

**Air Quality Control Advisory Council Meeting Notes
June 8, 2015 @ 8:15 am
MDE Headquarters—Aeris/Terra Conference Room
1800 Washington Boulevard
Baltimore MD 21230**

AQCAC MEMBERS PRESENT

Sania Amr, M.D.
Cindy Parker, M.D.
Kevin Barnaba
Jonathan Kays
John Kumm
Julian Levy – (attended as an observer for CEHPAC)
Lawrence Kasecamp
Lawrence Schoen
Ross Salawitch, PhD

AQCAC MEMBERS ABSENT

John Quinn
Andrea Bankoski
Sue Garonzik
Sara Tomlinson
Kip Keenan
Hon. Leta Mach

VISITORS

Josh Berman – Sierra Club
David Smedick – Sierra Club
Tom Weissinger – Raven Power
Dr. Rasto Brezny - MECA (Manufacturers of Emissions Controls Association)
David Cramer – NRG
Ghirmay Kerne – Pepco
Paul Fiore – Auto Care Association
Jim Donohue – Chesapeake Automotive Business Association
Ed Much – Constellation Energy
Amber DiDominic – ERM
Mike Danielson
Gene Trisko – ACCCE
David Smedick
Debra Raggio

MDE-ARMA

George (Tad) Aburn
Randy Mosier
Eddie DuRant

Carolyn Jones
Husain Waheed
Kathleen Wehnes
Joshua Shodeinde
Marcia Ways
Jed Miller
Karen Irons
Karl Munder
Peggy Courtright

This is a summary of the June 8, 2015 Air Quality Control Advisory Council Meeting and serves as a record of the Council's vote on regulatory action items. The meeting is recorded and the digital file is maintained by MDE/ARMA. This digital file is considered public information and may be reviewed in its entirety by anyone who is interested in the details of the discussions.

Available at MDE website

<http://www.mde.state.md.us/programs/WorkwithMDE/MDEBoardsandCommissions/Pages/AQACmeetingminutes.aspx>

MEETING OPENING/OPENING REMARKS

Air Director George (Tad) Aburn opened the meeting by welcoming everyone to the meeting. Due to the absence of Chairman John Quinn, and Vice Chairman Kip Keenan, Mr. Aburn explained that a chair would need to be elected for the day.

Motion to elect Larry Schoen as chair for the day was made by Ross Salawitch and seconded by Sania Amir. Eight members voted in favor and none opposed, at approximately 8:17 a.m. (~ 1 min into recording).

Tad Aburn announced that EPA has moved forward with a Clean Data Determination for the ozone standard in the Baltimore area. The Baltimore area has been recording attainment level for ozone that has been a result of some of the control programs that the Council helped implement, and the unusual cool summers of summer 2013 and summer 2014. This news is a great indication that progress is being made in the right direction. Mr. Aburn further announced that Phase I of the Regulation - Control of NOx Emissions from Coal-Fired Electric Generating Units is currently in effect, and a stakeholder process will be held for Phase II of the NOx Regulations.

Mr. Aburn stated that EPA will soon release its Clean Power Plan, a federal initiative to require greenhouse gas emission reduction for existing power plants. The Department will plan to brief the Council at a future meeting.

Approval of Minutes from March 30, 2015 meeting:

Acting Chairman Larry Schoen called for a motion on the March meeting minutes at approximately 8:28 a.m.

Motion to approve the March 30, 2015 minutes was made by Sania Amr and seconded by Kevin Barnaba. Eight members voted in favor, and none opposed, at approximately 8:28 a.m. (~ 11 min into recording).

ACTION ON REGULATIONS

COMAR 26.11.02.11 – Procedures for Obtaining Permits to Construct Certain Significant Sources

Karen Irons presented on the amendment to Procedures for Obtaining Permits to Construct Certain Significant Sources, under COMAR 26.11.02.11, at approximately 8:29 a.m. (~12 min. into the audio recording).

MDE proposes to make three regulatory changes to air permitting regulations to make the regulations consistent with statutory changes that were made effective on 01/01/2010 and 10/01/2013. MDE is already implementing the statutory requirements. The changes will affect applicants for permits to construct that are subject to Section 2-404 of the Environment Article, also known as “Expanded Public Participation”. Permits to construct (PTC) are permits that air emission sources are required to obtain prior to building, or modifying existing facilities that have air emissions.

Ms. Irons explained that not all PTCs are subject to expanded public participation. The Standing Bill Law, Senate Bill 1065 from the 2009 Legislative Session, effective 1/1/2010, expanded who is able to challenge PTCs and substituted direct Judicial Review for the previous contested case hearing process. The proposed changes to MDE regulations incorporate the Standing Bill Law into the regulations.

Ms. Irons explained that the public participation process for PTCs remains a multi-step process that includes an Information Meeting, a Public Hearing, and now with the new proposed regulation, a Judicial Review (previously the last step was a Contested Case Hearing). The informational meeting is the first step in public participation process and there was no change to this requirement. If the Department makes a tentative determination to issue a permit, the next step in the public participation process is that citizens must be given the opportunity to request a public hearing. If a hearing is held, a court reporter prepares a transcript. Ms. Irons explained that a new requirement in the proposed regulation is that the comment period can now be extended once for an additional sixty days if someone makes the request.

Another amendment to the regulation is the detailed requirements for what must be included with the tentative determination. Ms. Irons stated that one thing that did not change is that if no adverse comments are received, the tentative determination becomes a final determination and the permit is issued. If MDE does receive adverse comments, the Department prepares a response to comments document and a Notice of Final Determination. If the Department intends to make a final determination that is substantively different from the tentative determination, then there is an additional public comment period just on the changes.

Mr. Irons further explained that the big change to the regulation was made with the Judicial Review portion of the public participation process. The Judicial Review process, which replaces the contested case hearing process, allows anyone who wants to object to a permit to take the challenge directly to court. A Judicial Review must be filed within 30 days after the publication of a notice of final

determination. Ms. Irons stated that since MDE has followed the Judicial Review process, the Department has had two petitions for Judicial Review – one which was withdrawn by the petitioners, and the second which is still pending in the courts after years.

The second bill that will be included in the regulation is House Bill 95 from 2013 Legislative Session, which provided a streamlined process for small sources subject to expanded public participation. Instead of the usual six to twelve month public participation process, the amended changes allow for an alternative public participation process for smaller sources. Examples of these sources are small combined heat and power facilities and medium size boilers, which are located at government facilities, military bases, hospitals and universities.

The last bill to be included in the amended regulations is House Bill 994 from 2013 Legislative Session, which requires notification for Public Review permits to public officials of all jurisdictions located within one mile of the property line of a source. Anyone who wants to be on an interested party list can be added.

Acting Chairman Larry Schoen asked for clarification for the first bill, which Mr. Schoen stated sounded like MDE was already following the statute. Ms. Irons responded that the Department is already following all three Bills, and the Department is seeking to update regulations to reflect the work that is being done.

Julian Levy inquired whether it was automatic when someone wants to request an extended comment period, and Ms. Irons responded that it was. The Department grants anyone the ability to request for a public hearing as well.

A visitor asked if stationary emergency generators are subject to permits. Ms. Irons responded that the air permitting threshold for emergency generators is 500 brake horsepower (373 kilowatts).

Motion to approve this action was made by John Kumm and seconded by Sania Amr. All members present (8) voted in favor, no members voted against, and no members abstained at approximately 8:40 a.m. (~24 min into the audio recording).

COMAR 26.11.20.07 – After-Market Catalyst

Karl Munder presented the proposed Aftermarket Catalytic Converter Regulation under COMAR 26.11.20.07 at approximately 8:40 a.m. (~25 min into the audio recording).

Mr. Aburn opened this presentation by stating that the After-Market Catalytic Converter Regulation initiative has significant regional NOx reduction benefits, and that MDE has been working with other states, the private sector, and EPA to develop this regulation.

A catalytic converter is a device installed on a vehicle that reduces emissions formed in the engine, but as they age, contaminants build up on the catalyst surfaces, making them less efficient. Currently, there are three options to replace a catalytic converter after it fails: 1. Original equipment manufacturer (OEM), the converter sold by the manufacturer; 2. Used converter; or 3. One manufactured by a third party, also known as an aftermarket converter.

Mr. Munder explained the types of after-market catalytic converters (AMCC) with the differences between the two: federal AMCC, currently sold in Maryland, and the California Air Resources Board (CARB) certified AMCC.

Mr. Munder stated that there is a need to update the federal AMCC program which has not been updated since 1986. The federal AMCC program has not incorporated significant technology advances that have occurred over the years. Due to the lack of federal action, the Ozone Transport Commission (OTC) made a push for an update to the federal program and developed a model rule based on the CARB AMCC program. Two states, New York and Maine, have adopted a version of the rule. Establishing the AMCC rule that MDE is proposing will move Maryland forward, and will continue to push for a federal AMCC program, which would make the most sense for AMCC.

New catalytic converters can reduce engine-out emissions by over 99%. Federally certified AMCC have not benefitted from technology progression. CARB approved converters have a better converter efficiency, a better warranty, and are compatible with OBD II. The establishment of the CARB AMCC program has the potential to provide a large regional NOx emission reduction of around 30 tons per day in the OTC states – greater reductions would be seen in a national program.

OTC has worked with manufacturers for over 3 years on developing a rule and is once again pushing for EPA to update the federal AMCC program. Manufacturers would like to see a federal rule instead of only a few states implementing a rule.

MDE's proposed regulation, based on the OTC model rule, requires CARB-approved AMCC on model year 2000 and newer vehicles beginning 1/1/2018. The regulation would prohibit the sale or installation of used, recycled, or salvaged converters and would apply to a person that installs, sells, supplies, or offers for sale an AMCC in the state. MDE anticipates the adoption of the regulation by end of 2015. A stakeholder meeting was conducted regarding the regulation in April 2015. Industry is generally supportive of requiring more efficient AMCCs, but would prefer a federal program. Stakeholders are concerned that Maryland motorists will avoid the additional cost of the CARB AMCC by driving to nearby states where cheaper federal AMCC are available, or using the internet to purchase federal AMCC.

A member of the Council asked what happens with the old converters that are replaced. Mr. Munder responded that they are recycled. The Council further asked if the 30 tons reduction of NOx emissions is across all the OTC states, and MDE confirmed that that is the case. Mr. Aburn stated that the 30 tons per day doubles if the requirement is made federally. Mr. Aburn also explained the OTC has made two requests to EPA to make the requirement a federal rule, but EPA has not acted upon these requests.

The Council inquired if the proposed regulation is obligated to follow the CARB AMCC program. MDE responded that the proposed regulation was built off of the work done by the CARB AMCC program but it is not directly linked to the CARB AMCC program.

The Council inquired the status of other states in implementing the OTC AMCC model rule. MDE responded that NJ and CT are behind MD in implementing the rule, and Delaware is further behind them, and other states are behind Delaware. MDE wants to move forward with the rule to create momentum for other states to follow. The Council further inquired if NY and ME followed the CARB

AMCC program identically. MDE responded that NY and ME rules are pretty much identical to CARB AMCC program with some changes applicable to their state.

The Council asked about the length of time the issue of individuals going “next door” to other states will remain. MDE responded that the economic incentives to go to another state to get a converter will last for as long as there remains inconsistency in neighboring states’ AMCC rules. The Council also inquired about the importance of a national rule for an AMCC program in respect to other states contributing to Maryland’s ozone. MDE mentioned that analysis indicates that in the 2018 -2020 timeframe pollution transport will be largely influenced by mobile sources, with less contributed by power plants. Therefore, more states will likely adopt a similar AMCC program and pressure EPA to create a federal rule.

The Council inquired about the reason MDE selected the use of the CARB certified converters on model year 2000 vehicles and newer. MDE responded that by the year 2018, most of the vehicles in Maryland’s fleet will be model year 2000 or newer vehicles. The Council inquired about the availability of the CARB certified converters for vehicles model year 2000 or newer vehicles. MDE responded that the CARB certified converters would be available. The Council asked if the year selection was based on CARB’s program. MDE responded that it was not as CARB’s program includes additional model year vehicles. The Council expressed concern of exemptions for 2000 or 2001 vehicles if a CARB AMCC does not exist.

The Council inquired if the regulation would unduly impact individuals in rural areas as opposed to urban areas. MDE responded that they are unsure if the proposed regulation would adversely affect rural communities. MDE also stated that there is an added level of consumer protection with the extended warranty of the CARB AMCC.

The Council asked how enforcement will be implemented, both in the state and over the internet. MDE responded that enforcement will be similar with any consumer product: spot checks on inventory and online converters. Also, MDE stated that online products will have a statement that a non-CARB-certified converter could not be sold in Maryland. The Council asked about spot checks during emission testing. MDE responded that a car would fail emissions testing if an AMCC that did not function correctly with the OBD II system were installed.

The Council inquired what happens if the CARB certification process changes, and if Marylanders would be able to participate in a public hearing. MDE stated that CARB would usually notify MDE of changes that would need to happen in regulations that are linked to CARB. If a change would occur in the CARB certification process, the regulation would be brought through the public process.

The Council expressed concern about the proposed regulation straining small business relationship with the state of Maryland and wondered if the regulation should only be applied to nonattainment areas within the state. MDE responded that it is preferred that the regulation is at minimum a state-wide rule.

The Council inquired if a vehicle will fail emission testing if a federal converter is installed, and if the indication of failure would be the check engine light. Dr. Rasto Brezny of Manufacturers of Emissions Controls Association answered that federal AMCC can be compatible with the OBD II system, even though they are not compliant. A federal converter can be placed on a vehicle and the check engine light indicator would stay off. The Council expressed concern regarding federal AMCC having the ability to fool the indicator system at compliance stations.

The Council inquired the percentage of the current Maryland fleet that would need to replace the catalytic converter by January 2018. The Department responded that only a small percentage would need to be replaced.

The Council inquired if a CARB converter affects other functionalities of the car when placed. The Department and Dr. Rasto Brenzy stated that a converter would not affect other parts of the vehicle.

The Council inquired whether an OEM replacement converter would be allowed on vehicles based on the regulation. The Department responded that an OEM replacement converter would be allowed since it provides an equal or greater amount of NOx reductions compared to a CARB AMCC.

The Council asked the difference in cost between a federal AMCC and CARB AMCC. The Department responded that the CARB AMCC is \$300 - \$500 more than a federal AMCC.

Dr. Rasto Brenzy is in support of a federal AMCC rule that is at the same level of performance as CARB AMCC program. Dr. Brenzy represents MECA, an organization that has worked with CARB in the development of their AMCC program; they also worked with New York during their AMCC regulatory process, and the OTC. Dr. Brenzy advises focusing resources on enforcement of the regulation.

Mr. Jim Donohoe is not in support of the proposed regulation unless a regional or federal rule is established. Mr. Donohoe represents the Chesapeake Automotive Business Association and is concerned with industry having to carry multiple inventories to suit varying requirements among states in the region.

Mr. Paul Fiore, representing the Autocare Association and in favor of a national program, indicated that the requirements of the CARB certification process were problematic and CARB AMCC availability can therefore be limited.

Mr. Schoen asked if the Council agreed to delay the approval of this action and not vote today at approximately 9:45, all members agreed for the delay. (~ 1 hours and 29 min into the audio recording)

The Council asked the Department for more information on the comparison of costs for CARB AMCC, federal AMCC, and OEM converters. They also want to know how enforcement of regulations would work and whether it would be feasible to have a county-wide regulations.

BRIEFINGS – Control of NOx Emissions from Coal-Fired Electric Generating Units **COMAR 26.11.38**

Mr. Tad Aburn presented on upcoming measures for an attainment SIP and status of regulations to control NOx at Coal-Fired Power Plants at approximately 9:55 a.m. (~ 1 hours and 39 min into the audio recording).

On October 6, 2014, the Council approved COMAR 26.11.38 – Control of NOx Emissions from Coal-Fired Electric Generating Units (EGU) which had two steps: 1) A 2015 requirement that provided

immediate NOx reductions and public health protections; and 2) a 2020 step that required deeper reductions at selected units. MDE has moved forward with the 2015 requirements, as an emergency action, but will be taking a second look at the 2020 requirements. The 2015 requirements are designed to ensure EGUs are minimizing NOx emissions by optimizing emission control technology – this portion of the regulations will produce approximately 10 tons of additional NOx reductions on hot, peak energy demand days. MDE is currently working to revise the 2020 requirements which will provide equal or greater public health protections compared to the originally proposed 2020 requirements. MDE expects to move forward with second step in the next few months and will aim to adopt the 2020 requirements by the end of 2015.

The Council inquired about the level of reduction the 2020 requirements will provide and the level of reduction MDE is seeking to achieve. The Department responded that based on the various options originally presented in the 2020 requirements, the emission reductions will vary.

The Council asked the Department to include Council members in information about upcoming stakeholder meetings.

Josh Berman from the Sierra Club stated that the EGUs without state of the art technology are contributing the most to Maryland's ozone issues. He also stated that the current regulation is a result of a lengthy stakeholder process and the current stakeholder process for the 2020 requirement will make the regulation weaker.

Gene Trisko from the American Coalition for Clean Coal Electricity expressed their support of MDE revisiting the 2020 requirements of the NOx EGU regulation. Mr. Trisko hopes MDE will be sensitive to Maryland jobs as the stakeholder process reconvenes.

Jonathan Kays inquired where Maryland's power would come from if units were shut down. Mr. Gene Trisko responded that power would come from out of state. Dr. Ross Salawitch noted that a Governor's appointed task force has recommended that future power needs of Maryland be met by new natural gas generating capacity within the state.

BRIEFINGS – Distributed Generation Reporting Rule COMAR 26.11.36

Mr. Randy Mosier presented on the Distributed Generation Reporting Rule under COMAR 26.11.36 at approximately 10:12 a.m. (~ 1 hours and 56 min into the audio recording).

Mr. Aburn gave a brief background on the topic by explaining how on high energy demand days smaller EGUs, which are not designed to run consistently, are being used to generate energy. Mr. Aburn stated that MDE does not yet have the information needed to make informed decisions.

Mr. Mosier explained that stationary engines, which provide backup power in the event of the loss of electricity, are usually diesel fueled with no pollution controls on older units. Mr. Mosier stated that newer engines are becoming cleaner, however the vast majority of existing engines are older and less efficient.

The regulation MDE currently has in place, COMAR 26.11.36, established NOx emission requirements for emergency generators and load shaving units. The regulation also requires that backup generating

units to either meet NOx standards, owners to purchase NOx allowances, or owners/operators to use backup units minimally. In 2011, the Department made a Curtailment Service Provider (CSP) reporting amendment to have a better understanding of how the backup units were being utilized. Mr. Mosier explained that MDE still needs to better determine who is operating engines. EPA significantly limits the operation of these engines and MDE will be monitoring the development of EPA's rules.

Ms. Kathleen Wehnes stated that MDE is seeking to collect data on the operation of backup generators that are used throughout the state at facilities ranging from industrial to hospitals to grocery stores. MDE would eventually like to propose regulations to capture engines down to 100 hp. MDE is tracking emissions from the engines that report to CSP, but would like to find engines not going through CSPs. Ms. Wehnes explained that EPA no longer allows load shaving without emission controls. Backup engines can only be used in the event of an Energy Emergency Alert (EEA) level 2. MDE is following the PJM requirements for electric grid markets and newly proposed rules through FERC.

Mr. Mosier explained the Departments plans moving forward. MDE plans to coordinate with EPA as the EPA established changes to federal rules. MDE is also considering public awareness campaigns to educate businesses of existing federal and state regulations. Finally, the Department may decide to amend existing regulations.

Mr. Salawitch offered to share a paper that the University of Maryland has published on emissions from these sources.

Acting Chairman Larry Schoen adjourned the meeting at approximately 10:48 AM. (*~2 hours and 32 min. into the audio recording*)

Confirmation of Next meeting dates:

September 21, 2015

December 7, 2015