

## MEMORANDUM

TO: Western North Carolina Regional Air Quality Agency Board of Directors

FROM: Betsy Brown, Air Quality Supervisor

RE: March 11, 2019

DATE: May 3, 2019

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Enclosed, please find the **MINUTES** from the **Monday, March 11, 2019** Board Meeting. The next meeting of the WNCRAQA Board is scheduled for **Monday, May 13, 2019**, in the meeting room at the Buncombe County Permit Office at 30 Valley Street, Asheville, N.C. 28801.

The Western North Carolina Regional Air Quality Agency Board of Directors met on Monday, March 11, 2019, in the meeting room at the Buncombe County Permit Office located at 30 Valley Street, Asheville, N.C.

The attendance of the Board members was as follows:

**Members Present:**

*Britt Lovin  
Karl Koon  
Joel Storrow  
Dean Kahl*

**Members Absent:**

*Vonna Cloninger*

**Staff Present:** *David Brigman, Director; Ashley Featherstone, Air Quality Permitting Program Manager; Kevin Lance, Field Services Program Manager; Betsy Brown, AQ Supervisor; Mike Matthews, Senior AQ Specialist; James Raiford, Senior AQ Specialist*

**Others Present:** *Brandon Freeman, Attorney; Steve Hodgens, Asheville Pet Crematory; Brenda and Russell Jefferies; Tikkun Gottschalk, Attorney; Others who did not sign in or identify themselves to staff*

Mr. Lovin called the meeting of the Western North Carolina Regional Air Quality Agency Board of Directors to order on March 11, 2019 at 4:01pm.

The order of business was as follows:

**I. Public Comment Protocol Announcement**

Mr. Lovin started the meeting by reading the announcement about the public comment protocol.

**II. Adjustment and approval of agenda**

Mr. Lovin stated that Item VIII Executive Session is not required and needs to be removed from the agenda. Adjournment becomes VIII. Mr. Koon made a motion to approve the Agenda as modified. Mr. Storrow seconded. The motion passed 4-0.

**III. Consent Agenda:**

**A. Approval of minutes from January 14, 2019**

Mr. Storrow made a motion to approve the minutes as written. Mr. Koon seconded. The motion passed 4-0.

**IV. Director's Report:**

**A. FY 2020 Budget Discussion**

Mr. Lovin discussed the preliminary budget for Buncombe County fiscal year 2020. The proposed budget for the Agency will go to public comment for 30 days prior to the next Board meeting, when the Board will vote on the budget.

Mr. Brigman stated that the biggest change is a reduction in indirect costs. The charge was \$115,000 in 2018. We estimate \$32,000 in indirect costs for the current 2019 budget year, and an amount slightly higher in FY2020. This helps bring our costs where they need to be. The County is changing, and appears willing to hold our costs back. Salary and benefits are the largest portion of our budget. We can give line item breakdown if requested. The budget will go out for public comment 30 days prior to the next Agency Board meeting, which will serve as the public meeting. The County will probably include our budget with the County's budget when it goes out for public notice. Mr. Lovin commended Mr. Brigman and staff on

our efforts with the County to bring indirect costs down. Board members noted an issue with a number on the Budget Narrative page. Staff will check the numbers and update. The corrected documents will be sent to Board members to replace the pages with errors.

**B. Duke Energy Progress Permit Update**

Mr. Lovin said that he, Mr. Brigman, and Ms. Featherstone had a meeting a couple weeks ago with Mr. Brownie Newman, Chairman of the County Commissioners. They felt that the County and the City of Asheville should be made aware of what was happening with the Duke Energy Progress (DEP) Permit. We had no County Manager for a time, since Mr. Wood had retired. Normally we would have discussed the situation with the County Manager. We went to Mr. Newman, and reached out to Mr. Vijay Kappor, our liaison with the City, although we have not talked with him yet. We wanted to update the County and the City on DEP's proposed permit and how it affects Duke's air quality permitting in the future. Mr. Newman was very receptive, asked questions and was appreciative of the information. Duke is requesting operational flexibility which Ms. Featherstone discussed. Fees will go down with the shutdown of the coal-fired boilers.

Ashley Featherstone explained that the proposed modification comes under EPA's New Source Review Program which was passed by Congress in 1977 with the Clean Air Act Amendments. It was amended in 1990. This is a pre-construction review program for the largest sources of air pollution. We only have six Title V sources and only three would fall under these type requirements. Any time one of these larger facilities modifies or adds new equipment that increases emissions- or starts a new project, air quality agencies do an analysis under that program. Prevention of Significant Deterioration (PSD) is a part of the New Source Review Program. In an area like ours that meets the air quality standards, the goal is to continue to meet those standards and prevent deterioration of air quality. A facility requesting modification resulting in a significant increase in their emissions may be required to add state of the art emission control equipment. If it looks like there will be a significant increase in emissions, we must look at the Best Available Control Technology by doing a BACT analysis.

A review was conducted under this rule when DEP proposed their modernization project to retire the coal-fired boilers and install combined cycle turbines that would run on natural gas and fuel oil. DEP submitted a project netting analysis where they account for the increase in emissions from the new equipment, and the decrease in emissions for shutting down the coal-fired boilers. Project net emissions increases were below the significance levels that would trigger a review and a BACT analysis. We did put limits in their permit to ensure that emissions remain below those levels, and there will be a shakedown period where the facility will run both the coal-fired units and the new natural gas units. DEP is required to stay under those limits (which include the coal-fired units while they are still operating) to comply with that program.

What DEP has applied for now is a Plantwide Applicability Limit or PAL for seven pollutants. It is a voluntary program under the NSR/PSD rules in which facilities cap their facility wide emissions at a certain level based on actual emissions. They can then undertake different projects that increase and decrease emissions within this limit without having to undergo the New Source Review analysis similar to what we did two years ago. This gives the facility more flexibility. This is a significant modification for New Source Review. This requires going to public

notice, notifying the Federal Land Manager, EPA, neighboring states, and local programs. There will be a public comment period and we will probably have a public hearing. The Agency received the application at the end of January 2019. We are currently reviewing it and wanted to give the Board a heads up. This could draw significant public interest. The proposed PAL at this facility would be in effect for 10 years, after which the facility would have to request to renew it. The Agency would have to look at their potential to emit at that time, which will likely be lower due to removal of the older equipment. The Agency will probably be required to lower the emissions caps or PALs. Without the PAL, DEP could undertake different projects that would increase emissions and still take advantage of the reduction in emissions from retirement of the coal units for 5 to 7 years. Without a PAL, they would require NSR review for each project. With the PALs, they would not have to go through NSR review for each project as long as they stay under the emissions caps. However, if they brought in new equipment, they most likely would have to request permit modifications due to state air toxics rules and other regulations.

We are working with the State of NC who are interested and are willing to review the proposed permit. We are also working with the EPA, who is required to review it. There are no other PALs for electric generating units (EGUs) in Region IV, so Region IV is very interested. There are other PALs in the country that have been sent to us, one in Texas that was similar. In the 2012 preamble to the rule amendment PALs are discussed; it states the PAL is supposed to drive innovations, by reducing emissions in one area, a facility is allowed to increase them in others. It is a good planning tool for the facility and allows 10 years of flexibility. It is much cheaper and quicker than doing PSD review several times for different projects.

PSD review requires a 30 days public comment period. Normally we do the required 45-day EPA review concurrently. Since we expect we will get public comments, we may go ahead and schedule a public hearing. The public hearing requires a 30-day public notice. We will compile and review any comments, and write our response before we initiate the EPA 45-day review period. The EPA will want to see all the public comments, and what our responses are. We are not sure of the time frame. The earliest we could issue would be to complete a draft in April, have a public hearing May 1, allow a couple of weeks for public comment. Then we could go before the Board in July. This is very ambitious, and it could take longer than that. Mr. Storrow requested more information. We will send information and the permit to our legal team and the state may send to their legal team. Even though it is voluntary, when a PAL is written into a permit, it needs to be enforceable. We are scrutinizing the emissions calculations it is based on. The permit will require monitoring, record keeping and validation testing; we will try to make it as stringent as possible. These permits can be challenged in court by third parties. They can submit petitions to the EPA.

Mr. Lovin said that we can give as much information as possible to the County Commissioners and the City Council.

**C. Facility Permit Modifications**

| Facility Name | Type of Facility | Facility Classification | Location | Changes from Existing Permit |
|---------------|------------------|-------------------------|----------|------------------------------|
|---------------|------------------|-------------------------|----------|------------------------------|

|                         |           |       |                              |  |
|-------------------------|-----------|-------|------------------------------|--|
| Asheville Pet Crematory | Crematory | Small | Summer Haven Road, Swannanoa | Add an additional pet crematory to the permit. |
|-------------------------|-----------|-------|------------------------------|--|

This modification was discussed at the Board meeting on January 14. Board members should have received the review document and update memo for status (Mr. Lovin read attached memo into the record). The memo states that Mr. Hodgens signed a Contract and Agreement to Pay the Civil Penalty.

Dr. Kahl asked about odor complaints and what can be done about it if staff observe odors. Mr. Brigman said odor can be addressed if staff can identify it as objectionable according to our rules. Ms. Featherstone said our nuisance odor rule is 4.1806. Odor does have to be observed by staff. The Agency can require the permittee to come up with possibilities for abatement, such as best practice standards and technology. They are allowed to consider technological and financial feasibility. If we do go out and find strong odors; we can ask the facility to come up with a plan to reduce odors. We have done this with an asphalt plant. It is up to the facility to come up with a solution.

Mr. Raiford said with crematories issues with smoke and odor are usually with larger human cases where there is not enough residence time and the after burner cannot keep up. Usually there are more problems with human crematories than with pets due to size. When you have smoke that is when you may have odor. Mr. Raiford said that he had not personally observed odors at Asheville Pet Crematory, but has heard that from other people.

Tikkun Gottschalk spoke. He is an attorney based in Asheville representing the Jefferies in their nuisance lawsuit against Mr. Hodgens. He provided a handout to the Board and County attorney, which will be attached to the minutes and provides more detail. They oppose the issuance of the permit. They feel it should be denied, if not postponed, and request that the Board deny the issuance of the permit. The issue is odor. Mr. Gottschalk discussed the siting of the properties and the difficulties of odor lingering due to the topography of the properties being discussed; odor sits with no prevailing wind. He provided photos of the valley and a GIS map of the Jefferies property. These show the house and buildings, adjacent property that the Jefferies also own, and shows the proximity of the crematory to their home. The documents included a copy of the lawsuit filed to get a court order to stop the operation of the incinerator.

Mr. Gottschalk cited WNCRAQA Code pertaining to odor and control of odors. He also spoke of state statues related to the definition of solid waste and specifically "garbage;" and the storage, processing, and/or disposal of waste on real or personal property without permission from the appropriate authorities. He also cited nuisance regulations pertaining to the location of a private business that due to its location constituted a private nuisance. They are appealing to the Board, acknowledging that even though the new unit is technically allowed under Air Quality Regulations, there is a reason as a public body that the Agency exists to supervise the issuance of permits. It might not be a bad thing in another place; it should not be allowed in this location. He stated that the Jefferies may prevail in the lawsuit to stop this as a nuisance, but are still looking to this body (the Board) to use their authority to deny the issuance of the permit.

Brenda Gash Jefferies, owner and resident of 25 Summerhaven, spoke and thanked the Board for letting her speak again about the impact on her life. She stated that

there was minimal smoke. The offensive odor is the problem, and is prevalent 2 to 3 hours after burns. The stench hangs over all their property. She sets her gardening schedule around the stench of burning animals.

Russ Jefferies, also of 25 Summerhaven, stated he worked in industry, and never encountered odors as offensive as from this crematory. He can taste it for a few moments after he goes in the house. They assume this odor would get worse if a second crematory is added.

Steve Hodgins, owner and operator of Asheville Pet Crematory also spoke. He provided handouts. They illustrated the sizes, basic design and function of the two incinerators. He discussed specifics of the new unit, the stack and why it would operate more efficiently, which would result in fewer of the problems being discussed. The newer unit would use less fuel, have a larger, more efficient afterburner and result in fewer emissions. The older unit is legally allowed to run. He hopes to take a lot of the load off the old furnace, hopefully with no odor issues on Ms. Jefferies' property. He said that he would pay off the fine, for adding equipment without obtaining a permit, before the year was over. He said he would research to see if there was a device to reduce the odor, and would incorporate it if there were any way possible. He stated that he would not use both furnaces at the same time. He plans to run the majority of loads in new unit.

The addition of the new unit is an expansion of the business. He still plans to use the older unit for some cases. With his current set up, he cannot run both units at the same time. There was extensive discussion around the possibilities of additional limitations and conditions to the permit. Mr. Hodgins said he could possibly run the older unit longer at a higher temperature or for a longer time period to try to prevent the odors.

Mr. James Raiford said he has not observed an odor at Asheville Pet Crematory. He stated that you would expect any odor at the beginning when the unit might have incomplete combustion, more so than later in the cremation. Usually the further into a cremation, the less odor you would have. With human crematories, there are problems when the units overheat, usually at the beginning.

Mr. Brigman reiterated that we have yet to identify the odor when we are there; that is not to say the odor does not exist, just that we have not been able to discern the odor. If the new unit is utilized, our opinion is that this will improve. Usually odor is from incomplete combustion. Topography and inversion levels cause problems. If he can operate the unit with the larger afterburner, we think that may help eliminate some of the odor problems.

Mr. Brandon Freeman, County Attorney pointed out that these are two separate issues: one includes the discussions on ways to address the odor, whereas the issue before the Board today is about the issuance of a permit. He felt the Board should focus narrowly on the new application before them. There is a procedure for the Agency to follow to address odors for existing operations.

Mr. Gottschalk said that the application has a place for the applicant to list what the facility does to mitigate odor. This section was blank. There is an odor consideration with the new permit. His question is what has the applicant done to mitigate odor that they know is going to be there. It is the applicant's job to

determine how odor can be mitigated. He suggested a more thorough application that states how burns would be conducted to reduce odor.

Ms. Featherstone stated that we do have a permit condition that requires the facility to operate at all times according to manufacturer recommendations. If there are concerns, there is a tool in the permit. We have used that before.

Dr. Kahl pointed out that the unit is located 75 feet from the Jefferies' property. He has concerns about the safety of the emissions. He pointed out that this sounds like a zoning issue.

Mr. Lovin referred back to Mr. Freeman's comment, and said we have a permit to consider that came before the Board on January 14, 2019. This permit was tabled due to the Notice of Violation. We have entered into a contract with Mr. Hodgens to address the NOV. The permit also contains a condition that addresses zoning, and we have the memo from staff.

There were further discussions about operational conditions and limitations. The Board was asked how these would be enforced.

Mr. Freeman again pointed out that there is a procedure to address the issue around odor, but it is outside of what we are considering today. Although the ideas mentioned were good, he suggested that we follow the steps outlined in the rules, starting with staff responding to odor complaints. Staff has requested that the complainants call when they smell the odor. Staff has not been able to smell the odor. Staff has the duty, once the objectionable odor has been substantiated, to be able to enforce the odor rule. Staff is willing to go out after hours. With odor complaints, the smell has often dissipated by the time staff is able to get to the area. The Jefferies have indicated that these odors last several hours, and we should be able to get there during that time frame.

Mr. Freeman asked staff whether it would be better for staff to change the language in the permit or to address the issues by following the odor rule.

Mr. Raiford pointed out that there is no guarantee that if a condition is put in the permit that it will work to deal with the issues. We can come at this issue from the enforcement side. We have odor rules and procedures to follow.

Mr. Freeman noted the unintended consequences of putting restrictions in the permit, especially since staff has robust enforcement rules. If the permit is issued with the condition that the unit must be approved by zoning, and the unit or both units are later prohibited by zoning; the applicant would violate both zoning and air quality regulations if he were to run one or both units that are prohibited. This would involve enforcement from Zoning and Air Quality. Apart from both of those issues, there is the odor rule enforcement.

Mr. Raiford pointed out that an objectionable odor nuisance is established, then a plan to mitigate the odor could include some of the operational restrictions discussed earlier.

Ms. Featherstone said the quickest resolution may be making sure that Mr. Hodgens is using the best practices and following manufacturer's recommendation. This is a general condition that is already in his permit under Operation and Maintenance.

We would not have to observe the strong odor to require that. There are two tools: one is following operating procedures, the other is the odor rule.

Mr. Koon said that in consideration of the tools available to staff to handle the issues, he withdrew an earlier suggestion to place additional operational conditions in the permit, which would have involved restricting Mr. Hodgens to only run one unit at a time.

Mr. Koon made a motion to approve the permit modification with the zoning condition language that staff has provided. Mr. Storrow seconded. The motion passed 4-0.

**V. New Business:**

**A. Legal Counsel Report**

Mr. Frue sent his regrets. Mr. Freeman did not have anything to report.

**VI. Other Business:**

**A. Agency rules update**

Ashley Featherstone reported that the Agency did submit the package of updated rules to the State and the EPA for their review. We are waiting to hear from them to see if we need to make any changes. After we hear from them, we will go to public notice. Moving forward, the State is very busy, and it may take a while for them to review the submittal. They are having to readopt their entire rulebook as required by the General Assembly; therefore, we also have to readopt our rulebook. This will be quite a burden on staff.

**B. Advisory Committee Report – Dean Kahl**

They have not met.

Ms. Featherstone reported that we sent out nominations for the Clean Air Excellence awards. We will accept nominations through April 11. It is open to all of our permitted facilities, other organizations, any nonprofits, individuals, and businesses.

**C. Calendar**

**Next regular scheduled meeting is May 13, 2019**

**D. Announcements**

Mr. Lovin noted that he appreciates the forward thinking of Mr. Brigman and Ms. Featherstone to notify the County Commissioners about the proposed PAL permit. The DEP plant is very prominent in our community. We all want to know how the change to natural gas will reduce emissions. We were right to make sure Mr. Newman knew what was going on before it became public. He wanted to thank Mr. Newman for his time. He gave thanks to the Board for dealing with issues brought forth in the last two meetings. Mr. Storrow asked if during the next meeting, staff could give an overview about the nuisance odor rules. Staff agreed.

**VII. Public Comments**

None.

**VIII. Adjournment**

Mr. Koon moved to adjourn. Mr. Storrow seconded. The motion passed 4-0. Adjournment was at 5:39 pm.