

Air Pre-construction Task Force meeting notes
February 19, 2002

Meeting Attendees:

J. Reitsma, M. Clark, G. Almquist, R. Hittinger, M. DeCelles, C. Cote, S. Montecalvo, A. Dzykewicz, T. Gray, S. Majkut, D. McVay and T. Getz

The meeting began with the review of the January meeting notes. The minutes were accepted as written. The purpose of this meeting was to discuss the two regulatory and three policy issues that were identified in the first meeting of the Task Force and two issues that were not discussed at the January meeting.

I. Regulatory Issues

1. *There is not sufficient flexibility in the regulations to propose other alternatives. Sources should be able to propose solutions that solve the problem in another way and take credit for going beyond compliance.*

The group was questioned about specific areas in the regulations where regulatory flexibility was needed. The following points were raised:

1. Regulation number 9 should be amended to allow some operational flexibility. One scenario presented was a coating line that wanted to reduce emissions through some change in operations. According to a strict reading of the regulations, this would not be allowed unless a permit modification was submitted. The commenter stated that DEM applies the regulations in a way that provides some flexibility but feels it would be better if the rules could be clearer when operational changes trigger the need for permit modifications.
2. One member expressed concern about situations where a company wants to install new equipment to reduce emissions, but despite the lower emissions may still not be able to meet the air toxics requirements. This provides a disincentive to reduce emissions. Doug mentioned that the regulatory framework is quite clear in these instances. The Director said that this forum was not designed to weaken any of the regulations, but to find ways to streamline the decision making process. If a problem is found, it should be fixed.
3. A question was asked whether a permit was required when a new piece of air pollution control equipment replaces an existing piece of equipment that results in a reduction in emissions? Doug McVay mentioned that yes a permit is needed, but a BACT analysis may not be required. Modeling might be required depending on several factors, including the age of the equipment, air toxics impacts etc.
4. The group was asked if any obstacles existed in the regulations that prevented operational flexibility. Issues mentioned were:
 - ◆ The time needed to process applications.
 - ◆ Regulation #9 required filing a new permit if replacement / construction costs exceeded 50% of the original cost of construction. The group was reminded that this was a federal

requirement for major sources and there is little flexibility to change this and that this is an issue under consideration in current NSR improvement discussions on a national level. Most of the state permits impact minor sources and DEM was requested to consider a change in regulations for this class of permits. Doug expressed his opinion that if a company is making changes that cost more than 50% of the original cost these are more likely than not "minor" changes and should be subject to permitting.

5. The group discussed the age of permits and how that might affect decisions. If a facility replaced a piece of equipment that was 20 years old, there is a good argument that a newer technology in either pollution control or process equipment would be available to reduce emissions. The issue may not be as clear for an operational change on the process that was recently permitted. One proposal discussed to address this issue included the following:
 - ◆ DEM should consider a permit that would detail the federal and state emission control parameters and allow flexibility to be built into the permit. Operational changes might trigger modeling. The results of modeling would determine if a new application would have to be submitted.
6. Boilers- One commenter suggested that the regulation should allow modifications that result in lower emissions without a permit.
7. Uncertainty in DEM's permitting decisions can be a problem, especially when it comes to BACT. Doug mentioned that there is little uncertainty if people perform a top-down BACT analysis and choose the top level of control. Uncertainty comes in only if an applicant does not want to choose the "best" controls. The top-down BACT process ranks control options on a \$/ton basis with the most expensive option being considered first. If this BACT is not appropriate, the next lower cost option is evaluated. The process continues until the appropriate level of BACT is determined. It was generally agreed that the nature of the BACT process would always have some uncertainty if an applicant does not want to install the control technique identified as the "best".
8. In previous meetings an expedited process was outlined, where "super applications" would be submitted and these applications would bypass the queue and go directly to Doug for review. A concern was raised that the system could be too successful and Doug might be the new source of the backlog. Steve Majkut suggested that we change the procedure and have the application go to the top of the queue and be assigned to the next available reviewing engineer instead of Doug. This might eliminate this problem.
9. The Director said he was disappointed that the group was not interested in linking expedited permit processing with a company's ability to go beyond compliance. One participant noted that the problem with the concept, for example converting a vehicle fleet to natural gas, was that this normally would be used by larger sources. There are not a lot of larger facilities located in Rhode Island. The mid to smaller size facilities are less interested in the concept since there are not a lot of options that work for these sources. The Director is investigating applying this concept on a regional basis.
10. One obstacle for a facility to accept a permit condition that goes beyond compliance is the concern that the permit would require emission reductions greater than those required by a

BACT analysis. This new emission limit may become a Lowest Achievable Emission Rate (LAER). This approval would set the emission level for other sources and would require this level of control to be required on subsequent proposals. The Director requested people to propose ideas on how to prevent this from happening.

- 2. Increase permit thresholds and require registration for those sources that have dropped out of the permitting program.*

Glenn Almquist had collected information on this topic from other states. He did not have sufficient time to review the material and would present this information at the next meeting. He agreed to share this information with the group as soon as he completed his review.

Someone made the suggestion that DEM should re-examine the existing 10 pound / hour emission threshold, especially for sources that emit emissions over a short period of time, i.e., petroleum products tank clean-outs and remediation projects. Doug mentioned that site remediation projects could be evaluated under a previous proposal of issuing general permits for temporary sources of emissions. The director also suggested that we look at Best Management Practices for some source categories. There was a suggestion made to look at different threshold time-periods, instead of just relying on an hourly time-period. Toxicity could also be a factor when we consider changing thresholds.

There was a third regulatory concern raised that applied primarily to landfills. The director mentioned that DEM would work on this issue with the RI Resource Recovery Corporation directly.

II. Policy Issues

- 1. DEM BACT determinations should be consistent with BACT requirements that are issued in the region. A lot of the pollution problems are regional and the emission requirements should be consistent throughout the area.*

The Director mentioned the Task Force process would not be used to push the Department into using a least common denominator approach for BACT determinations. The group needs to evaluate obstacles in the permitting process that prevents us from meeting our goals in an efficient manner. The Director mentioned that he would prefer the states, through NESCAUM and EPA Region 1, to evaluate setting up a regional BACT Clearinghouse. Steve said he would discuss this with the NESCAUM Board of Directors, but indicated that Rhode Island sets BACT for minor sources and some of the other states require this control only for major sources.

Doug said the process DEM uses for determining BACT is to check the EPA National clearinghouse, some of the major state clearinghouses like Texas, New Jersey and California and his NESCAUM counterparts. There may be some additional independent research for a high impact major source. Most consultants can reproduce this process.

In order to provide additional information to the regulated community, DEM could develop a website that could provide links to the major state and EPA clearinghouses along with permitting contact information in the NESCAUM states.

2. Develop an approach for handling distributed generation permits that would encourage clean generation.

This topic is not truly a permit-streamlining concept but is an important topic to discuss. The Director would like to bring a small group of people together to develop incentives for pushing the implementation of clean sources of energy. The Ozone Transport Commission approach may create more permit processing for DEM for facilities using dirty diesel engines by having lower permit thresholds. In their approach cleaner engines may avoid permitting requirements.

Steve Majkut mentioned the Regulatory Assistance Project, has developed a model rule for distributive generation. Information on this rule can be found at their website located at: <http://www.rapmaine.org/> This model rule is expected to be finalized in June 2002. The Director mentioned that the Northeast is evaluating a clean energy policy that includes CO₂ and NO_x controls.

Claude Cote mentioned that most distributive energy policies ignore landfill gas as a source of energy. The cost of power produced by this source is generally more expensive than typical or other alternative fuels. A distributive Generation policy should include performance standards as opposed to the OTC approach of lower permit thresholds for dirtier equipment and higher thresholds for cleaner burning equipment.

3. Change the way DEM processes applications from first in / first out to one that is based on time sensitivity or complexity.

Because of the Task Force, DEM will be modifying the way applications will be processed. The “Super Application” and general permit processes will reduce the review time for these categories of applications. The EDC process also allows projects of critical economic concern to move forward faster.

Doug also polled the NESCAUM states to determine if they process applications using a process other than the order they are received i.e., (first in/first reviewed). Doug mentioned that all agencies use this model. He also questioned them if they have developed criteria used to decide when a permit should be taken out of order or given priority treatment. Massachusetts does have a formal application process that allows applications to be taken out of order. The process does not have a lot of firm criteria to give us guidance if we were to adopt this procedure.

A question was raised whether the Title V applications caused a backlog in the system, due to sources needing to permit processes or equipment that previously were not permitted, but should have been. Doug said that there were few applications filed that resulted from the Title V process. The point was made that DEM should process applications from new sources of pollution before it works on existing sources of pollution that are filing an application after the fact.

III. Other Issues (From January Meeting)

1. *Early stakeholder involvement (for permits requiring a hearing)*

DEM will continue to work with applicants concerning major permits. The department will get involved with community outreach if we are requested to do so at the appropriate time in the process. There was some reluctance expressed by the department to move forward with a public process before there is a complete application and DEM is able to adequately review an application. DEM would however, participate in pre-application meetings to discuss the specific issues of a proposed application.

2. *Air permits that impact multiple DEM permitting programs*

DEM currently uses OTCA for coordinating permits that run across multiple programs. Participants agreed that the process is working and the existing process should remain in effect.

The Director mentioned that he would be interested in having someone from the small business community come to a meeting to discuss their concerns. The Economic Development Corporation will develop a list of small business and perhaps invite a representative to the next meeting. DEM will also attempt to consider this viewpoint in formulating changes that are a result of this Task Force.

The date for the next meeting will be **March 26** from 3:00-4:30. We will meet in Conference Room A of room 450 in 235 Promenade Street, Providence. This is a change from the previously scheduled March 19th date.