

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
MONDAY–APRIL 25, 2011
LIBRARY MEETING ROOM
SPRINGFIELD CITY HALL
225 5TH STREET
SPRINGFIELD, OREGON

ATTENDANCE

Board: David Monk, Chair–Eugene; Bill Brommelsiek, Vice-Chair–At-Large (Springfield Area); Mike Fleck–Cottage Grove/Oakridge; Brian Forge–At-Large (General); Drew Johnson–Eugene; Scott Lucas–Eugene; Andrea Ortiz–Eugene; Dave Ralston–Springfield; Faye Stewart–Lane County (ABSENT: None)

Staff: Merlyn Hough–Director; Merrie Dinteman; Lance Giles; Max Hueftle; Robbye Lanier; Matthew Lee; Sandra Lopez; Sally Markos; Nasser Mirhosseyni; Colleen Wagstaff; Debby Wineinger

Other: Earl Koenig, Chair, and Amy Peccia–LRAPA Advisory Committee; Jim Daniels–Kingsford; Laura Seyler–International Paper

1. OPENING: Board Chair **Monk** called the meeting to order at 12:35 p.m.
2. ADJUSTMENTS TO AGENDA: There were no changes to the agenda.
3. PUBLIC PARTICIPATION: None.
4. CONSENT CALENDAR:
 - A. Approval of Minutes of March 28, 2011 Board of Directors Meeting. Lucas pointed out that the minutes of the March meeting indicated a start time of 11:14 p.m., and that it should have been a.m.

Monk said he had a couple of questions, one of which had been answered by Mirhosseyni during the budget committee meeting which took place before this board meeting. His other question concerned a comment attributed to Stewart, that he has heard from industry that it is difficult to operate a business in Lane County and comply with LRAPA’s rules, and then have to comply with a different set of rules or standards elsewhere in the state. Stewart confirmed that he did make that statement at the March board meeting. Monk stated that he was not aware that LRAPA had different rules than DEQ has, and both Stewart and Brommelsiek responded that the rules are not different but they are administered differently by LRAPA than they are by DEQ.

ACTION: MSP (Brommelsiek/Fleck)(Unanimous) approval of minutes of the March 28, 2011 LRAPA Board of Directors Meeting, as submitted.

- B. Approval of Expense Reports Through March 31, 2011. There were no questions or issues with the expense reports.

ACTION: MSP (Fleck/Ralston)(Unanimous) approval of expense reports through March 31, 2011, as presented.

5. CONTINUED DISCUSSION AND PROPOSED ADOPTION OF PROPOSED AMENDMENTS TO RULES FOR PM_{2.5} AND OTHER PERMITTING REQUIREMENTS:

Background and Changes to Rulemaking Proposal.

Hueftle explained that the proposed rulemaking would establish PM_{2.5} and greenhouse gas permitting program provisions, for new and expanding facilities. It would also establish permitting for facilities subject to federal rules on air toxics, such as auto body refinishing, plating and polishing, and metal fabrication. Hueftle said these are small sources of air toxics emissions; however, together they can be a fairly significant contributor. Hueftle estimated that the approximately 80 to 100 small sources of air toxics emissions in Lane County would generate approximately \$20,000 to \$40,000 in permit fees. Another aspect of the proposed rulemaking would give LRAPA authority to charge fees for sources subject to the state greenhouse gas reporting rule, and Hueftle estimated that the provision would generate about \$15,000 per year in fees. Other changes included in the proposed amendments would correct rule citations and typos in the existing rules.

Hueftle explained that he and two lead permit writers from DEQ started working on this rule package in January of 2009, and their work laid the foundation for the temporary PM_{2.5} rules which the board adopted last August. Those temporary rules expired in February of this year. In the meantime, work was done on the greenhouse gas reporting rules. Hueftle said five workshops were held locally over the past year, to solicit stakeholder input and provide information on the rule package. There was also input in 2009 from the Small Business Compliance Assistance Panel, from the LRAPA Advisory Committee and from EPA. LRAPA also had the benefit of the stakeholder input received by DEQ in its rulemaking process for these rules.

Information received during the public input process resulted in some changes to the original proposal. Those changes also included some revisions suggested by Brommelsiek. Hueftle said one of Brommelsiek's suggested changes involved a technical change to how the agency addresses what is considered an ambient air quality violation, under the National Ambient Air Quality Standard for PM_{2.5}. The language in the proposed changes to Title 50 had an errant cutting and pasting that made the annual standard and the 24-hour standard language identical, and that was corrected in the proposal for this meeting. There was also a change to Title 38, which removed a repeated reference to owners and operators.

Hueftle said that the more significant changes to the proposal involved how LRAPA defines what are called, "baseline emissions." He said the baseline emission rate is a pollutant-specific value whereby sources use an historic annual rate of production to establish a numerical level against which emission increases are measured. Sources that do not have baselines basically measure those emissions from a zero-tons-per-year standpoint; but those that do have baselines have the benefit of getting to measure increases against that baseline emission rate. Once adjustments are made to the baseline emission rate, the baseline becomes what is called the "netting basis."

In the original proposal, the PM_{2.5} and greenhouse gas baseline emission rates were proposed to be any consecutive 12-month period in the calendar years 2000 to 2010; and that is still the case for the greenhouse gas portion of the baseline. For the PM_{2.5} baseline, however, the final proposal includes the baseline to be defined as a percentage of the existing baseline emission rate for PM₁₀, which is a straightforward way to handle it and assumes that PM₁₀ has been regulated all along. The fact that PM_{2.5} is a subset of PM₁₀ works well to transition into this new way of looking at PM₁₀ and PM_{2.5}.

For greenhouse gases, LRAPA and DEQ solicited input as to whether or not the federal program for handling greenhouse gas baseline and netting changes should be adopted. In the end, LRAPA and DEQ decided to stick with the Oregon program, to define a set baseline rate as any consecutive twelve-month period between 2000 and 2010.

One last area of change to the proposal improved the program by increasing the likelihood of certain sources to go through what is called "Prevention of Significant Deterioration," by reducing the baseline emission rate for sources that were permitted to construct, but had not yet begun operation, in that baseline period. The old rules allowed those sources to set their baseline at their "potential to emit"—the highest they could ever emit. The proposed rulemaking changes the definition of "actual emission" to require that that gets re-evaluated 10 to 15 years down the road, so that the level becomes much more realistic. Rather than the high potential to emit, it gets reduced to their highest operating rate in the future.

Comments/Questions from Board Members

QUESTION: Ralston asked for more detail on the small sources of toxics pollutants Hueftle had mentioned earlier, and the amount of fees anticipated from those sources.

RESPONSE: Hueftle explained that the rules would allow LRAPA to permit a new class of sources called "Area Source NESHAP" sources, or those that are subject to federal rules for air toxics. There are several industrial activities that will soon be regulated, or are already regulated, under federal rules. Under the new rules, LRAPA would establish a permitting program for those sources, which include auto body refinishing, metal fabrication, and plating and polishing. There should be about 80 to 100 individual sources and, depending on where they fall, they have choices on the types of permits they are issued. That is why staff cannot give the board an exact number of sources or figure for anticipated fees; however, staff has estimated that LRAPA will receive between \$20,000 and \$40,000 per year in fees from those sources.

COMMENT: Ralston referred to Hueftle's earlier statement that LRAPA would receive approximately \$15,000 from greenhouse gas reporting fees. He reiterated his statement that he is hearing from business that there are already enough fees for them to have pay. He said it is no wonder that people wonder why LRAPA exists, when LRAPA wants to have rules different from state and federal agencies' and keeps charging more and more fees—especially when LRAPA's fees are higher than Oregon's fees.

RESPONSE: Hueftle responded that, although there are slight differences in how LRAPA and DEQ will be implementing the area source NESHAP permitting thresholds, the proposed rulemaking package would essentially bring LRAPA's program nearly identical to that of the state. An example of a difference is, DEQ has a provision where auto body sources that paint more than 20 cars in a year or use a certain gallon percentage trigger this permitting requirement; whereas LRAPA's program would be based on gallons per year, rather than the number of vehicles painted. The fees, however, would be identical. Hueftle added that there are incentives to get out of the need to even pay that fee to obtain a permit, by, for instance, switching to coatings that don't contain the HAPs. He said LRAPA and DEQ have done three workshops for the auto body sources, in particular, so that they are aware of their options.

Hough commented that he was an ex-officio member of DEQ's Greenhouse Gas Reporting Advisory Committee a year or two ago, and one of the clear things that committee recognized is that the industrial

sources were the ones that DEQ, and LRAPA, had already imposed reporting fees on to cover the costs of the program. The goal was that that would be diluted by additional legislative authority, so that there would be a way to spread it more completely across the source categories that contribute to greenhouse gases. Hough said the industry people on that committee recognized that, up-front, and there was no strong opposition to imposing those fees on the sources for which the authority already existed at that time.

Hough added that LRAPA and DEQ staff have provided training sessions, locally, which were very well attended. Both JCI and Nine-Wood hosted some of those sessions on the air toxics requirements for auto body shops and painting operations. Hough said the way this has been handled is really how any new program should be handled, by having this kind of up-front detailed outreach to let people know what is proposed and get their input.

Hueftle added that a non-profit group in Washington state worked with DEQ to provide virtual painting equipment training at the sessions. Painters at the affected sources were allowed to practice and become more efficient at their application of spray-applied coatings, through the use of the virtual paint application equipment. The equipment uses a sensor that applies paint onto a screen and then tells you how efficient the application is.

Hough also mentioned that several of LRAPA's operations staff were involved in the outreach effort, and Lopez said there was a lot of one-on-one contact with businesses in Lane County. She added that DEQ is ahead of LRAPA with these rules, and one reason is because LRAPA decided it was going too fast, and staff wanted to be able to implement the rules with everyone affected knowing what they are subject to and what their options are.

QUESTION: Brommelsiek noted on page 5 of the staff report for this agenda item, that it mentions major sources that were permitted but not operating for greenhouse gases; and he asked if staff knows how many such sources there might be in Lane County.

RESPONSE: Hueftle said it is a very narrow scope of sources, and that there might be one that might fall into that category, although there could be some in the future that will go through that exercise.

QUESTION: Fleck asked if there is some sort of analysis of the time staff spends going through an application process, to determine what the fees should be in order to recoup agency costs.

RESPONSE: Hough said the most exhaustive effort to do that is for setting Title V fees for major industrial sources. Title V of the Clean Air Act requires that the permitting fees charged to the major sources that are subject to these requirements must be enough to fully support the Title V permitting program. The fees get adjusted, each year, by the Consumer Price Index. When program costs rise above existing fees, DEQ starts the effort to increase them to cover the costs, and LRAPA participates in that as well. The process also involves industry groups, and the Oregon Legislature makes the final decision. LRAPA adopted DEQ's Title V permitting rules by reference, and does not have its own fee schedule for Title V permits.

Hueftle added that, for ACDP fees, LRAPA generally tries not to be more expensive than DEQ. If a fee charged by LRAPA is higher than a DEQ fee, staff tries to justify that.

With regard to the fees covered in the proposed rule revisions, Hueftle said, staff has not found the need to be any different from DEQ. Lopez added that the fees in the proposal are identical to DEQ's for area sources. Staff did not specifically track the time it took to develop the rules and proposed programs, but Lopez said the fees currently being charged could not come close to covering all of those initial costs. It is expected, however, that as the programs are implemented and situated, the cost of the programs will go down. If the board felt the need to change those fees, it could do that; however they are identical to what DEQ is charging throughout the rest of the state.

QUESTION: Stewart referred to the definition of "Categorically Insignificant Activity" and asked if those source categories are exempt from these PM_{2.5} and greenhouse gas reporting rules. He said it seemed a little unclear, the way it was written.

RESPONSE: Hueftle said the categories listed under the definition are categorically exempt from the need to get permits or to set permitting limits counting toward the Plant Site Emission Limits. He explained further that, if they support the major industrial group, then they are basically assumed to have such small emissions that they don't need to comply with the need to assign those numerically to the PSELs. Nor would they need to stand on their own as permitted sources. Hueftle said how that came about was that, some years ago the question was asked, regarding at large Title V sources, how far down do we go, as far as these small sources that may have emissions of air pollutants but yet are fairly insignificant; and it would take quite a bit of time to figure out and may not necessarily be relevant or needed to maintain air quality.

Stewart said it appeared that staff is comfortable with the language of this definition, and perhaps later on it may clarify that these source categories are exempt; however, he wondered if it would be worth adding that wording, to avoid confusion.

Johnson said he thought that definition supports what is in the permitting rules. The permitting rules would say you have to permit everything, except categorically insignificant activities; and then you would look at the definition to see what those activities are.

Stewart said if that was the case, he was fine with it the way it was proposed.

QUESTION: Ralston said he was looking for a definition of what the greenhouse gases are. He said CO₂ certainly should not be included, because the science is not there to support CO₂ being a greenhouse gas. He added that CO₂ is a ridiculous gas to call a pollutant.

RESPONSE: Brommelsiek said there is a definition and list of gases in Title 12, page 12.16 and that CO₂ is included. He said CO₂ is the federal rules, and LRAPA does not have the option to be less restrictive than federal rules.

Lopez added that, currently, the only sources affected are large sources with a major modification or a new construction. She said it may change over time, after the program has been in place for a while.

QUESTION: Monk noted in Title 12, page 12.4, the aggregate insignificant emissions, stating that he did not see anything that had changed in the revised draft. He asked what it was in the greenhouse gas emissions, the CO₂ equivalent, that changed from a thousand tons in the prior proposal, and why the change was made.

RESPONSE: Hueftle said in the original proposal it was a thousand tons which was a nice, round number as a percentage of the hundred thousand tons. It was changed to the short ton amount that is the reporting threshold for greenhouse gases. The rules had the 2,500 metric ton threshold for sources that are required to report, annually, their greenhouse gas emissions. When it was changed from metric tons to short tons, the number ended up being 2,756 tons. Staff wanted to make it coincide with that number so that there wouldn't be two different numbers floating around.

COMMENT: Monk said he was surprised and pleased that the baseline consideration had been reconfigured in the revised draft. He said he read comments from Associated Oregon Industries in which they argued that they be allowed to use any prior time period that they could make the determination that it is more representative of what they call "normal source operations." He asked for confirmation that the revised proposal bases it on any consecutive twelve months within the past ten years for greenhouse gases, and a percentage of PM₁₀ for PM_{2.5}.

RESPONSE: Hueftle confirmed Monk's statement.

COMMENT: Monk asked for clarification, on page 3 of the "Relationship to Federal Requirements" document (Attachment B). He noted the fourth full paragraph, which said: "The foundation for calculating net emission increases or decreases for determining applicability of the New Source Review/PSD program in the LRAPA rules is the Plant Site Emission Limit established for each source." Monk said his concern, all along, about this is that—because of the permit streamlining rules that the board adopted previously, most of the ACDP (Air Contaminant Discharge Permit) permits have very large PSELs (Plant Site Emission Limits)—many times above what their actual emissions are. He said Hough had suggested that the board could revisit the ACDP streamlining rules if they chose to do so; however, Monk's concern is that a facility could add to their production without ever having to engage in NSR (New Source Review)/PSD (Prevention of Significant Deterioration) evaluation.

RESPONSE: Hueftle said a source would have to increase its PSEL above its baseline emission rate, to trigger the review. He said that never changed in the rules. Prior to the 2008 streamlining, any source that increased their PSEL above the SER (Significant Emission Rate) had to go through an ambient air quality analysis, determine the offset impacts, etc. All that has happened is that staff changed the source-specific PSEL to a generic PSEL level, which basically sets that PSEL to an amount just below the SER. Hueftle said perhaps Monk understood that the SER kicked in right at their source-specific PSEL level, even if that was lower than the SER. Where that was not the case, that analysis did not kick in unless they went over the SER. Hueftle said that is still the case.

ACTION: MSP (Brommelsiek/Forge) (8 in favor and 1—Monk—opposed) adoption of rules as revised and discussed at this meeting.

6 DIRECTOR'S REPORT FOR MARCH 2011:

- A. 2010-11 Winter Air Quality Report. Hough introduced a report which Markos recently completed, with help from other staff members, including Tim Sawyer and Ralph Johnston. Hough said this is the first annual winter-time recap of air quality for the period of November through February. The goal was to turn that information around as quickly as possible, while the winter season is still fresh in people's minds. This report, combined with the State of the Air report produced in January, are an effort to try to get information out as timely as possible. The annual report comes out, usually, in May or later, when the wintertime information is no longer as current.

Hough said the winter report is another “good news” report, in that this was one of the continuing progress winters. Levels of PM_{2.5} have continued to improve, even in Oakridge where those levels have been higher than elsewhere in the county. While Oakridge levels are still not down to the new federal standard, they are getting closer all the time. One of the key reasons for that has been the woodstove replacement program in Oakridge that Markos and Beltran have been managing. Staff wanted to give that good news to the city council as part of asking them to work with LRAPA to form an advisory committee (*see below*).

Brommelsiek asked what staff’s plan is for distributing the report, and Hough said, so far, it has been distributed as e-mail attachments and on the agency’s website. Markos said when this information gets rolled into the bigger annual report, notice of the availability of that report will be sent to a sizeable list of interested persons, who can request it. That will also be on the agency’s website. Brommelsiek suggested sending the report to the *Register Guard* to clarify what the air quality actually is in Lane County, based on actual monitored data, after some of the recent letters to the editor, etc. following release of national air quality reports that relied on external data and gave this area low marks.

Markos added that when staff looked at all the data, they realized that weather wasn’t as much of a factor in Oakridge as they had thought. Staff thinks maybe the greater reasons for the consistent improvement in air quality in Oakridge are the woodstove changeouts and the fact that people are following the burning advisories. She said she and Hough let the Oakridge City Council and city staff know that, and thanked them for their efforts.

Monk noted that PM_{2.5} levels have been dropping significantly in the Eugene-Springfield Metropolitan Area and asked what staff believes is the reason for that. Markos said LRAPA did a survey in the Eugene-Springfield area regarding wood smoke and found that the purchase of heat pumps has gone up quite a bit since the last survey in 2005. People are switching over, and Markos said she thinks a lot of them are getting rid of the woodstoves and putting in either ductless heat pumps or natural gas. She said we are seeing a kind of natural progression, to a cleaner-burning system, here in the Valley.

Monk suggested that tax credits may be helping with that, and Markos said there is a tax credit of 30 percent or up to \$300 for changing out. In addition, the utilities are offering \$1,000 to \$1,500 rebates for changeouts. She said in Oakridge, LRAPA has been able to add \$1,000 on top of the rebates and tax credits, which is helping to persuade a lot of people to change out their old, uncertified woodstoves.

Oakridge Advisory Committee. Hough said he and Markos had attended an Oakridge City Council meeting the week before this board meeting, to talk with them about forming an advisory committee to work with LRAPA on PM_{2.5} attainment strategies. The goal is to have an advisory committee specific to Oakridge, probably with an liaison person from LRAPA’s standing advisory committee. He added that City Councilor Glenn Fortune is willing to serve on that committee, which will provide some continuity with his many years of experience on LRAPA’s board.

Ortiz said that having an advisory committee in Oakridge is a good idea and that she would like to see that happen in other areas of the county where there might be air quality issues. She commented that LRAPA has tried unsuccessfully to draw some of the other cities in the county into participating with LRAPA, and perhaps this is a way to do that.

Enforcement. Brommelsiek recalled that, at the April meeting, a question was asked about the enforcement issue with Forrest Paint, and he asked if staff had followed up on that to explain it to the board. Hough said he had talked with Diane Bollenbaugh at Forrest Paint, to get her perspective on the situation. There was a delay in giving the required reports to LRAPA, and there were some complications on their end that caused them to miss the date. We assessed a civil penalty, and they responded and requested a reduction in the amount of the penalty. We did reduce the penalty, and they promptly paid it.

Brommelsiek referred to an item in the current enforcement report, a Notice of Noncompliance issued to Michael and Rubye Systma of Creswell, and asked why no further action was taken before the case was closed. Lopez said that, in this case, it was not the property owner who violated the rules. She believed the Systmas were renters who moved away and left no forwarding address. She said she would follow up and get any additional information to Brommelsiek.

Air & Waste Management Association President in 2012. Hough said when he first talked to the board in October of 2009, he was hoping that LRAPA would have more economic flexibility by 2012. Since then he has looked at how he can do this entirely within existing resources. Hough said he was not requesting any adjustments in the budget, based on his election as 2011 president-elect and 2012 president of the A&WMA. He said he needed to make the decision by the end of October of 2009 in order to be on the ballot; and, after consulting with the LRAPA board, and with air directors in the Pacific Northwest, as well as air directors that had represented local air agencies, he chose to run and was elected. Hough had prepared a report for the board which included minutes of past board meetings where this has been discussed and reports given to the board in October 2009 and in June 2010. He said he has been trying to determine how to serve as president most effectively, as well as how to do it without increasing costs to LRAPA. Hough said 15 to 20 hours a week is what he has estimated he currently spends on local community service activities, which is very similar to the number of weekly hours that he will need to perform his duties as A&WMA president. He knows that the elected officials on the LRAPA board devote many hours to community service, and that 15 to 20 hours probably does not sound like a lot to them. Hough said he believes that is about the limit of what he can do and still give full effort and more to LRAPA and have quality family time. Hough said he has been able to absorb the time, thus far, out of the community service time that he does, and out of family time. Both his family and his community partners are very supportive of his doing this next year. One thing that helps with the need to devote additional time to A&WMA is the fact that Hough and his family made a decision years ago not to watch much TV. He said the average family has the TV on seven hours a day, and the average person watches four hours a day, or 28 hours a week.

Monk said the reason he brought this up is because he believes LRAPA needs a full-time director, focused on this agency. He said he does not believe that leading a national organization is easily done, even with what Hough had just reported. Monk said his reading of Hough's contract says Hough can't do that. Hough said that is not true and asked if Monk had read the contract. Monk said he had and that it is clear that whether extra activities are paid or volunteer, Hough needs to demonstrate his full-time attention to LRAPA. Hough said he touched base with legal counsel on that and, actually, his serving as president of A&WMA is fully consistent with his contract and, in fact, if he were unwilling to serve that would be more of a conflict with the contract.

Monk said the board can revisit that when the time is appropriate. Monk said Hough had just made the point that when he first considered running for the office, he had thought there would be more

economic flexibility for LRAPA. He pointed out that Hough and Mirhosseyni had just finished telling the board that there was sufficient funding available in the budget to reinstate the agency's contribution to employees' retirement. Monk said the fund balance has grown over the past few years, and LRAPA has about as much economic flexibility as it has ever had. Monk then suggested that an assistant director be brought in to ensure that LRAPA has full time management here at the agency, accountable to the board, during Hough's time as president of A&WMA. He said he believes the funding is there, and that is why he thought this was a funding issue, to be discussed during the budget cycle. Monk said he only brought this up to see whether other board members have the same concerns and that, if they do not, he has no problem with whatever Hough chooses to do.

Johnson said he thinks it is a feather in Hough's cap to have been elected as 2012 president of a large international organization like A&WMA. He said his concern is that he, personally, has high expectations for LRAPA. He said he wants the agency to do more strategic planning with performance management measures, working with the goals and measures of success from the work done with Consensus Associates and developing goals based on cost/benefit analyses. Johnson said there is a lot that he would like to see happen, and his concern is that Hough will not have enough time to devote to LRAPA. He said he is particularly concerned because of the fact that the board had just heard that neither Lane County nor the city of Springfield have LRAPA in their budgets for the coming fiscal year. That affects LRAPA's ability to meet the match for federal base grant funding. In addition, Johnson said he is concerned about the problems LRAPA is having collecting on the lease payments from the Everybody Wins program. Johnson said he prefer not to wait until September but would rather see, now, a plan for how Hough intends to handle his LRAPA and A&WMA duties next year, possibly including Monk's suggestion of a job share with someone else who could be here when Hough is away.

Hough reiterated that his year as president of A&WMA does not begin until January of 2012. He said he has the same kinds of concerns that Johnson mentioned regarding LRAPA's funding. As for Monk's suggestion about an assistant director position, Hough said he would like very much to be able to do that; however, he does not want to include in this plan for next year anything that would have an additional impact on the agency's budget. The agency has dropped an FTE per year for the past four years, and it is difficult for him justify paying for an assistant director in light of that. That is why his plan calls for his taking the necessary time from his current local community service and from his family time.

Stewart said he was at a loss at this conversation, because he has a great deal of confidence in and respect for Hough and believes Hough is doing an excellent job for LRAPA. Stewart said he has not sensed any lack of response from Hough and, in fact, always gets very quick responses to e-mails or phone calls. He said Hough has given him his personal cell phone number so that Stewart can reach him at any time. Stewart said he is not hearing comments from anyone except a couple of board members, that there is concern about this. He said unless someone can give him some kind of concrete evidence that Hough's serving as president of A&WMA will be detrimental to LRAPA, he does not see any problem with it. Stewart added that this is getting beyond what the board's role is, and the appropriate time for this conversation would be when Hough's performance review is done.

Fleck agreed with Stewart, stating that he is the director of a non-profit and works more than 40 hours per week at that. He is also on five boards and adjusts his time so that he meets his obligations at work. Fleck said he had been looking at the Consensus Associates report and felt that there

needs to be trust between the board and director. Fleck acknowledged that he is new on the board; however, if Hough says he can do the work as president of A&WMA without losing his ability to do the job of LRAPA director effectively, then the board should trust that he can do that. He added that the director should be able to engage in this activity as long as it does not reflect badly on LRAPA and that, in fact, being president of A&WMA would enhance LRAPA's visibility and knowledge. Fleck said he understands the concerns, but this is the second meeting, in a row, that he has felt the board is micro-managing its director. Fleck also agreed with Stewart's comment that the proper time for this discussion would be during the board's evaluation of the director's performance. Fleck said he meant no disrespect to anyone here, but it is the board's role to set policy and direction and the director's role to implement that. He said, from what he has seen, that is happening, and he would really like to see the board evaluate what it is doing as a board and try to stay out of administrative areas. He would also like to see the board members work on their relationships as board members, and on the board's relationship with the director. Fleck said the city manager of Cottage Grove was president of the City Managers' Association and got everything done for the city, flawlessly, and has brought many programs to the city as a result. Fleck said he encourages this kind of activity in an employee.

Lucas said he would like to go on record as being one of the people who does have some concern about this plan, but he also agreed with Stewart's comments. He said his concern is not driven, at all, by Hough's performance up to this point or his responsiveness to the board. He said, by all accounts, Hough is doing a wonderful job as director of LRAPA. Lucas said his concern stems from Hough's statement that in the past this office has been held by people from much larger organizations who are probably much better able to absorb the extra time commitment that it takes. Lucas said Hough has estimated that it will take about 15 to 20 hours per week of this time, and he thought what the board was really discussing was not whether it is an appropriate discussion for the board to have, but more a matter of timing. He said Hough had told the board in 2010 that he would bring a them a plan in 2011, for how he intends to balance the responsibilities of LRAPA and A&WMA during 2012. Lucas said he does not think this discussion is out of line with the board's role; however, the discussion at this time should center on possible impacts on the budget. He suggested the discussion of Hough's plan should happen in the fall, once people have a chance to breathe.

Ortiz said she does think this discussion is within the board's purview because Hough is the board's employee. She said she knows that Hough works over 40 hours per week for LRAPA, and she also thinks it is an honor for him to have been elected as 2012 president of A&WMA. She does not believe it is out of line to ask him what his contingency plan is for 2012. Ortiz said she wants to know what Hough plans to do if something critical happens while he is away, and who would be next in line to monitor that. Ortiz said board members, and especially the elected officials, do a lot. When they are here to a board meeting, they are also carrying the load for other different constituencies.

Ralston said he has no concerns with what Hough has suggested because he trusts Hough. While he does not want to create problems that don't exist, he would like to see a contingency plan; however, there is plenty of time to do that later in the year.

Brommelsiek said he supports comments from Fleck and Stewart and strongly believes that this is a great opportunity for LRAPA and for Hough. Brommelsiek said he has been involved in national and international trade association and professional societies, as a board member and as president;

and in every case he brought information back that improved the organization for whom he was working. He said he has every expectation that Hough will do the same and that Hough will put together whatever plans are necessary to ensure that LRAPA continues to function as well as it can. He added that, given today's technology, staying in touch is much easier than it was fifteen years ago.

Forge said he appreciated Monk's having brought this up and certainly encouraged what Hough is doing. He said he believes Hough can handle both jobs and will also bring a lot of good information back to LRAPA. Forge said he trusts Hough's judgement but also agreed that it will be good to see a plan so the board will know how LRAPA business will be handled in Hough's absence. He added that this will be an opportunity for others on staff to step forward and do some of the things Hough does, thus broadening their own experience. Forge said he looks forward to getting more information throughout the year.

To be clear, Hough said his plan has changed since October 2009 when he first spoke with board members about it. He said he told them at that time that he would not be able to devote more than 40 hours per week to LRAPA work during 2012. What he is now proposing—based on the concerns he heard from two board members in October of 2009—is to reduce his community service and family time by 15 to 20 hours per week during 2012. That is where he will find the extra time he needs, and he does not intend to impact LRAPA any more than what happens now. He has a Smart Phone and a laptop with which he can keep in constant contact with LRAPA, no matter where he is. He added that many times A&WMA and other organizations schedule standing meeting times so that much of it is done on weekends in order to minimize the impact on members' work responsibilities. Hough pointed out that when he takes a week of vacation, there are people at the office who can fill in, even if he were not available by cell phone or laptop. There are three managers who report to him, and they are the logical people to help fill the gaps while he would be away.

7. **ADVISORY COMMITTEE:**

- A. Activity Report. Koenig announced that, at the committee's last meeting, Amy Peccia was elected to chair the committee this year, and he had been elected as vice-chair.

The committee talked at some length about the limited maintenance plan for PM₁₀ and it appeared that this will be a very long, involved process.

The committee also talked about the project Koenig had suggested that the board assign to them—that of studying the functions of the board and of the staff. Koenig said the committee had agreed that any report to the board should not list detailed functions of each, because they felt the purpose of this project would be to provide more of a broad guideline. They will not proceed with that until or unless the board makes an official request of them.

- B. Committee Appointments. Markos reported that three existing committee members had applied for reappointment, including Maurie Denner (general public), Larry Dunlap (public health) and Earl Koenig (general public). In addition, three individuals who work for Title V sources applied for appointment, including Jim Daniels (Rosboro), Randal Jones (Johnson Crushers International) and Laura Seyler (International Paper).

Markos explained that all three existing members have served more than one term and need to be reappointed by the board. There are also some openings on the committee to represent major industrial sources (Title V) because Russ Ayers and Amy Peccia, both of whom worked for Title V sources, are now doing other things and are currently representing the general public instead of industry. All three new applicants currently work for Title V sources. Markos explained further that the statute only requires one representative for each of several categories; however, the committee decided years ago that they need the perspective of both the smaller, ACDP, industrial sources and the larger, Title V, industrial sources. ACDP sources are currently represented on the committee.

There was significant discussion among board members, regarding which applicants to appoint. Consensus was to reappoint the three incumbents. Of the three new applicants, Daniels has been attending LRAPA board meetings regularly for several years, and Seyler also attends board meetings at times. There was also some desire to have more women on the committee. Markos said she would like to keep the maximum number of committee members to thirteen, which meant that only five of the total applicants could be appointed or reappointed.

Monk said he did not think it is right for either Ayers or Peccia to represent the general public, when they have spent so many years working for industry. He said they should still be representing industry because that is their focus. Ayers said it has been required that a person representing industry had to actually be employed for an industrial source in order to hold those positions. He said that, while he still has contact with people he used to work with, he no longer has the same connection with industry in general as he had when he worked there. Hough agreed that those representing industry need to be currently employed by an industrial source. He also said the board had this same conversation at the time Ayers was reappointed to the committee, after his retirement from employment, and was moved to general public instead of industrial representation, because some board members felt that Ayers still has a lot of industry insights and perhaps perspective, and there was a reluctance to fully move him to representing the general public.

MSP (Forge/Lucas)(Unanimous) reappointment of Denner, Dunlap and Koenig; and appointment of Jim Daniels and Laura Seyler to represent Title V industry on the LRAPA Advisory Committee. All terms are for three years.

8. OLD BUSINESS:

- A. LRAPA Board Information Binders. Fleck said he had had a chance to go through the binder he was given at an earlier meeting and had found it to be very helpful. He said he has a lot to learn, but the binder was a good first step which really helped him with discussions at this meeting.

Johnson asked if board members are still going to get copies of the binder information on thumb drives, and Hough said staff is still receiving ideas for additional information to include. As soon as the binders are as complete as possible, for now, the information will be scanned and sent to board members on thumb drives or CDs, according to each board member's preference.

- B. Organizational Dynamics and Collaborative Approaches. Hough said he had spoken with Bob Chadwick of Consensus Associates, who suggested that a useful way to advance the process begun with the board retreat in December would be for the board to choose two or three of the best

outcomes in the report his company provided, and focus on those for the next few meetings. He suggested asking two questions regarding those outcomes: what evidence do we see that we are making progress on these outcomes; and what evidence do we see that we are not making progress on these outcomes. Hough asked that board members look at the short-term best outcomes on pages 4 to 6 in the final report, and the long-term best outcomes listed on pages 8 to 10, and decide which are the highest priority items and should be addressed first. Hough added that the lists are on pages 4 and 8, and the following pages provide further explanation of each item on the lists.

Hough said the idea was to choose those few items and have them as part of the agendas for several meetings, so that board members could talk about them and determine whether the group is on track to reach those outcomes and, if not, what can be done to make progress.

Two board members offered possible choices for first priority. Ortiz suggested, "industry wants to work with LRAPA," stating that she thinks that would be a really good place to try and focus some energy. Ralston said he is interested in having shorter board meetings. Other board members agreed with those suggestions. Brommelsiek also agreed but said that, since the board had just been asked to prioritize the outcomes, it might be better to take time to look at the two lists of outcomes and rank them according to what each member feels are the most important outcomes. At the next board meeting, a vote could be taken to determine which of the outcomes should be addressed first. He suggested, further, that board members look at the lists, determine which outcomes are most important to them, and get that information to Hough before the next board meeting. Monk requested that people send their priority suggestions to himself and Brommelsiek, in addition to Hough. Brommelsiek said he would not be available to look at the information until just before the May board meeting, and suggested that the priority items be send just to Monk and Hough.

Hough commented that it might be easier to do the lists of outcomes separately, and to focus first on the long-term list since both Ortiz's and Ralston's suggested priorities were on that list. **Board members agreed that they would look at the long-term lists of outcomes and send their top three priority choices to Monk and Hough prior to the May 23 board meeting.**

Johnson said it was brought up a couple of times at today's meeting, that people didn't know why the board was talking about a particular issue, or that it seemed like micro-managing. He said that makes him feel as though he is not being heard and takes away his contribution to the board. He said, even though his concerns might be misplaced or poorly presented, they are still his concerns, and he would like to have a way to explore concerns in a constructive way without putting anyone on the spot or threatening anyone's reputation.

Fleck responded that board members have disagreed with him, as well, and he respects their right to do that and does not take it personally. Fleck said he feels that it is disrespectful to Hough not to trust that he is able to do what he says he can do. Fleck said he respects Johnson's position, and he hopes that Johnson also respects his. He suggested that perhaps the board needs to come up with language that allows everyone to speak and by which board members respect each other's points of view, even though they may disagree. Fleck stressed that board members need to focus on respect for one another's right to express their points of view.

Johnson said he respected what Fleck had said, that Hough is the board's employee but deserves board members' respect. He said he should be able, with other board members' help, to find a way

to present his concerns without sounding like he does not trust Hough or threatening Hough's reputation. He said that would be the best outcome.

Fleck said that he agrees with other board members, that these issues are the board's purview; however, he has worked on some very contentious boards and is trying to help this board not go down that road. He said if his comments are ever taken out of context, he would appreciate people saying so, and he will try to frame his comments in a more appropriate manner.

- C. Air Toxics Program Development Committee. Committee Chair Brommelsiek reported that the last committee meeting started with a presentation by Hough and some of the others who have been attending the Portland Air Toxics Solutions Advisory Committee meetings. He said the Portland group has finished all their modeling and have produced some white papers regarding the various sources that contribute the HAPs in that area. Brommelsiek described the white papers as providing the source categories, the modeling results related to each source category, and the existing emissions reduction strategies that apply to each. Brommelsiek said two things have struck him after attending the second-to-last Portland meeting. First, there are a number of people participating in the Portland effort who do not understand acute versus chronic. The numbers being generated are annual average numbers, and they are trying to use that to address acute release issues. Secondly, the impact on most of the area related to background and secondary sources makes it obvious that they are not going to achieve the Ambient Benchmark Concentrations (ABCs) for most of their targets by 2017, if ever.

Brommelsiek went on to say that the Portland air toxics group is swamped with pollutants that they can't tie to a source; and some of it may be transport or secondary, meaning that there are other pollutants that are emitted that combine to form some of the pollutants that are being measured but not tied to specific sources. He said the group is no longer as optimistic as it was about the ability to make a big difference by 2017. Hough added that the background and secondary impacts are based not on monitoring but on EPA's NATA work which reconciles monitoring and modeling on a national basis.

Brommelsiek said the second item at the last LRAPA Air Toxics Program Development Committee meeting was presentation by Tim Sawyer of his summary of the 2005 NATA results for Lane County. He said Sawyer took the information and put together a package for the committee that highlighted those areas in the county that exceed the various ABCs for different types of air pollutants. Brommelsiek said, from what he saw, there was unbelievable correlation between the NATA estimates and LRAPA's Amazon monitoring results. Typically, if the modeling-to-monitoring correlation is a factor of 2, it is considered very good. Brommelsiek said the correlations in Sawyer's summary were phenomenal. He described some of the correlations in the summary: NATA estimate for acetaldehyde was 1.93 micrograms per cubic meter, and the Amazon measured number was 1.53; NATA estimate for benzene was 1.33, and LRAPA's measured number was 1.48; NATA estimate for formaldehyde was 1.7, and LRAPA's measured number was 1.9.

Brommelsiek said that the NATA data identify the five highest tracts in terms of cancer risk, and then identify the pollutants and those sources contributing to those levels. The report indicates that the area of greatest cancer risk in Lane County is the core area of Eugene, between Jefferson and Willamette, and 4th and 13th. Monk attributed that to transportation sources. Ralston stated that there are a lot of places of intense traffic congestion that don't have those kinds of numbers, and

there are more tall buildings in those few blocks of Eugene which restrict the air flow which would remove the gases from the area. Ralston said that probably is a major contributor to the concentrations of transportation-related pollutants in that area. Lucas also pointed out that a lot of the other areas with traffic congestion don't have a lot of people living in them.

Brommelsiek said the data also show that, with the exception of perchloroethylene, there is no point source that contributes more than 2 percent of the HAPs to any reading at any monitored elevation. What the committee is finding is that background and secondary pollutants play a major role for things like formaldehyde and acetaldehyde. Brommelsiek said the elevated risks of cancer are due to the same problems the Portland area is seeing, from secondaries and background. The committee is going to have to take a long look at the data and try to determine how to make a big difference, in terms of the toxics in this area. Brommelsiek said he is very impressed, first of all, to see the correlations in the monitoring and modeling, and also with the work that Sawyer did to present the information in a concise and helpful set of documents.

Ortiz asked where the study is, and Brommelsiek said it is the EPA information that was released in March, and that Sawyer had put together a chart which Brommelsiek had asked Hough to share with all board members. He asked at this time that the entire report be shared with board members. Monk agreed and asked that the whole packet from the last LRAPA committee meeting be provided to board members. Ortiz said she would be interested in looking at the information and seeing whether SHINE has looked at it or if they are even still involved with cancer cluster studies like they did in the Trainsong Neighborhood and west Eugene. Brommelsiek cautioned, when looking at the information, not to compare the current numbers to the report that was done in 2002, because the methodologies have changed.

Brommelsiek said the committee will meet again either in late May or early June and will talk about the information from the Amazon and Petersen monitoring sites. There is enough data, now, from the Petersen site, to see how the two sites are tracking. He said the committee will also invite Oregon Toxics Alliance to do a presentation of the work they've been doing in Eugene.

- D. Personnel Policy Review Committee. Committee Chair Monk reported that the committee had not met since the last board meeting but were scheduled to meet on Thursday of the current week. He said the agenda included an assessment of PERS and its hybrid model, to see whether that is something that should be considered by LRAPA. He said he hoped the committee could also look at the issue brought up at the budget committee meeting (*to reinstate the agency contribution to employee retirement to what it was before July 1, 2010*) and get back to the board with a recommendation. He said it would be his preference to move on that recommendation prior to the public hearing on the budget.

Lucas commented that Fleck had been invited to participate on the committee, and Fleck said he had intended to participate; however, the city recorder had asked him to be on the interview panel for the new LTD director, and that has conflicted with the LRAPA committee meetings. He said he would not be able to attend the meeting on Thursday of this week. Stewart said he also would not be able to attend the Thursday meeting due to a county budget committee meeting scheduled that afternoon.

Hough asked if committee members could come up with an alternate day and time that would work better, but Stewart said he did not have his calendars with him. Monk said they had a meeting scheduled and would continue as planned.

9. NEW BUSINESS:

- A. Question of Staff Discretion. Hough said the question of staff discretion has been brought up by a couple of board members several times over the past few months, specifically with respect to permitting and enforcement programs. Hough provided copies of a report from the February 2008 board meeting, which gave an overview of the agency's enforcement program. He said the intention of that document was to answer questions about how the process works and how the penalty amounts are determined. To prepare the 2008 document, staff put quite a bit of time into putting the rules into understandable English, talking about the concepts in pure terms, and walking through specific case examples to illustrate the variety of things that staff faces with the enforcement of the agency's rules. Hough suggested that, if board members could use that, at least as a starting point, it would be more efficient from a staff standpoint. Even before that, though, Hough said he would like to hear from the board if there is enough interest in the subject of discretion or professional judgement to pursue it further. He said he just wants to be sure there is enough interest, because it does take significant staff time away from implementing other parts of LRAPA programs. If it is important to the full board, staff will be happy to do this; however, if it is not a big concern to the full board, he would rather have staff use its time on things that are directly improving air quality.

Fleck said that, from his perspective, from the information he has received in agenda packets, it seems that LRAPA is pretty fair and even-handed, and he is comfortable with the way staff is implementing the enforcement program. He added that he can see both sides of the issue. In the city's planning, they have revised their entire code to take a lot of the ambiguity out, so that there are clear expectations. He can see where that is necessary; however, he also thinks there needs to be some latitude so that staff can educate people instead of penalizing. Fleck said his preference would be to leave it as it is; however, he is inexperienced and would certainly listen to comments from the rest of the board members.

Ralston said he is not concerned with the way the enforcement program is handled. The board revisited enforcement in 2008, and the document that was provided at that time provides a good explanation of the program and the civil penalty matrices. Ralston said the only aspect that does concern him a little is when someone violates the rules and is assessed a civil penalty, and they choose to appeal the fine, and the agency invests a lot of money in legal fees that LRAPA will never be able to recover. He said that seems counter-productive, and it should be avoided as much as possible. He agreed that education is important, but he believes that if someone is doing something serious that violates the rules, they should be punished for it. He said if anything were to be changed, he would like to see a way to determine ahead of time what the cost to the agency would be for a specific action, or possibly to add more authority to the rules.

Johnson said the 2008 document was good. He said his main concern is with cases where the respondent "plays" the agency by appealing a case and forcing the agency to spend a lot of money on legal costs, only to settle at the last moment for the original fine amount. He said you have to balance that against the deterrent effect LRAPA wants its enforcement program to have, in order to change behavior. Johnson said if there were anything he would want to see, it would be a confiden-

tial document with a cost/benefit analysis of certain types of enforcement actions and the impact. He would like to know what penalties are negotiable and what penalties are not; and would also like to see what the staff discretion is around being able to negotiate and how a settlement is negotiated.

Hough said there are three response options available to people who receive civil penalty assessments from LRAPA: they can just pay the fine; they can request a reduced penalty; or they can appeal the enforcement action. Staff does not discourage people from requesting a reduction in the penalty amount, because that option also requires that the respondent admit responsibility for the action that caused the enforcement action and outline what they plan to do to ensure that it does not happen again. That option gives LRAPA a record that the person knows they broke the rules, and the person has also had to think through their actions and come up with a plan to avoid recurrence of the violation. The third option, a contested case hearing, is not cost/effective because of the involvement of legal counsel. It ends up costing both sides more than the disputed penalty amount, in most cases. For those reasons, if staff steers respondents in any direction, it would be toward the second option—requesting a reduced penalty amount. The amount of the reduction varies, depending on the case they make and what mitigating factors staff can apply after hearing their side of it.

Hough said he would like to know, at this point, how big a concern this is to the full board, and how much more information board members would want.

Ortiz said she would like to have a presentation on this subject by the field people who actually go out and do the enforcement of the rules. She said she would not want them to spend more than a couple of hours preparing something for the board, but she would like to have more of a dialogue with the enforcement staff, to gain a better understanding of how they work through different kinds of cases. She added that she would not expect Hough to follow up with this unless the full board gave him that direction.

Lucas said he, too, would like to have the kind of dialogue Ortiz suggested. He said he is interested to know what the recidivism rate is among people who get their fines reduced, as opposed to those who just write out a check when they get the civil penalty assessment. Lucas added that he did not think it should take too much time for staff members who do this on their jobs all the time to have that kind of conversation with the board, as opposed to spending a lot of time preparing a written report with charts and graphs. He said he would be more interested in just hearing how the program works, from the people who do the enforcement. Lucas said he thought that kind of conversation might alleviate whatever concerns board members may have, adding that he did not come into this meeting having any concerns about it.

Johnson said what other board members were describing, in response to his question, would be a way to measure how successful the enforcement program is, what the recidivism rate is for the different response options to civil penalty assessments, and whether the program is costing the agency more than it is bringing in. He said keeping track of that data might be an example of performance-based management measures.

Monk said the reason he brought this up in the first place was because of cases where LRAPA assesses a civil penalty, the respondent appeals it and goes through a contested case hearing with a hearing official, and then the respondent appeals that decision to the board. LRAPA spends time and money preparing to hear the appeal. If the respondent is allowed to settle just before the

appointed date, for the same amount of the original fine, it just costs the agency money without gaining anything. Monk said, to him, that is staff discretion. He said settling initially in order to avoid those extra costs makes sense to him; however, once someone has taken the option to appeal a case, there should be a policy to try to recover the legal costs associated with that process. In the case of a multi-billion dollar industrial source that is best able to pay a penalty, and that has the best-trained staff to ensure that violations will not occur, LRAPA needs to be sure that they do so and, in the process, send a message to other smaller business people that they should follow the rules. Monk said people probably don't take LRAPA's rules seriously, if they see that someone else is able to violate the rules with no serious consequences. Monk said he thought he had heard Ortiz, Lucas and Johnson express a desire to have more information on the enforcement program, and he would also like to have that.

Brommelsiek said he doesn't know if he has a concern until he spends a little time reading the 2008 document, but he would be more than happy to hear a presentation. He said he is familiar with a system where if you don't comply with the rules, the sheriff is at your door shutting you down. One of the aspects of the enforcement policy he would look for is what program is in place to ensure compliance when someone chooses not to be in compliance.

Monk said time will be scheduled at an up-coming meeting to have a staff person walk the board through an enforcement example. Brommelsiek asked if it would be appropriate to have legal counsel present for that conversation, to answer any questions that are generated by the presentation and dialogue. Monk said that might be a good idea. He suggested that people develop those questions and ask Hough to talk with Shepherd so that he can have Shepherd's answers available at the meeting without having to have Shepherd sit through the whole board meeting.

- B. Directing the Advisory Committee to Help Define the Roles and Responsibilities of Board and Staff. Lucas said he was still interested in taking up the committee's offer to look at the proper role of the board, and the staff, and give the board some thoughts on that. He said he is concerned, though, that unless the board decides what product they want back, it might waste a lot of the advisory committee members' time. Lucas suggested that, at the May meeting, the board discuss the result they would like to see from this project, before officially assigning it to the committee. Board members agreed to discuss that at the next meeting.
10. ADJOURNMENT: The meeting adjourned at 2:40 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Monday, May 23, 2011, 12:15 p.m., in the LRAPA meeting room at 1010 Main Street in Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary