

**MINUTES**  
LANE REGIONAL AIR PROTECTION AGENCY  
BOARD OF DIRECTORS MEETING  
TUESDAY–MARCH 14, 2008  
LRAPA Meeting Room  
1010 Main Street, Springfield, Oregon

ATTENDANCE

- Board: David Monk, Chair–Eugene; Bill Carpenter, Vice-Chair–At-Large, Springfield; Glenn Fortune–At-Large, General; Drew Johnson–Eugene; Kit Kirkpatrick–Eugene; Andrea Ortiz–Eugene; Pat Patterson–Cottage Grove/Oakridge; Dave Ralston–Springfield; Faye Stewart–Lane County (ABSENT: None)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Ralph Johnston; Sally Markos; Kim Metzler; Nasser Mirhosseyni
- Other: Russ Ayers, Chair, and Amy Peccia–LRAPA Advisory Committee; Landa Gillette–LRAPA Budget Committee; Terry Connolly–Eugene Chamber of Commerce; Paul Nielson–Isler CPA; Kathryn Brotherton–LRAPA Legal Counsel

1. OPENING: **Monk** called the meeting to order at 12:15 p.m.
2. PUBLIC PARTICIPATION: None.
3. CONSENT CALENDAR:

Corrections to Minutes. **Fortune** called attention to a statement by **Carpenter** on page 12 of the minutes, at the bottom of the page, in which the minutes state that he “things,” and **Fortune** said he believed it should read “thinks.”

**Monk** noted that on page 15, in the last paragraph, third line, at the very end of the line, there is a semi-colon, followed by the words, “but is it is . . .,” which he said he thought should be, “but if it is . . .”.

Comment on Expense Report. None.

**ACTION: MSP(Fortune/Johnson)(Unanimous) adoption of the minutes of the February 14, 2008 board meeting, as corrected, and approval of the expense reports through January 31, 2008, as presented.**

4. DIRECTOR’S REPORT: **Hough** said there was only one item in the written report which he had intended to highlight; however, EPA took action the day prior to this meeting on the ozone standard, and he wanted to touch on that. Written information in that regard had been provided at the table at today’s meeting.

Federal Ozone Standard. **Hough** said that, under the new tightened ozone standards 75 parts per billion (ppb), there are no areas in Oregon which would trigger non-attainment; however, with the tightened standard, Lane County does not have much margin of safety. **Hough** explained that the ozone standard is a three-year standard, based on the fourth highest day, each year. The three-year average of those fourth-highest days give you the number to compare with the national standard. He said the chart staff had provided for the board, showing the new standard and LRAPA’s ozone monitoring data, underscores the need to maintain the course on many of the things LRAPA has already been working on, such as the strategies for

addressing area sources, to reduce those air toxics and ozone precursor emissions, and diesel particulate reduction programs, which also reduce the ozone precursor oxides of nitrogen.

**Hough** explained that, within a year of the new standard coming out, the governor has to identify any areas of Oregon which are out of compliance with the new standard. EPA will review that list and finalize which areas are in compliance and which are not. That decision would probably be made in 2010. Any areas which EPA deems to be out of compliance will then have three years to adopt a plan to attain compliance.

**Fortune** noted that the chart shows that much of California is above the standard. **Hough** explained that areas which have more severe problems and are very far from the standard can get as long as twenty years to meet the standard. If an area does not meet the time frame EPA has given it to achieve compliance, EPA can impose sanctions; however, those sanctions tend to be counter-productive. For instance, if an area triggers sanctions which make them ineligible for federal highway dollars, that might interfere with progress to meet the air standard.

**Ralston** referred, also, to the chart showing ozone levels in Lane County over the years, noting a drop in ozone levels in 1991. He asked what happened between 1988 when the levels were in 80s and 1991 when it dropped to 61. **Hough** explained that the biggest improvement in ozone levels has been from newer, cleaner-technology cars replacing older cars; however, ozone is volatile from year to year because it is dependent on the number of hot days the area experiences. There are times when this area experiences multiple years with no—or very few—days that reach 90 degrees F or above. Without the high temperatures and strong sunlight, the ozone levels do not rise as high. **Hough** said it is necessary to look at the overall trend to tell what is happening over time. He said this area has been experiencing an overall improving trend, despite significant population and traffic growth. He stressed, though, that the shrinking margin of safety, with the tightening of the standards, is a key observation.

**Johnson** pointed out that EPA's scientific panel recommended a 60 to 70 ppb standard, which would have meant that this area would have gone above the standard. He said that, even though Lane County is in compliance with the new standards set by the current administration, the standard may not accurately reflect what is protective of public health, based on EPA's scientific panel's recommendations.

**Patterson** commented that Portland is the only area of Oregon that has problems with ozone, and he does not like to have Lane County put in the same category as Portland. He also said that a lot of the ozone that impacts this area comes from metropolitan areas to the north, and he wants to have a complete explanation of why the area is not in compliance with the new ozone standard, if EPA designates any area of Lane County as non-attainment.

GreenHouse Gas Reporting. **Hough** explained that, last summer, **Governor Kulongoski** asked the EQC to consider adopting reporting rules for GreenHouse Gas emissions. DEQ then established an advisory committee and asked Hough to be an ex-officio (non-voting) member. That group finished its recommendations in December, and DEQ is in the process of putting those recommendations into rule form. LRAPA must be as stringent as the state requirements, and it is desirable to have consistent statewide reporting. **Hough** said he had discussed this with LRAPA legal counsel **Glenn Klein**, who advised him that the most efficient way to accomplish that it to ask EQC to specify in its rulemaking that the state's rules also apply to Lane County. It would apply to all Title V sources and to some of the ACDP sources, as well. **Hough** said that is what he recommended to DEQ as they are drafting these new rules. He said **Klein** has suggested specific language to DEQ on how that can be accomplished under the state statutes. **Hough** stated that, if the LRAPA Board of Directors wants to discuss that further, or if the board disagrees with **Hough's** recommendation to

DEQ, the subject can be scheduled for more discussion at the April board meeting. **Monk** asked if board members had opinions on that.

**Carpenter** commented that, with LRAPA's limited resources and potential for even more limited resources, it would be better to allow DEQ to carry the reporting burden. **Hough** said the proposal is for DEQ to handle the rulemaking and that the reporting would be handled as part of the reporting permittees already have to submit to LRAPA. LRAPA would then forward that information to DEQ, and DEQ would put together the overall statewide report.

**Johnson** asked if the rule being proposed by DEQ would require reporting through an existing reporting system. He said he remembered seeing an account of California having two existing systems, and the rule simply could have required facilities to go to one of those databases to do their GreenHouse Gas reporting. **Hough** said the Oregon advisory committee discussed two schemes for reporting. One would be to report through DEQ, and the other would be for the affected facilities to report directly to the Climate Registry that is being set up nationally. He said DEQ explored the second option and found that facilities would have to pay a fee to the Climate Registry because that is how the Climate Registry is funded; and EQC does not currently have the authority to do that. DEQ has determined that, legally, the option would be for facilities to file reports with DEQ; and, if the information were submitted to the Climate Registry, it would probably be DEQ that would do that filing. **Johnson** asked if LRAPA or DEQ staffs would be funded to use the Climate Registry, and **Hough** said that would be covered by permit fees. He said, as far as he knows, there will not be a separate reporting fee required of permittees and that, in most cases, it would be a matter of adding another column, or two, to the emissions reporting they already submit to LRAPA and DEQ.

**Patterson** asked if the permit fees would be increased to cover the reporting requirement, and **Hough** said the reporting requirement would not affect the fees LRAPA charges permittees. **Patterson** said he does want LRAPA to get trapped into an unfunded mandate and be forced to use its existing funding to pay for something that is being required by the state. **Hough** responded that the role LRAPA would have in this scenario would be very minor. He said staff is sensitive to the resource issue, and that was why he recommended to DEQ that they handle the rulemaking this way. It would not put as much administrative burden on LRAPA.

**Monk** asked if the rulemaking is purely for the reporting. He speculated that once the data is there, there will be a cap and trade system recommended to address that, and he asked if the rulemaking would incorporate program implementation. **Hough** responded that the state rulemaking is just for reporting, and that it is actually only a partial reporting because DEQ realizes they don't have authority to do some things. For example, load-based utility reporting is something that will probably be clarified in the 2009 Legislative Session. The current DEQ rulemaking will put everybody on notice so that reporting of 2009 emissions could occur in 2010. In order to accomplish that, the rules need to be adopted in 2008 and they will probably have to do another rulemaking after the 2009 session to complete the process.

**Hough** said the way DEQ is proceeding with its rulemaking is a way to have a minimal impact on LRAPA while still keeping LRAPA involved where it needs to be involved, and end up with the necessary statewide consistent EI development for GreenHouse Gases. Regarding the cap and trade issue brought up by **Monk**, **Hough** said the governor has been clear that it is his intent that Oregon and other Western states should do cap and trade; however, that is not addressed in this rulemaking.

**Johnson** asked that this topic be placed on the April meeting agenda for further discussion. He said he had a number of questions, mostly about financial impacts and the burden on staff, such as how permitted sources

are to be notified that they have to report under this rule, and if the new reporting will require staff time to modify permits. He said he sees a financial burden on the agency and on staff to implement this rule, without a funding mechanism.

5. **ADVISORY COMMITTEE:** **Hough** asked **Sally Markos**, the main staff person for the advisory committee, to report on the progress of the two sub-committees and the full committee. He said **Max Hueftle** has been a key staff person involved with the details of the proposed industrial permitting rules and air toxics rules and that both **Hough** and **Lopez** could also help to answer questions the board may have.

**Markos** reported that the industrial rules subcommittee met twice in February, and the air toxics rules subcommittee met once. Both subcommittees reported their progress back to the full advisory committee at its regular meeting at the end of February. **Markos** noted that the committee members involved in the subcommittee work had devoted significant extra time to attending LRAPA advisory committee meetings during the month, many taking time off work to do so.

Industrial Rules. **Markos** said the subcommittee met on February 20 to review the documents presented by **Hueftle**, one of which was a stringency analysis. The subcommittee went through the documents, rule by rule, and looked at whether the rules would be as stringent or more so than the DEQ's state rules. They also evaluated the environmental benefits of the rules. **Hueftle** also provided a fee and workload analysis, because there was some concern about how the proposal to adopt DEQ's streamlined permitting rules would affect LRAPA's workload and fee-generated resources. **Markos** said the analysis showed that, even though the fees would go down, the workload would also go down, and the financial impact on the agency would actually be neutral. She said **Hueftle** also presented a New Source Review comparison between DEQ and LRAPA. The subcommittee members were pleased with the way the rules are written and decided to recommend that the full committee approve them for adoption by the board, with minor changes suggested by DEQ. Those suggested changes resulted from DEQ's finding some problems with their rules after adopting and implementing them.

The full committee discussed the subcommittee's findings and recommendations regarding the industrial permitting rules and voted unanimously to recommend that the board adopt the rules with the minor changes suggested by DEQ. **Ayers** commented that the committee is now passing further action back to the board regarding the industrial permitting rules. He asked **Hough** what the next steps would be. **Hough** responded that the intent has been that the committee would make its report to the board at this meeting, with its recommendations. If the board concurs with that general direction, staff would come to the board in April with a request for the board to authorize a public hearing and potential adoption at the June board meeting.

**Ayers** asked if the public comment period would begin as soon as the board authorizes public hearing; and **Hough** said that is correct, although staff has considered it open for public comment ever since the proposed rulemaking was made public last October and November. The draft rules have been available, not just to the advisory committee but to any interested persons since that time. **Hough** added that the draft rules have been posted on the agency's website for public review. The public notices for the hearing will include a closing date for accepting public comment.

**Carpenter** asked if **Hough** considers the industrial rules package substantial enough to notice and hold a public hearing, and **Hough** said he did. He said one thing staff planned to discuss with the board when the request for authorization of public hearing is made is whether the board would like to do an evening session with staff acting as hearings officer, as well as the daytime hearing before the board at a regular board meeting. Any comments received at the evening session would be summarized and distributed to the board

members prior to the daytime hearing. **Hough** commented that both **Monk** and **Ortiz** had expressed interest in evening meetings, and perhaps other board members would also like LRAPA to hold evening hearings in order to make it as accessible as possible to the public, especially with a significant rulemaking such as the current industrial permitting rules proposal.

**Johnson** said he had gone through the individual rules on the disk that was provided to board members and had a number of comments. He said he would like to see the board work on this rulemaking over a longer period of time, and he did not understand what staff's urgency was in getting this proposal to public hearing. **Johnson** said he would like to break this proposal down and have the opportunity to go through it, title-by-title, or some other digestible segments so that the board and the advisory committee can discuss particular parts of the proposal. He said he would like to see the time line slowed down a little bit, because he felt that the board was being rushed.

**Hough** responded that, because this rulemaking proposal is so significant, staff originally intended to have a longer time frame. That was why the eight-month process was outlined in October, for the advisory committee to review the proposal and bring recommendations to the board at this meeting. There was a stakeholder meeting in November to introduce the proposal to industrial permittees and give them time to familiarize themselves with the proposal and comment on it. **Monk** asked where the eight-month process stands at this time, and **Hough** said the process began with the November stakeholder meeting and will go through June, which was the intended target date for the public hearing on this proposal. He said the advisory committee has done a lot of work on the proposal, with the intention of reporting back to the board at today's meeting. **Hough** said if the board wants to take additional steps, that can certainly be done, adding that June does not represent an absolute deadline. He said the intention of setting the overall schedule was to ensure that people would have an opportunity to get involved at whatever stage they had the most interest.

**Johnson** said he is quite troubled with the financial analysis of the impact of this proposed industrial rulemaking on LRAPA. Given the fact that the board has seen budget presentations with a scenario where staff would be laid off, he does not see how the agency can adopt a rule that will cost FTEs. He is concerned that LRAPA will start losing its capacity to do what it needs to do. **Ayers** said he had not looked at the financial analysis in a few weeks, but he did not think that is what it concluded.

**Monk** commented that what he heard **Johnson** saying was that, given the agency's current leaner resources, adopting rules that would change the fee structure to result in less fees coming in would only cause further financial strain on an already stressed budget. **Monk** said, if he understood **Johnson's** point correctly, he would concur that the agency should not even be considering giving away any of its resources at this point if it is to keep its current staffing level. **Johnson** added that if the rule results in one FTE less workload, that would be great; but he would like to maintain funding where it is so that the one FTE freed up from permitting can do other things such as the process reporting requirements under the proposed new GreenHouse Gas reporting rules.

**Hough** explained that the workload analysis was intended to look at the amount of work under the streamlined permitting program, vs. the FTE available. The savings in work was approximately equivalent to the reduction in fees. But that means that LRAPA would have one, or a fraction of an FTE, less to work with. He said his guess is that the reduced workload in permitting would free up someone to work on some of the other work that needs attention, such as area source air toxics work. He said there are other programs that would complement that reduction in permitting workload. One key thing was to make sure that the workload matched the revenue, and that part seemed to work out, to the comfort of staff and the advisory committee.

**Patterson** said that, all too often, people who come to public hearing don't learn enough about the subject of the hearing and tend to ask questions and make comments that draw the focus away from the specific subject of the hearing. He wants to be sure there is as much information as possible available to the public so that they can understand the proposal and make their comments appropriate to the subject, so that the hearing is productive.

**Carpenter** said, for **Johnson's** benefit, that he and **Monk** and **Hough** had talked about a possible schedule on the agenda and had decided that this month would be the time for board members to get information back from the advisory committee. They decided that, if there were enough comments or concerns among board members, the date of the hearing could be moved out to a later time period. He said he thought it was good that the board had a schedule for this proposed rulemaking; but it is not certain what will happen with that schedule, based on concerns board members have.

**Ortiz** said she had not looked at the rules on the disk; however, she does have concerns about moving ahead with the proposal at this time. She said she was glad to hear that other board members would like to slow the process down a bit. She also commented about public hearing, stating that she thinks it is good to get public input, whether people know what they're talking about or not. She said public hearings are an opportunity to educate people, as well as to get input from them. She also said she thinks there should not be an expectation that the whole board should be at every public hearing, because staff will produce a record of the hearing that board members can read.

**Kirkpatrick** said she was interested in **Johnson's** idea of each board member taking a different part of the rules contained on the disk that staff provided and coming to know one part of it. **Johnson** said he was imagining that the board would take this rule package and just have it as a standing agenda item over the next few months and, at some point, staff would come in and show the board sections of it and explain the changes that are being made, in groups of the titles, because there are quite a few titles that are open for revision under this proposal. He said if it could be presented in sections then, at some point three to six months down the road board members would all be comfortable and would have given their feedback. Then the board could talk about holding a public hearing and move this rule forward to adoption. He said that was what he meant by, "stretch it out and break it up a little bit." **Kirkpatrick** added that, if the board is well enough educated on this rulemaking proposal, they should have good answers for anything people ask, and public comment should not be a problem.

**Hough** commented that the 30 minutes allotted to this discussion was not much time. He said, if board members have a great interest in this, he would encourage board member involvement in the advisory committee meetings. The sub-committee meetings on the industrial and air toxics rules have been taking about two hours at a time on those specific topics. He said staff had invited outside resource people to attend some of those meetings, such as **George Davis** from DEQ to talk to the group regarding the industrial rules. He said if there are board members who are interested in going through that kind of detail, he would encourage more participation by board members in those committee meetings when there is a significant rulemaking package like this. Even though it would mean devoting more hours per months, those board members might benefit from attending those meetings, in order to get the necessary time to go through the details of the proposals.

**Ralston** commented that he thinks the advisory committee has done a great job. They are doing the footwork, and if a board member feels strongly about it they should attend those committee meetings. He said the most he is expecting to receive, as a board member, is a condensed version of the changes. He said

he does not want to micro-manage this rulemaking, because he does not think the changes are significant enough to be a real problem, and he is fine with getting the condensed version.

**Fortune** agreed with **Ralston**, and said it had already been suggested that, when there are items like this before the advisory committee, board members who have direct concerns should attend those meetings. He said if board members had to go through every single rule, themselves, there would be no reason to have the advisory committee. He said he trusts that the committee and staff will look at the information and give the board a summary of what is taking place. If there is something critical, staff will bring it to the board for a decision. Again, he asked why have a committee if the board is not going to trust that committee to review everything and make the proper presentation to the board.

**Monk** said he sensed a differing of opinion and asked **Hough** what he would recommend that the board do. **Hough** referred to what **Carpenter** had said earlier and suggested that, if board members can identify issues between now and the next board meeting, in April, it may be possible to have those issues discussed by staff and also by the advisory committee. If there are specific additional items that have not yet been addressed by the committee, that would allow at least the consideration of going to the next step (authorizing scheduling of public hearing) at the April meeting. He said it is up to the board to decide how they want to proceed. If they want to go through a more detailed process, that can certainly be done. **Hough** said additional questions can be asked in the next few weeks, to increase board members' comfort level with the proposed rulemaking, but it is up to the board to agree on direction at this point, forward.

**Ortiz** said her comments were not for lack of confidence in the committee, and she assumes they are doing what the board asked them to do. She added that she does not really consider it micro-managing to look at this rulemaking in greater detail. As a new person coming onto the board, she is just asking if the board can take another look or two at this proposal, because she does not feel she has her feet underneath her around these issues. She just wants to make sure that all concerns are addressed before moving forward.

**MOTION: CARPENTER MOVED to continue with the proposed schedule of having this proposed rulemaking decision be made at the April meeting, and that anyone who has serious concerns with the proposal should put forth the information to staff, and staff should get it to the whole board. Then at the meeting in April, the board can decide whether there needs to be more time to continue to review those concerns, or to decide to go out with the available information. STEWART SECONDED THE MOTION.**

**Kirkpatrick** asked when those concerns should be received by staff, and **Hough** said they should, ideally, be received by staff in the next couple of weeks so that there is some time to respond and still get as much as possible into the packets for next month's board meeting so that the board members have time to review what the issues are.

**Johnson** asked for a summary of the motion. **Carpenter** said that, tentatively, the board is scheduled to review the decision to go out for a public hearing on this rule at the June meeting. But the board could also decide in April to postpone the authorization of public hearing, based on the kinds of information that comes in regarding any concerns board members have. **Carpenter** said everyone should get their comments to staff in the next few weeks.

**Hough** said he interpreted that to say that the request for authorization of the public hearing is to be scheduled for the April meeting agenda. The board will discuss if they are comfortable proceeding with that, or not, based on what kind of dialogue has been in place in the intervening few weeks.

**Ralston** said he understood **Carpenter** to say that the board will continue on the current schedule until its discussion at the April meeting. If, at that time, there is sufficient doubt about the direction this proposal is taking, the board will decide to revise the schedule. **Carpenter** said that was correct, with the clarifying point that on that schedule is the decision of whether or not to go out to public notice with the rule.

**VOTE ON MOTION: THE MOTION PASSED WITH A VOTE OF 8 TO 1 (Monk opposed).**

Air Toxics Rules. **Markos** reported that the sub-committee met on February 19. She said **Carpenter** and **Monk** had attended most of those meetings and are aware of what has been going on. **Sarah Armitage** of DEQ in Portland joined the February 19 meeting by telephone to answer the committee's questions about the air toxics rules, hot spots, geographic areas and how those focus areas are to be identified, and how everything will work. **Markos** said **Ayers** had put together a document with five options for action by the committee. The committee ended up with a tie vote regarding approving the air toxics rules with recommendation to the board for public hearing. Two committee members voted to continue talking about the rule, because there are still some concerns and issues they want to discuss further. The sub-committee reported to the full advisory committee on February 26, and there was lively discussion and a round table where each person expressed an opinion or concern about the direction this discussion was going. There was a two-part motion that the advisory committee, as a group, would come up with their concerns or issues, and the sub-committee would investigate those and report back to the full advisory committee at its April 1 meeting. The vote on that motion was eight in favor and two opposed, and **Ayers** prepared a majority and minority report which he wanted to share with the board.

**Ayers** directed the board's attention to the notes of the February 26 advisory committee meeting, at the bottom of the second-to-last page, a table titled, "Majority and Minority Opinion Summary." The two options for the committee were to keep talking and consider other models, or to quit talking and approve the Oregon rule and recommend adoption by the board. The sub-committee wanted to approve the rule and submit it to the board for further action; and the full committee reversed the sub-committee. **Ayers** said 12 people attended the meeting, and two had left before the vote was taken. The opinions among the committee members ranged from wanting to adopt DEQ's rule, to adopting a rule unique to Lane County, to being concerned about the rule, to not understanding it and needing more information and discussion. **Ayers** said he did feel that the group is unanimous in believing that LRAPA needs a local emissions inventory and assessment of the air toxics air quality issues in Lane County; and anything LRAPA does in Lane County that is different from the state's air toxics program should be based on Lane County's emissions inventory and assessment. **Ayers** added that the second point upon which the majority of the advisory committee agrees is that LRAPA should adopt the Oregon air toxics rule now and look at improvements to it later.

**Markos** called attention to a document provided to the board members at this meeting, which had been prepared by **Hueftle** to compare a number of state and local air toxics programs. **Hueftle** had taken seven questions and concerns from the board and the advisory committee and provided information regarding how those questions and concerns were addressed by the various other programs. **Markos** said the air toxics sub-committee went over that document in detail and discussed it thoroughly; and their next step is to summarize their discussion and present that to the full committee at its April 1 meeting.

**Johnson** said the state rule includes an emissions inventory component, and he noted that seems to be one of the concerns of the advisory committee members who voted to continue looking at this rule. **Johnson** said he is curious about how the state's rule, if adopted by LRAPA, would be implemented, what the schedule would be for completing the emissions inventory for air toxics in Lane County, and how the inventory work



would be funded. He said he does not understand how the DEQ rules would get LRAPA to the necessary air toxics inventory.

**Hough** explained that one of the first steps in focusing on a geographic area is pulling together all relevant emissions inventory information available for that geographic area and being able to compare area sources, mobile sources and point sources. A local air toxics advisory committee would be formed to work with staff to pull together the relevant emissions information. **Hough** said starting to implement the rule is not conditional on having an emissions inventory. That is an early effort of the geographic focus when a committee is formed. He asked Hueftle to expand on that point. **Hueftle** said one of the early steps of developing a geographic plan is to complete an emissions inventory at a local level that identifies the toxics problems that are within that geographic area.

**Hough** said there are a variety of information sources available, but there are criticisms of each of those. The EPA's National Air Toxics Assessment includes information which may or may not be the best available for a local assessment. The Toxics Release Inventory for point sources also includes some information but, again, there is some question as to whether it is the most reliable information for point sources. Consequently, there are refinements to each of those reports that would take place early in the development of a plan for a geographic area.

**Ralston** asked if LRAPA has a pretty good idea of what the emissions inventory is, from the permits LRAPA issues. **Hough** said that is true for criteria pollutants but not as much so for air toxics. He said getting accurate air toxics inventories is a challenge elsewhere in Oregon and across the country. Industries are doing a lot of work, now, to implement federal MACT (Maximum Achievable Control Technology) standards; and before they can actually report their emissions, they want to have confidence in what their resultant emissions are, after implementing MACT. There is extensive source testing to verify those emissions numbers. He noted that **Ayers** likely has some experience with pulp mill MACT implementation and verifying post-MACT emissions. **Ayers** responded affirmatively and said industry will publish the results of the post-MACT emissions inventory reduction. He said the first reports will come out this year, but the final report which will include the big database of all the HAPs (Hazardous Air Pollutants) will not be published until about a year from now. **Ayers** explained, further, that the first MACT deadline for his company's process was in 2001, followed by further deadlines in 2004 and 2006, and there will be more deadlines before MACT has been completely implemented. Once a facility implements the measures it has designed to comply with the applicable MACT standards, it still takes time to evaluate the impacts of the reductions.

**Carpenter** commented that when Ayers says, "industry," he means the wood and paper products industry, and there are 30 or 40 industrial categories that are covered by MACT standards. The MACT standards for those different categories are not all coming out at the same time, but there are some industrial associations that are trying to get better numbers together now. **Carpenter** said the question of whether to pass the rule first or develop an emissions inventory first is kind of a "chicken and egg" question. He commented that funding for an emissions inventory might be easier to get if the rule were already in place, rather than trying to hold the rule up until you can get the funding to develop the emissions inventory first. He said he envisions both things taking place in a parallel mode.

**Johnson** said this discussion highlights, for him, a major concern he has with the industrial source rule package not providing any funding. He said a source of funding needs to be identified at some point—either before or after the rules are adopted. He said in his mind the logical source of funding is the stationary source permitting rules, and that the agency needs to think about the relationship between its air toxics rules and its stationary source permitting rules. He said he sees a disconnect that is very troubling to him because it does

not move the board toward what they are talking about, if the rules are not helping each other to accomplish goals.

**Ortiz** said, in her opinion, when the board talks about industry and tracking of emissions, they're talking about things that are being tracked and that the agency knows about. However, there are other kinds of toxics, such as car emissions, that perhaps are not really being tracked. She said the real health concerns about those emissions are not really known, and she would like to see the agency somehow work its way into an assessment of that source of toxic emissions. **Ortiz** added that another board that she sits on is looking at health effects and infant mortality, and that one of the indicators that they have found in other communities that are similar to Eugene/Springfield (geographic setting) is that they also have a high infant mortality. **Ortiz** said there might be funding available if LRAPA were to partner with other agencies or organizations if, at some point, LRAPA wants to develop a toxics assessment with a broader base than just industrial air toxics emissions. She said that would be a way to help make decisions that really affect the health of the community.

**Monk** said he thinks that rulemaking is probably the biggest thing the board oversees for LRAPA, beyond fiduciary and financial responsibilities. He said he would challenge many of the advisory committee members, other than those who work in industry, to even understand many of the rules that they have been discussing. He said that is why he would agree with Johnson's suggestion that this rulemaking be broken down into smaller pieces and discussed in a way that would be better understood by those board members who have reservations about these rules. He said the board can see whether it can understand the rules well enough at the April meeting to move ahead with granting authorization to schedule a public hearing.

6. FINANCIAL AUDIT REPORT (**Paul Nielson** of Isler CPA): **Nielson** explained management responsibilities of creating a system of internal controls, maintaining the record, preventing and detecting fraud, and providing accurate information for the financial statements prepared by the auditors. **Nielson** said his firm gets a letter from **Hough** and **Mirhosseyani**, stating that the statements are accurate. Management is also responsible for safeguarding assets and complying with all laws and regulations.

**Nielson** then explained the auditor's responsibilities, including following audit standards, performing a test of records, and providing an opinion that the financial statements are free of material mistakes. Following the problems with ENRON a few years ago, new communications to the board have been required. GASB-34 requires that assets be depreciated, and those adjustments have been made to LRAPA financial records.

**Nielson** said there is also some information at the back of the financial statement that is not required by governmental auditing or accounting standards but is required by state statute. He said the auditors have no disagreement with management, and as far as he knows there has been no opinion shopping by management. There were no issues that cause Isler CPA not to be retained as the auditor for LRAPA; and there were no difficulties in performing the audit.

**Nielson** spoke about cash on hand in the General Fund. In 2004 it was seven days. It slipped to two days and has been building since that time. He said he has been recommending for several years that the agency have three-to-six months cash on hand at the end of each fiscal year so that operations can be maintained during times of low cash flow. He said he is a little concerned that the cash on hand in the General Fund as of June 30, 2007 was only enough to operate for two days and said that might be something the board might want to address.

**Ralston** asked how that figure compares to the “LRAPA-Wide Days Cash” figure. **Nielson** said the two days’ funding is just the cash on hand from the General Fund. If all the funds are put together, the cash on hand is better. **Ralston** asked if that total figure isn’t a better indicator of the financial health of the agency. **Nielson** said there are ways of transferring money from other funds to the General Fund to avoid having the General Fund go to deficit and become a “reportable condition” in the auditor’s report; and he has spoken with **Mirhosseyni** and **Hough** about those. He agreed that looking at all the funds, together, is a better indicator of the overall financial health of the agency.

Regarding the Airmetrics enterprise fund, **Nielson** said Airmetrics is what they call a “business-type” activity and operates on a business model rather than a budgetary model. The fund has depreciation on it. It did not make much of a profit last fiscal year, and in 2004 it lost some money; however, the fund has made a profit in all the other years that it has existed.

Something new that was added this years is “debt and assets.” That takes all the receivables tied to the Everybody Wins Program, including “BETC (Business Energy Tax Credit) receivables, and compares it to outstanding debt against those receivables. **Nielson** said, basically, the assets are there to pay off the debt on this fund. The record shows that, except in the very first year of Everybody Wins, which was very close, there have been more assets than debt against those assets.

**Nielson** said he had provided a letter to **Hough** and **Mirhosseyni** about some minor comments regarding the accounting records. He said those issues have been dealt with, and he really did not think the board needed to hear those kinds of bookkeeping issues unless they wanted to. One issue he did bring to the board’s attention is the capital leases on the APUs in the Everybody Wins program which are being paid off over five years. When the auditors were doing the testing on this fund, the accounting records had not captured \$16,000 worth of leases. There were \$44,000 in leases that were paid off that were not properly recorded on the books. The paperwork was there, but the books were not caught up. The fund had written off a certain amount for the year; however, the auditors found a little over \$12,000 in leases that were written off but were not recorded in the books. **Nielson** said that in his letter to LRAPA management, he recommended that, when an agency has such a huge outstanding receivable, they should look at the “allowance for bad debts” every six months to determine how much of the outstanding debt the agency can estimate it will collect. The agency needs to have an estimate, and the auditor has proposed an estimate at the end of the year.

**Stewart** said he was wondering, with the price of fuel as high as it currently is, and the fact that APUs are going on trucks that travel a lot, perhaps LRAPA should watch that a little more closely. He said they are saving money on fuel with the APUs, but that does not mean they are still able to pay their bills. **Kirkpatrick** agreed that the current high cost of fuel is a special problem with the small operators.

**Nielson** said there are some new auditing standards which have come out which will affect next year’s audit of LRAPA’s fiscal records. He said he notified **Hough** and **Mirhosseyni** of an increased cost of 15 to 20 percent for the audit. **Nielson** said in the past the auditor could come in and document something such as payroll, and that was all the testing that was necessary. Starting next year, when the auditor considers a significant section such as payroll, they will have to test it. They will still come in and document the payroll records, but then they will need to take out several personnel files to test things such as whether the W-4 form is signed by the employee and whether the person’s wage and withholding were calculated correctly.

**Monk** said he has had long concerns about the contributions the Everybody Wins Program made to the startup of Cascade Sierra Solutions, through LRAPA funding. He said he wants to make sure that LRAPA receives reimbursement for all the resources expended to help get CSS started. With that concern in mind, he asked if the unrecorded lease figures were something that has carried over from several years ago, or whether it is something that was missed this year. **Nielson** said those were mostly leases from this year. The paid-off leases were scattered over the three years the program has existed. The majority happened not in the year of audit he is talking about now, but are split, with most coming from the preceding year. He said there are individual files for each individual lease; and some of the files indicate that the lease is paid, but the accounting records did not catch up with the paperwork. **Monk** asked if **Mirhosseyni** is the one who needs to make sure those records are reconciled, and **Mirhosseyni** said he is responsible for that.

**Patterson** referred to the allowance for bad debt that is factored into the leases and asked if the agency has a record of which people defaulted on their leases. **Mirhosseyni** said the agency does have that information. **Patterson** asked if those individuals are bankrupt, in escrow, out of business, or still in business. **Mirhosseyni** said some are bankrupt. He said there are two categories: one group is not willing to pay; and the other is unable to pay. Those who are not able to pay have been classified as “bad debt” and have been written off. He said staff had to make a decision about whether or not to go after those individuals to try to recapture the lost payment. **Patterson** asked if those businesses are still in existence, and **Mirhosseyni** said there is at least one who died, and there are a couple that did actually go bankrupt, and the truck and the equipment are gone. **Patterson** asked if there is no way for LRAPA to get in line for payoff under those bankruptcies, and **Mirhosseyni** said there is not.

**Hough** reminded board members that the financial model for the program set aside about \$1,000 per unit (10 to 12 percent) for the purpose of covering defaults. With 350 units leased or sold, there is about \$350,000 for bad debt. He said experience thus far shows that figure to be a conservative number, and it is not a surprise. **Hough** said **Nielson** has recommended that LRAPA set aside, on the books, a certain amount each year to cover that. That was part of the original model, but LRAPA has not actually been doing that. **Nielson** said when the audit was completed, the fund showed \$200,000 set aside for those defaults, and the auditors were happy with that even though it is a little lower than the figure in the financial model.

**Johnson** went back to **Monk**'s question about LRAPA getting fully reimbursed from the startup of CSS, stating that that information was not in the slide **Nielson** was showing for the Everybody Wins Fund. **Nielson** said that information was not in the slide, adding that the auditor has not really addressed that. He said that is not really something the agency would hire an auditor to do. He said if LRAPA put a model together, he could look at it; but that is not something the audit of the agency's financial records would address.

**Hough** told the board that he and **Mirhosseyni** have been working to assemble the right information regarding the question of reimbursement from CSS. He said that subject is not as pressing as some of the other issues staff has been working on; and he thought the logical time to bring that information, and a recommended way to clean up that whole outstanding question, to the board would be during the budgeting process. **Johnson** responded that he is concerned that an agency providing a financial benefit to a private entity has the potential to get board members into a difficult spot, because it seems like Oregon laws don't allow public entities to provide a benefit to a private entity through an exclusive partnership that is not available to anyone else. He said he's sure any non-profit organization would love to have seed money, from a public agency, for which they didn't have to compete. **Hough** said he did not think that would be an issue, because LRAPA's contribution to the startup of CSS was small, compared to what other air agencies all along

the West Coast have contributed to getting it started. For example, he said, the Sacramento agency provided \$200,000 seed money just to get a showcase center established at a Sacramento truck stop.

**Mirhosseyani** said he agrees that the contributions made to CSS were public funds, from the Everybody Wins Program, which is an enterprise fund. He said if the funds had not come from an enterprise fund, it would have been difficult to justify; however, the fact that the money did come from an enterprise meant that it probably was a decision of the board to make that contribution or not. When the board decided to do that, it was not a conflict because of the source of the funds.

7. CONTINUATION OF DISCUSSION AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO LRAPA TITLE 47, RULES FOR OPEN BURNING: **Monk** thanked **Hough** for providing options for the board to consider in consideration of further action on the proposed adoption of the open burning rules after the public hearing in March. **Monk** asked if anyone had any ideas for structuring the discussion.

**Carpenter** suggested that, since LRAPA's legal counsel was present at this meeting, the board could work to resolve the religious rites exemption brought up at the public hearing. The board could then discuss **Monk's** proposed modifications to staff's proposed rule amendments.

**Hough** explained that proposed wording was included in the revised staff proposal, regarding the exemption for religious rites and a revised definition of "bonfire." He then called attention to Attachment B to the staff report for this agenda item, prepared by legal counsel **Kathryn Brotherton**, which offered alternatives to the wording for the exemption and a definition for religious ceremonial fires.

**MOTION No. 1: Fortune MOVED that the board adopt Option 2 for the exemption for religious ceremonial fires, "Section 47-005-2.C. Religious ceremonial fires are allowed," as part of the rule. Ralston SECONDED THE MOTION.**

#### Discussion of Motion No. 1

**Patterson** said his concern in this discussion is that individual communities still be able to set their own rules for open burning under certain circumstances. He said there are different circumstances in different areas of the county, and he thinks the city councils of the different cities should be able to make the rules for what they want to allow within their city limits. **Monk** asked **Brotherton** if local jurisdictions, municipalities, can set their own rules as they wish, within the context of LRAPA's rules; and can those rules be less stringent than LRAPA's rules. **Brotherton** said local jurisdictions can, and some already do that. She said her first reaction to **Monk's** question about stringency is that the local jurisdictions cannot adopt anything that is less stringent than LRAPA's rule, but they can adopt rules that are more stringent than LRAPA's. An example is that within the city limits of Eugene no burning is allowed, which is more stringent than LRAPA's rule. If the city were to choose to say that residents can do open burning at midnight, they could not do that because it would be less stringent than LRAPA's rule.

**Ralston** pointed out that Option 2 (which stated simply, "Religious ceremonial fires are allowed.") would do that. If a municipality wanted to make it more stringent, they could do that. Keeping the wording in LRAPA's rule simple would avoid making it more complicated than it needs to be.

**Stewart** noted that Option 2 just refers to the ceremonial open burning and not to the entire open burning rule, but it sounded like **Patterson** was talking about the whole rule in his comments. **Monk** agreed.

**Kirkpatrick** asked if the exemption was for religious purposes or for celebratory or ceremonial purposes, and whether that exemption would require a permit. **Monk** said his understanding from the discussion at the March meeting was that any fire under this exemption would be exempt from getting a permit from LRAPA. **Monk** said he would say the fire needs to be fully a part of the religious experience so that others would not claim they need a big bonfire for a religious ceremony. He said this exemption is essentially about Native American people who have sweatlodge ceremonies. **Kirkpatrick** asked if they would have to establish before having the fire that it will be a particular ceremonial fire, and **Monk** said the subject of whether or not to require a permit was open for discussion.

**Hough** said the proposal before the board was for a category that could be authorized by a special letter permit. With the testimony at the last meeting and the following board discussion, the ceremonial fire was pulled out and put under the exemption category. He said staff had discussed this at length with legal counsel, and he said it might be useful for **Brotherton** to explain her research and the reason for the options she provided for board discussion. He said the option staff put into the revised rule draft did not require a letter permit but recognized some of the environmental constraints that were important to LRAPA.

**Brotherton** said that after the March board meeting she looked to see what other local jurisdictions do around the state and in other states. She said that, pretty uniformly, they allow an exception for religious ceremonies, but a large percentage of the time they require a letter permit. **Brotherton** said she looked at some of the limitations included in other rules and found that whether or not the rule requires a letter permit for this type of burning, they do include a limit on the size of the fire. None of the other jurisdictions allow people to have religious ceremonial fires anywhere, any time, any day they want to do so. **Brotherton** said she is pretty confident the agency can allow this type of exemption, and that was why she offered options to include some parameters such as a size limit for the fire in case the board would like to do that.

**Ortiz** said her understanding is that Native American tribes are recognized as a kind of sovereign nations. She asked whether Lane County has any properties that fall under those criteria, as tribal lands. **Brotherton** said she does not know whether there are tribal lands in Lane County, recognizing that on those properties LRAPA cannot regulate any activities. **Brotherton** said LRAPA's rule, and any language added for this exemption, would not purport to regulate land owned by Native American tribes. **Ortiz** said she appreciated the option that **Brotherton** put forth, and the spirit in which it was being put forth; however, she said she envisioned the Druids out at Fern Ridge having a celestial party around Country Fair time and burning whatever they wanted to burn. **Ortiz** said she would probably support Option A (Religious ceremonial fires are allowed. Prohibited materials listed in Section 47-015-01.E. shall not be burned. Within the Eugene/Springfield Urban Growth Boundary and within the city limits of Oakridge, these fire are prohibited on Yellow and Red Home Wood Heating Advisory days set by LRAPA during the months of November, December, January, and February."), as far as it requires a controlled outdoor fire and it is a religious sort of ritual. She also liked requiring them to use only clean-burning fuel or something along those lines, because she had the feeling that this discussion was about Native Americans and what they do. They are respectful of the environment, and she couldn't say that everyone would treat the environment the same way.

**Monk** said he was in the minority at the last meeting, because he prefers Option 1 and the inclusion of a way to not allow this type of fire under poor air quality conditions. He asked **Brotherton** is there is a way to

combine that kind of language and limit the size of the fire. **Brotherton** responded that the board has the ability to craft whatever wording they want for this exemption. She pointed out that the wording staff had put into the revised draft rule was based on the previous board discussion.

There was some discussion of whether or not LRAPA should put controlling parameters on the religious ceremonial fire exemption. **Ralston** pointed out that conditions in rural areas of the county are different than conditions in Eugene and Springfield, and that each jurisdiction could make it more restrictive if they wanted to do that.

**Stewart** said he favored Option 2 because a lot of times these religious ceremonies are planned out months in advance. To have a huge activity planned and get to the date only to find that a Yellow or Red day has been called, and they are not allowed to perform their planned activity would be a shame. **Stewart** said he favored using Option A regarding the definition of "religious ceremonial fire," which does have some parameters around the size of the fire, with Option A under the exemption language, which says simply that religious ceremonial fires are allowed. **Stewart** said a 5' x 5' size limitation would exclude the huge bonfires such as those sometimes built for a football game.

**Fortune** said he thought the main concern for the board, that came up at the March meeting, was about Native Americans wanting to do a few ceremonial fires in a year. He suggested removing the word, "religious," from the proposed exemption, to avoid the potential problem of people building huge fires and calling them "religious ceremonial fires." He suggested just saying that Native American ceremonial fires are allowed.

**Brotherton** said the board does not want to differentiate between different religious groups. If there is a fire-related ceremony associated with Native American religious beliefs, and there is another religious group whose practices include fire-related ceremonies, LRAPA would not want to allow the Native American group to have its fire ceremony and not allow the other religious group to have theirs. Including the word "integral" in the definition of "religious ceremonial fire" limits the religions that the exemption would cover without limiting it to just one. She said she had based her suggestion wording options on the board's discussion at the March meeting, when they said they wanted to include all religions that had fire as an integral part of a religious ceremony.

**Carpenter** said he was leaning toward Option 1 for the wording of the exemption, because of the health aspect of allowing any fires during certain periods. He said he had thought backyard burning was prohibited only during Red Home Wood Heating advisory days and did not realize it was prohibited during Yellow days, as well. **Carpenter** said he thinks religious ceremonial fires should be allowed on any days when home wood heating is allowed. He said he favored Option 1 for the exemption but would want the prohibition to be only on Red Home Wood Heating advisory days. **Carpenter** agreed with Stewart's suggestion to keep the 5' x 5' size limitation.

**Ralston** commented that there was already a motion on the table to adopt Option 2 for the proposed exemption for religious ceremonial fires. He said Native Americans are respectful of the environment, and he did not think the board could restrict the size of the fire because it is a purely spiritual thing. He noted that the person who testified at the March hearing on these rule amendments had said the usual size of these fires is based on 21 stones and is about 3' x 3'; however, it is entirely possible that for certain circumstances they

need to use more stones, and the size of the fire would be bigger. **Patterson** agreed, stating that he thinks limiting the size of Native American religious ceremonial fire would open the agency up to legal action.

**Johnson** said he favored Option 2 because it was just easier.

**Ortiz** asked if the list of prohibited materials was included in Option 2, and **Brotherton** responded that Option 2 was the simple version of the exemption, itself. **Ortiz** asked if **Fortune** would take a friendly amendment to add prohibited materials listed in 47-015-01.E, and Fortune said he would not. He said he did not see religious people going out and burning asphalt materials in a bonfire. **Ortiz** said she would vote against the motion.

*[At this point, **Ortiz** left the meeting room to speak with some people who had arranged to meet with her at the LRAPA office.]*

**Stewart** said he could understand **Fortune**'s point, because a Native American, or other religious, ceremony might require burning of some special substance which might technically fall under the category of prohibited materials. He agreed with **Fortune** that someone performing a religious ceremonial fire would probably not rip off asphalt shingles and throw them into the fire because that material probably would not be representative of the spirit of the ceremony.

**Kirkpatrick** pointed out that the definition of clean-burning fuel also involves wood that has been seasoned, and **Hough** confirmed that to be true.

**VOTE ON MOTION No. 1: THE MOTION PASSED, with FIVE IN FAVOR (Fortune/Johnson/Patterson/ Ralston/Stewart) and 4 OPPOSED (Carpenter/Kirkpatrick/Monk/Ortiz).**

The board then acted to adopt a definition of "religious ceremonial fire."

**MOTION 2: Johnson MOVED to adopt Option A, "Religious ceremonial fire' means a controlled outdoor fire integral to a religious ceremony or ritual that is no larger than 5' x 5" in size and where only clean-burning fuel is used. Prohibited materials listed in Section 47-015-01.E shall not be burned." Monk SECONDED THE MOTION.**

#### Discussion of Motion No. 2

Referring to his earlier statement, that he was in favor of a size limitation, **Stewart** said he had not taken into account that there may be some activities that are size-related of which he was unaware. He asked if anyone testified at the March meeting about the sizes of the ceremonial fires. **Monk** responded that the person had said the traditional 3' x 3' fire was for 21 stones, and that he has been to a sweat where there were a many as 50 stones, which was more like 5' x 5'. That was what the board thought would be the maximum for this type of fire.

**Patterson** said Native American ceremonial fires are dictated by ritual, and the size is determined by the spirits and depends on the person for whom the ceremony is to be held. For that reason, he said he thought it would be difficult to determine a maximum size for the rule. In any case, **Patterson** said, a size limitation would be unnecessary because he doubts that there would be a huge bonfire under this exemption.



**Carpenter** noted that, if there needed to be a fire more than 5' x 5', they could always get a special letter burning permit from LRAPA to be able to do that. He reminded the board that counsel had said limiting the size of the fire is not an illegal restraint on their religion. What is proposed in the motion is a size which is up to the 50-stone fire which was testified to at the March hearing. **Carpenter** said he thinks a 5' x 5' size limit is appropriate to address health concerns, and getting a permit for a larger fire is still an option.

**Ralston** commented that simple is better. Option B simply states that a religious ceremonial fire is a controlled outdoor fire associated with a religious ceremony or ritual; whereas Option A, once again, puts limits on the size and what can be burn. **Ralston** said he does not think the board can do that. He added that Option B for the definition of religious ceremonial fire is more in line with the vote for the simple option for the wording of the exemption.

**Fortune** agreed with **Ralston**. The previous vote allows the exemption for religious ceremonial fires, but a vote for the definition Option A would put limits on it. He noted that, while a special letter permit would be an option, that would not help if something happened on a Friday evening and the resulting ceremony needed to take place on a Sunday afternoon. The LRAPA office would closed during that time, and it would not be possible to get that letter permit.

**Johnson** said he was in support of a size limitation after hearing the testimony at the March meeting; however, he now supported a size limitation because what the board is saying is that, for the purposes of LRAPA's rules, here is what we consider a religious fire. If it is not 5' x 5' or less, it needs to get a permit or comply with some of the rules. **Johnson** said he thought the sweatlodge ceremony brought up at the March meeting was a good reason to have an exemption; however, **Ortiz's** earlier hypothetical situation of Druids having a celestial celebration at Fern Ridge around Country Fair time and burning whatever they want had made him think different about it. He asked what LRAPA would do about a Burning Man at the Country Fair, where the fire is integral to that religious ceremony. **Johnson** said that, even though his instinct is to keep it simple, he thinks for purposes of LRAPA's rules the ceremony needs to be defined with a size limitation. He added that, if Option B were chosen by the board, he would hope that the words "associated with" would be changed to "integral to," to be consistent with Option A; however, he was sticking with his original motion to adopt Option A.

**VOTE ON MOTION No. 2: THE VOTE RESULTED IN A TIE. Fortune, Johnson, Ralston and Stewart were IN FAVOR of the motion. Carpenter, Kirkpatrick, Monk and Patterson were OPPOSED to the motion. Ortiz had not yet rejoined the meeting.**

**MOTION No. 3: Ralston MOVED to keep it simple and adopt Option B, "Religious ceremonial fire" means a controlled outdoor fire integral to a religious ceremony or ritual." Fortune SECONDED THE MOTION.**

**Ortiz** then returned to the meeting. **Monk** told her that she had missed the vote on **Johnson's** motion to adopt the Option A alternative for the definition of religious ceremonial fire, and that the vote was a four-to-four tie.

**Ralston** then told her that he had moved to adopt the definition in Option B, with the words, "integral to" substituted for the original words, "associated with." **Ralston** added that he did not feel it was necessary to

say how big the fire could be or what was allowed to be burned, because the board already agreed in its first vote to agree that the people who would have these fires are responsible people.

**Monk** said that, in the previous vote, it was hoped to add “clean-burning fuel,” which would put some restrictions on what could be burned, and to limit the size of such a fire to 5' x 5'.

**Fortune** commented that, if religious ceremonial fires were a problem in Lane County, he could see restricting the size; however, he thinks it is a non-issue. The person who testified in March said they had, maybe, three ceremonial fires in a year, and that did not constitute a problem, in Fortune’s opinion. He also had a problem with limiting it to a specific size, because the Native American ceremonial fire is based on ritual and on what the spirits say is necessary. **Fortune** said he does not think LRAPA can put that kind of limit on the size of the fire without ending up in court. He suggested that **Brotherton** speak to that.

**Monk** suggested, instead, having **Ortiz** weigh in on the subject. **Ortiz** said she was more than willing to drop the size limitation, because she kind of agreed with **Fortune**’s point of view; however, she thinks anyone who wants to do a religious ceremonial fire should be encouraged not to burn the wrong materials. She stressed that, even though the exemption was being included in the rules in response to the Native American representative who spoke to the board in March, the exemption is being added for any religious group which uses fire as an integral part of a religious ceremony. **Ortiz** said she would support having the prohibited materials included in the definition.

**Ralston** reminded board members that if LRAPA’s rule defines religious ceremonial fires simply as in Option B, there is nothing to stop individual jurisdictions from making their own open burning ordinances more restrictive regarding size limitation or types of materials burned.

**FRIENDLY AMENDMENT:** Stewart asked for a friendly amendment to the motion, **TO INCLUDE THE SENTENCE, “PROHIBITED MATERIALS LISTED IN SECTION 47-015-01.E SHALL NOT BE BURNED.”** He said he had a problem with the phrase, “where only clean-burning fuel is used,” because he does not know what the definition of “clean-burning” is. He said that including the sentence regarding prohibited materials would get him to vote for the motion. **RALSTON AGREED TO THE AMENDMENT, AND FORTUNE SECONDED THE MOTION AGAIN, AS AMENDED.**

**Carpenter** told **Ortiz** that, while she out of the room, the board discussed the fact that if a fire larger than 5' x 5' were required, they could get a letter permit from LRAPA; however, **Fortune** had asked what they would do if the need for the fire came up on a Friday evening and the ceremony had to be held on Sunday, during which time the LRAPA office would be closed. **Stewart**’s friendly amendment actually puts a restriction on these ceremonial fires after the board had not wanted to restrict in any way to begin with. He noted that the person who made the motion had at first said there should never be any restrictions on these ceremonial fires.

**MONK RESTATED THE MOTION TO ADOPT OPTION B, WITH STEWART’S FRIENDLY AMENDMENT TO ADD NOT ALLOWING PROHIBITED MATERIALS TO BE BURNED: “RELIGIOUS CEREMONIAL FIRE” MEANS A CONTROLLED OUTDOOR FIRE INTEGRAL TO A RELIGIOUS CEREMONY OR RITUAL. PROHIBITED MATERIALS LISTED IN SECTION 47-015.01.E. SHALL NOT BE BURNED.”**

**Brotherton** explained that the DEQ rules have an outright exemption for ceremonial and recreational fires; however, those rules also require compliance with the general provisions which include a prohibited materials provision. Given that fact, there is some support for the motion currently on the table, in that if LRAPA did not include the prohibited materials provision, the rule would fall below what DEQ already requires, and LRAPA cannot do that. **Brotherton** added that the DEQ rule simply says “ceremonial fires are exempt,” without providing a definition of the term “ceremonial fires.” Her conclusion was that, if the board wishes to be firm that LRAPA is not slipping below what DEQ rules require, the current motion would accomplish that.

**VOTE ON MOTION No. 3: The MOTION PASSED ON A VOTE OF 6 IN FAVOR [Fortune/Johnson/Ortiz/Patterson/Ralston/Stewart] and 3 OPPOSED [Carpenter/Kirkpatrick/Monk].**

Following the vote, **Ralston** said when he got to today’s meeting, he was fully ready to approve the amendment to Title 47 proposed by staff; but then there was a brand new, revised proposal from **Monk**. [**Monk’s suggested changes were included in a draft which had staff’s original amendment in red and Monk’s suggested changes in blue, a copy of which was provided at this meeting for each board member.**] **Ralston** said he is absolutely appalled to arrive at this meeting and, at the last minute, look at this document with suggested changes. He said there is absolutely no way he would approve the changes suggested by **Monk**, because **Monk** had removed chimineas and fire pits and things that Springfield would never agree to. He said he didn’t think many residents of rural Lane County would go those changes, either. **Ralston** said **Monk’s** suggested changes would eliminate open burning as a disposal practice, whereas it was originally proposed to eliminate open burning disposal practices where alternative disposal methods are feasible. **Ralston** said he thought the original proposal was entirely reasonable, to not allow burning where other disposal methods are feasible. **Monk** said he would agree with **Ralston** on that point.

**Carpenter** said this situation brings up some issues that the board needs to deal with regarding how rulemaking actually is brought to the board. He said he has some concern that, while he is not necessarily opposed to all of **Monk’s** suggested changes, the draft **Monk** submitted was not the rule that was noticed for the public to comment on; and **Carpenter** did not believe it would give the public a fair shake to substitute a different rule for board action. **Carpenter** said he was ready at this time to vote on the rule which had been through the full process but would also like to take some time at future meetings to discuss some of **Monk’s** ideas to discuss whether they have impacts on public health, from an air pollution standpoint. If so, the board could talk about future revisions to incorporate those things in another rulemaking, following the process of going through the Advisory Committee and public comment period.

**Carpenter** also said that some environmental lawyers will say that the Clean Water Act prohibits everything unless a permit allows it; and the Clean Air Act allows everything unless a permit prohibits it. **Carpenter** speculated that **Monk** had tried to move into the open burning arena for his perceived health effects of prohibiting everything unless a permit or an exemption allows it.

**Monk** said he has a big concern with the air permitting and air toxics rule proposals because, in his estimation, what has come out of the advisory committee is not what LRAPA should be doing.

**Stewart** asked if the board could legally adopt **Monk’s** suggested changes without a public hearing. **Brotherton** said her opinion is that it could not, because **Monk’s** draft amendments were a replacement for what was originally proposed and discussed at the public hearing.

**Stewart** then commented that, at times, the rules tend to get too description, such as the guidelines regarding the size of the fire compared to the amount of food being cooked on the fire. He said that is subjective, and there could be a problem if the inspector going out to investigate were not a reasonable individual. He gave an example of the logging industry where, if you get on the wrong footing with the person who is regulating your logging activities, it can create big problems for you. Another example he cited was a person on a hunting trip who needs a campfire to keep warm. Perhaps a 3' x 2' fire is not sufficient to keep the person warm. **Stewart** concluded by saying he just wants to be sure LRAPA is not getting too restrictive so that inspectors have a way to fine someone by putting them in an unfair situation.

**Patterson** said he agreed with what **Stewart** and **Ralston** had already said. The advisory committee had worked on the proposed rule revisions for some time, and staff had spoken with the fire departments to get their agreement. He said he saw a lot of the differences the board has in their discussions of open burning rules as local jurisdiction problems. **Patterson**, too, said he could not support any of **Monk's** proposed changes to the draft rules. He said he preferred to vote on the proposal from staff and the advisory committee which everyone has read and discussed.

**Johnson** agreed, that this illustrates a problem with how the rules are brought to the board and how the board has the opportunity to interact with the advisory committee. He added that this board has come out against field burning, with its summertime smoke intrusions into the Valley but, with this open burning rule, allows backyard campfires. He said the fact that people do it is known, but the LRAPA board does not need to state that this is a legal activity. **Johnson** said adopting the rule the way it is written is an embarrassment because the board is contradicting itself by allowing chimineas and backyard campfires. He said the rule, as it is written, does not move the agency toward its strategic plan and goals of improving air quality, and that the lack of disincentives for certain activities is out-dated and needs to be changed because conditions in the county since the rules were originally written have changed. **Johnson** said the availability of different options needs to be explored and to be considered in this rule; and he would hope that the board would not move forward to adopt the rule until it can be discussed further.

There was an exchange between **Johnson** and **Ralston** about the fact that the draft amendments to Title 47 would allow the use of chimineas for recreational fires. **Ralston** said the devices are legally sold and people use them, so LRAPA should define how they are allowed to be used. **Johnson** argued that the agency should not include in its rules everything that happens. **Ralston** said the alternative is to make people keep wondering about whether they can buy the units or use them legally, and **Johnson** said people are doing that anyway. **Ralston** countered that use of chimineas must be defined. He said he was willing to support the draft amendments as submitted by staff, but he would not do so if it did not include chimineas, because Springfield would not agree to a rule without that clarification. **Patterson** agreed with **Ralston** and said that Cottage Grove would also not support the draft if the clarification about use of chimineas were not included. **Ralston** stated, once again, that LRAPA can make general rules; and if particular jurisdictions want to have stricter rules, that is up to them. **Ralston** concluded that a lot of work has gone into the proposed rule amendments, and the board should try to move forward with the existing proposal.

**Carpenter** said he had thought about if there were smoke intrusion days, he would like to have backyard fires eliminated from the Urban Growth Boundary on those days. But he is willing to go forward with what is in the current draft, with a little more fine tuning later.

**Stewart** commented that the kind of burning done under the category of backyard campfires, under this proposed rule, is very different from the volume of burning done during the field burning season. He said he is concerned that if people who have five or ten acres in rural Lane County aren't allowed to burn yard debris, or if the cost of being allowed to do so would be \$100 or more, or if they are required to take their yard debris to Rexius or Lane Forest Products, those people will simply let their blackberries grow. If rodents were to move into very large piles of this debris, there would be other health issues. **Stewart** said the rules that have evolved over time have a purpose for being there. He said one of his concerns of being on this board is that some of the board members are elected officials who are accountable to the public for the decisions they make on this board which impact the public. The remaining board members are citizen appointees whose actions are not subject to the same degree of accountability. **Stewart** said this board needs to be careful about the decisions it makes, or the elected officials on the board may decide that the board is over-reaching and that regulation of air quality in Lane County should be done differently. He said that statement was not a threat; however, when citizens hear that this board is potentially supporting elimination of backyard burning, or \$100+ fees for open burning, he will receive some very serious feedback from his constituents. He said the only thing he would be able to tell them is that that was a decision of the board and, if they are unhappy with it, they should come to board meetings and talk to the board, to see if they can get it changed. **Stewart** said he had a pile of limbs in his yard from a windstorm; and when the conditions are right and it is dry enough, he will probably burn that pile because it is a lot easier for him to do that than to try to haul it somewhere. He said he no longer has a pickup to haul the material away. **Stewart** said the board needs to be cautious about how it moves forward and how the views of the board are reflected, because it can cause some backlash that the board really does not want to deal with.

**MOTION No. 4: Carpenter MOVED adoption of the amendments to Title 47, as drafted by staff, with the additional amendments approved earlier in this meeting. Ralston SECONDED THE MOTION.**

**VOTE ON MOTION No. 4: THE MOTION PASSED by a vote of 6 IN FAVOR (Carpenter/Fortune/Kirkptrick/Patterson/Ralston/Stewart) to 3 OPPOSED (Johnson/Monk/Ortiz).**

8. SETTLE REVISED MONTHLY MEETING SCHEDULE (Friday/Monday/Tuesday): **Ortiz** reiterated that she works every Tuesday and cannot give up another day of work and still be able to earn enough to live or continue to have benefits from her employer. She added that after the hospital moves to its new location in August, her hours might change. In the meantime, **Ortiz** said, she had noticed from the e-mail correspondence that quite a few of the board members would be available to meet on Mondays, and she would like to meet on Mondays, except for the third Monday which is the day the Human Services Commission meets. She also said she would not be able to meet in the evening.

**Ralston** stated that Monday evenings would not be possible for him, either. He said he has Policy Board and that a lot of other meetings occur on Mondays. **Monk** noted that in previous discussions, the second Monday of the month seemed to work for everyone. **Ralston** acknowledged that but noted that **Stewart** has a rotating meeting on Mondays that would occasionally fall on the second Monday. **Ralston** said he has city council meetings on Mondays and still has to get in eight hours of work. If he took off three hours for an LRAPA board meeting, he would only get in five hours on those days.

**Ortiz** said the first Wednesday of the month would be okay for her, and **Ralston** said he has Rotary Club meetings on Wednesday. He asked whether Fridays would work. **Ortiz** said that would be a challenge for her, because she works every other Friday. It is not specific Fridays of the month, but alternates every other

Friday and falls on different weeks each month. She explained that she works weekends in order to be able to take two full weekdays off for her council duties.

**Patterson** commented that the second Tuesday of the month has been, for many years, the best available day for everyone on the board. People have gotten used to that and how that between 11:00 and 3:00 on the second Tuesday there will be an LRAPA board meeting. He said there is a certain amount of responsibility that elected officials assume when they are appointed to this board, to work not only with the agency, but with the public and industry, etc. He said if the meetings get moved around, it will cause some problems. Regarding evening meetings, **Patterson** also pointed out that most elected officials—who, by the way, are not paid—already have a lot of evening activities connected with their councils or the commission. He said time spent at home is precious, and he does not want another evening activity and so would not want to hold LRAPA board meetings during evening hours. **Monk** commented that he thought all board members were in agreement, that LRAPA board meetings should be held during the day.

**Kirkpatrick** asked if another Monday besides the second one would work. **Ralston** said he has meetings on the first and fourth Mondays. **Stewart** asked if other board members could make the second Tuesday, and **Monk** said he believed **Stewart's** schedule was the only one that conflicted with the second Tuesday. **Stewart** said he would double-check his calendar and suggested that he might be able to participate via telephone on those Mondays when he was not available to be at the meetings.

**Monk** summarized by saying that the second Monday will tentatively be the LRAPA board meeting day, unless Stewart were to discover that it would not work for him. The next meeting would be Monday, April 14.

Staff member **Dinteman** asked that the board decide today on dates for April, May and June, because notices have to be published for those three meetings for budget committee meetings in April and May and the public hearing on the budget in June. **Stewart** said that the meeting schedule should be set for the second Monday, and he will make it work.

**Monk** noted that the elected officials on the board have the tightest schedules, and he very much appreciated their willingness to accommodate the change in the regular meeting schedule.

9. NEW BUSINESS:

- A. Digital Recording of Meetings. **Johnson** said he knew the board meetings are already being recorded, but he asked if it would be possible to record them digitally and put the recordings on MP3 files so that they would be available for board members to listen to them. **Johnson** said the advisory committee does a digital recording. There could still be an analogue recording, but a digital recorder could be placed on the table so that the recording could be placed on the Web. **Monk** asked if anyone were opposed to that and received no response. He said the meetings will be recorded digitally.
- B. Open Burning. **Monk** said he had put out his revised draft of the open burning rules in hopes that the board would look at some of the ways it does thing. He said he thinks the board is failing in its mission when it allows some of the things in the adopted rule.

- C. Rulemaking. **Monk** noted that some board members have fundamental differences of opinion regarding how the rulemaking is done. He said he is in total agreement with **Johnson**. He said the board should be getting a look at the rules and having ample opportunity to give direction to the advisory committee. He noted that he realized the board did not do a good job of that; but when the time frame is compressed in such a way, it makes it difficult. He said the board needs to understand the rules well and be in agreement before going forward with them.

**Stewart** asked if LRAPA is in a period where is a lot more rulemaking, perhaps trying to catch up. He noted that the open burning rule amendments have been at the board level for several months and a public hearing on the amendments has been held, adding that the decision on the amendments was postponed until today because neither he nor **Ortiz** was able to be at the March meeting when the hearing was held. **Stewart** stated, further, that it seems to him that the board has had plenty of time to work on the open burning rules.

**Monk** responded that he has expressed his concerns about the open burning rules, all along. He said he is adamantly against allowing open burning of construction debris, even with a permit; and he would like to see LRAPA enter into public/private partnerships to develop better rules that encourage people to see that what they want to burn is actually valuable material. He added that in the next couple of years there will be a lot more venture capital available to set up all kinds of waste energy.

**Stewart** said he is 100 percent supportive of using waste material to generate energy, adding that Lane County is working on different biomass plants that could come in. He said it would be wonderful if a resident could take a pickup load of material to such a plant and come away with a little cash for his efforts. **Monk** said he would like to revisit the open burning rules if those biomass opportunities arise, adding that he doubts the board will get back to the open burning rules anytime soon.

**Johnson** noted that, when the original draft amendments to Title 47 was presented to the board in September or October of last year, he asked if the board could suggest some language. He said he felt there was never an opportunity for board members to work on this rule or come in with suggested revisions, such as **Monk** submitted at this meeting. **Johnson** said he did not feel the board, as a body, had the opportunity to discuss the merits of pieces of the rule.

**Ralston** commented that the board has had a lot of opportunities over the past six months to discuss the open burning rules.

10. ADJOURNMENT: The meeting adjourned at 2:35 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Monday, April 14, 2008, 12:15 p.m., in the Library Meeting Room in the Springfield City Hall at 225 5th Street, Springfield, Oregon. The board meeting will be preceded on that date by a LRAPA Budget Committee meeting at 11:00 a.m. in the same location.

Respectfully submitted,

**Merrie Dinteman**  
Recording Secretary