

# MINUTES

## REGIONAL AIR QUALITY COUNCIL

Monday, September 8, 2008

### **RAQC MEMBERS/ALTERNATES PRESENT:**

Andy Spielman, *Chairman, Hogan and Hartson, LLP*  
Brad Beckham, *Colorado. Department of Transportation (alternate for Russell George)*  
Theresa Donahue, *Smart Energy Living Alliance*  
Mark Johnson, *Jefferson County Department of Health and Environment*  
Ben Manvel, *City of Fort Collins*  
Jim Martin, *Colorado. Department Public Health and Environment*  
Jana Milford, *University of Colorado at Boulder*  
Nathan Rabinovich, *National Jewish Health*  
Joan Ringel, *Citizen Member*  
Nancy Severson, *Denver Department of Environmental Health*  
Melanie Worley, *Douglas County/DRCOG*

### **RAQC STAFF PRESENT:**

Ken Lloyd; Jerry Dilley; Sandi Garcia; Misty Howell; Steve McCannon; Kate Riegler

### **OTHERS PRESENT:**

Renee Allen, Envirotest; Theresa Amoruso, APCD; Gale Biggs, IES; Jim Brandon, ESP; Kevin Briggs, APCD; Dennis Creamer; Laurel Dygowski, EPA; Aimee Fenlon, CCD- Dept of Aviation; Abby Gaffney, Davis, Graham & Stubbs; Zac Graves, CDOT; Martha Hyder, WREG; Ed Ingve, Renegade Oil & Gas Company; John Jacus, Davis Graham & Stubbs; Kristen King, CDPHE; Doug Lempke, CDPHE; Chuck Machovec, APCD; Dennis McNally, Alpine Geophysics; Pam Milmoie, Boulder County Department of Health; Karen Murphy, Corestream Health Inc.; Jeremy Nichols, WildEarth Guardians; Lucy Nolan, ERAS; Pat Reddy, APCD; Ann Rhodes; Steve Rudy, DRCOG; Jeff Schwarz, DSMB; Jim Shaw, Wagner Equipment; Mike Silverstein, APCD; Paul Tourangeau, APCD; Scott Wagner, Wagner Equipment; Dale Wells, APCD; Callie Videtich, EPA; Chris Williams, EnCana; Sabrina Williams, Denver Environmental Health;

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The meeting was called to order at 2:40 p.m. by Chairman Andy Spielman. A quorum was present.

### **Approval of Agenda and Minutes**

Andy Spielman suggested the following items be added to the agenda: an overview of SIP revisions and comments by EPA as bullet items under VI; and a formal public comment before item VII.

**Nancy Severson moved to approve the agenda with the above noted additions. Seconded by Jim Martin. Motion passed without objection.**

Minutes will be reviewed at the October 2 meeting.

**Informational Items**

*Chairman*

None.

*Executive Director*

Ken Lloyd informed Council that audience members are having a difficult time hearing Council and he asked them to speak up during discussions. He indicated staff is investigating a sound system for the room.

*Committees*

None.

*Members*

None.

**Public Comment**

None.

**Additional Information Related to 2008 Ozone Action Plan and State Implementation Plan**

*Overview of Weight of Evidence Analysis*

Chuck Machovec, APCD, provided Council with an overview of the requirements for a weight of evidence analysis and outlined the elements.

Pat Reddy, APCD, explained the weather and ozone trends. He said that the July monthly mean daily maximum 8-hour ozone is strongly correlated with upper level high pressure strength than any of the host of other logical choices for significant predictors of ozone, including temperatures, winds aloft, cloud cover, solar radiation, and number of days with temperatures above 90 degrees. He also noted that the strong linear relationships between ozone and 500 millibar heights at most sites can be used to remove the effects of weather from the ozone record.

Jerry Dilley, RAQC, briefly reviewed the alternative modeled metrics to assess the changes in ozone levels in the nonattainment area. He said the final weight of evidence will combine and weigh the various supplemental analyses with the results of the attainment tests resulting in an aggregated, qualitative and quantitative conclusion as to whether the proposed set of control strategies will result in the Denver Front Range reaching attainment by 2010. Jerry said the weight of evidence analysis will continue to be refined through the AQCC public hearing process.

Jerry summarized the weight of evidence conclusions, which included:

- Weather-corrected and non-weather-corrected 4<sup>th</sup> maximum time series suggest that ozone levels are flat at key monitors.
- A review of other metrics supports the conclusion that the area will attain the 0.08 ppm ozone standard by 2010.
- The overall reduction in emissions expected between 2006 and 2010 provides further evidence of attainment.
- At this time, the photochemical modeling is considered to be the best predictor of future ozone levels.
- The overall weight of evidence suggests that the area will attain the standard in 2010, but there will not be much of a cushion.

Jana Milford asked whether the information presented today is going to be included in text of the SIP. She believes the weather-corrected ozone trends presented by Pat Reddy should be included, along with recognition that the trends are not statistically significant. Chuck Machovec said that the information will be included in the expanded weight of evidence in the technical support document. She said she understands that all of the details cannot be included in the document but that the bottom line results should be included in the SIP.

There was discussion on how to handle language changes to the SIP. Ken Lloyd said that any changes made today and be incorporated into the plan. He suggested Council not postpone voting on the plan, unless the information presented today changed Council's conclusions. He indicated Pat Reddy's charts, language about the trends not being statistically significant and any other technical wording could be added to the text of the document.

#### *Overview of Elements of the Technical Support Document (TSD)*

Chuck Machovec, APCD, gave Council an overview of what is included in a Technical Support Document. Elements of the TSD include the modeling protocol; meteorological model performance evaluation; emission inventory development; 2006 base case modeling performance evaluation; 2010 base sensitivity and ozone source apportionment analysis; 2010 control scenario model evaluation and weight of evidence documentation. Chuck indicated the TSD will be provided on a disk to the AQCC and other upon request and will be available at [www.colorado.gov/airquality/documents/deno308/](http://www.colorado.gov/airquality/documents/deno308/). He said there will be a draft TSD by September 18, 2008 and a draft final TSD by November 11, 2008. The TSD will be finalized after the AQCC hearing.

#### *Report on action taken by North Front Range Transportation and Air Quality Planning Council*

Ben Manvel informed Council of the discussion and action taken by the North Front Range Transportation and Air Quality Planning Council (NFRTAQPC) at their September 4 meeting. He explained the NFRTAQPC has endorsed an alternative approach as suggested by industry that would increase the current system-wide control factor to 90% as a SIP measure rather than the measure included in the plan which increases control requirements on oil and gas condensate tanks to 95% for all  $\geq 2$  tpy tanks. The NFRTAQPC was comfortable with endorsing the SIP with a footnote referencing their endorsement of the alternative approach, which is likely to be considered by the Air Quality Control Commission during the upcoming pre-hearing process.

Ben also conveyed that the NFRTAQPC had considerable discussion regarding the North Front Range Inspection and Maintenance (I/M) proposal. The North Front Range Transportation and Air Quality Planning Council endorsed a proposal to extend the inspection/maintenance program structure that currently exists in the Denver metro area to portions of Larimer and Weld counties. The program includes IM240 testing, remote-sensing clean screen, gas cap checks, and advisory OBDII checks. The NFRTAQPC also endorses and evaluation of the I/M program structure by 2013 that includes consideration of expanded OBDII and high-emitter identification.

Ken Lloyd indicated the footnote language is included in the document noting the NFRTAQPC endorsements.

#### *Transportation Conformity Motor Vehicle Emission Budgets*

Ken Lloyd reviewed the motor vehicle emission budgets in chapter VI of the document. He explained why subareas were used in the proposal. He said once the budgets are approved by the AQCC, EPA has 45 days to find them adequate. Once the budgets are approved or found adequate, DRCOG and the NFRMPO will have to use them for conformity.

Brad Beckham said the subarea budgets represent a good solution for the two areas that are on separate schedules to meet conformity while maintaining flexibility.

#### *Overview of Document Revisions*

Ken Lloyd reviewed the redline version of the SIP with Council. He indicated the changes included adding the NFRTAQPC endorsement language; weight of evidence language; the 2008 monitoring data was added through August 31, although it is not quality assured; final modeling results are included; and the motor vehicle emissions language has been included.

He asked Council to get any grammatical edits to Misty Howell as soon as possible so the document can be put into final form for submitting to the AQCC.

#### *Comments from EPA*

Callie Videtich, EPA, commended the RAQC and APCD staff for preparing a SIP in ten months. She said the document leads her to conclude that the region has shown a demonstration of attainment. The goal of EPA, RAQC and APCD is to work through the details to make sure the SIP is fully approvable.

She indicated that EPA, Region 8 staff is committed to drafting a proposal making the 7.8 psi RVP be allowed so that credit can be taken for the measure in the SIP. She said there may be issues at the Office of Management and Budget (OMB) with the rulemaking.

Council asked for EPA's view of how the current SIP and the new standard relate. Callie outlined the process EPA uses to designate attainment/nonattainment areas. She said that the State can move forward with control strategies earlier than 2013 when the new SIP is due.

## **Public Comment on Proposed Ozone Action Plan and State Implementation Plan**

Steve Rudy, Denver Regional Council of Governments, indicated he reviewed the proposed revisions dealing with conformity and appreciates the flexibility of the subarea motor vehicle emission budgets. He urged Council to endorse the proposed language.

John Jacus, Davis Graham and Stubbs, thanked Council for the stakeholder process. He said written comments were provided to Council. He outlined some of the main concerns. His clients support a 90% system-wide control approach on condensate tanks rather than the strategy included in the SIP. They also oppose the APCD's approach to condensate tank controls as unnecessarily complex and burdensome. He said they are committed to conducting additional modeling and quantifying the difference between the two approaches. He said they oppose the State-only RICE controls because they believe them to be the least likely source category to deliver an ozone benefit. He expressed an interest in evaluating a diesel truck reflash program as an alternative to the State-wide RICE controls. John indicated they will be providing an alternative strategy proposal to the AQCC for consideration. He also reinforced his comments with select charts from the ozone modeling source apportionment presentation.

Mr. Jacus inquired whether there would be public comment during on EPA's rule making. Callie Videtich, EPA stated there will be public comment during the proposed rulemaking some time after July 2009.

Jeremy Nichols, WildEarth Guardians, expressed concern that the SIP would not meet Clean Air Act requirements. His key concern is with the ability to meet section 172, subpart 1 of the CAA. He believes subpart 1, not subpart 2, applies to the Denver ozone SIP. He said a formal finding has not been made and EPA's rules indicate the Denver nonattainment area is categorized as subpart 1 for 8-hour ozone as recently as August 15, 2008.

Ken Lloyd responded to Mr. Nichols' view of the subpart 1 versus subpart 2 issue. The rule referenced by Mr. Nichols was vacated by the courts in December 2007. He explained the issue has been litigated twice. Ken provided Council with the background information which led to the court's decisions. When EPA first proposed the 8-hour ozone nonattainment areas, they considered the 8-hour standard a new standard and applied subpart 1 to designate areas. The court overturned the decision and informed EPA that it was clear that Congress set up subpart 2 to regulate ozone. EPA then reviewed the designations and included previous nonattainment areas under subpart 2 and proposed other areas under subpart 1. The court again overruled the decision and told EPA they had not provided any good justification for designating areas under subpart 1 when it is clear that Congress' intent was to regulate ozone under subpart 2. Ken said that EPA has not formally changed its designations since the courts decision. However, EPA has indicated a clear intent to classify every nonattainment area in the country under subpart 2. This is the direction the RAQC and APCD have followed to prepare the current SIP. Callie Videtich, EPA, added the agency's intention is to make a proposed rulemaking by the end of the year. It is her understanding that the Denver nonattainment area would be subject to subpart 2. She also stated that it was EPA's direction to staff to pursue the SIP under subpart 2.

Ed Engve, Renegade Oil and Gas Company, expressed concerns with the ozone monitoring sites. He questioned why twelve months of enforcement of oil and gas controls is being considered for a three month problem. He believes the decisions are political and not based on

technical information. Mike Silverstein, APCD, said a different approach to twelve month enforcement could be considered during the AQCC process.

Gale Biggs, IES, noted that none of the monitoring sites were close to any tree cover and reiterated the importance of trees in helping to reduce ozone.

### **Action on Proposed Ozone Action Plan and State Implementation Plan**

Joan Ringel expressed her discomfort with voting on the Proposed Ozone Action Plan and State Implementation Plan (SIP) today because of the limited time for discussion.

**Joan Ringel moved that Council discuss the plan and recommend changes today and have staff email the updated version. Once any changes are made, the Council would notice a conference call meeting to vote on the SIP. Seconded by Ben Manvel.**

Jim Martin said he only heard one change to the document which was to make it clear that the trends do not show statistically significant changes. He indicated there would be no new information available in the next seven days that would change the outcome of the SIP and did not support postponing the vote as long as Council is able to have a complete discussion.

**Ben Manvel asked if a friendly amendment could be made to have the motion come to action if discussion was not complete by the end of the meeting.**

In response to Jim, Joan said she thinks the trend issue is very significant and should not be underestimated. If the trends are not going down then she is concerned that the strategies in the SIP are not adequate.

Jim Martin indicated he is not convinced the trends are statistically significant. He reiterated that the base case demonstrates attainment in 2010, the measures included in the SIP reduce concentrations and there may be additional state measure put into place over the next twelve months to further reduce ozone.

Joan said it seems unresponsive to the Governor and falls short of the Governor's expectations to say we have done our job because we reached attainment. It is not clear to her how fast the additional measures will be reviewed to be included in the SIP. In her opinion waiting until 2012 is not responsive to the Governor's request.

Jim responded that waiting until 2012 to begin reviewing the additional strategies was never suggested. Review will begin within months and continue into next year.

Jana Milford suggested Council agree collectively to plan to draft a letter to the Air Quality Control Commission to address a myriad of bigger picture, longer-term issues and to address any loose ends. Nancy Severson suggested including time targets for addressing the issues.

Nathan Rabinovich asked Jim about the SIP deadlines. Jim Martin explained the schedule is driven by State and Federal requirements. The Governor needs to give the SIP to EPA by July 2009. He indicated that if any of the deadlines are missed, the Governor will not be able to submit the SIP.

Nathan asked if it is easier to go to the Legislature with the package next session and make an amendment later or to provide them with one package. Jim noted that there is a universally shared sentiment with the Council to do more. However, doing more requires significantly more work. There is not a clear sense of what benefits these additional strategies will have. There are implementation issues to be worked out, costs to consider, funding to be raised for additional analysis and modeling, as well as a stakeholder process to organize. If measures are found to have significant benefit then they can be recommended as State-only measures through the Air Quality Control Commission. In response to Nathan's question, Jim said including additional measures as a State-only regulation is much simpler than a SIP revision.

Andy Spielman stated there are real external deadlines which govern the RAQC's actions. He said that he personally intends to push for the additional evaluation of near-term strategies in a timely manner.

Andy reflected on the comments made at today's meeting. He said one of the primary charges of the RAQC is to get the region into attainment. This plan does that. He said it is now time to determine what additional steps need to be taken to improve the situation where we all live. In his opinion, the RAQC is in the position to take that first step tonight.

Council discussed the RAQC's role in the Air Quality Control Commission process. Ken Lloyd explained that the RAQC's Executive Order specifically allows the RAQC to register for party status. He noted that RAQC staff will continue to work on technical issues with the APCD staff and bring issue to the Board for discussion. He said RAQC will file pre-hearing statements and there will be an opportunity to make comments at the hearing in December.

Theresa Donahue expressed her concern that the Council approved the rule language as part of the SIP since Council had not specifically discussed the language. She suggested Council not approved specific rule language and defer the proposal of language changes to the APCD.

Jana clarified her request for the Weight of Evidence modifications, which included modifying the language regarding the trends not showing any statistical significance. She suggested using some of the language crafted by Chuck Machovec and she would also like Pat Reddy's results of the weather-corrected trends included in the document. The detailed information can still be in the TSD.

**Joan Ringel's motion was tabled.**

**Jim Martin moved to approve the Ozone Action Plan and State Implementation Plan with the Weight of Evidence language changes recommended by Jana Milford and forward it along with the APCD regulation changes to the AQCC to request a public hearing. Seconded by Jana Milford.**

Ken Lloyd offered to email the language changes to Jana to make sure her recommendations were adequately reflected in the document.

**Motion passed without objection.**

**Jim Martin moved to include further discussion on next steps, the supplemental communication letter and party status at the October meeting. Seconded by Joan Ringel. Motion passed without objection.**

**Adjournment**

There being no further business before the Council, the meeting was adjourned at 5:15 p.m.