman

Rachael Hamilton
Secretary-Treasurer

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