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**Air Quality Control Advisory Council Meeting Minutes
December 12, 2022 @ 9:00 am
Webinar held by MDE**

AQCAC MEMBERS PRESENT

John Quinn – Chairman
Todd Chason – Vice Chairman, Esq.
Lawrence (Larry) Schoen, PE
Sania Amr, M.D.
Thomas Killeen
Weston Young, PE
Megan Latshaw, PhD
Sunhee Park, PE, BCEE
Thomas Dernoga, JD
Benjamin Hobbs, PhD
Robert Wright, PhD, PE (ret)
Anna Marshall
Nicole Cook, JD

AQCAC MEMBERS ABSENT

Ross Salawitch, PhD
Adrienne Hollis, PhD, JD

MDE

Chris Hoagland
Megan Ulrich
Roger Thunell
Mark Stewart
Randy Mosier
Carolyn Jones
Eddie Durant
Kathleen Wehnes
Suna Sariscak
Ryan Buckley
Kara Dorr
Joseph Winters
Kim Drake
Cynthia Weisz
Jenny St. Clair
Catherine Salarano

VISITORS

Lindsey Mendelson
Kevin Shen
Jason Freeman
Sari Amiel
Josh Berman
Mike Deitz

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This is a summary of the December 12, 2022, 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/ARA. 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.

MDE website: <http://mde.maryland.gov/programs/workwithmde/Pages/AQCACmeetingminutes.aspx>

Mr. John Quinn, AQCAC Chair, opened the meeting by welcoming everyone to the Air Quality Control Advisory Council (AQCAC or the Council) meeting at approximately 9:01 a.m. Mr. Quinn introduced and welcomed Ms. Sunhee Park, AQCAC's newest member representing the American Institute of Chemical Engineers. Ms. Park is replacing Mr. John Kumm, who also serviced as Vice-Chair on the Council and was acknowledged by Mr. Quinn on his service to the Council. Mr. Quinn followed by announcing that Mr. Todd Chason was appointed by the Secretary of the Environment to be AQCAC's newest Vice-Chairperson. Mr. Quinn then asked Mr. Chris Hoagland, the Air and Radiation Administration Director, to open the meeting with introductory remarks.

At this point, the Department was experiencing technical issues with the GoTo Meeting platform and had to transition to Google Meets for the remainder of the meeting. Please note that several minutes from the beginning of the meeting were not captured through the webinar recording, including the Air Director's opening remarks. A full list of Council Members and attendees may not have been recorded.

MEETING MINUTES

Mr. Quinn requested approval of the previous meeting minutes shared with the Council through email.

Motion to approve the October 24, 2022 minutes was made by Dr. Sania Amr and seconded by Mr. Thomas Killeen. All members present voted in favor at approximately 9:21 a.m. Mr. Ross Salawitch and Ms. Adrienne Hollis were not present for this motion.

ACTION ON REGULATIONS

Repeal of COMAR 26.11.17.04 – Nonattainment Provisions for Major New Sources and Major Modifications – Intreprecursor Trading

Mr. Randy Mosier presented on the repeal of Chapter COMAR 26.11.17.04 Nonattainment Provisions for Major New Sources and Major Modifications, Intreprecursor Trading (IPT). Mr. Mosier presented to the Council the purpose of the IPT regulation, followed by the reasoning it will be repealed. The regulation was adopted to address the nonattainment New Source Review (NSR) requirement to offset emissions with creditable emissions reductions (ERCS), which allowed IPT for ozone precursors. On January 29, 2021, the D.C. Circuit ruled that IPT provisions of ozone precursors (NO_x and VOC) were in violation with the Clean Air Act. By this proposed action, the Department will repeal the IPT provisions from COMAR 26.11.17.

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Mr. Quinn questioned if air quality credits would interfere with economic development. Mr. Mosier stated high emitting sources have been controlling their emissions or shutting down throughout Maryland over the last 20 years compared to growing, which has resulted in ERCs being more readily available. Neither has regulatory actions necessarily precluded economic growth in Maryland, however, there is potential that limited ERCs could have an impact upon facilities locating to Maryland. Mr. Quinn followed by asking if there were specific cases where businesses could not locate to Maryland because they could not get air quality credits. Ms. Suna Sariscak from the Air Quality Permits Program stated that the Permits Program receives many inquiries for projects in Maryland, but what has a greater impact on businesses locating into Maryland is the 25-ton major source threshold as well as the fact that the Department currently does not have many offsets available. Ms. Sariscak also stated that it is difficult to get emission reduction credits certified and that there are more NOx credits available than VOC. The IPT regulation being repealed does impact if a source will be generating VOC emissions. The State currently does not have many VOC credits available. That being said, there are not many large VOC sources coming to Maryland due to the major source threshold. Some businesses have located to Maryland without triggering major NSR by installing VOC pollution control devices to minimize VOC emissions.

Dr. Benjamin Hobbs asked which source has taken advantage of the regulation and will it be impacted by the change or is it grandfathered in. Mr. Mosier and Ms. Sariscak confirmed that the facility was Lifoam Industries. Ms. Sariscak stated that during the NSR approval process in 2017, Lifoam needed to acquire more ERCs and that there were no VOCs available for offset. Utilizing the IPT provisions, Lifoam was able to purchase NOx credits for the needed VOC offsets. EPA has stated that since the IPT provision has been repealed, they will not make Lifoam obtain VOC credits.

Mr. Larry Schoen was curious on the impact of the repeal and the Court's decision. Mr. Mosier explained the procedure a business would need to go through to purchase ERCs if there were none available in Maryland. There are alternative pathways for a business to procure ERCs from another nonattainment area that is preferably in a neighboring state and of an equal or more serious nonattainment status. Going this route is a more difficult procedure that goes through a more challenging EPA process.

A motion to approve the repeal of the regulation as presented was made by Mr. Larry Schoen and seconded by Dr. Sania Amr.

All members present voted in favor.

Did not attend the meeting – Mr. Ross Salawitch and Ms. Adrienne Hollis.

Briefings

Build Energy Performance Standards (BEPS) – Mark Stewart

Mr. Mark Stewart presented to the Council a new regulation that is currently being drafted on Building Energy Performance Standards (BEPS). Mr. Stewart informed the Council that

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Building Performance Standards are emerging around the nation, generally with the goal of guiding larger buildings to higher levels of energy efficiency and/or lower levels of greenhouse gas emissions. The Climate Solutions Now Act of 2022 requires the Department to develop BEPS regulations that cover most large buildings in the state and that decarbonizing large buildings is an important step toward Maryland's greenhouse gas reduction goals. A covered building is a building in Maryland that has a gross floor area of 35,000 square feet or more, excluding the parking garage area. Buildings that are exempt from the regulation are buildings smaller than 35,000 square feet, historic buildings (designated as historic property under law), public or nonpublic elementary and secondary school buildings, manufacturing buildings, and agricultural buildings.

Mr. Stewart presented to the Council the general requirements for covered buildings in the regulation, which include reporting data to the Department annually beginning in 2025, achieving a 20% reduction in net greenhouse gas emissions by January 1, 2030 as compared with 2025 levels for average buildings of similar construction, achieving net-zero direct greenhouse gas emissions by January 1, 2040, and buildings must meet to be determined energy use intensity (EUI) targets, which the Department will set in the regulations. Mr. Stewart said that net direct greenhouse gas emissions will be defined in the regulation and explained the law will require an Alternative Compliance Pathway, which is a fee for building owners would pay for any net direct greenhouse gas emissions produced annually over target levels. Mr. Stewart also explained the financial incentives that can help owners of covered buildings comply with this regulation. The Department is currently taking stakeholder input throughout the regulation drafting process.

Mr. Todd Chason asked what the enforcement mechanism will be once the regulation is adopted. Mr. Hoagland answered by stating that the Department is currently working hard to develop an enforcement mechanism and they are diligently working to find an enforcement mechanism that is manageable and as automatic as possible. Mr. Thomas Killeen believed this regulation also focused on decreasing energy use, and Mr. Stewart responded stating that it is true that there is a two-target system required for the regulation (energy and greenhouse gas), and that the law provided less guidance on the energy use intensity target. The Department is working with their technical consultants on what that EUI target will be for energy use.

Dr. Megan Latshaw asked if there was a publicly available list of all the buildings that will need to follow the regulation. Dr. Latshaw also noticed that the social cost of carbon seemed very low and wondered if it is per capita. Mr. Stewart responded letting Dr. Latshaw know that there is a list being developed, but it is currently not ready to share. The EPA has released a report showing that the central estimate for the social cost of carbon dioxide is \$190 per ton (in 2020). Mr. Hoagland added that the old figure was around \$50 per ton, but the Federal Government is in the process of updating this and the draft figures are the ones that Mr. Stewart mentioned in his presentation.

Mr. Schoen questioned the construction criteria and explained that there are other factors that go beyond construction that impact energy and carbon emissions, such as the density and schedule of occupancy. Mr. Schoen questioned how the Department will handle these issues beyond the construction of the building. Mr. Stewart explained that some jurisdictions are looking to normalize their data by the hours of operation for a facility or occupancy, and that the

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Department is looking at different ways to do area weighted measurements or normalizing the data. Mr. Quinn commented on the Maryland Department of Natural Resources ongoing study on the pass to get to 100% clean energy. Mr. Quinn questioned if the requirement in the State is 50% clean energy under current RPS by 2030 and commented that it needs to be adapted to get to net zero by 2045. Mr. Stewart was in agreement with Mr. Quinn. Mr. Schoen asked if a person is using a fuel from renewable or waste process (such as landfill gas), are there any plans in place and does this count as a carbon emission or not. Mr. Stewart said this is among the open questions that they have while working through the details of the regulation.

Dr. Hobbs stated if the inventory of large buildings and the direct emissions associated with those covered by this rule and those exempt – does the Department have a sense of the relative proportion/the fraction of emissions in exempt buildings. Mr. Stewart did not have an immediate answer but did know the three most common types of covered buildings are office buildings, warehouses, and multifamily. Mr. Stewart referenced a preliminary analysis by the Lawrence Berkeley National Lab detailing that 40-50% of offices and warehouses are already all electric or using a trivial amount of onsite fuel. Dr. Hobbs followed up by asking if there was going to be any flexibility for buildings. Mr. Stewart stated it is on their list of things to consider for the regulation.

Mr. Weston Young asked what the thoughts were behind the exemption of public or non-public elementary and secondary school buildings. Mr. Stewart stated the exemptions were defined by the General Assembly. Mr. Robert Wright asked if there is an end date that this regulation needs to be finished. Mr. Stewart stated the law requires the Department to adopt the regulations in 2023. Mr. Quinn asked if it is possible to get progress reports on the regulation to make sure the Council is ready when it is presented again. Mr. Hoagland responded to Mr. Quinn informing him that the Department will keep the Council notified. If there is no draft by the next meeting, there will be a progress update. One final question from Mr. Schoen asked if specific stakeholders were on the stakeholder list and asked if the Council can be informed on the stakeholder meetings. Mr. Stewart confirmed that stakeholders were on the list and that the Council can be informed on future public meetings.

Ms. Lindsey Mendelson from the Maryland Sierra Club commented on the Advanced Clean Cars regulation and her concerns of it not being on the agenda. Ms. Mendelson asked why it is not on the agenda and if the Governor had made a decision regarding adoption of this regulation. Mr. Hoagland stated that since it is not on the agenda it will not be adopted this year, and the Department plans to bring Advanced Clean Cars II to the Council at a future meeting as soon as possible. Mr. Kevin Shen emphasized the urgency of adopting the Advanced Clean Cars rule.

Dr. Latshaw asked if Advanced Clean Cars can be a formal item on the agenda for the next meeting to talk about the regulation's progress. Mr. Hoagland stated that an update or action will be on the agenda for the next meeting.

The meeting was adjourned around 10:09 a.m.

The next meeting is scheduled as a 9 a.m. webinar for:

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- March 13, 2023