

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
MONDAY–SEPTEMBER 9, 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; Pat Patterson–Cottage Grove/Oakridge; Faye Stewart–Lane County
(ABSENT: Andrea Ortiz–Eugene; Dave Ralston–Springfield)

Staff: Merlyn Hough–Director; Merrie Dinteman; Nicholas Horres; Max Hueftle; Niene Le; Sandra Lopez; Sally Markos; Nasser Mirhosseyni

Other: Russ Ayers, Chair, Amy Peccia–LRAPA Advisory Committee; Landa Gillette–LRAPA Budget Committee; Mike Bucci and Paulo Montenegro–Kingsford Mfg.; Jim Daniels–Rosboro Lumber; Rick Smith–SierraPine; and several others

1. OPENING: Monk called the meeting to order at 12:15 p.m.
2. PUBLIC PARTICIPATION: None.
3. CONSENT CALENDAR: The minutes of the July 14, 2008 were not yet completed, and approval of those minutes was placed on the October 14, 2008 agenda.

Because there was no August board meeting, there were two financial reports to be approved at this time. One covered expenses through June 30, 2008 (end of FY 07/08), and the other covered expenses for July of 2008.

Carpenter noted that the FY 07/08 ending report indicated LRAPA received only 83 percent of the anticipated permit fees for Title V, and Mirhosseyni said the amount in the budget is estimated, based on the percentage increase in the fee amount each year. Carpenter asked if there was enough reduction in emissions to account for that difference in fees. Mirhosseyni said Weyerhaeuser had paid almost \$160,000 the previous year, but emissions reductions reduced fees to \$124,000. That was only one source.

Carpenter also noted that revenue for Airmetrics was only about three-quarters of what it was the previous year; the enterprise had a reduction in costs of \$470,000; and that Airmetrics was providing about \$205,000 to the LRAPA General Fund. Mirhosseyni explained that only part of the \$205,000 is available as cash which can be contributed to LRAPA's General Fund because part of that total is what Airmetrics holds in inventory. He said the budget is prepared based on the last five years. Airmetrics had its best year, ever, in FY 2004-05 when it sold nearly 500 units; and that skews the numbers for the estimate. Mirhosseyni said the budget is intended to provide sufficient funds so that, if there is a good year, the budget is not short. The revenues and expenditures are over-estimated, and as the numbers materialize the program goes forward based on actuals. Hough added that Airmetrics is due for a detailed inventory, and the ending figure may need to be adjusted as a result of that inventory.

Patterson asked if the inventory has been upgraded or still uses the original materials, and Mirhosseyni said the sampler has been upgraded and uses more digital and electronic components than the original did.

Patterson asked if there is a way to sell some of the older stock to customers who bought the older model of the sampler, and Mirhosseyni said staff wants to keep some of those old inventories in order to be able to continue to make repairs and replace parts on some of the older units.

Hough commented that it would probably be interesting for the board to see the new sampling unit, because this has been the most significant upgrade that has been done, to date, on the sampler. The outward appearance is different, and the displays have changed significantly. The pump and battery units have also been changed to give them longer life. Hough said if the board members were interested, he would schedule a demonstration of the old and new units, to show the upgrades that have been made.

Johnson asked about the money that was budgeted for the upgrades to the sampler, and whether that included the patent and licensing as well as the actual changes in the unit. Mirhosseyni said that did not include the licensing. He said he recalled when he first came to LRAPA that a board member had asked if Airmetrics was doing anything to improve the product. There was \$25,000 in the budget that year for upgrades, and it was not used at that time. That money, as well as the money included in this year's budget, was spent to develop the newest version of the MiniVol sampler.

There was discussion of the licensing agreement and the patent on the new technologies. Mirhosseyni explained that EPA and Jerry Boyum (the inventor of the unit, who works for LRAPA) are the licensors, and LRAPA and Airmetrics are the licensee. Airmetrics is the agency which is designated to produce the sampler and other associated products, and as long as LRAPA and Airmetrics continue to produce the materials, they are the licensee. If LRAPA were to decide to discontinue Airmetrics and not to produce the material any more, the license would revert to the licensor, and the licensor would have the option to purchase the equipment and materials from LRAPA. As for the patent, Mirhosseyni said LRAPA does not own the patent. The invention still belongs to EPA and Jerry Boyum. Johnson asked if there will be a new patent for the upgrades and, if so, would LRAPA own that patent since LRAPA money was used to pay for the research and development on the upgrades. Hough said he believes the upgrades have been more refinements to the sampler, and he does not believe the upgrades affect the original patent. Mirhosseyni agreed that the patent is not affected by the upgrades. Hough said that South Korea recognizes the MiniVol as its reference sampler, and there will be some additional refinements made to the unit in that regard.

Monk said he also had some questions about the licensing agreement, and he asked that staff provide a brief written explanation of the licensing agreement and patent information for Airmetrics so that board members could understand it better. Patterson said he also had concerns about the patent. He said at one time there was a company from another country which tried to produce and market the same device; however, they could not do that because some of the parts were manufactured locally specifically for the MiniVol and were a part of the patent. The MiniVol was manufactured at a low enough cost to be able to sell it at a very competitive price in markets all around the world. He said he wants to be sure that any upgrades are covered by patent to prevent someone else from marketing the same equipment. Mirhosseyni said ownership of the product belongs to LRAPA and that, if the license ever reverts back to the licensors, they would have to purchase the product and materials at the cost LRAPA paid, plus the agency's profit margin.

Johnson said he was still not clear regarding ownership of the patent. He said if LRAPA is paying to develop upgrades, he is uncomfortable with the idea of the patent belonging to someone else. Hough responded that there are no new patents. It has been more a matter of refinements to the design, than anything that affects the basic patent. Mirhosseyni said staff would get a legal opinion regarding how the patent is affected by the changes that have been made over time to make the MiniVol more efficient.

Carpenter stated that he does not think that adding something like a new display would affect the original patent and that he thinks it has to be a significant modification to be able to get a new patent on the sampler. Johnson said he was thinking of the device that holds the filter, and that he thinks there may have been fundamental changes to configurations that would affect the patent.

ACTION: Stewart MOVED approval of the expense reports through June 30, 2008 and July 31, 2008 as presented. Carpenter SECONDED THE MOTION. THE MOTION PASSED BY UNANIMOUS VOTE.

4. DIRECTOR'S REPORT: Several items were discussed.

- A. Air Quality. Hough reported that ozone levels have been boring in that, the past two summers have recorded some of the area's lowest ozone levels. Those levels put the area in compliance even with the new, tighter ozone standard, which means that it is likely that we'll meet the standard for the three-year average. Hough explained that the weather is the biggest factor that changes from year to year, but reductions in traffic due to higher fuel prices has also contributed. He added that many of the strategies to reduce air toxics also reduce ozone precursors, so there may be a combination of factors, both economic and environmental, that are helping to keep those ozone levels lower.
- B. Plywood MACT Compliance Status. Hough reported that there were three sources which needed to complete work to meet the extended compliance deadline. Rosboro completed its work in the spring. SierraPine has been consistently on scheduled and expects to meet the October 1, 2008 deadline. Flakeboard expects to meet the deadline on the biofilter on the presses; however, for a number of reasons, they do not expect to meet the deadline on the post-dryer blending portion of the process.

Lopez reported that Flakeboard might not be able to achieve compliance on the blending operation until January 1, 2009. She approximated emissions during that time at 10 tons of Volatile Organic Compounds, 5 tons of formaldehyde, and 5 to 7 tons of methanol, all assuming steady operations during that period. Carpenter asked if staff plans to develop an enforcement action prior to October 1, and Lopez said the plan is to do that when the facility is actually out of compliance, and move forward with a civil penalty.

Carpenter said he was glad to see that everything else is going according to schedule and that testing will be done on the affected equipment. Lopez confirmed that sources have 90 days to complete compliance testing once the controls are in and operational. Carpenter added kudos to SierraPine for having completed the work by the deadline date and for having scheduled the necessary testing. Lopez agreed that SierraPine has done a great job.

Referring to a picture of Flakeboard's construction for the controls, Patterson asked if all the equipment shown in the photograph would be indoors or out. Lopez said there will be a large tower-type building where all the ducts in the picture will eventually meet, so that will be internal. She said she would check to see what will be covered when the project is completed. Patterson expressed concern that the portion that is to be internal be designed to provide adequate ventilation inside the building. Lopez said the permit for the source includes some source testing requirements for that area, and the ventilation inside the structure will be a part of that. Hueftle said there is a full enclosure on the press already, and it looks like they will just enclose some portion of the rest of it. He said most of what is seen in the picture will not be inside the building.

- B. Field Burning. Hough said staff originally understood that the bill to be introduced to the '09 Legislative Session would have a multiple-year phase-down of field burning; however, the final bill will require that the practice be phased out completely in one to three years. He said by 2010, the amount of open field burning currently allowed would be cut in half, and that by 2011 there would no longer be any open field burning allowed. Hough said that accelerated schedule had been developed over just the past few weeks.

Monk said he heard an interview which Markos had done with radio station KLCC, and he was curious about what the agency's policy is regarding affirming the agency's support for a legislative proposal. He said he wondered whether there is a process for staff to follow before making a statement without having input from the board first. Markos said there was a question about whether LRAPA supports an immediate ban or the phase-down, and she said LRAPA was looking at both bills. She said that was her response because she had not heard from the board regarding which direction they would prefer to go. Markos said she answered the question about LRAPA by stating that both bills were consistent with the board's actions. Monk said he did not hear "consistent with the board action" in the interview. Monk agreed, that the board had not discussed the two legislative proposals.

Hough said LRAPA provided testimony at hearing in the Health Care Committee in the last session regarding Representative Holvey's bill which would have eliminated field burning. He said that bill was consistent with the LRAPA's board's recommendation at that time. He said he and Markos had talked recently about how to respond to questions, and the intent was to respond that both bills would be responsive to the board's direction, to eliminate field burning as soon as possible. Monk said he agreed. He said he was just glad Markos answered the question as she did, because he thought endorsing a legislative concept like that seemed inappropriate.

Stewart said it was his understanding, in listening to DEQ Air Quality Administrator Andy Ginsburg's report to the Lane County Board of Commissioners, regarding the field burning legislation, that DEQ's legal research shows that they don't have the ability to actually stop it immediately, and there may be some question as to whether or not the Legislature could even do it. Monk agreed, stating that it was also his understanding that stopping the practice immediately would require DEQ to make a determination that emergency cessation of burning was required, and DEQ's legal counsel has advised them that such a finding would be suspect and would be challenged in litigation which would further extend the process of dealing with field burning. Stewart agreed with Monk's assessment, stating that stopping the practice immediately, by emergency cessation, would take backing which the backers of the two pieces of legislation do not believe is there. Stewart said he would imagine that they will try this year to answer the question of whether there is something quicker than what the governor's bill is asking for. Stewart speculated that, if the Legislature takes this bill on quickly and gets it enacted before the beginning of the next field burning season, the process could be accelerated enough to eliminate the practice a year earlier.

- C. Lane County Budget. Hough said the Lane County Board of Commissioners had to propose elimination of all dues, including LRAPA's and LCOG and AOC and possibly others, because of their revenue shortfall. The commissioners held a public hearing in June, and both Hough and Monk spoke at that hearing in support of at least partial funding for LRAPA. The Commissioners reinstated \$45,000 of the \$118,000 contribution, leaving LRAPA with a net shortfall of over \$70,000. In response to that, staff considered options, including drawing down the agency's reserve which has been making slow progress toward the auditors' recommendation of three to six months of operating funds; laying off staff or maintaining staff vacancies, which would limit the agency's ability to meet its obligations to EPA, DEQ

and others; or cutting expenses for the agency's air toxics monitoring which is not mandated and is the single most expensive thing LRAPA does. The most expensive part of the air toxics monitoring is the laboratory analysis of the samples, which DEQ performs under contract with LRAPA, and for which LRAPA pays approximately \$61,000 per year. Hough said he requested that DEQ consider reducing LRAPA's cost, and DEQ has agreed to waive the cost to LRAPA and absorb that cost in their own general fund. The agreement includes a provision that, if the governor requires DEQ to cut its own general fund expenses, DEQ would not be able to continue to absorb those analytical costs. Kirkpatrick asked if LRAPA will be trying to get grant funding to fill that gap in coming years. Hough said staff does explore grants when they see a good potential match. He said the remaining shortfall of about \$10,000 can be made up with conservative spending. He added that the permit writer position is critical and needs to be filled as soon as possible; however, the vacancy savings for that position for the first part of the current fiscal year should make up a large part of the \$10,000 shortfall.

- D. Clean Air Excellence Award. Hough said EPA held an air toxics summit in Boise and, during the conference, awarded a Clean Air Excellence award for himself and LRAPA for his and the agency's work on EPA's benzene-in-gasoline rule. Hough said it was an excellent opportunity for him to be able to acknowledge the other participants in that process, including Puget Sound Clean Air Agency, Oregon Department of Environmental Quality, Senator Ron Wyden's office, as well as Diane Dietz of the Register Guard who wrote the editorial in the Eugene *Register Guard* that was picked up by the *Oregonian* and ultimately got Senator Wyden's attention. Hough said this was an excellent example of state and local agencies, media, and elected officials working together to make a significant improvement in a major federal proposal.

Monk said he had understood that the benzene level would be down to the target by 2012, but the media piece included in the agenda packet talked about reductions starting in 2012. Hough explained that the reason the EPA mobile source/air toxics rule has a 2012 date is because significant tightening of benzene in gasoline requires major refinery changes. He said he expects to see incremental changes between now and then, but 2012 is when all refinery changes are required to be met, in order to produce gasoline with the lower level of benzene.

- E. Mailings of Information Packets. Kirkpatrick asked whether the information packets that LRAPA sends out go to everyone or just people in the Eugene-Springfield area. Markos explained that the new homeowner packets are sent to people in the Eugene-Springfield area and Oakridge because those packets include brochures regarding open burning and home wood heating intended to educate people and help keep smoke levels from summertime open burning and wintertime home wood heating down. The asbestos packets are sent out to people who get building permits for remodeling projects, throughout Lane County, to educate them regarding what kinds of materials might contain asbestos and the proper way to remove and dispose of it or the people to call for help in dealing with possible asbestos-containing materials.
- F. Summertime Drive Messages. Kirkpatrick noted reference in the director's report to summertime drive messages, and she asked what those message are. Markos explained that LRAPA has standard messages about ways to reduce vehicle emissions by cutting down on driving such as trip chaining or carpooling, and alternatives to driving such as taking the bus, riding a bike, or walking. There are also messages regarding not idling vehicles to help reduce emissions. Hough added that when high temperatures are forecast, creating potential for higher ozone levels, LRAPA puts out an advisory for the public, and the vehicle emissions-related information is always part of those advisories.

- G. Enforcement. Johnson said he was curious about an enforcement action resulting from Lanz Cabinets modifying a facility without getting a construction permit. He said that seems like a serious violation to him, because they have a Title V permit and know the rules. He asked if they had offered an explanation, and Lopez said the company called her directly before they installed the baghouses, to ask whether they needed a construction permit or anything else from LRAPA. She said they got an e-mail stating that they did need a construction permit; however, field inspector John Morrissey went to the site and found that they were in the process of construction. They said they thought the contractor who was doing the construction had gotten all the permits, and there was some sort of mis-communication. Lopez said Lanz Cabinets has put in a UV liner which will reduce their VOC emissions over the long term. She assured Johnson that staff was aware of it and were on top of it as soon as Morrissey saw the construction happening. Johnson said Lanz is subject to the federal air toxics standards for cabinet finishers, and he is concerned that they did this construction after being in business and having had a partnership with LRAPA for a long time. Lopez agreed that Lanz should know what the rules are, and LRAPA should not have to tell them they need a construction permit for the baghouse construction. Johnson said Lanz should not be able to realize one penny of economic advantage for having done what they did, and he hopes the civil penalty will reflect that. Johnson also commented that earlier in the meeting, it was stated that the current budget under-estimated construction fees under Title V sources by about \$40,000. He said he could not help but think that a facility planning expansion and knowing it needed construction permits would have made that estimate a little closer, and that it hurts the agency when facilities don't comply.
5. **ADVISORY COMMITTEE:** Committee Chair Russ Ayers reported that there was a very good discussion at the committee's August meeting about mobile sources. He said one of the newer members had requested that, and Ayers appreciated Hough's presenting the information and providing for the discussion on that. Ayers said another subject that was brought up was whether or not the committee needs any education regarding the rulemaking process. Ayers also made a personal observation about the practice of field burning. He said he thought that the state of Washington had eliminated field burning; however, he drove recently from Pasco to Spokane in what seems to be endless mushroom clouds. He said he thought it might have been wheat fields, but burning nonetheless, and he has never seen anything that bad in thirty years of living in the Willamette Valley.

Johnson asked if the committee would like to have someone be brought in from outside the agency to educate them regarding the rulemaking process. Ayers said it was a matter of education regarding how the whole rulemaking process works, the various steps, how specific rules are developed, where they come from, and how they're implemented. He said he thought staff could provide that education. Johnson said he wondered if there might be someone at the state who is an expert in administrative procedures who could give LRAPA a refresher. He said his heartache about how LRAPA's process has gone is that he sees the state doing it differently, and he wonders if having someone from the state come in would help clarify if there are things that LRAPA is doing differently and if that is a problem.

Monk agreed with Johnson, stating that LRAPA's process is not working well. He said he does not know why it is not working well, and he has his own ideas; but it might be helpful to have a little tutorial on how rulemaking is done by other agencies in the state. Monk said he thought it would make sense to him to spend some time educating everyone on the rulemaking process.

Carpenter said he had a clarification for Johnson. He said it is his understanding that LRAPA has to follow the Oregon Administrative Rules like any other state agency does. He said if Johnson was talking about a substantive matter, there might need to be a different conversation. Johnson said his interest is the

administrative rules and the process that LRAPA is following. Carpenter suggested that someone from Oregon Department of Justice or one of DEQ's attorneys might be able to come to a LRAPA meeting and explain that. Carpenter said he thinks rulemaking should be consistent throughout all agencies unless LRAPA makes some special rules that at least include all of the protections that the OARs require. He added that LRAPA is unique in that it can adopt rules that are more stringent than the federal rules. Carpenter also commented that EPA has adopted some standards that are less stringent than their own scientific committee has recommended, and the LRAPA board can have policy discussions about whether or if it wants to adopt rules that are more restrictive. If the board decides to do that, staff should create regulations to implement that decision. Carpenter said he thinks that the board should be having those broad policy discussions rather than "fine-tooth-combing" individual regulations. If the board finds a rule that they believe does not meet its goals for public protection and safety, the board can work to revise the rule on its own accord.

Johnson said he did not disagree with Carpenter; however, his concern is that LRAPA skipped the step of the board setting policy about where it wants the agency to be relative to the state, on industrial source permitting. He said that is part of why he wants to discuss the process question further. Carpenter said he believes that discussion is huge and could take many hours. He said staff has told the board that LRAPA is really not deviating from what it had done in the past, at least on health standards, with these rule changes. He said the board will now see what the public tells them at the public hearing later on the agenda, although there has been an initial screening of that. He added that maybe the question is whether Johnson feels that was significant or thorough enough.

6. PUBLIC HEARING-PROPOSED INDUSTRIAL PERMITTING RULES: Monk opened the hearing at 1:13 p.m. and asked staff to briefly explain the proposal. Hueftle explained that the proposed rulemaking changes primarily affect industrial permitting for criteria pollutants, although there are several things that will affect air toxics. The proposal would correct and update some things and would streamline the permitting process to make the permitting process more efficient. Information regarding the proposed changes has been available to the public on the agency's website, and the public comment period has been extended until 5:00 p.m. on September 30. Hueftle said the soonest the board would be asked to act on the proposal would be at its October 14 meeting.

Monk asked if anyone in the audience wished to comment on the proposed rulemaking. There was no response, and Monk closed the public hearing at 1:14 p.m.

Discussion

Monk again stated that he has concerns about the rulemaking process, and that Johnson agrees with him. He said the advisory committee is available to provide a neutral assessment of the proposal, and that assessment should be done at the direction of the board. He said that direction should be the result of the board having developed some good understanding of what the proposal before them is. Monk said if there are gaps in understanding of the proposal, that's where the committee should do its assessment and come back to the board with its explanation to help the board understand the subject better. Monk said he does not feel that this rulemaking process has done that, and he would like to see the board be more engaged at the beginning of the process.

Stewart said he thinks the board has been engaged since the very beginning. He said if board members have questions that they want to staff to consider making a recommendation on, they need to make contact with staff and talk about it. Stewart said the proposal went before the advisory committee; the board has received public comment on the proposal; and the board has had several months to review those items and try to insert

some of their thoughts and concerns into the process. He said that this process seems to be a very good one compared to some of those he has been involved with as a commissioner. Stewart noted that as policy makers, the board has the ability to potentially make changes or make a rule more stringent. He said it seems to him that the board would need to have some justification to implement something more stringent on a business or industry that's located in Lane County than what is required in other counties—that such an action would need to be defensible.

Hough responded that the big driver on tightening of the industrial rules has been if air quality improvements were needed to achieve the targets the agency has established. Those targets generally are the National Ambient Air Quality Standards. He said the framework comes from the Clean Air Act and the state's rules, because the state rules are required to be at least as stringent as the federal rules, and LRAPA's rules are required to be at least as stringent as the state's rules. He explained that Reasonable Available Control Technology (RACT) is required on existing sources in non-attainment areas. Best Available Control Technology (BACT) is required on major new or modified sources in attainment areas. Lowest Achievable Emission Rate (LAER) is the most stringent and is required on major new or modified sources in non-attainment areas. Hough said those frameworks are in place, and LRAPA and DEQ have had the opportunity to help shape those things, over time. Hough explained that if the area is meeting the ambient health standards, there is not that extra driver for doing something more stringent. In short, Hough said, LRAPA does have to have a basis for justifying whatever it does.

Johnson said his concern is that the agency does need reasons for its actions, and that includes issuing and denying permits, if there are health quality problems. Johnson said the proposed rule package would streamline the issuance of permits, thus reducing the agency's review of what they're putting into the air. He said he brought up questions a year ago about having an inventory of what is going into the air, and about revenues resulting from the proposed changes. He said he stated at that time that he was okay with the concept of streamlining as long as the board can look at how it will affect people who breathe and sources who emit pollution in Lane County. He said he does not think the board has had that conversation, and that is what he meant when he said the process has not served the board to allow them to come to agreement about what their strategy is going forward. Johnson said this process was an opportunity to learn together and to educate the public about what LRAPA does and why it is valuable to Lane County; and he thinks the agency missed an opportunity to demonstrate some value through this process.

Carpenter agreed with Hough, that LRAPA can't create a rule that would be arbitrary and capricious; however, relying on scientific studies that EPA's science advisory committee relied on to reduce the limit where the EPA, through administrative policy decisions, decided to keep things higher, would be a sufficient defense for a stricter rule not to be arbitrary and capricious. Carpenter said he didn't see a reason why an agency couldn't put a rule in place that would be more restrictive in order to provide further protection for the airshed. For instance, LRAPA could require Lowest Achievable Emission Rate in an area that is in attainment, with the defense that they just didn't wish to use up the increment for everybody, and wanted to preserve their future airshed by keeping it from going out of compliance.

Hough said the Environmental Quality Commission is going to have a conversation later this year regarding the PM2.5 standard and the recommendations from the Clean Air Scientific Advisory Committee. Hough said many people have been critical of EPA's not following the committee's advice. He said the LRAPA board could have the same conversation and, if EQC were to adopt a new state standard, LRAPA would need to be as stringent. He added that there would be much scientific medical basis for that conversation to occur. Carpenter said he did not believe LRAPA staff or board would pull a number out of the air without having some kind of scientific health reviews and studies already completed that were peer reviewed. But there may

be much more discretion for this board, with regard to control technologies, to preserve the airshed and the public health.

Hough commented that, at the August 26 public hearing on this rule proposal, someone asked the question, what is the environmental reason for putting all this work into these rule revisions for industrial permitting. He said his response was that an environmental benefit, to him, is that the more efficient LRAPA makes its permitting process, and if we're able to ensure that stringency analysis has been part of this effort, we will be at least neutral in protecting air quality, or better. In some cases, it is clearly an improvement on the air quality side. The more efficient LRAPA is at using staff resources on permitting, the more resources are freed up for other high-priority work to be done. An example would be the emissions inventory. In addition, Hough said, the streamlining should make things easier for sources that are permitted by providing more clarity without sacrificing air quality protection. Hough said the big environmental reason for his support of this proposal has been to free up those staff resources for other high-priority work that currently LRAPA is not able to do as much as desired, on a number of fronts.

Monk said the proposal seems to allow any boiler put in place prior to 1970 to be grandfathered into twice the particulate emissions that a piece of equipment installed or modified after that date could emit. He said if the older boilers are hog-fuel fired, that would mean more particulate emissions, and that would be in a non-attainment area for particulate matter. Monk said his concern is that major corporations who are making millions of dollars a year off their facilities are using pre-1970 technology, while anyone who wants to compete with them would have to comply with much more stringent emissions limits. He said he does not think older facilities should be grandfathered into a competitive advantage against someone who wants to invest in the community. Monk asked why LRAPA isn't seeking to address a reinvestment by these corporations into the newer equipment.

Hough responded that the analysis that has been done over the past several decades indicates that industrial sources are not a significant contributor to the remaining problems that Lane County has. He said originally it was expected that many of those old units would get replaced over time or would be substantially modified which would trigger the new, tighter requirements. That has been the case for many of those facilities. Hough said the Eugene/Springfield area meets the standards and is, in fact, well below the annual average standards, which would be typically the more important standard for industrial sources. The areas where levels get closer to the standard are those areas where there is more residential woodstove smoke on the most stagnant winter days.

Monk again stated his opinion, that a business that is making money and externalizing its costs onto the rest of the community should be asked to reinvest in that to preserve some of the airshed, to protect public health. He said the federal government is obviously ratcheting down standards because they are recognizing that the older standards were not safe for the majority of the population.

Lopez said she heard Monk asking, if this technology is out there and people can use it, why does a specific party get a break. She said the area does meet the standard, but LRAPA is always looking for ways to maintain or get local impacts lower. That has nothing to do with long-term standards, but in terms of this proposed rule package, that is something that needs to be evaluated on a case-by-case basis. For example, could they make minor modifications which would allow them to meet the new standards. Lopez said that was kind of what Hough was talking about when he said he wanted to free up more staff time to really look at those issues. She said the agency can't just arbitrarily adopt a new regulation without doing that evaluation. Lopez said Monk's question was a good one which deserves looking into; however, it is a matter of priorities and staff time and knowing how the businesses operate and how they would be able to comply.

Kirkpatrick said what resonated the most with her were the questions that came from the Oregon Center for Environmental Health, and the issue of having written toxic use reduction plans. She said it would probably require a lot more time from staff to have sources produce those plans and then comply with them, but she said it would be great in terms of a proactive program to change the airshed. Monk asked if LRAPA staff has ever looked at a toxics reduction plan, and Hueftle responded that he was not aware that that had been done. Monk said the statute mandates that every Title V permittee will produce one, and they're supposed to be doing that already. Monk said he thought DEQ had done a survey and found that less than 50 percent of them are producing toxics reduction plans. He said the reason is because they have never been asked to present that. He said the state of Massachusetts has a program in place which has produced great innovation and cost savings for businesses by requiring them to reach out see what is out there in the world. Those businesses are saving their shareholders money and increasing their returns to the shareholders, as well as protecting public health.

[Note from Hueftle: Toxics Use Reduction Plans: David Monk mentioned that Toxics Use Reduction plans have been required by Title V, and I believe what David was referring to are the Section 112(4) Risk Management Plans (RMPs) under the Accidental Release Prevention requirements of 40 CFR Part 68. The requirements specify that a plan must be submitted by facilities with throughputs above thresholds for certain chemicals to "ensure that facilities reduce the likelihood and severity of accidental chemical releases that could harm the public and government." (Quoted from EPA guidance). EPA has recently been getting criticized for not ensuring that these requirements are being implemented by state and local permitting authorities. All Oregon (including LRAPA) Title V permits contain the requirement for the RMPs to be developed and submitted if required.]

Carpenter commented that grandfathered uses have been around the Clean air Act since it was adopted. Some of these may be positive thoughts, and he thinks LRAPA needs to look at these individually. He said the problem with the streamlining rules is not that the rulemaking process is bad, but that the proposal is extensive and somewhat overwhelming. It's much more difficult to comprehend than a rule that deals with a specific type of source or process. Carpenter said each board member could spend a couple of hours going over each of the rules in the proposal, but he did not think the board was here to do that. He said his sense is that if the board decides to approve these rules, it shouldn't be left for another 18 years before looking at it again. In a year or two the board should have a kind of evaluation of what it would have been like if the old rules were still in place, compared to what it is like with the new rules in place. If there are some aspects of the rules that don't work as expected, those can be fixed individually.

Hough said that was a good point to remember, that staff started the rulemaking process to update rules and make corrections and some fixes that had been identified, and to streamline the permitting process to gain efficiency. If the board wants to talk about something like whether BACT should be required across the board, including .2 grain boilers, that would be an interesting discussion; however, that would involve different stakeholders and be a totally different discussion than what this process was meant to accomplish.

Johnson asked if he was correct is assuming that in getting a general permit, the tradeoff would be that there would be no grandfathering and no baseline. It would hold a source to a tighter standard, and there would be no going back once the general permit is issued. Hueftle said that was right.

There was no further discussion, and Monk said the board would talk about the proposed rules again at the October meeting.

[Note from Hueftle: Pre-1970 boiler particulate limits in General ACDPs for boilers: Drew Johnson suggested, and I mistakenly concurred, that the Boiler General ACDP requires boilers to meet the 0.1 grains per dry standard cubic foot (gr/dscf) when, in fact, the General ACDP contains the 0.2 gr/dscf limit for boilers constructed/installed prior to 1970. It is true, however, that facilities lose their baseline emission rate(s) if they choose to operate under a General ACDP.]

7. AT-LARGE, GENERAL, BOARD POSITION APPOINTMENT FOR 2009-2001: Hough said this item was placed on the agenda at Monk's request and was intended as an early discussion of the at-large appointment which will need to be made in February of 2009, when the Cottage Grove/Oakridge shared seat on the board will switch to Oakridge for the next two years.

Monk said the board's discussion of the at-large position the last time it was filled was that it should go to a representative of rural Lane County.

Patterson announced that his current term on the Cottage Grove will expire this year, and he is not running for re-election. There will be some new people on the city council. Patterson said he still is of the opinion that the at-large, general, member should represent rural Lane County, and he would like to see someone from the northern area of the county.

Carpenter said the Oregon Statutes talk about what seats are to be filled on this board by what political communities and also talks about at-large members; however, it does not include any specification of where an at-large member should come from. Carpenter said he did not know whether the board should pre-destine the area from which the at-large member should come. He said he wants to see the whole pool of applicants and vote for the person who would serve LRAPA the best, rather than requiring that the appointee come from a specific area of the county.

Fortune said he does appreciate the conversation that took place when he was appointed to the at-large, general, position, and appreciates being allowed to continue to serve and represent Oakridge. He said he agrees with Carpenter, that if you pre-destine a location then "at-large" loses its meaning.

Kirkpatrick asked what Patterson meant by "the northern" area of the county. Several board members responded that it would include Junction City or Coburg. Kirkpatrick asked if Patterson considers Cottage Grove to be rural or urban. Patterson said Cottage Grove is rural.

Stewart said his opinion is that LRAPA governs the air for all of Lane County, but the way the statute has been structured creates a board that tends to give the impression that LRAPA is a city-run organization. He said he would like to see the board make a commitment to appoint someone from a rural area of the county. He said he does not think this board needs another Eugene or Springfield member. If he were to be taken off the board by the next commission chair, the new appointee could well come from Eugene, leaving Fortune or whoever is appointed from Oakridge as the only representative of areas outside of Eugene/Springfield. Stewart said he would like to see an appointee from Florence or Marcola, Junction City, Cottage Grove or another small city, rather than someone from the Metro area.

Monk agreed but also agreed with Carpenter's perspective of appointing the most qualified person. He said that, even though he is a resident of Eugene, he believes he can safely say that when he thinks about rulemaking he is thinking about air quality for everyone. When the board talks about open burning, he has a distinctly different opinion about that and how it might impact rural residents as opposed to urban residents.

He reminded Carpenter that, as an at-large member, Carpenter does not get to vote on the appointment. Monk commented that there was a man who applied last time whose application was not considered. It was explained that the individual came from the city of Eugene. There is a limit to the number of representatives a single entity can have, and Eugene has reached that limit.

Stewart said Monk had correctly acknowledged that there are different opinions on different subjects. Regarding the open burning rules, Stewart said it was important that Fortune was on the board representing rural interests. He said the board can't make the best decisions if areas of the county outside of the Metro area are not represented.

Monk said the reason he wanted this subject on the agenda is so that the advertising could be done in advance of the Holidays so that the time available doesn't get compressed prior to the February meeting.

Patterson suggested that the solicitation of applications wait until after the November elections. Johnson suggested that staff bring back a draft of the advertisement to the board for the October meeting, so that the board can discuss it and give clear direction for that. He said the ad should go out in early November and again at the beginning of December. Carpenter suggested that the board look at the ad that ran the last time the position was filled. Markos said she would run a display ad, and she would provide that to the board for approval. Patterson also suggested trying to get representation from the agricultural community so that the lines of communication between LRAPA and agriculture are kept open, and Monk agreed.

Monk said the board should decide at the October meeting whether it wants to focus on applications from rural areas of the county.

8. NEW BUSINESS:

- A. Civil Penalties Going to Lane County. Carpenter commented that Lane County may or may not be a paying member of LRAPA next year because of its budget problems; however, LRAPA's civil penalties go into the county's general fund. He said that sounds like an inequity because, if the county is not paying, they shouldn't get the rewards either. Carpenter said he'd like to talk about getting the Legislature to remove that provision from the statute. If the county elects not to continue its participation in LRAPA, those civil penalty funds should be divided between the cities participating in the agency.
- B. Civil Penalty Reductions for Violators. Carpenter said the enforcement reports each month include instances where penalties have been reduced significantly in settlements with people who have violated LRAPA's rules. That can be a sizeable amount of money over time. With reductions of 50 percent Carpenter said it seemed to him that either the fines are much too high when they are assessed, or there is a lot of money being left out there that could be going to help a very strapped Lane County which cannot afford to pay its LRAPA dues right now. He said he would like to have a discussion regarding the agency's penalty compromise matrix, to make sure that those funds are maximized to Lane County so that they can continue to be a members of LRAPA. Carpenter said he did not know, if the report says a penalty is \$8,500, if that is the maximum before the matrix is applied, or if that is a matrix-applied number that has been further reduced through negotiation with the people.

Carpenter said he thought the subject of the amount of civil penalties is on the advisory committee's agenda, and Hough said it is on their future agenda but they have not yet actually started working on

that. He said the plan was to have a discussion at the board level so that the board could formulate specific issues that they would like the committee to evaluate, and then assign those to the committee. Hough said there is significant staff work that needs to take place before the board has its discussion on this topic. Monk agreed and said he would concur with Carpenter's assessment that changing the disposition of the agency's civil penalty money would require a legislative change.

There was some discussion of the conversation the Lane County Board of Commissioners had when it decided to restore \$45,000 of its contribution to LRAPA for this year. Monk asked if it would be appropriate to ask the county, in years when they could only afford to pay 50 percent of the LRAPA dues, could the agency keep the civil penalty money, or redistribute to the other governing jurisdictions a percentage of that money.

Several board members asked questions about where the county puts the money it receives from LRAPA fines, and how they budget for that. Staff responded that the county puts that money into its reserve fund. Hough said he does not think it is a large enough amount of money for the county to actually factor it into their budgeting process. The amount given to Lane County by LRAPA over the past decade has ranged from the teens to the low nineties per year, but the average is about \$42,000. That did come up in the commissioners' discussion, and they acknowledged that there is that significant fluctuating dollar amount that comes to the county, when they agreed to fund \$45,000. They were, however, very careful not to link the two.

Monk said he did not think the county's financial situation would improve for many years, and this could be a place where LRAPA could actually help them. If LRAPA can find ways to improve its enforcement process and capture more of the fine money, that might allow more money to go to the county.

Patterson commented that a lot of the county monies that the cities get for road maintenance and other uses have almost completely disappeared. Lane County has lost a lot of its employment-based opportunities, and we've seen manufacturing and other things go away. There hasn't been anything to supplant that. At the same time, there is the ongoing battle of the fact that Lane county has the largest renewable resource in the Northwest (national forests), and it doesn't generate any money. In fact, the federal government is going to begin charging for walking permits in the national forests very soon.

C. Future Agenda Items. Monk summarized items for future board meetings, as follows:

- (1) Enforcement rules and fines discussion to be held as soon as staff is prepared;
- (2) Airmetrics licensing agreement and how it works.
- (3) Rulemaking process education and discussion. The board should hear information regarding LRAPA's process and DEQ's process, as well as other state agencies. Not urgent, but it needs to happen before more rulemaking processes are started. Monk would like to redo the open burning rules.
- (4) Discuss the industrial permitting rules at the October 14 meeting.
- (5) Discuss draft of advertisement for at-large, general board member, at October 14 meeting.

10. ADJOURNMENT: The meeting adjourned at 3:10 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, October 14, 2008, 12:15 p.m., in the LRAPA Meeting Room at 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary