

CLEAN AIR ACT ADVISORY COMMITTEE (CAAAC)

Meeting Summary

April 6, 2006

Crystal City Sheraton

Arlington, VA

Welcome – Introductions and Opening Remarks – Rob Brenner, EPA - OAR

Rob Brenner, EPA OAR, opened the meeting by welcoming everyone in attendance. He stated that the Clean Air Excellence Awards ceremony the previous evening went very well, and he congratulated all the recipients. He then introduced Debbie Stackhouse to give the report out for the Air Quality Management Subcommittee.

Air Quality Management Subcommittee Report-Out – Debbie Stackhouse

Debbie Stackhouse, EPA OAQPS, reported that the AQM Subcommittee has prepared recommendations and the members have written 20 issue papers, currently in draft form. She stated that the AQM issue papers are posted on the Clean Air Act Advisory Committee (CAAAC) website and encouraged members to review those papers and contact the subcommittee with any ideas. She explained that the Subcommittee has two teams—the first team is looking at AQM planning strategies and the second team is looking at new and existing tools that would be useful in the AQM planning process. She said they also discussed the goal of the subcommittee, which is to anticipate what major air quality issues will arise in the future, and be prepared to address those issues. Ms. Stackhouse stated that from the initial set of recommendations generated by the AQM work group, the Subcommittee divided the recommendations into three categories. First, they looked at identifying recommendations that could easily be worked into the current AQM system; second, they identified recommendations that would be a significant undertaking and require substantial efforts; and third, they looked at recommendations that would require changing the Clean Air Act. She then announced that at the next AQM Subcommittee meeting in May they plan to meet in two separate teams to work on the recommendation papers. She then asked for any input from the subcommittee co-chairs.

Janet McCabe, Improving Kids Environment, explained that team one is divided into four groups: the first focuses on how to define air quality problems and determine if the system can be more flexible; the second focuses on the air quality planning process; the third focuses on ways that the air quality planning process interacts with other things in the regulatory world and beyond; and the fourth group focuses on how they can encourage people and groups to work together when developing policies and programs. Bob Wyman, Latham and Watkins, provided information on team two's plans for the next meeting. He said that they will be reviewing an inventory of tools for air quality management that the team previously developed and will now decide which tools should be applied to which problems. Gregg Cooke, Guida, Slavich, & Flores, P.C., added that at the team two meeting in May they will be focusing on using economic incentives as a part of the tools for air quality management. Ms. Stackhouse asked for any other comments regarding the Tuesday AQM meeting.

Discussion and Comments

Mr. Brenner commented on EPA's perspective on the Clean Air Act (CAA) and the recommendations they receive. He explained that because it has been 16 years since the Act was passed in 1990, and the Agency believes it is certainly time for a thorough review of the statute. He explained that the Agency envisions the CAAAC's involvement in air quality management process as the opportunity to have people who are very involved in the statute look at what has been done, look at the set of existing tools, and recommend what new tools should be incorporated. He stated that ideally the Committee will recommend two paths: first, how the Clean Air Act can be made more effective under the current statute; and second, a new set of amendments for the Act if there is an opportunity to make more significant changes to the statute. He said that the Agency will be pushing quite hard throughout the year to get results from the air quality management process. He then asked for any comments, reactions, or additional things EPA should be considering in this process.

Mr. Wyman brought up a few of the significant ideas that have been discussed at the subcommittee meetings regarding changing how air quality is managed. One idea is to have an equal degree of control for every facility in the U.S., whether it is in attainment or not. Another idea is a continuous improvement program, in which every few years controls would move up. Ms. McCabe highlighted another idea discussed in the AQM subcommittee meetings, which was to implement a system that would require states do a statewide comprehensive multi-pollutant plan on a regular basis.

Robert Avant, Texas Food & Fibers Commission, recommended taking a systems approach to regulation of the environment because air quality is only one piece of a larger process. He commented on the importance of streamlining all the permitting processes and suggested developing the equivalent of a "turbotax" for environmental permits.

Bill Rosenberg suggested that the committee consider how the Clean Air Act encourages or discourages the employment of advanced technology that improves the efficiency of energy use because most air problems are associated with the utilization and combustion of energy. He said the Committee needs to think about the impacts of their decisions on carbon, on clean air, on economic development of the different sectors of the economy across the country, and on national security as it relates to the importation of oil and natural gas.

Chris Recchia, Ozone Transport Commission, stated that it is important to integrate their work with energy and the economy, but they must start from bottom and work up to the broader issues.

Eugene Trisko, Attorney at Law, noted that in the past, the CAAAC had an Energy, Clean Air, and Climate Subcommittee and the Committee should consider bringing back this subcommittee.

Dan Greenbaum, Health Effects Institute, emphasized the importance of the broad, long-term ideas and recommendations being discussed outside of the air office. Mr. Brenner responded that the Office of Air and Radiation has had good participation from the General Counsel's office and the regional offices. He also said that the Committee does need to consider how they will make other environmental groups and other agencies aware of the recommendations.

Economic Incentives and Regulatory Innovations Subcommittee Report-Out – Ben Henneke

Ben Henneke, Clean Air Action Corporation, reported that the Economic Incentives and Regulatory Innovations Subcommittee discussed current issues in ozone and PM SIPs. One specific question that they addressed was how to generate the same kind of citizen interest with PM_{2.5} as the interest that occurred with ozone through the early action compact approach. They also discussed a list that was prepared for the subcommittee by the EPA of a series of potential measures for addressing PM_{2.5}. Mr. Brenner thanked Mr. Henneke and introduced the Diesel presentation.

OTAQ High Priority Overview – Lori Stewart

Lori Stewart, Transportation and Regional Programs Division, provided an overview of OTAQ high priority efforts. OTAQ's highest priority is implementing the heavy duty 2007 on highway standards including ultra low sulfur diesel requirements. The next biggest challenge is locomotive and marine engines, which will comprise about half the mobile sources for NO_x and a quarter of the diesel PM. Ms. Stewart said they plan to propose a locomotive and marine rulemaking by the end of the year could be adopted as early as 2011. She also said OTAQ is focused on the small engine rulemaking that will address lawnmowers and garden equipment as well as gasoline. Recent estimates show that these engines are projected to contribute about 27% of the hydrocarbon emissions for mobile sources so they see this as an important strategy for states trying to meet the ozone NAAQS. A congressionally directed study showed that tougher standards will not increase risks of fire and burns to consumers. Now that the study is complete they will move forward on developing the proposal for these engines and they plan to propose this by the fall of 2006. Ms. Stewart said one of their more significant, recent events was the publishing of the mobile source air toxics rule, which addressed toxics emissions. The proposal aims to clean up toxics from gasoline with benzene controls through vehicle standards as well as gas can standards. She said the proposal is out there for comment right now, but comments close May 30. The renewable fuel standards, which were required by the Energy Policy Act, were the last item that Ms. Stewart touched upon. By 2012 the policy act requires 7.5 billion gallons of renewable fuels such as ethanol and biodiesel to be used in the nation's fuel supply, which compares to 4 billion gallons that are out there today. She said they began the implementation of the renewable fuel program for 2006 in December by implementing a default standard requiring that all gasoline, on average, contain 2.78% of renewable fuels.

Committee Responses to OTAQ's Priority Efforts

There were several points addressed in response to Ms. Stewart's presentation.

The question on whether the small engines rule could be integrated in time for the presentation of the 2007 SIPs was asked by Gregg Cooke, Guida, Slavich & Flores, P.C. Ms. Stewart responded that her division includes the group that works with the states and regions on the SIPs and they could work with the rulemaking team to coordinate the integration to capture the benefits as best

as possible. She said the timing is unclear at this point, but they are hoping to do the proposal this fall so hopefully they will have enough data for incorporation into the SIPs.

Bob Avant, Texas Food & Fibers Commission, addressed the safety issue of the smaller engines, which Ms. Stewart had mentioned. He said he had witnessed an engine compartment fire on a late model last summer, which didn't even have newer technology engines on it. He said they are going to have fire problems, specifically with the new filters in dusty areas. There is no way to avoid leaf fragments while running the engines with these new filter systems that must work in high temperatures. He said you can not make an engine air tight and he foresees this as a big problem on the larger horsepower engines. He said a good study needs to be directed towards fire safety in dusty areas, environments, and field operations.

In response to Mr. Delucia, Ms. Stewart stated that the percent of renewable fuel that must be used in 2006 is 2.78 percent, but she said the country is already there. She said they really do not have a challenge until a couple of years out. She said she is not directly involved in the rulemaking process, but she knows the rulemaking team is working closely with stakeholders and doing extensive analysis, required by the Energy Policy Act, to look at the availability of ethanol and the production process and transportation issues.

Rich Kassel, Natural Resources Defense Council, raised two points. First, he said he hoped the agency would be looking into ways that give appropriate benefits not just to renewable fuel use, but also the air quality benefits or negatives associated with any of the fuels or any of the blends of the fuels. He said it's also important to look at oil displacement and not just the decrease in greenhouse gases. Secondly, Mr. Kassel pointed out that it was important not to prejudge the market, but look instead at the outcome the group wants to achieve and let the industry determine how to meet the standards.

Mr. Brenner ended the discussion by saying that there has been an increasing discussion on diesel retrofits since 1990. Several sources have provided the committee with tremendous examples of way to make progress. Additionally, he said supplemented legislature, and hopefully the Energy Bill, will provide additional boosts to these programs.

Recommendations for Reducing Emissions from the Legacy Diesel Fleet – Timothy Johnson

Tim Johnson, Corning Incorporated, presented the recommendations his working group developed on incentives for diesel retrofits. He said the working group is comprised of a variety of stakeholders including forty to forty-five different groups representing users, fuel, engine manufactures, emission control manufacturers, environmental groups, health organizations, state governor associations, and various trade associations. He said the recommendations have been through approval by the working group and the mobile sources subcommittee and they are now looking for approval from CAAAC.

Mr. Johnson said there are regulatory programs that address diesel emissions as well as voluntary programs that address diesel emissions. He said retrofits are defined broadly not only meaning

emission control retrofits that go into the tailpipe, but also rebuilding engines, replacing engines with cleaner fuels, and anti-idling programs.

Mr. Johnson said the Clean Diesel & Retrofit Workgroup, which falls under the Mobile Source Technical Review Subcommittee (MSTRS), had two goals. The first goal of the program was to provide passion and energy and stimulate the momentum on diesel retrofit and bring in technical expertise. The second goal of the program was to increase awareness of retrofits. Mr. Johnson also noted that the work group was further divided into four sectors: 1) Clean School Bus USA; 2) Clean Ports USA; 3) Clean Construction; and 4) SmartWay Transport Partnership.

Mr. Johnson said there were several areas of general consensus. The potential benefits of cleaning up the legacy fleet are significant and worth national investment. There is a large gap in resources to fund and run programs to retrofit the legacy fleet. A combination of incentives is needed to address diesel emissions across sectors, but the best available technology should be advocated in each situation to achieve maximum reductions. Also, the provisions of the Transportation and Energy Bills provide new funding opportunities. Two other important consensus findings were that grants, loans, and rebates are part of the answer across all sectors and tax incentives should be pursued at the federal level. Additionally, established outreach and education is important. Enhancing technology verification is important and establishing a national recognition program will help support the retrofits. Lastly, Mr. Johnson said that EPA should expedite guidance needed for calculation credits for use in SIPs.

Mr. Johnson next went into detail about each particular sector. He began with the school bus sector, by saying that a third of school buses were manufactured before 1991 and 2000 were manufactured before 1977. He said the school bus sector is a very cost sensitive sector and because most of the money goes into books and teachers, grant money is important for bus retrofits. The work groups recommendations for this sector include the need for more funding from all sources, developing education & outreach programs to education about programming and funding, giving priority to replacing pre-1977 buses, focusing on clean-up effectiveness & cost effectiveness, including children's exposure, striving for geographical diversity, and ensuring that privately owned fleets and small economically disadvantaged districts have equal access to programs.

Mr. Johnson next went into further detail on the freight industry. He said combined truck and rail consume 35 billion gallons of diesel annually, which accounts for 20% of all energy in the transport sector. Mr. Johnson said that some considerations in designing incentives include the marginal economic nature of the freight industry, the unique characteristic of bundling incentives together that reduce emissions and conserve fuel, and the mobility of freight sector across state lines that pose challenges to conventional thinking on SIP credits. Key recommendations to the freight sector include the need for significant public funding for technology, the promotion of favorable financial and tax terms, the resolution of technical issues unique to the freight sector, and outreach.

The third sector that Mr. Johnson discussed was the ports sector. He said that ports are unique in that they include both public and private entities, they are competitive and they are contract and lease oriented. There are several diesel engines operating in ports such as ships, ferries, tugs,

drayage trucks, rail, and dredging equipment. Mr. Johnson said a variety of entities also use the port. These entities include the military, coast guard, ferries, fishing vessels, and private ports and docks. Mr. Johnson also added that ports are located in non-attainment, maintenance, and attainment areas. He also said that ports often have the responsibilities of being “good neighbors.” Ports can be operated directly by the terminals, leased to private operators, or be a combination of operating and landlord ports. Mr. Johnson said that ports are growing for a variety of reasons and a homeland security issue was recently brought forth by the administration. He said new money is being allocated to ports for security and he hopes some of this money might be leveraged to cleaning up the ports. Mr. Johnson next introduced his work group’s recommendations for this sector. The key recommendations were to assemble a suite of solutions to accommodate the diversity in the industry, acquire more grant money for the public port authorities, look at tax incentives and loans/rebates for the private entities, develop emission inventories, create regulatory credits, and lastly provide recognition and evaluation.

Lastly, Mr. Johnson reviewed the construction center. He said roughly 93% of new diesel equipment is privately owned and construction companies are very small, which must be kept in mind. Mr. Johnson also said that only 60% of construction companies reported net profits in 2001, so tax credits might not be effective for roughly a little less than half of the sector. Mr. Johnson said there were several consensuses within the working group. The first is that more verified technology is needed for the construction sector. Additionally, there is a significant resource gap. Outreach and education on retrofits is also important. He said, however, that the group members hold different views of regulations and mandatory requirements. The group had several recommendations, the first being to look for synergies such as developing national programs of low interest loans to support retrofits. Additional recommendations include the development of model programs and assistance for SIP credit and rebates, and providing useful tools, education, and outreach.

Mr. Johnson ended his presentation by saying potential future work include participation in development of model guidance on idle reduction strategies, assisting in education and outreach on technology and funding sources, and addressing resource gaps.

Mr. Johnson’s PowerPoint presentation on this topic is attached.

Discussion of Diesel Recommendations

Following the presentation on the legacy diesel fleet report, the committee had a general discussion offering their input and suggestions on what additional recommendations should be included in the report. Included below is a summary of the recommendations raised by the committee during the meeting. There was general consensus among the committee that the presentation was excellent, organized, substantive, and much needed at this point in time. Some committee members also noted that this organized format leads to more productive and focused discussion. Mr. Brenner and Mr. Childers commented that they will continue to tinker with the agenda to allow for both discussion and formal presentation such as the legacy diesel fleet presentation.

Throughout the discussion, individual committee members raised their thoughts regarding on how and by what method recommendations offered by committee members could be added to the report and submitted to EPA. After discussion among members, the committee decided to submit the report to EPA along with the formal minutes of this discussion so that the opinions of all committee members regarding the report would be included. The working group may also want to look over a few things before formally submitting to EPA. Both the report and the comments of the committee will be posted to EPA website.

Specific Recommendations and Comments

The wording throughout the presentation to describe the mortality effect of particulate, which is present but underplayed, should be “substantial.” The language should be more straightforward about the need. EPA may want to consider using mandates to stimulate these activities. Aside from the need to retrofit the existing school bus fleet, there was not a strong enough sense of priorities in the report. California is talking about the possibility of means testing as the amount of need exceeds the funding. There have been matching requirements but no means testing. Perhaps the national program is not ready for this, but as the amount of funding increases, it will come up. Transparency and fiscal auditing is also crucial to maintain public trust but these issues are not really raised in the report. The report should also consider the role of match requirements when discussing grants. In California, there was a one-third to two-thirds match until the amount of funding became so large that a cap was instituted. Short of regulations, it is another way to share the burden and share the rewards of public subsidy programs.

The report is a consensus document and involved a wide variety of stakeholders and as such, the wording used in the report is based on consensus from a wide variety of stakeholders. An increased focus on priorities and fiscal auditing could certainly be added to the report.

A committee member commended the work of Mr. Brenner in making this topic a key issue within the agency.

Concerning specific recommendations, Mr. Raheer echoed Ms. Witherspoon’s comments about priorities. It seemed to him that the emphasis of the report was on the longer term rather than the shorter term. Mr. Raheer listed the following three short term specific priorities;

1. EPA and FHWA need to tell states and local regions how to get CMAQ money for diesel retrofits. Mr. Raheer noted his difficulty getting anyone outside of California where Carl Moyer funding is available to do diesel retrofits because of this. When Congress amended CAA, it specifically charged the agencies to give CMAQ priority.
2. Obtaining SIP and conformity credits for diesel retrofits needs to be a priority. There are legal, policy, and quantification issues surrounding this and it is impossible to explain why localities are getting a benefit and how localities can get credit for diesel retrofits.
3. Certification process needs to be streamlined.

Mr. Raheer did not see a reference to agriculture in the report but noted the tremendous potential in this sector noting that there are just as many if not more benefits to individual farmers which

should not be overlooked. By including the sector, this also would bring in a totally new funding source from the Department of Agriculture which should not be ignored.

The priorities raised by Mr. Raheer are also on the top of EPA and FHWA's list. DOT and EPA are working on guidance documents currently including SIP and CMAQ conformity as well as streamlining the technological verification process.

The agricultural sector has since been added to the National Clean Diesel campaign as the fifth sector in that campaign.

The question was asked as to whether the cost-benefit calculation could be used to persuade county and state departments about some of the longer term economic benefits. The cost-benefit calculation could be used in that manner and includes everything from fuel, cost of equipment as well as mortality and morbidity calculations. The working group would be delighted if the report is used at the state, county and local levels.

It was suggested that perhaps EPA develop a step-by-step guidance document for how local communities can go about creating a program. Mr. Johnson mentioned that the report touches on this.

The working group did the right thing by breaking it down by sector. There is funding and technology in place and engine manufacturers and others are working with EPA and other agencies to make sure that the expected outcomes occur so that the benefits of retrofit technology are retained.

EPA needs to develop a standard for biodiesel fuel. Without a standard, the industry is having a tough time figuring out what should be approved.

One member wondered if the committee would consider whether EPA should increase the weight limits for trucks. The AFPA found that this would significantly decrease vehicle miles traveled. If federal government would allow the increase, there would be fewer trucks on the road and the amount of fuel used would decrease.

The report does not look at this because it was beyond the domain of the report.

Mr. Greg Dana, from the Alliance of Automobile Manufacturers, recommended that since new cars are so clean, if new cars could be exempt from testing for the first couple of years and car owners could pay a small fee which is less than the cost of testing, that could be used as a potential revenue stream to set up funding for other programs. This, he noted, does not have environmental costs.

Mr. Dennis J. McLerran from Puget Sound Clean Air Agency and a subcommittee member on the report, expressed that perhaps as the committee adopts the report, the committee can put in stronger language about the imperative to move these programs forward. This could be done, he said, with language that is separate from the report.

Organizations are working to get the president to including for this in his budget and working with Congress to make sure it gets passed. Attainment areas also need to be considered in retrofit efforts.

Getting the legacy fleet retrofitted is difficult because it is difficult to establish where the sources are and where the opportunities are to retrofit.

There should be more emphasis on getting inventories together so that it would be easier to establish where the opportunities are and get a sustained effort underway.

EPA should be clear that retrofitting the legacy diesel fleet is a priority.

There is not a complete inventory of port sources but enough is known to know that there is great potential to reduce emissions in this sector.

Mr. Bob Avant, Texas Food and Fibers Commission, questioned the calculation on page 35 of the report which discussed bundled costs for adding units and stated that after three years profits for the companies jump \$600 a month. Without having seen the calculations, Mr. Avant questioned these figures and wondered if the lifecycle costs of those bundled units had been included. He thought it was a good recommendation but thought the calculation might be questionable. He went on to say, 10% of the producers in the country produce 90% of the agricultural commodities in this country. When discussing the legacy fleet, 90% of the farmers in this country have a legacy fleet. There are a lot of old tractors out there but in terms of the impact of those users, it's a waste of time to focus on them. According to Mr. Avant, those tractors may only be used about 100 hours a year and those types of things need to be considered. EPA should not be wasting their time on retrofitting equipment at these types of farms.

Agriculture should be included in the report because of the significance of this sector, the uniqueness of the response to the agricultural fleet, and the fire safety concerns in particular applications.

Increasing the truck weight limit will likely not be well received by DOT.

Mr. Avant expressed that he would be happy to be involved in adding the agricultural sector to the report and noted that there was not one agricultural representative included on the report while other sectors were represented.

Getting the 2,000 30 year old buses still off the road should be an immediate short term concern. A longer term recommendation is getting EPA involved in the maritime and ports sector, including fuel and engine quality.

Most engines have higher NOx levels at higher loads and this increase tends to be exponential.

Most ships have multiple fuel tanks. It is plausible and within EPA's authority to have ships burn cleaner fuel when docked at port.

One committee member wanted to underline and emphasize the information regarding SIP credits and the technical specification process in the report so that EPA would understand the importance of getting the information out concerning verification and SIP credit calculations.

Mr. Richard Bolton, Center for Toxicology and Environmental Health, LLC mentioned that he would be distributing the report in Tennessee to about 35 individuals from different sectors.

At the next meeting, there will be a report on the SIP guidance, verification process, and CMAQ guidance that EPA is currently developing.

There are various funding sources where money is available and that is information that could be collected from EPA and local agencies. In El Paso, for example, the railroad commission provided funding for the school bus fleet to convert to natural gas so there are other funding avenues available beyond EPA.

When discussing diesel fuel, it is important to figure out how to include the effects on waterways.

The Port of Los Angeles and the Port of Long Beach have extensive information about their inventories and the CARB website also includes a recent health assessment of ports.

Private sector financing is crucial and the best way to do this may be through mandated regulatory programs. There are innovative approaches which can be binding and make it in the economic interests of some sources to participate in the program. Even if public sector financing is available, there are other challenges like getting truck drivers to take the subsidies when their concerned about the income tax implications.

There should be future discussion regarding how long the life of some of these engines can last after being retrofitted. As the attempt continues to integrate engine and environmental policy, it will be important to discuss to what extent these retrofit solutions are engine modifications as opposed to engine treatment because it will have significant effect on overall fuel economy.

As a compliance strategy, the production of near zero sulfur fuel is a promising approach being promoted by the governors of Pennsylvania, Montana and other coal states through the gasification of coal and petrocake. Diesel fuel from coal is about 35 dollar a barrel as opposed to 65 dollars a barrel from foreign sources. This strategy has a lot of political support and it can begin the process of EPA looking at these issues in a broader, more politically supported approach. EPA currently has a working group looking at coal gasification issues.

There are important effects that this report can have on both health and climate change.

The equipment used in the construction sector is privately owned but over sixty percent in Dallas and Houston area is influenced through public contracts. Therefore, it is possible to put an incentive attached to contracts to provide more money if contractors comply and get new construction equipment. It is being used for the first time in Dallas and Houston. The emphasis,

Mr. Cooke stated, is that because the construction equipment is used for public contracts there is the public ability to influence those construction projects.

It was suggested that someone review the legal issues raised in the report in light of a suit filed by American Road Builders Association challenging the ability of state and local agencies to implement retrofit programs.

LUNCH

Remarks from Acting Assistant Administrator of the Office of Air and Radiation – Bill Wehrum

Mr. Bill Wehrum, EPA OAR, gave a brief presentation about the OAR's priorities for 2007 in relation to the Clean Air Act. He stated that they will be working with states to implement certain clean air programs; they plan to develop new major rules; and they will work to support voluntary programs, like Energy Star, which have been successful in the past. They plan to focus particularly on radon because there is a lack of regulations for radon.

Comments

Janice Nolan, American Lung Association (ALA), asked what the opportunities would be in the future for public discussion and input on the NAAQS review process. Mr. Wehrum responded that in December 2005 a work group undertook a review of the NAAQS review process and on Monday issued a report with recommendations of how to improve the process. He said that some recommendations are complicated and will require more work, discussion, and opportunities for public input. Ms. Nolan responded that the ALA was concerned by some things in the memo because they do not believe all of the aspects of the NAAQS review process need debate. She encouraged EPA to ensure that the recommendations in the memo have sufficient opportunity for discussion and consensus before any substantial changes.

Mr. Brenner then introduced Jeff Muffat to open the discussion of the Title V Task Force.

Final Report of the Title V Task Force

Jeff Muffat, 3M Corporation, explained the Task Force was comprised of 18 individuals, six people representing each of the three stakeholder groups: industry, environmental groups, and state and local agencies. He announced that Shannon Broome, Bob Hodanbosi, and Karla Raettig, each representing one of the three interest groups, would give a presentation summarizing some of the recommendations.

(See attached presentation)

Shannon Broome, Air Permitting Forum, explained that in May 2004 the Task Force was charged with evaluating what was working and what was not working for Title V permitting and generating recommendations of how to improve the Title V program. The final report was produced in April 2006. The Task Force addressed a range of issues related to Title V content

and process. For each issue, a group composed of one person from each of the three interest groups worked to develop an issue paper. Ms. Broome discussed the first issue paper on ‘Costs and Benefits.’ Recommendations included best practice sharing to capture program benefits at a lower cost or burden level.

Bob Hodanbosi, Ohio EPA, discussed the next two issues: ‘Incorporation of Applicable Requirements’ and ‘Insignificant Emission Units (IEUs).’ The Task Force majority recommended eliminating insignificant emissions units from inclusion in the program because the administrative burden outweighs the environmental benefits, but they suggested that any unit not included in the program would not have a permit shield.

Ms. Broome then discussed the issue of ‘Monitoring’, which was one of the biggest and most divisive issues addressed. She explained that there are many different legal interpretations for this topic and ultimately the Task Force felt these issues would be best resolved in litigation. Ms. Broome also discussed the issues of ‘Title I/Title V Interface’ and ‘New Substantive Requirements’ issues. Problems with new substantive requirement have arisen because states sometimes impose monitoring parameters as enforceable limits. There was general agreement among Task Force members that Title V does not authorize imposition of any new or more restrictive emission limitations. Ms. Broome said the Task Force also discussed ‘Permit Definitiveness’ issues for which the Task Force did not achieve consensus. Another issue the Task Force dealt with was ‘Compliance Certifications,’ specifically what format should be used. The majority of the Task Force recommends the short form.

Mr. Hodanbosi reported on Task Force discussions regarding ‘Startup, Shutdown and Malfunction (SSM)’ which focused on whether SSM defenses in both SIPs and federal rules create enforcement and compliance problems. One consensus recommendation was that the Title V permit should be clear as to what limits are subject to the emergency defense.

Karla Raettig, Tulane Environmental Law Clinic, reviewed Task Force discussions of the two main issues related to ‘Compliance Schedules.’ She stated that the Task Force determined that the topic raised legal issues that could not be readily resolved and therefore they did not offer any recommendations.

Mr. Hodanbosi discussed the issue of ‘EPA Review of Proposed Permits’. He stated that the Task Force majority recommended a concurrent EPA and public review unless a significant comment that is germane to Title V permit proceeding is submitted by someone other than the permittee. In this case, the review would be sequential.

Ms. Raettig presented topics that the Task Force addressed related to public involvement. For the issue of ‘Public Access to Documents,’ she said there was general agreement that permitting authorities should maintain an accessible and complete file of the relevant documents and make certain these documents are available online. However, she said there was disagreement as to which documents are relevant to a Title V permit. The issues related to ‘Public Hearings’ generated some debate about the state’s discretion for deciding when to hold and when not to hold public hearings. Ms. Raettig also discussed issues with ‘Public Notice Throughout the Process’ and the issue of ‘Statement of Basis.’ She reported that there was consensus on most

items that should be included in a statement of basis for initial permits, renewals, and revisions; and consequences for permits issued without a statement of basis. She also discussed issues with ‘Response to Public Comment.’ She said that permitting authorities not responding to public comments is a real problem and the majority of the Task Force agreed that permitting authorities should respond to each comment received and send a copy of all responses to EPA .

Discussion on Title V Report

Ms. Broome introduced the permit revisions and operation flexibility. She mentioned several issues involved with this, an example being the permit engineer confusion in regards to which path applies. Ms. Broome also discussed recommendation topics. She said they decided it was not productive to try to agree on whether or not the rules should be revised. Instead, they created two sets of recommendations – one to improve current rule implementation and another assuming rule revisions.

Ms. Raettig presented the last topic, appeals and petitions. Some of the issues under this topic are first that some states are very slow in processing sources’ permit appeals. Secondly, EPA is slow in responding to petitions for objection to permits and lastly both of these processes are not transparent (i.e., poor communication with petitioner, permittee, or permitting authority). Ms. Raettig said they recommend that they seek to expedite appeal resolution and consideration of source stay requests, improve transparency of the petition process, and expedite EPA petition responses. Lastly, Ms. Raettig, said they need to address concerns regarding resolving programmatic issues in individual petitions/appeals with out public input.

Committee Responses to the Title V Task Force Overview

The committee responded to this Title V document and presentation with overwhelming enthusiasm. Most everyone agreed that it should be moved on to the agency for consideration.

Mr. Rahe, Hogan & Hartson, LLP, for example, said once the report was submitted to EPA he thinks that EPA should provide feedback on the document by the next committee. This feedback would include what EPA looked at and what they prioritized based on their budget and how they think the committee should proceed based on public comment. Mr. Rahe next said he would like to make one recommendation that he heard the other day. He said there are a number of recommendations that begin “these are best practices...” He said some are good recommendations that have been identified from various agencies and he would like to see if there is a way for the agency to get these out even faster than before their next meeting. If they can do that he thinks there is a potential for a short term and a longer term proposal.

Many committee members agreed that what made the document so great were the various recommendations from a variety of stakeholders. Chuck Knauss, Swidler Berlin LLP, in said the report was a great document because it was produced by multiple stakeholders and all the views were reflected.

Jeffrey Muffat, 3M Corporation, next read what he and Mr. Harnett had put together to recommend to the full committee.

We recommend that the Clean Air Act Advisory Committee request EPA to review the Title V Task Forces final report to the CAAAC and respond to each of its recommendations taking into account the particular pattern of task force voting on each one. For the recommendations that EPA accepts, EPA should also indicate its plans for their implementation and report back to the next CAAAC meeting in August.

There was a variety of support for this recommendation; however, some committee members needed clarification on several issues.

Ms. Nolan, American Lung Association, said, for example, that her understanding of a recommendation is that one person could make a recommendation. She asked if they are suggesting that every single recommendation, regardless of the support, go to EPA as a recommendation from the work group?

Mr. Harnett responded by saying that he wanted to include all the views including minority views. He said in a number of these areas the recommendations overlapped on different approaches to the same issue. Mr. Harnett said in order to resolve how to respond to the issue it is necessary to pick upon differing perspectives on how best to handle it. He said his feeling was that it was important to have recommendations on the table even with limited support. They felt it was important to get feedback on all recommendations so they know what can move forward and which recommendations the committee should push back. He said he would rather bring all the recommendations forward and receive feedback than to start picking and choosing.

Ms. Nolan then asked if the working group was suggesting that EPA should then implement the recommendations that EPA foresees as implementable regardless of the consensus status of that recommendation.

Mr. Harnett said he understood the concern, but his feeling was that they would be reporting back to the committee on what their plans would be to proceed and which ones they would not be proceeding with to get feedback from the committee. He said there was consensus among all parties that the statement of basis should be prepared now by every state agency or permitting agency. He said he would like to move forward in working with the states and permitting agencies to get this to happen and not wait until August to get feedback. He said he would like the ability to move forward with things that have a general consensus or majority agreement. He said he thinks they have a feel for the controversial areas.

An additional concern was expressed by Mr. Knauss who said there are a number of rules that the agency is working on now that are addressed in this report. He said he doesn't want the agency to think this group was blocking the agency from moving forward on rules that are in process.

Following several of these concerns, Mr. Brenner tried to summarize the feelings of several of the committee members. He said thinks the concern is that no one wants to have a situation where the agency says they're moving ahead because the task force supported the recommendation, regardless of a minority support. He agreed that they didn't want to have this situation. He said they should not use this as a justification for proceeding if there is not broad support within the group that developed the report.

Elaine Mowinski Barron, JAC Paso Del Norte Air Quality, responded to Mr. Brenner and the other concerned committee members by saying that she thought the recommendations in the report explained those items that had consensus and the topics that failed to come to consensus. She said those opinions were reflected in the total body of the report. She said this reflection was why they came to an agreement that the report should move forward. She said they should get it to EPA and let the public cry out for more if there are areas which have been neglected.

One last concern, brought up was that the environmental community did not want the agency moving forward with recommendations and backing up their advancement by saying the task force supported the recommendations, when the environmental community might not have supported the recommendation.

Mr. Harnett responded to this concern by saying that he didn't expect there to be referral to the "task force" for anything. He also said to the degree that they ever do characterize anything coming out of the report; he said he promised that they would be accurate and go into detail so they're not wrapping people into a place that they did not support.

The committee agreed to submit the report to EPA and get feedback on recommendation implementation by the next meeting. In the meantime there was a consensus to focus on the recommendations that had broad consensus.

Concluding Remarks

Pat Childers, EPA, concluded the meeting with a discussion of the location and potential topics for the next meeting. He asked the committee to give their preference for meetings the first week in April, August and November, or May, September, and December. Mr. Childers mentioned that possible topics for next meeting included the AQM Phase I report, EPA response to the Title V report, and a follow up on the Diesel report.