

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–JULY 11, 2006
LRAPA Meeting Room
1010 Main Street, Springfield, Oregon

ATTENDANCE

Board: Dave Ralston, Chair–Springfield; Faye Stewart, Vice-Chair–Lane County; Bill Carpenter–At-Large, Springfield; Glenn Fortune–Cottage Grove/ Oakridge; Drew Johnson–Eugene; Earl Koenig–Eugene; David Monk–Eugene; Carol Tannenbaum–At-Large, General; Betty Taylor–Eugene
(ABSENT: None)

Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Sally Markos; Kim Metzler

Other: Russ Ayers, Chair–LRAPA Advisory Committee; Terry Connolly–Eugene Chamber of Commerce; Gary Hunt, Anita Ragan and RueAnn Thomas–J. H. Baxter

1. OPENING: Ralston called the meeting to order at 12:15 p.m.

2. PUBLIC PARTICIPATION:

Gary Hunt, General Manager, J. H. Baxter, Eugene. Hunt reported that, since the June LRAPA board meeting, J. H. Baxter representatives had met with LRAPA staff to continue to develop an amendment to the Best Work Practices Agreement. He said he believes it is very close to completion.

3. CONSENT CALENDAR:

ACTION: MSP(Fortune/Koenig)(unanimous) approval of the minutes of the June 13, 2006 board meeting and the expense reports through May 31, 2006, as presented.

4. DIRECTOR'S REPORT: Discussion included several items.

A. Air Quality Data. Hough commented that the information in the written director's report and the information in some of the graphs prepared by the air monitoring staff might differ slightly at times. The reason for that is that the graphs depict calendar month data, whereas the written director's report includes data from mid-month to mid-month. He said that also holds true for some of the other information in the written report, such as complaint statistics. When staff prepares a graph showing the number of complaints received each month in the current year, compared with the same period for previous years, the most recent data may be different in the monthly director's report than what is shown for the same month in the graph.

B. Ozone Data. Hough noted that the ozone data on a 15-month rolling plot graph prepared by air monitoring staff show that there was a peak ozone number in June of this year similar to a peak ozone number in July of last year. Hough pointed out that the 15-month graph demonstrates the difference between ozone and other air contaminants. With other contaminants, such as particulate and carbon monoxide, the levels may rise and stay relatively stable over a 24-hour period. Because ozone is a photochemical reaction of other pollutants in the air in the presence of strong sunlight and high temperatures, the ozone level may rise during the day but will drop quickly once the sun has gone down. Hough also pointed out that the peak ozone levels in June at the agency's special monitoring site in north Coburg was almost identical to the levels at the Amazon Park site in southeast Eugene. Tannenbaum asked how that can be explained, since ozone is usually highest downwind of urban areas. Hough said

that is what makes the similarity of the levels at the two sites especially interesting. He said staff does not know how to fully interpret that but thought that it was important that LRAPA acknowledge that it was, on that day, similarly high. Hough said he alerted DEQ to this pattern, to see if they have any insights, because it may be that there is a combined effect of ozone coming down from Seattle, Tacoma, Olympia, Vancouver, Portland and Salem, to Eugene. During the ozone peak last summer, the level was elevated at Coburg, but not quite as high as it was at Saginaw, which is downwind of the Eugene/Springfield urban area and is the site which usually records Lane County's highest ozone levels. Carpenter asked what the distance between the Albany metropolitan complex and the north Coburg monitoring site is, compared with the distance between the Eugene/Springfield metropolitan complex and the Saginaw site. Hough said he did not know, precisely, what that difference is, but he suspected that the distance between Albany and Coburg is greater than the distance between Eugene/Springfield and Saginaw. He said he would check on that mileage. *[NOTE: LRAPA monitoring staff confirmed that the north Coburg monitoring site is 35 miles downwind of downtown Albany, and the Saginaw monitoring site is 19 miles downwind of downtown Eugene.]*

Johnson said he recalled that, a few years back, DEQ was working with Washington State University, doing a modeling study of ozone and toxics. He asked if Hough had seen the results or any recent data from that study and if the ozone levels recorded by LRAPA this summer are consistent with what the model predicts. Hough said the modeling scope of that study, which is a combined effort of the University of Washington and Washington State University, did not reach as far as Eugene in the original work. Part of the plan is to expand the study to include all of Washington, Oregon and Idaho, which would make it possible to model ozone formation down to Eugene/Springfield and Medford. That typically would be done some weeks, or months, after the actual event, by going back and reconstructing that from the weather data and all the other available data. Hough said that was why he had alerted DEQ to the similarity between the north Coburg and Amazon ozone data, because these would be interesting days to model when that is possible.

- C. Complaints of Odor from Rexius in West Eugene. Taylor asked why the director's report did not list any complaints about odor from Rexius. She said she knows there have been some complaints because she has been getting copies of the e-mails that are being sent to LRAPA. Hough said he did not know why those complaints were not included in the report. He said he had forwarded the e-mails to a staff member and asked that the complaints be entered into the complaint program, but they might not have been entered until after the mid-month cutoff point. Taylor said the board needs to know how many complaints there are and how staff is responding to them.

Stewart asked if the complaints have been from multiple complaints or from a single complainant. Taylor said she has heard from only one person, but that individuals refers to a number of other people who have been disturbed by the odor. She asked Hough if he had heard from more than one complainant. Hough said most of the complaints have come from one person, but there was another person who was copied on one of the complaints, and that individual affirmed that the odor was bad on that day. He said he thought that person is involved with the neighborhood association for the area in which the main complainant lives.

Ralston said he would like to have more information about the complaints about Rexius. He said he would like to know where the complainants are located and their proximity to the Rexius facility. He suggested a map with locations indicated on it. Hough said he would do that.

- D. Complaints of Odor from J. H. Baxter in West Eugene. Referring to a chart of complaints received regarding odor from J. H. Baxter which compares current complaints with previous years, Carpenter asked if the eight complaints shown for June is the mid-month to mid-month number. Hough said those eight were for calendar June, and that the 17 included in the written director's report included the mid-month to mid-month number. He said that was why he wanted to point out that difference before the board got to the point of discussing complaints. The figures in the written reports are not the same as those in on the chart because they represent different time periods.
- E. Special Projects Update. Hough said this update was included in an attachment to the report this month instead of being included in the body of the report, because there were more details in the report this month. The major addition to the report is the June 22 press event for Cascade Sierra Solutions (CSS). Hough said LRAPA was recognized by the Governor and by EPA's Region 10 Administrator, Mike Bogart, as well as by Sharon Banks in her talking points about the non-profit. They all recognized the importance of LRAPA, through the Everybody Wins program, in shaping what now is being addressed for the entire West Coast under CSS. The Governor announced at that meeting that a \$5-million revolving loan fund will be made available through either Energy or Transportation. The EPA administrator announced a \$200,000 grant, or start-up, through the West Coast Diesel Collaborative.

Monk noted that Hough is a member of the CSS Board of Directors and asked if that would take much of Hough's time. Hough said it would not. He said his interest is making sure that LRAPA maintains its connection to the West Coast project, through a mutually beneficial arrangement, and that a lot of the local diesel initiatives can continue, even if they do so through CSS.

Johnson said he was a bit confused regarding how CSS is to operate. He asked if the LRAPA Board of Directors will have some kind of controlling interest or authority over CSS. Hough said it is an independent non-profit organization, and the LRAPA board will not have control over it. Johnson asked if it will be controlled by Sharon Banks and its board of directors. Hough said the intent is that there will be a board comprised of representatives from the three states of Washington, Oregon and California and that those board members represent the interests of air quality, transportation, energy and trucking.

Johnson said he was still confused because the LRAPA board just adopted a budget which includes a lot of what is called, "Everybody Wins," and he is not sure he understands the difference between Everybody Wins and CSS. He said he thought Everybody Wins is now CSS. Hough said consideration was given to whether Everybody Wins Phases I and II should be shifted over to CSS, but there did not seem to be a compelling reason to do that. Consequently, Everybody Wins, Phases I and II, are still a part of LRAPA. He added that part of the interest in keeping the link between the two programs is that CSS does not compete with Phase II of Everybody Wins. He said the idea is to complete Phase II implementation before CSS offers APUs or other parts of the Smart Way package.

Johnson asked if CSS will change any of the financial predictions of Everybody Wins Phases I and II, with respect to income to LRAPA. Hough said it will not. LRAPA will maintain Phase II installation, which will probably be done before the end of this calendar year. The collection on those leases, and the financial expectations of LRAPA should fully meet the original forecast. Hough added that the more he looks at that, the more confident he is that the original estimates of the ultimate income to LRAPA were conservative. Johnson asked if there will need to be any budget amendments to break out Everybody Wins Phase III (CSS), because it appeared to him that the LRAPA budget includes some of

Phase III. Hough said that, thus far, what has been considered Phase III-related work is still within the Everybody Wins Phase I and II budget, and that has been made possible from other cost savings. Hough said it is his hope that some of those costs—even though they are still within the existing Everybody Wins budget—may also be reimbursed from the start-up of CSS when that funding is fully in place. Johnson commented that Banks has a budget for CSS and also has to manage LRAPA's budget, and he is optimistic that those funds can be kept separate in a way that, a year down the road, there is not confusion during the next budget cycle about which money was Phases I and II and which is Phase III. He said he looks through LRAPA's budget and cannot see any difference, but the special projects report tells him that there is a budget of \$5.2-million for CSS. Hough responded that the mutual benefit is a continuing thrust of this process. One of the big savings to LRAPA that he expects is going to happen will be when Phase II gets into its collection phase, once all the leases are completed. At that point, LRAPA will perform just a collections function, rather than the advisory and customer service function which is currently the case when a potential customer calls and asks about the different APUs that are available and which might work the best for his particular situation. Hough said he had anticipated LRAPA staff having a certain amount of continuing effort in that regard; however, CSS will be taking over part of that work.

Hough said the other key special project is the Warm Homes/Clean Air project in Oakridge, which continues to progress. An EPA grant has been awarded to complement the work by the other partner agencies who are involved with that project, to address the woodstove change-out part of that project.

Koenig noted that there was a survey being done several months ago in Oakridge regarding woodstove use. He asked if that is an ongoing effort or if it is finished. Hough said there was an initial effort, as part of the kick-off for the Warm Homes/Clean Air project, to survey interest and actually get applications from interested home owners, to participate in the program. He noted that staff were quite impressed with the number of people who responded and submitted those applications. Metzler added that there was no regular survey done. LRAPA has done surveys about every three or four years, to see how many residents of Oakridge have and use woodstoves, as well as how many stoves are certified and how many are uncertified. Metzler added that about 170 families have said they want to participate in the Warm Homes/Clean Air program and, now that the grant funding is available from EPA, those families have been contacted. Metzler said staff has appointments with 20 of those households, to do in-home visits to get them going on the process to replace their current stoves. Ralston asked if all of those homes are inside the Oakridge city limits, and Metzler said it includes the Oakridge and Westfir area.

5. **ADVISORY COMMITTEE:** Metzler reported that the committee has been discussing the use of Supplemental Environmental Projects as an alternative to payment of cash fines in enforcement cases. The minutes of the last meeting were in the board's agenda packets for reference.
6. **EVALUATION OF DIRECTOR'S PERFORMANCE:** Ralston asked how the board wanted to handle the evaluation process. Hough referred to the staff report which offered two alternatives. One would be for board members to develop a composite form during their discussion, and the other would be to provide the information to staff for compilation after the meeting into a composite form. Sharon Banks, who has performed this function in past years, was on military leave at the time of this meeting and would not return for two weeks. Ralston noted that there was also a choice between the long evaluation form and the new, abbreviated form.

ACTION: MSP (Tannenbaum/Koenig)(unanimous) because this evaluation covers only a six-month period, the board should use the short form to do a composite for this evaluation.

Board secretary Dinteman pointed out that, in previous years, the board has taken the categories of the evaluation form separately and gone around the table so that each board member can say what rating they gave the director's performance. After discussion, a composite number is determined for each category. Ralston agreed to use a blank evaluation form to record a composite score for each category as the board discussed them.

Board members agreed that each of them would talk about Hough's strengths and weaknesses and how they believe Hough is doing as director of the agency, and give their overall rating from one (inadequate) to five (excellent), and that Ralston would use a blank form to write down all of the ratings and divide by the nine board members to reach an average rating for the overall evaluation.

Board Members' General Impressions and Overall Ratings of Hough's Performance

Stewart said he believes Hough has done an excellent job. He stepped into a position that was in turmoil and calmed the waters. Stewart said every time he has called Hough or needed additional information on something, Hough has been very responsive. If he has not been able to give Stewart what he needed at the time Stewart has called, Hough has gotten the information and gotten back to him very promptly. Stewart said he has witnessed Hough representing the agency in public meetings regarding Baxter, and that Hough has done a great job in presenting information, listening to people, and explaining what the situation is. As far as how Hough is working within LRAPA, Stewart said the evaluation forms he received from staff indicate he's doing a good job. Stewart pointed out that Hough has tackled the agency's finances, talking to each of the local participating member bodies to get commitments for funding. He added that going to a population-based formula for local contributions has somewhat leveled the playing field, and he thought that was a very good approach. Stewart said he is very impressed with what Hough has done so far, and he rated Hough's performance at five.

Tannenbaum said Hough's calmness has been extremely important. She said she interprets the fact that the board received only five evaluation forms from staff members—all of which were very positive—as an indication that staff is feeling at ease and very comfortable with Hough's leadership. She said it is still early in his tenure, and the improvements that he has made have to continue, but she thinks it bodes well that there is not a lot of excitement about things that are not being done right. Tannenbaum said the strongest negative comments she had gotten were that Hough does not delegate enough and some question as to whether he is listening to everyone's advice and taking it into account. She commented that part of this process is that the board should be telling Hough what is expected of him in the next year, so that he knows what to expect and can perform accordingly. Tannenbaum said one of the things she expects is preparation of a strategic plan for the organization to cover the next three to five years. She rated Hough's performance at five.

Taylor said she had received no evaluation forms from staff this year, where she has received piles of things in the mail from staff in previous years. She said her impression is that things are going well, and you can tell that Hough is working hard. Taylor commented that she has been on the LRAPA board under four directors and, with a couple of them, people have gone from high praise at first to condemnation in a short time. Taylor said she, too, has seen Hough at public meetings, and agrees that he represents the agency well. Taylor said she is concerned that the Baxter odor complaint situation show real results for the benefit of the neighbors. She added that she is concerned that there was nothing in this month's director's report about odor complaints

on Rexius, when she knows that the odor is bothering some people a great deal. She said and she will be watching, with interest, whether complaints are not just listened to but dealt with in some way. Taylor said at this point everyone thinks Hough is a nice person, but that she thinks it is too soon to know if things are to work out with Hough as director in the long term. She said her overall rating would be at least four, for now.

Carpenter said he believes that Hough has been in the job of director for about year, because he thinks the board needs to evaluate his job as interim director, as well, which he assumed in July of last year. Carpenter commented that, when he was first appointed to this board in October of last year, there was some question as to whether the agency was going to continue to exist as an entity, with dissension both inside and outside the agency; but it seems that has been quelled. Carpenter said he would summarize Hough's blend of knowledge, experience, and management style as very strong in both turning the agency's dissension around and continuing programs which are necessary mandates, as well as programs which will protect air quality in Lane County. He agreed with Tannenbaum, that LRAPA needs a strategic five-year plan which will help everybody to know what the agency is supposed to be doing. He also suggested that, based on comments included in evaluation forms submitted by staff, perhaps Hough should evaluate whether he needs to do a bit more micro-managing in some areas. Carpenter said the agency is headed in the right direction, and rated Hough's overall performance at five.

Johnson said he thinks that Hough's combination of technical background, positive attitude, and management approach has been very effective in leading the agency. He also agreed with Carpenter, that Hough has effectively been the agency's director for a year, not just six months. Johnson said the evaluations he received from staff members, as well a few brief conversations with various staff members over the past few months, have indicated that staff morale has changed and that staff members have no negative comments. Johnson noted that Hough's integrity and patience are very effective and very much appreciated. He said he does not see any weaknesses in Hough's performance but, as was mentioned by some of the other board members, he does want to see professionally facilitated strategic planning done as soon as possible. Johnson commented that Hough's efforts to educate him regarding the agency budget have been very helpful and effective, and he encouraged Hough to continue educating him and making the budget and finance functions of the agency more transparent. Johnson added that Hough has his confidence that the next year will be a good one with forward movement for the agency, and rated Hough's overall performance at five.

Monk noted that, judging from what he has seen and what was in the staff evaluations, the agency has come a long way in the past year, under Hough's leadership, adding that Hough has done a fabulous job in boosting morale. He said he believes the local participating jurisdictions also have a much more positive view of LRAPA because of Hough's leadership. Monk agreed with other board members, that strategic planning should move forward as quickly as possible. Monk said he had the feeling, from the staff evaluation forms he had read, that some staff think Hough does not delegate enough, and others feel it is just the opposite, adding that everyone has their own interpretations of what is appropriate at any given time, in terms of how much control Hough should take over a situation. Monk commented that Hough has come into an agency where many of the staff have been employed for many years and there is a culture here that, as director, Hough must be in complete control and have ultimate authority over all decisions. He clarified that he does not believe that Hough needs to actually be involved in every decision, but that it is important that everyone knows that they answer to Hough, and Hough alone. Monk said he thinks that has perhaps not always been the case in this agency, with other directors. He said it is critically important that, as Hough moves forward at LRAPA, he has that respect and authority. Monk commented further that what he would suggest for change involves what he saw reflected in one of the staff comments, that one particular employee is spending

a little too much time with something which was not specifically identified but which he thinks refers to Everybody Wins. He said that, while he can see the value in that activity, he concurs with that comment, that this activity is not part of the core work of the agency. Monk said he would like to see the agency brought back more to its core mission and not allowed to get too far afield from that, adding that strategic planning would help to identify those goals and objectives for the agency and the resources needed to accomplish them. Monk's overall rating of Hough's performance was four.

Fortune said most of what he had intended to say had already been said by other board members. He said he believes Hough is doing an excellent job, and his overall rating of Hough's performance would be four.

Koenig added, to what had already been said, that the thing that has impressed him the most about Hough, from the beginning of Hough's employment with LRAPA, is his professionalism, which he believes has gone a long way to calm some very troubled waters and helped Hough to gain respect and appreciation of his skills. Koenig gave Hough's performance as director an overall rating of five.

Ralston agreed that Hough exhibits a high level of professionalism. He also said Hough's technical knowledge is excellent, and that he has brought a positive environment back to LRAPA. He said Hough has good leadership qualities and good personal relationships and has done a good job; however, Ralston said, he has a problem giving a person an excellent rating to start with, because then there is no room for improvement. Ralston said he feels that Hough has exceeded the board's expectations. He said the preliminary goal-setting work which was done last year was a good start, and some changes have been made as a result of that; but he agreed that strategic planning is very important and needs to be done as soon as possible. He said his overall rating of Hough's performance is four.

Composite Overall Rating. Ralston added up the overall rating numbers and said the composite rating would be about 4.5, which is a very good rating. All board members agreed that Hough has done a very good job as director. Taylor asked Hough to comment regarding his own assessment of his performance. Hough said he had been looking over the form and preparing to say a few words. Hough said his tendency is to get involved and stay involved, resulting in his sometimes being a bit too involved in projects that perhaps don't need his personal involvement. He said the fact that his not delegating enough seemed to be a common theme in this discussion was very insightful and helpful for him, and he appreciated the board's feedback. He said he also appreciated the board's kind words because it is a good confirmation for him, as far as focus.

Merit Review and Salary Adjustment. Having completed the performance evaluation portion of Hough's annual review, Ralston then moved to the merit review and salary adjustment portion of the annual review. Hough explained that the agency's personnel policy allows for a 2.5 percent salary increase for longevity, or simply showing up and doing the job. There is also a possible 2.5 percent merit increase which can be awarded in .5 percent increments, for above-average performance, according to how well the employee has performed. The policy also allows for an additional increase of up to 2.5 percent for superior performance. Hough said it has been very rare for an employee to receive only the longevity portion of the annual salary adjustment and nothing for above-average performance; and it is equally rare for an employee to be given the additional increment for superior performance.

Board members gave their individual recommendations for salary adjustment for Hough:

Ralston said he has a problem with giving people 5 percent raises because it is hard for him to justify giving a raise in a larger percentage than what the increase in the overall budget is for a given year. He said he felt

it would be appropriate to begin with a 1 percent increase for the six-month review and then start again next year and look at a full-year cycle. He recommended a total increase of 3.5 percent.

Stewart asked what Hough's current salary was and where he was in the pay range. Hough said he is in the upper-middle part of the range but did not remember, specifically, which of the 13 steps in the range or what his actually monthly salary is at present. He said he believed he was at step 9 of 13. Taylor commented that staff usually provides that information for the board's discussion. Stewart said he did not remember at what level Hough was brought in as director, but he was fairly certain it was not at the highest part of the scale. Stewart brought up the fact that Hough had been able to gain additional funds for the agency in all of its revenue sectors, and he said he would not be opposed to a 2.5 percent merit increase, for a total of 5 percent.

Tannenbaum said the board has asked a lot of Hough, and he has performed well under difficult circumstances; and that Hough impresses her as the kind of person who will perform better under reward. She said Hough has done an outstanding job, and she would support giving him a 5 percent salary increase.

Taylor said she would support a 4 percent salary increase but said she was open to what other board members had to say.

Carpenter said the agency is in much better shape since Hough has been in the director position. Five board members gave him overall ratings of 5, meaning that he has done an outstanding job. Carpenter pointed out that one of the candidates who was interviewed last year for the director position had said he didn't even want to take the job because of all the turmoil the agency was going through at the time. He recommended giving Hough an increase of 6.5 percent, stating that the amount is not unusual for the kind of outstanding performance Hough has given. He commented that, in the private sector, if you have someone who shines like that, you have to pay enough to be competitive in the market in order to keep that person. Carpenter said that Hough may not get that much next year, depending on what kind of issues come up during the coming year; however, for what Hough has done in the past year, it would not be right to offer him less than even the 5 percent which would be awarded for above-average performance.

Johnson commented that he had the opportunity recently to visit different offices in Washington in the process of doing some consulting work in that state, and that he believes LRAPA has a top performer in Hough. He said the board should recognize the distance the agency has come in the past year, both internally and in how the agency is viewed in the community, and reward Hough accordingly with a salary increase of not less than 6 percent. He said he liked Carpenter's recommendation of 6.5 percent.

Monk said he agreed with the reasonings he had heard from other board members, to give Hough more than a 5 percent salary increase; however, Monk said he is conservative regarding money. He said he did not know how quickly other directors had moved up the pay scale, but he would like to see the board leave some room to reward Hough for continued good performance in the future. He suggested an increase of 5 percent as fully recognizing the superior performance. He said he thought this would be above the income average, and he had originally thought that 3 percent would be appropriate just because of the language.

Fortune said he is also conservative fiscally, but he agreed with Carpenter. He said he truly believes that LRAPA brought Hough in at a lower pay scale than someone else that would have been hired. He said that, as far as being able to give Hough salary increases in the future, in salary matters you need to continue to reward based upon performance. What the board decides to do today should not be dictating what will be done next year. It is based on his performance and how the board values that performance.

MOTION: Fortune said he agreed with Carpenter's suggestion and MOVED to give Hough a 6.5 percent raise in salary.

Koenig said he could not condone giving Hough an average salary increase for a superior performance. He said he would support the 6.5 percent increase.

Ralston said he agreed with Taylor and would stick with his recommendation of 4 percent, just to leave room to grow.

Stewart SECONDED Fortune's motion.

VOTE: SIX IN FAVOR (Carpenter/Fortune/Johnson/Koenig/Stewart/Tannenbaum) and THREE OPPOSED (Monk/Ralston/Taylor). THE MOTION PASSED, and Hough was awarded a 6.5 percent salary increase (2.5 percent for longevity, 2.5 percent for above-average performance, and 1.5 percent for superior performance).

7. OLD BUSINESS:

Status of J. H. Baxter Odor Complaint Situation. Hough point out a complaint chart which was included with the director's report, which showed the numbers of complaints received by LRAPA, bi-monthly, since January of 2003. The chart showed that the complaints were coming in in low numbers from January through July of 2003, then increased to 104 by September of 2004, then began decreasing in number through November of 2005. The numbers of complaints during 2006 have been much lower than in the previous couple of years.

Hough said LRAPA and J. H. Baxter have had their attorneys involved in the last couple of meetings regarding specific proposed additional actions and a schedule to accomplish those actions. Carpenter asked if the permit for Baxter has been on hold until the new Best Work Practices Agreement is completed. Hough said the permit has been on hold. Once the new agreement is completed, staff expects to go in parallel with both the agreement and the permit. LRAPA will update the agreement with Baxter and get a commitment to a specific time schedule, and then re-start the permit process. Hough said he anticipates that the permit process, with its public notice requirements, will lag slightly behind the actual agreement, and he would like to get the implementation schedule started on the agreed-upon actions as soon as possible.

Carpenter said the process was unclear to him, that he did not see how a permit can be issued while there is still some question regarding the agreement. He asked if there would be adequate public notice and opportunity for public comment during both of the processes. Hough said the initial direction discussed by the board had given to the neighbors at a neighborhood meeting, and response has been received from the neighbors on that information. He said he expects to discuss the agreement at the board level and then proceed with the obvious actions in that agreement and incorporate those things into the permit schedule. Hough added that it is possible that additional requirements could come out of the permitting process. He said the permitting process does require public notice and, if it is a controversial permit, that typically means a public hearing. Carpenter said he wants to be sure that the public have the chance to comment on the final package before it is implemented.

Monk commented that he believed there was another wood treatment facility that just installed some kind of equipment above a retort door. He asked if it is the same equipment that is being considered by Baxter. Hough said it is not the same equipment. The equipment being proposed for the Baxter facility is a more

sophisticated control system than what is currently being implemented at McFarland Cascade. Staff member Max Hueftle explained that the McFarland Cascade retort hood vapor recovery system and the J. H. Baxter Alternative I are similar in that they both attempt to collect vapors via vacuum pumps and hoods above the retort door. In both cases the air collected is then sent through a condenser in an attempt to condense the vapors. At this point, the two facilities' controls would differ. McFarland Cascade sends the air to a fiberglass-type fabric filter before exhausting to the atmosphere; Baxter's Alternative I would send this air through a carbon adsorption unit prior to atmosphere discharge. McFarland Cascade estimated that their vapor recovery hood system cost approximately \$40,000, whereas J. H. Baxter has estimated that Alternative I would cost between \$150,000 and \$200,000.

8. NEW BUSINESS:

A. Wetlands Burning in West Eugene. Hough noted that there have been letters to the editor in the newspapers recently regarding proposed burning in West Eugene wetlands by the Nature Conservancy. He said this is a cooperative effort by the Nature Conservancy, the BLM, the Corps of Engineers, and Lane County Parks to do some burning in the wetlands, with multiple purposes. Hough said this is different from grass seed field burning. It is much more intensely managed and does not produce near the density of smoke as is produced by field burning. Hough said LRAPA has received some calls regarding the proposed burning, some in support and some in opposition. Hough said LRAPA has permitted this burning most summers. They allocate a certain amount that they try to accomplish each year, and typically it is done in late August to September. Hough said if the board were interested, he could invite the principals in this activity to come in and talk about why this is a necessary part of managing those wetlands for native species. Johnson commented that he has driven by on West 18th while some of the wetlands burning was being done and was surprised at how little smoke there was. He commented that there were a lot of people at the site, and that it was intensely managed. Hough said LRAPA is very prescriptive in the conditions included in the burning permit from this agency. It needs to be coordinated and must have the go-ahead from different parties, that the meteorological conditions are appropriate so that it will be the least likely to cause an air quality problem.

Board members were interested in hearing about this, and Hough said he would see about having someone come to the August board meeting.

B. September Meeting Cancellation. Ralston asked whether the board would have an August meeting, noting that the meeting for August is sometimes cancelled. Hough said he would like to ask the board about the possibility of cancelling the September meeting, instead, because he would like to participate in Cycle Oregon this year, and it bridges the second Tuesday in September. Board members had no objection to cancelling the September meeting.

C. Egge Sand & Gravel Appeal of Enforcement Action. Monk noted that the enforcement report included an action against Egge Sand & Gravel and stated that the company has appealed the case to the board. He asked if that had been scheduled or if Hough had a sense of when it would be on the board's agenda. He also asked how the board reviews such appeals, stating that he assumed it would be handled outside of the regular board meeting schedule. Hough said he would check with LRAPA's attorney handling this case, Kathryn Brotherton, to get a projected schedule for the case. Several board members provided responses to Monk's questions. Johnson recalled that the board had, in the last few months, heard an

appeal regarding an asbestos violation by a land management company. Tannenbaum noted that these appeals are heard during regular board meetings. Ralston noted that the appeals to the board come after the initial appeal of the enforcement action, which is heard by a hearings official. Hough said the Egge Sand & Gravel case was heard by a hearings official, and that the official had upheld LRAPA's action. Board secretary Dinteman explained further that the case is currently in the initial phases of the board appeals process during which the respondent submits the appeals brief explaining why they find the hearings official's decision to be flawed. LRAPA's attorney then responds to the points in the appeals brief. That may be followed by one or more additional rounds of briefs and answering briefs. The process can take several months before the case is ready for the board. All of the information in the case will be copied and provided to the board members as far as possible in advance of the scheduled board meeting, to allow them sufficient time to read through what could be a large volume of material.

- D. Explanation of Enforcement Actions and Amount of Civil Penalty Assessments. Monk once again brought up the fact that some board members have issues with some of the fines assessed for various rule violations and the fact that the amounts of the fines can cover a wide range for separate cases which seem to involve the same types of violations. He asked when staff will provide a detailed explanation of the process used to determine the amount of civil penalties assessed in enforcement cases. Hough said he was waiting for board members to tell him which ones they would like have staff bring before them. Monk said he had highlighted several cases and would give that information to Hough.

Johnson asked if LRAPA has to cover the legal costs of the appeals process. Hough said having legal representation is a normal cost of agency business. Johnson asked if it is legally possible to find out why the respondent is appealing the hearings official's decision, and Hough said it is clearly not the cost of the fine, because the investment in legal costs, on both sides, is much more than any penalty amount. He speculated that the reason for appeal to the board is based on principle. Ralston agreed.

- E. LRAPA Legal Counsel. Monk said he assumed that Harrang/Long has provided legal representation for LRAPA for some time. Dinteman said she believed that firm has always been LRAPA's legal counsel. Monk asked who initially made that decision and whether it has ever been reviewed. Dinteman said there was a time when the agency did look at hiring a new attorney, but it was quite a few years ago. Several legal firms were considered at that time. Monk said he was pointing out a possible need to review whether to keep Harrang/Long because, when the board discussed whether to go to nine members or keep it at seven, he felt that LRAPA's having the same legal counsel as the city of Eugene created all kinds of conflicts of interest, and he did not believe that either party got the best legal advice because of that. He said LRAPA might be better served to have legal representation that is not also representing LRAPA's local governing jurisdictions, or other conflicts that are perceived or otherwise. He said if other board members agreed that this is an issue, there should be board discussion at some future date.

MOTION: Johnson said he agreed. He MOVED that the board ask Hough to look at an RFP for legal services and that it be put out for bid. The MOTION DIED FOR LACK OF A SECOND.

Ralston said he did not think a motion was necessary, that the board can ask the director to investigate it and come back with his findings. He said cost will be a major factor. He agreed that there should not be conflicts of interest, and so it is a good idea that the board look into this issue.

Carpenter said, as a first step, he would like to see how much LRAPA has spent on legal costs in the past five years. He said there is provision for the agency to hire another law firm for a specific case where the regular firm has a conflict, without having to dismiss the firm that is on retainer. If there is a specific issue between the city of Eugene and LRAPA, one of the parties can get independent counsel. Ralston agreed that could be done for those circumstances where there is a conflict.

Taylor said, rather than doing an RFP immediately, it would be worthwhile to discuss LRAPA's legal representation and decide whether a change needs to be made and, if so, how to go about doing that.

Fortune commented that not every law firm in this particular area is versed in administrative rules and matters pertaining to public entities. You could hire another firm with lower rates and end up paying a lot more money because that firm would have to do extensive research in order to provide appropriate counsel to the agency. Ralston agreed, stating that Harrang/Long has a lot of history with LRAPA, and that is an important element to consider.

Monk asked if all board members were in agreement that Hough should be directed to evaluate this issue. Ralston said that Hough should be directed to call around and find out what legal firms might be versed in governmental administration, what their general fees would likely be, and provide a comparison for board review. Ralston said his main concern is cost, and if good counsel could be found at a lower cost, he would be willing to consider that. He said the issue of conflict of interest, however, can be handled by retaining independent counsel if necessary. He added that current counsel has a good relationship with LRAPA, and he would not want to throw that away for no reason. Carpenter commented that searching for new legal counsel would not be as easy as calling around to different firms, because all law firms have different levels of experience and expertise, as well as different hourly rates, among their attorneys. He suggested again that, as a first step, the board look at the current agreement with Harrang/Long and see what the cost of that firm's services has been over the past five years. After the board has that information, further direction could be given to Hough as to how to proceed if the board feels that is necessary.

Monk said he did not know if it would be possible, but he would also like to know where there were potentially conflicts of interest for Harrang/Long because they might have also represented someone with whom LRAPA has had a legal issue. Johnson commented that the board can set the policy regarding conflict of interest. The board can say that if Harrang/Long has had any business with Egge Sand & Gravel, the firm is conflicted. Ralston said he does not think this is a new concept. He said the legal firm does not want to be caught in the middle of something they know to be a conflict of interest for them. Carpenter agreed, stating that if they are representing someone with whom LRAPA has an issue, they have to state that and decline to represent one or the other side of the conflict.

Hough said that, when LRAPA made the request to Lane County to set aside an amount equivalent to the civil penalties received from LRAPA, there was an organization that challenged whether that request was legal. LRAPA shared with that organization the legal opinion from Harrang/Long, that in fact it was legal for the county to do that. Harrang/Long made known to LRAPA at the time that the firm served as secondary counsel to the challenging organization, and Hough signed a waiver to allow Harrang/Long to continue to advise LRAPA, as did the other organization. Hough said Harrang/Long was very alert

to that potential conflict. Taylor commented that such waivers are common, and it happens with the city all the time.

9. ADJOURNMENT: The meeting adjourned at 1:44 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, August 8, 2006, 12:15 p.m. in the LRAPA meeting room, 1010 Main Street, in Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary