

## MEMORANDUM

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

FROM: Ashley Featherstone, Interim Director

RE: Minutes for September 9, 2019

DATE: November 1, 2019

Enclosed, please find the Minutes from the Monday, September 9, 2019 Board Meeting. The next meeting of the WNCRAQA Board is scheduled for Tuesday, November 12, 2019 at 4:00pm in the meeting room located at the Buncombe County Permit Office at 30 Valley Street, Asheville, NC 28801.

The Western North Carolina Regional Air Quality Agency Board of Directors met on Monday, September 9, 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*

*Dean Kahl*

*Vonna Cloninger*

**Members Absent:**

*Joel Storrow*

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

**Others Present:** *Michael Frue, Attorney; Mike Plemmons, CIBO; Daniel Walton, Mountain Express*

Mr. Lovin called the meeting of the Western North Carolina Regional Air Quality Agency Board of Directors to order on September 9, 2019 at 4:00 pm.

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 noted that the Board needed to make an adjustment to the agenda. Item III needed to be completely removed. This included Item A. Ms. Sybil Tate, Assistant County Manager and B., the odor rule presentation. Ms. Tate had a conflict and could not be there. The odor rule presentation was removed because the Board member who specifically requested presentation could not be here. This moves each order of business up one number.

The motion to approve the adjusted agenda was made by Mr. Koon. Ms. Cloninger seconded the motion. The motion passed 4-0.

**III. Consent Agenda:**

**A. Approval of minutes from July 8, 2019**

Ms. Cloninger made a motion to approve the minutes. Mr. Koon seconded the motion. The motion passed 4-0.

**IV. Director's Report:**

**A. Duke Energy Progress Update**

Mr. Brigman said that the direction has changed since the original application. Ashley Featherstone told the Board about the PAL request earlier in the year where Duke Energy Progress (DEP) asked for facility wide emissions caps. Ms. Featherstone said this gives them more flexibility on different projects. In the emissions caps they asked for, they did not subtract out the emissions from the coal units that are scheduled to shut down at the end of the year. There was a debate concerning the interpretation of the rules- as to whether or not to include the

emissions from the two coal units in the emissions figures of the proposed permit. Not subtracting out the old units gave DEP much higher emissions caps. We discussed the issue with the State and there were concerns of whether to include the coal units emissions. We discussed the concerns with DEP. Their representatives said they understood. They came back to us asking for the PAL, but just for two pollutants, not for all 7 pollutants; they are subtracting out the emissions from the coal units. This is still beneficial to the plant. It allows more flexibility with the existing peaking units, Units No. 3 and No. 4; they can run them more often. We are expecting a revised application from them this month. We would like to get the permit issued in November, if not then, in January. DEP would like to have this permit before the end of the winter; because winter is a time they would like to run the peaking units more often. DEP can take advantage of the new gas pipeline. The peaking units can run on no. 2 fuel oil or natural gas. It used to be that there was less natural gas available in the winter and DEP would run the units on fuel oil. With the new gas line to the plant, DEP may not have to run much on fuel oil. The plant is limited to less than a 1000 hours running on fuel oil per year. The facility does have new fuel oil tanks, so they must expect to have to use it.

#### **B. VW Settlement Update**

Ms. Featherstone said applications are due by the end of September. The Land of Sky Regional Counsel hosted a Workshop. The State Division of Air Quality did workshops around the state so they could walk interested parties through the application. Buncombe County did express some interest in applying. Bill Eaker and Chris Dobbins, as part of the Clean Vehicles Coalition, met with several local governments to try to help them figure out if they were eligible. They help support them going through the application process. We have not heard back from the County, specifically Solid Waste, who expressed some interest in the grant, so we do not have much of an update. The workshop was attended by 30 or more people from all around Western North Carolina. There is a lot of interest in repowering or replacing diesel engines and in EV, electric vehicle, charging stations.

#### **C. Grant Opportunity for Air Sensor Colocation Shelter**

EPA is looking at grant opportunities for putting personal sensors next to our monitors. Kevin Lance applied for the Bent Creek Ozone site- the problem is that this site is only for ozone. He has received information back from EPA and he answered their questions. The particulate matter site at the Board of Education would be ideal to set up side by side with personal monitors, but there is no public access; however, it is only 7 miles from our ozone site. Individuals and groups that have monitors can still compare their data from sensors with the results from either site. Environmental groups, academic institutes or individuals may own these sensors. They are cheaper versions of our monitors. To co-locate is a good idea and allows for comparison. The public can get sensors for as little as \$100. The more expensive ones can be more accurate. We pay \$500 to \$20,000 or more for our equipment, which is tested and has to meet certain standards. The cheaper monitors can give misleading readings. Mr. Raiford said that Google has a site, Purple Air. On this site is a map of a network of everywhere that they have a sensor. They have a particulate monitors for \$200. These are very popular and you can see real time data on their website. There are at least two in Asheville. Mr. Raiford checks the website periodically. Some seem relatively close to the reading of our monitors. However, owners of these monitors are not careful where they place monitors. They do not look at site aspects like we do, such as how far they are away from a road. Some are kept indoors. Ms. Featherstone said that during the fires in California last year a lot people were concerned because residents were getting data from Purple

Air rather than from regulated monitors. A lot of inaccurate information was sent out and Google took some heat over it. Google called the EPA and suggested they should work together on this. There was a summit held in North Carolina. State and local agencies are concerned that Agencies are no longer the source for air quality information, but rather people are turning to citizen science. We need to work with the folks. These monitors do have good uses, such as if you have health issues or you are trying to site a monitor.

**D. Recent Complaints about Land Clearing Open Burning**

In 2014, the State relaxed the open burning set back distance for land clearing from 1000 feet to 500 feet, and the distances for air curtain burners (ACB) from 500 feet to 300 feet. During 2016, we had 40 open burning complaints, 6 from land clearing. In 2017, we had 26 open burning complaints, 7 from land clearing. In 2018, we had 43 open burning complaints, 0 from land clearing. So far, in 2019, we have had 53 open burning complaints of which 26 were land clearing. Of these 26 complaints, 19 were from the construction for Asheville Heights Apartments. The contractor has told us that they have finished burning now. There is a distance of 500 feet to the nearest occupied dwelling. However, it is in a low-lying area, everything else is above it. They are smoking out the valleys soon after they start burning at 8 am. The contractor wanted to comply; they wanted to use an air curtain burner (ACB) to reduce smoke. ACBs work pretty well. You dig a pit about 8 to 10 feet wide and 30 to 40 feet long depending on the blower. Then you direct high velocity air over the top of the pit, the air hits the side wall and starts a circular motion. This creates a furnace that allows the fire to get hot enough for complete combustion. This allows the operator to get the temperature up to 1800 to 2000 degrees. This can reduce 50- 70 % opacity from an open pit fire down to 10%, which you can barely see. You will not see a lot of smoke, mostly heat and particulate coming from the pits when they are functioning properly. The contractor is renting the ACB equipment and learning how to use it as they go. They get it dialed in, and then it rains. Mr. Lance and Mr. Brigman have worked with the contractor by explaining how the process needs to run. We continued to have problems and asked them to put the fire out.

We have had many complaints. We got a complaint from State Senator Terry Van Duyn. John Ager, the State House Representative for the area, has also contacted the Agency. We have tried to explain to them what we were doing and what the issue was. We had issues with another site last week. The site where they were burning was low in a valley and smoke blew into the homes above. Even the old distance of 1000 feet would not be far enough for occupied dwellings at this location. We did not fine the Asheville Heights contractor, but weighed our options. The contractor could put the fire on the ground and burn legally, but that would smoke everyone out. They did get better using the ACB toward the end. Even with people that are experienced with these can have trouble with conditions with hills and wind. The State has also contacted us about this site. It takes complaints to get things to change. The older 1000 feet requirement would have prevented them from burning at this site. Mr. Lance said the Agency got beat up on this one. We dealt with a bad situation with the regulations that we have. He is sorry that we cannot stop burning in an area that is a bad area to burn- one that is so populated. Mr. Ager and Ms. Van Duyn already contacted Mike Abraczinskas, the State Air Director. We are looking at the rules to see if we can possibly go back and readopt rules that are more stringent. We are trying to address the issue of the complaints with land clearing open burning.

This issue would not happen in flat lands. One might smell smoke, but would not get smoked out. Here until the fog burns off, the smoke is trapped in the valleys. Our rules before the changes stated that one could not burn before 9am or add after 3pm, which gives the fire time to burn down. Now, the time is 8am to 6pm. Usually by 9am most of the inversions have lifted, so the ceiling has lifted and the smoke could rise. As it is, 300 feet is too close to burn in any situation. It is just not adequate. Getting the rules changed back would be difficult because it was a legislative action, so the law may have to be changed. Also, now an ACB requires a Title V permit by EPA rules. Before an ACB was a temporary facility and no Title V permit was required. It was a lot easier and more attractive to the contractor.

Ms. Featherstone said the main problem is that a Session law was passed in 2011 and we were forced to adopt the changes into our rules. We had no choice because the law preempts our rules. We cannot do anything that conflicts with state laws. When the state was readopting their rules, there were comments about the burning distances but they were unable to increase the setback from 500 to 1000 feet because of the state law. It does not seem like we or the DAQ can change the setback to the previous distances unless the state legislature addresses it. It will probably require legislative action to get that setback changed.

**E. New Facility Permits**

<b>Facility Name</b>	<b>Type of Facility</b>	<b>Facility Classification</b>	<b>Location</b>	<b>Proposed Equipment</b>
NA-General Permit-Air Curtain Burner	NA	Title V	Various sites with local zoning authority approval	Air Curtain Incinerators subject to NSPS EEEE or CCCC
Brown's Excavating	Land Clearing Contractor	Title V	251 Charlotte Highway, Asheville and various sites with local zoning authority approval	Air Curtain Incinerator subject to NSPS EEEE

Since these were both new permits, Mr. Lovin said the Board would them consider separately.

General Permit

Mr. Koon asked if there were rules in the local zoning authority prohibiting open burning, and if so would that solve the issues? Ms. Featherstone pointed out that we could not issue an air quality permit unless we had proof that the facility had applied for zoning approval. In the State of NC we cannot act on an air permit application without a zoning interpretation, zoning consistency letter. We got into this with the pet crematory in the neighborhood. Mr. Koon asked if there was any jurisdiction that the Agency works in that specifically either allows or prohibits open burning in that area. We do not, but Mecklenburg County prohibits any open burning in their county. If Buncombe County adopted an ordinance that prohibited no land clearing in certain areas, that would address the problem. The current rules say that you cannot burn household yard waste (legal material) if you have brush pickup from the municipality. So in Woodfin, Black Mountain, Weaverville, Biltmore Forest and the City of Asheville residents are not supposed to burn yard waste. ACBs are considered incinerators or Air Curtain Incinerators (ACIs) by the EPA which triggers TV permit requirements. If Buncombe adopted an ordinance to

limit or prohibit land clearing in certain areas, a contractor would not be able to get the permit to burn. To get an ACI permit a facility must spend \$1800 in fees, when they could just legally burn on the ground, not get a permit and not pay any fees. In municipalities you cannot burn.

Mr. Brigman mentioned a recent issue in Asheville. The Fire Marshall referred it to us. The City does not pick up debris from land clearing and the contractor had the distance to burn. Setbacks do not apply to hand piled brush. Some regulations are rather gray and are open to interpretation. Most are written where distance prevails. If the burning is at 500 feet on the ground, the nuisance rule does not apply. This means that even if the site is smoking the valley out, we cannot use the nuisance rule to require that the fire be extinguished. If burning logs or stumps at your home, according to NC General Statutes, this cannot create a nuisance either.

Ashley Featherstone said that this is a general TV permit. This is not something we normally do. Contractors used to be able to burn in an air curtain burner, ACB, under our open burning rules. Then the EPA said that a ACB which they defined as an incinerator (ACI) now had to get a TV permit. It is daunting to get a TV permit, the permit application is extensive and expensive- it is a permit like a utility has and for which it pays the associated fees. The State came up with a general permit for ACIs. The State Legislature passed a law that set the ACI Title V permit fee as 10% of the usual TV permit fee in order to facilitate this. The State took the general permit through the EPA review process and to public notice. Therefore, they will not have to go through the full EPA review and public notice period each time. That is what we have done here. This is what we are going through with Brown's Excavating. They paid a \$900 fee, not a \$9000 fee. We got the zoning letter and all other permitting requirements from the facility. This is similar to the permits we issue to portable rock crushers. The facility crushes in one place where they have supplied a zoning letter. After they finish at that site they still have a permit, and when they move to another location, they are required to provide a zoning letter for that site. They pay an annual permit fee. That is what we are proposing to do here. After Brown's Excavating finishes at this site, they can choose to keep their permit and will be able to use the ACI at another site with the proper zoning approval. When another contractor applies for an ACI Title V permit, we would bring that to the Board for approval but would not have to go out to public notice. Unlike the portable rock crushers that are small facilities, these ACI permits have federally enforceable conditions.

Mr. Lovin asked about the memo sent out to the Board before the meeting. The same memo was copied twice in the pdf, but there was only one memo. Only the general permit went to public notice.

Mr. Koon moved to approve the general Title V Air Curtain Burner Permit.

Ms. Cloninger seconded the motion.

The motion passed, 4-0.

#### Brown's Excavating, LLC

Ms. Featherstone said that these are the folks running the Asheville Heights site in Fairview. We did require them to submit the application. They are now finished burning there, but they indicated that they would like to obtain and keep the permit. They will notify us where going to operate it. They will have to submit a zoning determination for a new site. They can do this under this permit. If another contractor submits an application, staff will bring that back to the Board.

Mr. Koon made the motion to approve the permit for Brown's Excavating. Ms. Cloninger seconded the motion. The motion passed, 4-0.  
The Board wants the Agency to let the Board know when an ACI is operating in the county.

**V. New Business:**

**A. Legal Counsel Report**

Mr. Frue had nothing to report.

**VI. Other Business:**

**A. Advisory Committee Status**

Mr. Brigman said only two or three members of the Advisory committee remain. As we are looking at things in the future, it would be beneficial to the Board and Agency Staff to have a functioning advisory board. Tony Candler moved to South Carolina, and Ned Guttman is moving. We have only two standing members. We need to look at candidates including industry. We are looking to adjust Title V and industry fees and it would be good to have industry feedback. We need to get a candidate list that we can bring back to the Board. It would be good to have someone from Duke Energy Progress. Other candidates include homeowners, citizens from Buncombe County and the environmental community. Dr. Kahl will get together with Ashley Featherstone and Betsy Brown.  
Ms. Featherstone said that the Agency has a list of groups that would be good to have representation on this committee. We could reach out to our 70 plus permitted facilities and to our Clean Air Excellence Award winners. It would be good to have a total of five members. The members need to be clear that they would only have an advisory capacity to the staff and Board.

**B. Calendar**

The next regular scheduled meeting is Tuesday, November 12, 2019, since Monday is a holiday.

**C. Announcements**

We did move the odor topic off the agenda since Joel Storrow was not here. We will tentatively plan the presentation for the November meeting.  
Mr. Lovin said that he and David Brigman met with Ms. Tate. She expressed interest in coming to the Board meeting and addressing the Board members. The meeting went well.  
Our staff has also met with the new County Manager. She has met with all County staff.

**VII. Public Comment**

There was no public comment.

**VIII. Adjournment**

Mr. Koon made the motion to adjourn the meeting. Ms. Cloninger seconded the motion. The motion passed 4-0. The meeting adjourned at 4:47pm.