

ENVIRONMENTAL REVIEW ADVISORY COUNCIL
March 18, 2020

A meeting of the Environmental Review Advisory Council was called to order by Dave Glatt, Office of the Director with the North Dakota Department of Environmental Quality at 9:30 a.m. on Wednesday, March 18, 2020 at the Gold Seal Center, 4th Floor, Bismarck, ND.

Members Present:

Randy Hanson, Waste Management Industry (teleconference)
Randy Binegar, Liquid & Gas Fuels Industry
Tom DeSutter, Agronomy & Soil Sciences (teleconference)
Terry Steinwand, Game & Fish-statute (ex-officio)
Terry O'Clair, Environmental Sciences (teleconference)
Dan Wogsland, Corp Agriculture (teleconference)
Steve Dale, County or Municipal Government (teleconference)
Ed Murphy, State Geologist-statute (ex-officio) (teleconference)
Garland Eberle, State Engineer-statute (ex-officio) (teleconference)
Julie Ellingson, Livestock Industry (teleconference)
Jessica Unruh (teleconference), Solid Fuels Industry (teleconference)
Greg Allen, Manufacturing or Agricultural Processing (teleconference)

Staff Members Present:

Dave Glatt, Director, Office of the Director
Jim Semerad, Air Quality
Chuck Hyatt, Waste Management
David Bruschwein, Municipal Facilities
Jim Quanstrom, Chemistry
Tom Bachman, Air Quality
Craig Thorstenson, Air Quality
Cindy Aune, Chemistry
Dale Patrick, Radiation
Maggie Olson, Ass't. Att. General
Carolyn Kvislen, Office of the Director
Beth Jacobson, Office of the Director

WELCOME

Dave Glatt opened the meeting. Dave stated that with the current COVID-19 situation that there was a new agenda that went out which was a shortened version. He relayed that the Department is continuing business as usual but under different circumstances. Carolyn Kvislen conducted roll call before the meeting began. Other members discussed shortly what their industry or organization is doing while under different circumstances and outcomes from COVID-19.

ABOVE-GROUND STORAGE TANK RULES UPDATE

Dave Glatt opened up the discussion with noting that there are no above-ground storage tank regulations for the state. He stated that North Dakota is one of the few states that did not have regulations as part of the legislation last session.

Duane Sandvick talked about the updates to the Petroleum Tank Program. Significant Changes were made to the Petroleum Tank Release Compensation Fund proposed rules released for public comment on December 19, 2019. The changes were based on emailed written comments received through February 18, 2020 and the testimony offered by three individuals at the public hearing held February 6, 2020 at 10:30 am in the Environmental training center in Bismarck, ND.

Public comments made by individuals or organizations have been used to make modifications to the original proposed administrative rules Chapter 33.1-12-01.

SIGNIFICANT CHANGES

In NDAC Section 33.1-12-01-03.(5) there were language changes made to parts c, d and e from the original administrative rules document released for public comment.

In NDAC Section 33.1-12-01-03.(9) tables 1, 2, 3, 4a, 4b and 5 were changed significantly (editing and additions to table language as well as editing multipliers) and may have a great economic impact on a selected group of PTRCF Program Registrants. These revised administrative rule modifications may require the revised proposed administrative rules Chapter 33.1-12-01 be sent out for an addition public comment period.

RULEMAKING PETITION UPDATE

Maggie Olson stated that over the last several months, the Department has been reviewing the rulemaking petition that was submitted by Continental Resources. That petition asked the Department to amend one of its air pollution control rules. That was 33.1-15-07-02, commonly referred to as Chapter 7. It restricts organic compounds emissions from all different kinds of stationary sources. It's been part of the Department's Air Pollution Control Rules since the 1970s; it's a longstanding part of the department's rules. It's also part of the State's implementation plan that's required by the Clean Air Act and approved by EPA. The apparent intent behind the petition was to realign the rules with the new source performance standards Quad O and Quad Oa, which are emission standards for certain oil and gas facilities that the department is in the process of adopting.

The main argument for amending the rule is that the rule is more restrictive than federal laws in violation of state statute and that it sets an impossible standard. The Department took public comment on the petition and related issues and also held a public hearing on those issues.

Various comments were received by all different kinds of parties, including Continental Resources, other members of the oil and gas industry, private citizens, and public interest groups. For the most part, industry generally favor changing the rule. There wasn't agreement in how

exactly to do that. Different approaches were suggested in the comments. Other private citizens and public interest groups oppose changing the rule and were concerned that this change would weaken the Air Pollution Control Rules. On March 13, the Department made its final determination and the denied the petition. That denial and all the related materials are available on the Department's web page. As the Department stresses in its final determination, there were several reasons for the denial falling into two categories.

The Department was concerned with the language of the proposed amendment. The Department felt it was ambiguous, that it would lead to negative consequences for industry and the Department, and that there was no support among commenters for the proposed amendment. The Department also did not agree with Continental that the current rule is flawed. The Department found that the standards set by the rule can be met, that it's not more stringent than federal law, and that it doesn't conflict with other Air Pollution Control Rules.

RULE REVISIONS OVERVIEW

Air Quality

Tom Bachman discussed proposed changes to the Air Pollution Control Rules. Revisions to Article 33.1-15, Air Pollution Control, and the changes to our state implementation plan. Some of the updates to the rules, most of them, are made to be consistent with the current federal rules. We've also made corrections for minor spelling errors, citations and grammatical errors. Major rule changes probably start in Chapter 12, New Source Performance Standards, in which we adopt certain subparts by reference. This includes Subparts Quad O and Quad Oa for oil wells, Subpart Cf and XXX for landfills and Subpart TTTT for greenhouse gases from new power plants. In Chapter 14, we provide new significant impact levels for PM_{2.5} and ozone. In Chapters 14 and 15, the changes allow the Department to use its web site as the primary method for soliciting public comment on Title V and PSD permits. In Chapter 20, the changes make the chapter applicable to all air contaminants and consistent with Chapter 7. In Chapter 22, we adopt by reference the Federal Maximum Achievable Control Technology Standard for Brick and Structural Clay Manufacturing. In Chapter 25, we update our Regional Haze requirements for round two of the planning process. State implementation plan revisions include updates to our conflict of interest requirements and a Regional Haze plan revision to replace the Federal Implementation Plan for the Antelope Valley Station from round 1. We are also adopting a couple of 111(d) plans for existing landfills and commercial and industrial solid waste incinerators. 111(d) refers to the section of the Clean Air Act that requires these plans. The plans would basically give us primacy over air pollution issues for those sources.

The public comment period was held from December 17 to February 17. The hearing was on February 7. No one attended that hearing; so, we had no oral comments. We did receive two written comments on the rule revisions. The same two comments, from three separate commenters, were regarding Chapter 25 for Regional Haze. These commenters were all power companies. One comment dealt with a deadline for installing emission reduction measures. The second comment suggested using the terms and language of 40 CFR 51.308 in the rule revision. For the most part we were able to accommodate those suggested changes. Tom discussed the final revisions with the three commenters and passed out the final changes to the Lignite Energy Council

at our March 5th meeting. They all seem to be satisfied with the final changes. No comments on our SIP changes or 111(d) plans were received.

TOM DESUTTER MOVED TO APPROVE CHANGES TO THE AIR POLLUTION CONTROL RULES. SECOND BY JULIE ELLINGSON AND MOTION CARRIED.

Chemistry

Cindy Auen explained that new Century Code in the last session required administrative rules to support the code and the rules organize and codify the processes of and fees charged for the services provided by the laboratory certification program. The program has been functioning since the early 1990s. We have 16 in-state environmental laboratories and 47 out-of-state environmental laboratories which provide data to the Department to be used for compliance, regulatory, study or project purposes. They are required to be certified by North Dakota Century Code 23.1-01-14. The rules outline the certification requirements, which are based on federal requirements for laboratory facility and operations analysis, quality assurance, quality control and data reporting. These requirements are found throughout federal program regulations and associated published guidance for regulated drinking water and or portable water that is located at 40 CFR 141, discharge water and non-potable water located at 40 CFR 136, biosolids located at 40 CFR 503, coal combustion residuals located at 40 CFR 257 and Hazardous Waste located at 40 CFR 261.11(a) and the associated SW 846 compendium. A Notice of intent to adopt administrative rules on November 25th was provided. Publication dates were December 4-17. We had a public hearing February 6th. No one came to that hearing. Comments closed for the comment period February 18th and there were no public comments received. Discussion followed regarding fees, fee collection and certification.

RANDY BINEGAR MOVED TO APPROVE CHANGES TO THE CHEMISTRY RULES. SECOND BY GARLAND EBERLE AND MOTION CARRIED.

Boiler Inspection Program

Beth Jacobson, Grants and Contracts Officer at DEQ discussed the Boiler Inspection Program. Trevor Seime, if the Chief Boiler Inspector for the State of North Dakota. The Boiler Rules Article 33.1-14 are the rules for the Boiler Inspection program that transferred to DEQ on July 1, 2019. These rules outline the definitions, general requirements, administration including fees charged, and installation requirements for the Boiler Inspection Program. The rules were updated to reflect the change to DEQ and to increase the fees to meet the program expenses as outlined in House Bill 1024 Section 32.

House Bill 1024 Section 32 states that the department shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020. In the rules, we have proposed increasing each fee type by \$10.00. Based on projections this minimal increase will generate enough additional revenue to meet the requirements outlined in House Bill 1024.

These rules give DEQ the authority to administer the Boiler Inspection Program. This includes the authority to inspect and certify boilers as defined by the rule. In addition, it gives the DEQ the authority to certify welders and issue hobby boiler operating licenses.

Notice for public comment was issued on November 25th, 2020. Public comments were accepted through February 18th, 2020. The notice was published through the North Dakota Newspaper Association and on the DEQ website. Also, a public hearing was held on February 6 at 1 p.m. at the Environmental Train Center. No oral or written comments were received at the public hearing or during the public comment period.

Radiation Control Program

Dale Patrick discussed the proposed Radiation Control Rules. Radioactive materials are licensed by the Nuclear Regulatory Commission (NRC) or by a state that has signed an agreement with the NRC to license and regulate those materials after adopting rules that are approved and compatible with the NRC.

In 1969, North Dakota became an Agreement State and has maintained that status since that time. From time-to-time, the NRC makes changes to the NRC rules that must be adopted by the Agreement States, within a specific timeframe, which is usually three years. North Dakota adopts the NRC rules by reference and as a result of a number of NRC rule changes, the Radiation Control Program hereby submits those required changes for your review to remain compatible with the NRC rules.

A notice of public hearing was sent out on January 8, 2020 and the public hearing was held on February 12, 2020 at 8:30 am in the conference room on 4th floor of the Gold Seal Center at 918 E Divide Avenue in Bismarck, ND. There were no oral comments provided and no member of the public attended the meeting. The meeting was closed after approximately 15 minutes. The written comment period ended on February 23, 2020.

The last chapter of our rules deals with non-medical X-Ray usage. There are X-Ray machines being installed for security purposes and these machines may be used on human subjects only when other options for security are not available and those individuals must be afforded the opportunity to opt out of going through an X-Ray machine. There is no safe level of ionizing radiation exposure and all exposures must be kept As Low As Reasonably Achievable (ALARA).

One written comment was received from Cass County Jail stating that the “Opt Out” requirement in the rules would hinder their ability to search individuals for contraband. The Department’s response is that for women who are pregnant and those that have had or have other medical issues such as cancer and youth may not be subjected to X-Ray exposure. Discussion continued about X-ray machines used in airports and jails, etc. Explanations were given and questions were answered.

RANDY HANSON MOVED TO APPROVE CHANGES TO THE RADIATION CONTROL RULES. SECOND BY ED MURPHY AND MOTION CARRIED.

Waste Management

Hazardous Waste:

The North Dakota Hazardous Waste Rules must be at least as stringent as the federal rules found in Title 40 of the Code of Federal Regulations. Whenever there are changes to the federal regulations, the state must adopt any regulations that are stricter than current regulations and have the option to adopt rules less stringent than current regulations. These rule changes will align state rules with federal rules.

There are five rule changes that are being addressed in this proposed rulemaking:

1. Import and export of Hazardous Waste
2. Hazardous Waste Generator Improvements Rule
3. Confidentiality Determinations for Hazardous Waste Export and Import Documents
4. Hazardous Waste Electronic Manifest User Fee Rule
5. Safe Management of Recalled Airbags

Public comment was held from December 4 to February 24 and a hearing was held on February 12. There were no comments, and no one attended the hearing. After the close of the comment period we did receive some comments from EPA (typos, etc.), but they did not require substantive changes.

JULIE ELLINGSON MOVED TO APPROVE CHANGES TO THE HAZARDOUS WASTE RULES. SECOND BY JESSICA UNRUH AND MOTION CARRIED.

Solid Waste:

Proposed changes to the solid waste rules include:

1. Introduction of a General Permits Program,
2. Adoption of the Federal Coal Combustion Residuals (CCR) Rule, and
3. Updates to sections relating to:
 - a. Permitting.
 - b. General Performance Requirements.
 - c. Regulated Infectious Waste.
 - d. Financial Assurance.
 - e. Waste Transporters.
 - f. Certification of Operators.
 - g. Solid Waste Management Planning.

Some of the changes were requested by industry, some were included to address specific problems that have arisen, and others are to keep up with changes to best management practices in the solid waste industry. The proposed changes to the Solid Waste rules regarding CCR are to comply with new federal regulations. Flexibilities were proposed for CCR which will need to be shown by the Department to be “as protective as” federal regulations when requesting program approval from EPA.

Public comment was held from December 4 to February 24 and a hearing was held on February 11. Comments were received both in writing and at the hearing. Comments included those that were:

1. Asking for clarification of language and addition of definitions,
2. Asking for demonstration of Department authority to adopt certain provisions,
3. Asking for certain flexibilities to be added, removed, or clarified, and,
4. Identifying clerical errors.

Specific responses are provided in the response to comment document.

RANDY HANSON MOVED TO APPROVE CHANGES TO THE SOLID WASTE RULES. SECOND BY JULIE ELLINGSON AND MOTION CARRIED.

APPROVAL OF MINUTES

Discussion about obtaining and distributing of the November 15, 2019 meeting was done. It was determined that members received the minutes and there was a motion to approve them

RANDY BINEGAR MOVED TO APPROVE THE MINUTES FROM THE NOVEMBER 15, 2019 MEETING. SECOND BY JULIE ELLINGSON AND MOTION CARRIED.

OTHER BUSINESS

Dave discussed the water supply project from the Missouri River and putting water into the Sheyenne River. He also stated that a public comment period was held that was intended for periods of drought in the thoughts that our largest populated areas may be short of water. Another topic was the discussed was about TENORM which leaves our state and is deposited in Oregon. Dave also stated that the Department has been asked by the Governor's Office to put together a strategy on what the Department wants to move forward as an agency. Discussion about Oregon taking TENORM from North Dakota was discussed. Dave discussed what the Department should do moving forward as an agency and highlighted some things that the Department is looking into such as a super fund and what that entails.

NEXT MEETING – DATE/TIME

A suggestion of September 9 at 9:30 a.m. in the Department of Environmental Quality Office's was made.

ADJOURNMENT

DAVE GLATT MOTIONED FOR THE MEETING TO ADJOURN. TERRY O'CLAIR MOTIONED. SECONDED BY RANDY HANSON. MOTION CARRIED.

Submitted,



L. David Glatt, P.E.
Executive Secretary