

**Minutes
Regular Meeting
of the
Louisville Metro Air Pollution Control Board
June 15, 2011**

The regular meeting of the Louisville Metro Air Pollution Control Board was called to order on June 15, 2011, at 11:01 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. Other Board members present were Dr. Nadir Al-Shami, Mr. Ronald Thomas, Ms. Bonnie Biemer, Mr. Steve Thomas and Mr. Bill Jacob. A quorum was present.

The following Louisville Metro Air Pollution Control District staff members were present: Lauren Anderson, Rachael Hamilton, Cynthia Lee, Eva Addison, Matt King, Michelle King, Karen Thorne, Steven Gravatte, Steve Taylor, Rick Williams, Colette McConville, Starlet Raj, Diane Hazellief, Hannah Byland, Dee Lynch, and Monica Little. Also present were Assistant County Attorney Stacy Fritze Dott and County Attorney staff member Tammy Brown.

The following guests were present: Paul Bowe, Marcus Paint; Jim Bruggers, The Courier-Journal; Dennis Conniff, GLI Air Quality Task Force; Tim Corrigan, GLI; Brad Dillon, GD&M; Carolyn Embry, American Lung Association; Stephanie Fares, Cane Run Neighborhood Association; Tom FitzGerald, Kentucky Resources Council; Jeffrey Frazier, Gaylor, Inc.; Paul Howard, Terracon; Joan Lindop, Sierra Club; Kathy Little, Cane Run Neighborhood Association; Wallace McMullen, Greater Louisville Sierra Club; Sarah Scheetz, LG&E; Paige Mosser Theriac, Theriac Environmental Consultants, Inc.; Jonathan Trout, resident; Debbie Walker, Cane Run Neighborhood Association; and Mike Wright, Nuplex Resins, LLC.

Introductions

Ms. Anderson introduced Hannah Byland, a new Compliance Officer in the District's Enforcement department.

Approval of Minutes

The minutes of the regular Board meeting held on May 18, 2011, were approved as written.

Public Comments

Mr. Wallace McMullen, an officer with the Greater Louisville Sierra Club, said he was involved with residents who live near the LG&E Cane Run power plant where coal ash was being emitted. He suggested that the Board request District staff to prioritize completing a draft of a new permit for the LG&E Cane Run plant because the most recent permit expired in 2007. Mr. McMullen also suggested that the Board schedule a public hearing in the Cane Run neighborhood for residents that live near the LG&E power plant.

Ms. Kathy Little, a resident who lives near the Cane Run power plant, expressed her concern that the fugitive fly coal ash emitted from the LG&E power plant is affecting the health of neighborhood children. Ms. Little stated two of her neighbors were in attendance at the Board meeting and were knowledgeable about medical issues that affect children because of the magnitude of the fugitive coal ash. She reviewed the progress of analyzing samples that were taken from her home by the District and LG&E. Ms. Little

asked the District if they would require LG&E to confirm in a written report the results of the samples and to develop a plan to address the issues. Also, Ms. Little said the residents wanted to know the chemical breakdown of the samples.

Ms. Stephanie Fares, a registered nurse and resident who lives one-third of a mile from the LG&E Cane Run power plant, said she moved into the neighborhood and was not aware or familiar with coal ash but began noticing problems with the interior and exterior of her home. On behalf of a neighbor, Stephanie Hogan, who could not attend the meeting, Ms. Fares read a letter that expressed Ms. Hogan's concerns with the emissions from the Cane Run facility and the effect it has had on her two year old son who was healthy at four months of age when she moved into the neighborhood.

Mr. Jeffrey Frazier, Vice-President of Gaylor, Inc., said the company did not deny their involvement and were partially responsible for the asbestos incident at the University of Louisville. Mr. Frazier said before Gaylor paid the fine, he wanted to discuss the company's role in the project at the University of Louisville and said there were some mitigating circumstances that occurred in March 2010. He said a year later, Gaylor was informed of the violation but the company could not provide documentation on their role in the asbestos project. Mr. Frazier asked the Board to reduce Gaylor's penalty.

New Business

A. Proposed Agreed Board Order with Gaylor, Inc.

Ms. Terri Phelps, Enforcement Manager, said the District recommended that the Board adopt the Agreed Board Order with Gaylor, Inc., as proposed. She said the District and Gaylor, Inc. agreed to a penalty of \$15,000 to resolve the case.

Discussion

Ms. Biemer asked staff if they had wanted to comment on the statements made by Mr. Frazier. Ms. Phelps stated the \$15,000 penalty for the type of violation that was committed by Gaylor was at the lowest tier of an asbestos violation. She said an important fact for the District was the company should have conducted a thorough inspection for the presence of asbestos before beginning the project. Also, she said Gaylor should have requested written documentation that asbestos was not present before they started work on the project.

Mr. Ron Thomas asked Mr. Frazier why Gaylor signed the Agreed Board Order. Mr. Frazier said the company did not have another alternative because they did not receive cooperation from other companies involved in the project and could not retrieve any written documentation. Ms. Phelps said the University of Louisville admitted that they did not conduct a survey before the work was started and did not give approval for the project to start.

Motion: Mr. Ron Thomas moved to adopt the Agreed Board Order with Gaylor, Inc., as proposed.

The motion passed unanimously.

B. Proposed Agreed Board Order with Nuplex Resins, LLC

Ms. Phelps said the District recommended that the Board adopt the Agreed Board Order with

Nuplex Resins, LLC, as proposed.

Motion: Mr. Jacob moved to adopt the Agreed Board Order with Nuplex Resins, LLC as proposed.

The motion passed unanimously.

C. Air Quality Trust Fund

Ms. Rachael Hamilton, Secretary-Treasurer, reported that KRS Chapter 77 requires the District to provide an update at each June Board meeting on the funds available in the Air Quality Trust Fund (AQTF.) Ms. Hamilton said the Board received a six month report in January 2011 as a follow-up to their authorization in February 2010 to spend up to \$30,000 for new equipment at the Cannons Lane Air Monitoring Station (CLAMS.) She reported that \$17,859.80 was spent on the CLAMS project and \$344.11 was earned in interest. Ms. Hamilton apologized for not providing a written report with the actual balance in the AQTF and said she would send the Board a report via electronic mail.

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

Dr. Powell stated that there were no comments relative to Regulation 1.02.

Ms. Anderson said the District recommended that the Board adopt Regulation 1.02 *Definitions*, Version 12, as proposed.

Motion: Mr. Jacob moved to adopt Regulation 1.02 *Definitions*, Version 12, as proposed.

The motion passed unanimously.

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

Dr. Powell stated that Jon Trout did offer comments relative to Regulation 5.00.

Ms. Anderson said the District recommended that the Board adopt Regulation 5.00 *Definitions*, Version 1, as proposed.

Motion: Ms. Biemer moved to adopt Regulation 5.00 *Definitions (Standards for Toxic Air Contaminants and Hazardous Air Pollutants)*, Version 1, as proposed.

The motion passed unanimously.

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

Dr. Powell reminded the Board that during the public hearing, commenter's had recommended some changes because they had concerns about Regulation 5.01, specifically about the term "hazardous air pollutants." He said the Board had the option to either adopt or table approval of the regulation.

Ms. Anderson said the District recommended that the Board adopt Regulation 5.01 *General Provisions (Standards for Toxic Air Contaminants and Hazardous Air Pollutants)*, Version 7, as proposed, and stated she would explain the District's position if a motion was made to discuss.

Motion: Ms. Biemer moved to adopt Regulation 5.01 *General Provisions (Standards for Toxic Air Contaminants and Hazardous Air Pollutants)*, Version 7, as proposed.

Discussion

Dr. Al-Shami stated that the word "carcinogens" should not be deleted from the regulation because it has not been proven that any type of chemical is not a carcinogen.

Ms. Anderson explained that the removal of the word "carcinogen" was not an issue in Regulation 5.01. She believed that Mr. FitzGerald's concern was the general duty clause in Regulation 5.01 related to the "owner/operator of the process or process equipment from which toxic air contaminant is or may be emitted must provide the upmost care and consideration, etc." Ms. Anderson said Mr. FitzGerald had stated that it could say "toxic air contaminants" or "hazardous air pollutants." His concern was that toxic air contaminants (TACs) and hazardous air pollutants (HAPs) are different and not that the District is being under inclusive by not including HAPs. In fact, Ms. Anderson stated a HAP is defined in Regulation 1.02 as something that is listed in Regulation 5.14 pursuant to Section 112 of the Clean Air Act as a finite list of chemicals. She said a TAC's very inclusive definition includes any air contaminant for which there is no national ambient air quality standard that is or may become harmful to public health or the environment when present in sufficient quantities and duration in the ambient air. Ms. Anderson said the definition had not changed from the prior definition and was inclusive enough to encompass every HAP, particularly since all of the HAPs are listed in Regulation 5.22 as TACs. She said that everything that was not in Category 1, 2 or 3 had been picked up in Category 4 TACs.

Ms. Anderson said the reason the District did not change the response to the comment that Mr. FitzGerald made during the comment period was because toxic air contaminants does include all of the HAPs. After Ms. Anderson's explanation of the comment, she said it was the Board's decision to delay adopting the regulations but felt Regulation 5.01 should not be controversial.

After discussion of Regulation 5.01, Ms. Anderson again stated the District recommended that the Board adopt Regulation 5.01, as proposed.

All approved. The motion passed unanimously.

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

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

Dr. Powell stated that there were no comments relative to Regulations 5.11 and 5.12.

Ms. Anderson said the District recommended that the Board adopt amended Regulation 5.11 *Standards of Performance for Existing Processes and Process Equipment Emitting Toxic Air Pollutants*, Version 4 and 5.12 *Standards of Performance for New or Modified Processes or Process Equipment Emitting Toxic Air Pollutants*, Version 4, as proposed.

Motion: Mr. Ron Thomas moved to adopt Regulation 5.11 *Standards of Performance for Existing Processes and Process Equipment Emitting Toxic Air Pollutants*, Version 4 and 5.12 *Standards of Performance for New or Modified Processes or Process Equipment Emitting Toxic Air Pollutants*, Version 4, as proposed.

The motion passed unanimously.

- I. Regulation 5.20 Methodology for Determining Benchmark Ambient Concentration of a Toxic Air Contaminant, Version 3 – Proposed May 20, 2011**
- J. Regulation 5.21 Environmental Acceptability for Toxic Air Contaminants, Version 6 – Proposed, May 20, 2011**
- K. Regulation 5.22 Procedures for Determining the Maximum Ambient Concentration of a Toxic Air Contaminant, Version 3 – Proposed, November 17, 2010**

Dr. Powell stated there were several comments relative to Regulations 5.20, 5.21, and 5.22.

Ms. Anderson said the District recommended that Regulations 5.20, 5.21, and 5.22 be tabled and discussed as unfinished business at the July 2011 Board meeting.

Motion: Mr. Ron Thomas moved to accept the District's recommendation to table the approval of Regulation 5.20, 5.21, and 5.22 until the July 2011 Board meeting.

The motion passed unanimously.

Staff Reports

A. Director

Ms. Anderson responded to comments made at the June 15, 2011 public hearing from concerned residents who live near the LG&E Cane Run power plant. She explained the process the District had taken to investigate and obtain an analysis of the fly ash emissions at the Cane Run power plant. She said the District's permitting staff met recently with LG&E representatives to discuss two permit applications. Ms. Anderson reported that LG&E said in order for them to comply with permit requirements they will demolish and rebuild the Mill Creek power plant and will discontinue the use of coal burning units at the Cane Run power plant which will be phased out over a two year period. As a result, the source of the coal ash emissions at Cane Run will be phased out.

Ms. Anderson provided an update on the District's request for attainment of the National Ambient Air Quality Standard. She said that the District expects Jefferson County to be designated in non-attainment of the sulfur dioxide standard, but EPA has one year to make a final decision on the designation.

B. Air Quality Data

Dr. Powell reported the community experienced exceedances in June 2011 of the 8-hour ozone standard.

The air quality monitoring report was submitted for filing. A copy is attached to the original minutes.

C. Enforcement Status Report

The enforcement report was submitted for filing. A copy is attached to the original minutes.

D. Excess Emission Report

The May 2011 Excess Emission Report was submitted for filing. A copy is attached to the original minutes.

E. Permitting Backlog Report

The permitting backlog report was submitted for filing. A copy is attached to the original minutes.

Next Meeting

The next regular Board meeting is scheduled Wednesday, July 20, 2011, at 10:00 a.m. (Note: This was later rescheduled for 9:30 am to account for the unfinished STAR regulations.)

Adjourn

The meeting was adjourned at 11:50 a.m.

Robert W. Powell, M.D.
Chairman

Rachael Hamilton
Secretary-Treasurer