

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–FEBRUARY 12, 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; Pat Patterson–Cottage Grove/Oakridge; Dave Ralston–Springfield
(ABSENT: Kit Kirkpatrick–Eugene; Andrea Ortiz–Eugene; Faye Stewart–Lane County)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Ralph Johnston; Sally Markos; Kim Metzler; Nasser Mirhosseyni
- Other: Russ Ayers, Chair, and Amy Peccia–LRAPA Advisory Committee; Terry Connolly–Eugene Chamber of Commerce; Paulo Montenegro–Kingsford

1. OPENING: Chair **Monk** called the meeting to order at 12:15 p.m.
2. PUBLIC PARTICIPATION: [*See agenda item number 6, below*]
3. CONSENT CALENDAR:

Corrections to Minutes. There were two corrections to the minutes of the January 8, 2008 board meeting. On page 10, mid-page, comment by **Carpenter**, the minutes said, “. . . has been cleanup up to standards.” “Cleanup” was changed to “cleaned,” so that it read, “. . . has been cleaned up to standards.” The second correction was on page 11, fifth paragraph, under a comment by **Monk**, “. . . , and virtually everything that is on the agency is an action item.” “Agency” was changed to “agenda,” so that the sentence read, “. . . , and virtually everything that is on the agenda is an action item.”

Comment on Expense Report. **Mirhosseyni** pointed out that the operating cash flow in the report for the previous month did not include the Everybody Wins Program, as agreed at the last board meeting. He wanted to make sure that board members understood that those figures will not be provided on a monthly basis but will be reported by staff on an annual basis.

ACTION: MSP(Carpenter/Fortune)(Unanimous) adoption of the minutes of the January 8, 2008 board meeting, as corrected, and approval of the expense reports through December 31, 2007, as presented.

4. DIRECTOR’S REPORT: **Hough** highlighted a few items from the written report, and board members had some questions about one item in the report.

Air Toxics Control Requirements for Gasoline Stations. **Hough** reported that the *Federal Register* came out in January with a requirement for at least the larger-throughput gasoline dispensing facilities to implement Stage I Vapor Recovery by January of 2011. He pointed out that this requirement is related to a voluntary program which LRAPA, DEQ and the Oregon Petroleum Alliance initiated in November of 2007. He added that most of that equipment is available on the trucks and on the underground tanks, and it is possible for them to voluntarily comply earlier than 2011. The federal requirement puts a backstop on the voluntary program, and ensures that Stage I will be implemented across the country on those larger stations.

Monk asked **Hough** how many stations in the Eugene-Springfield Metropolitan Area have a throughput of 100,000 gallons a month and thus fall under this requirement. **Hough** said it appears that most of the 50+ retail stations in the urban area would be above that throughput. He added that some stations which are further out into the more rural areas might not have sufficient throughput to fall under those requirements. It is also likely that companies which have small underground tanks for small fleets, or card-lock facilities, would not have large enough throughput to be subject to the mandatory Stage I requirements.

Johnson asked if “balancing” is the same as “vapor recovery.” **Hough** responded that vapor recovery includes two parts—submerged fill and connecting the lines from the delivery tank to the underground tank so that the vapors go back to the tanker truck. The lines back to the truck are what is referred to as, “vapor balancing.” Even the small stations are required to have the submerged fill part of Stage I Vapor Recovery, but the larger stations are required to do the vapor balancing as well.

Johnson asked if implementation of this program will be an expense for the agency, if it will be self-implementing, or if EPA will maintain authority over this regulation and enforce it. **Hough** said that is a key decision LRAPA will have to make with all area sources, of which gasoline dispensing emissions is the most significant. LRAPA will need to decide if it will request delegation for control of that source and, if so, how it will be funded. **Hough** added that DEQ currently enforces this program in Portland, Salem and Medford, and they have a small annual fee collected from the stations they inspect in those areas.

Patterson noted that when a lot of properties had to take out old underground tanks, and the equipment for Stage I Vapor Recovery was installed in the replacement tanks, there was significant expense which drove some of the smallest stations out of business. He asked if there is any provision for the big fuel distribution companies to pay some of the costs of implementing the program so that the small stations do not get stuck with the whole financial burden. **Patterson** added that he can understand making sure that fumes do not build to a point where there could be an explosion, but he does not think it is reasonable to expect gas stations to recover all fumes which escape during the process of dispensing gasoline.

Hough explained that the federal requirement which came out in January has two purposes. The objectives of capturing the fumes are to keep workers at the stations and neighbors in the area from being exposed to air toxics in the fuel, and to keep constituents of the fuel which are precursors of ozone formation from being released. The federal requirement is to reduce vapor emissions when gasoline is distributed by fuel companies into the station tanks (Stage I). The fumes are captured and collected back in the truck, and not lost to the atmosphere. **Hough** explained that during the decade between 1988 and 1998, there was a major upgrade, across the county, to fuel tanks, primarily for the purpose of protecting ground water. Most people, at the time they were upgrading the tanks, also included the fittings that are necessary to make Stage I Vapor Recover work. Submerged fill technology was put in and is virtually everywhere, already. **Hough** said the requirement is primarily on the distributor, because it takes a few more minutes for the driver of the tanker truck to connect all of the fittings and hoses in order to collect the vapors. The letters which LRAPA, DEQ and the Oregon Petroleum Alliance sent out in November of 2007 were sent to the distributors as well as to the stations. He said some distributors, such as Tyree Oil, had already committed to using the fittings whenever they are available, in order to collect the vapors, prior to receiving the letter in November. **Hough** added that some stations, such as Costco, also require that whichever distributor delivers fuel to its stations must use the Stage I system.

Ralston asked for an explanation of what happens to the vapors when they are recovered and collected in the tanker. **Hough** explained that it is typically cooled at the terminal and condensed back into gasoline. By recovering the vapors, the company is recovering product which can then be sold.

Ralston commented that every time a person fills his vehicle's tank, vapors are being displaced in the tank and not being recovered. **Carpenter** said newer cars (from about 1998 on) have a canister which does collect those vapors. **Hough** agreed, stating that about 2000 was when motor vehicles began being manufactured with on-board canister vapor recovery systems. The vapors are bled back into the fuel line where it gets combusted, over time. **Hough** explained that some parts of the country have gone to Stage II vapor recovery where the connection between the pump and the vehicle is covered to recover those vapors. Portland is the only area of Oregon where Stage II is in place. **Hough** explained that, because the percentage of cars on the road which have on-board canister systems is growing, there is not really a reason to consider Stage II for an area like Eugene-Springfield.

5. **ADVISORY COMMITTEE:** Committee Chair **Russ Ayers** reported that the Industrial Rules and Air Toxics Rules sub-committees both met in January, as did the whole Advisory Committee. Ayers referred the board to the meeting notes in the packet for all three meetings. The full committee had a round table discussion about climate change, and **Ayers** commented that board members might find the notes from that meeting interesting.

Ayers then provided additional input regarding the air toxics rules, stressing that his comments were his own and not the opinion of the committee. **Ayers** noted that both **Carpenter** and **Monk** had attended the Air Toxics Sub-Committee meetings, and noted that they might want to talk about some direction for the sub-committee. He added that the comments he was providing at this time anticipated comments he believe **Carpenter** and **Monk** would make at today's discussion of the proposed air toxics rules. **Ayers** commented on a subject brought up by **Betty Taylor** in the last couple of years for discussion by the board at a future date, concerning when the air we breathe will be medically safe, rather than politically safe, for everyone. **Ayers** said in his view, adoption of the Oregon air toxics rules would provide ambient benchmarks for 56 air toxics pollutants. The benchmarks are very stringent, based on a one-in-a-million cancer risk, and similarly stringent criteria for non-carcinogenic toxicological health effects. **Ayers** commented further that the state's rule provides a method to add pollutants to the list or to re-evaluate the benchmarks, and that some industry representatives have already expressed concerns to him about these tough new standards. Lane County's air toxics rules must be at least equivalent to the state's rules adopted in 2003 by DEQ and amended with health-based benchmarks in 2006. **Ayers** said he had spoken with a few industry representatives, and he thinks industry would support doing a Portland Air Toxics Assessment-type study in Lane County. He said this approach offers the best science available to assess where air toxics problems are located and how to prioritize agency work to address them and that it would help put agency resources and community focus on issues that actually would benefit air quality. As a practical matter, **Ayers** said, LRAPA had a seat at the table during development and consensus building for the Oregon air toxics rule. He said that was a resource-intensive effort and, in his opinion, LRAPA does not have the resources to venture out and evaluate other programs or to develop a new rule on its own. He said why not adopt the Oregon air toxics rule, a rule that is considered one of the best in the county, in Lane County and get started now to implement the new rule. **Ayers** said he knew the board would be discussing the air toxics rule later on its agenda and wanted to provide his comments for their consideration.

Carpenter said he is very interested in learning of the positives and negatives of emissions banking. He said when the board gets into detailed discussion of the air toxics rule, he would like to have either staff or the advisory committee present a detailed evaluation of how positive emissions banking is, especially in light of a federal circuit court recently overturning an EPA rule to try to do emissions banking regarding mercury contaminants in the electrical industry. **Ayers** responded that staff member **Max Hueftle** had done a stringency analysis which included some detail regarding banking, based on **Carpenter's** prior expression of

interest. **Ayers** said that analysis will be part of the committee's report to the board, adding that they are close to finalizing the report.

Patterson commented that Portland is very different from Eugene-Springfield, and he does not necessarily want to base Lane County's rule on what DEQ has done for Portland. He said he wants LRAPA's rules to focus on what is in the best interests of Lane County. **Johnson** agreed, stating that he does not think LRAPA should be following anything that has come out of Portland with regard to air toxics rules. He said he is not impressed with the state rules. **Johnson** also noted that Lane County's rules must be at least as stringent as the state's rules and asked **Ayers** who determines the stringency comparison between LRAPA's and DEQ's rules. **Hough** responded that in some cases, LRAPA must be at least as stringent as both federal and state rules, and in other cases, they must be as stringent as the state rules. He said with regard to air toxics, at least on geographic rule, LRAPA's rule would need to be as stringent as the state rule and on point source MACT would have to be as stringent as both the federal and state rules. He said stringency determination with federal requirements depends on the particular piece of air toxics and whether or not there is a federal requirement.

Johnson asked whether stringency is based upon the level of reductions or the burden on the sources or some other criteria. **Hough** said stringency review can get quite complicated. He said LRAPA's New Source Review rules took a different approach than the federal or state rules, and it was difficult for EPA to determine stringency on the LRAPA rule. It was easier for EPA to do that after LRAPA showed EPA where LRAPA's rules differed from the state's rules, because they had already gone through an exhaustive stringency review with the state rules, compared to the federal requirements.

Monk said he wanted to see how the advisory committee did the stringency analysis on the proposed rules and asked if that could be part of the committee's presentation of its recommendations at the March board meeting. He also pointed out that **Ayers**, in reading his opinion piece, referred to "standard" instead of the "benchmark." **Ayers** said it should be "benchmark." **Monk** commented that a benchmark is a goal and that he would rather see standards instead of goals. **Monk** added that he has all sorts of issues with DEQ's benchmarks.

Hough said he thought the stringency evaluation was intended to be one of the specific attachments to the committee's recommendation package to the board. He said the board will see the same kind of comparison that the sub-committee and the full advisory committee saw. **Ayers** added that staff member **Max Hueftle** wrote the stringency comparison document.

Fortune asked whether Portland modeled the air toxics that the LRAPA board is now discussing, and **Ayers** said they did the Portland air Toxics Assessment which, he assumed, was based on both monitoring and modeling. **Hough** said DEQ did a specific modeling effort, in addition to the national modeling that EPA does periodically (National Air Toxics Assessment). **Hough** said he believed DEQ got a grant and help from a consultant in order to do something more specific for the Portland area. **Fortune** said LRAPA should adopt rules which consider the future and whether the board wants industry to grow within Lane County. He asked why not have something proactive in place before industry arrives so that they know what they are coming into, from the beginning. He said he would prefer to see that approach, rather to let industry locate in Lane County and then adopt new rules and force those industries to comply.

Hough responded that he believes that is the intent of the proposed rule adoption. He said the air toxics rules being proposed for adoption do provide a framework to allow customization for a given area, assessing the area and identifying what things are problems and what things are not problems. It would be valuable, not

only to fix anything that needs fixing, but also for information useful for someone wanting to locate in that area.

Monk asked whether **Hough** needed a board motion to direct staff to provide information about emissions banking, and **Hough** responded that the stringency review includes looking at existing rules as well as the proposed rules, and what changes are proposed in the existing rules. That discussion will be a good opportunity to discuss the emissions banking issue.

Patterson stressed that the DEQ rules look primarily at the Portland area and that other areas of the state have their own problems as far as airshed, meteorology, transportation infrastructure, etc. The rules LRAPA ends up adopting should be geared specifically toward Lane County instead of just adopting a DEQ rule which is based on what is happening in Portland.

6. PUBLIC HEARING—PROPOSED AMENDMENTS TO LRAPA TITLE 47, RULES FOR OPEN BURNING: **Monk** asked staff to give a brief description of the proposed rule amendments.

Hough read the summary which was published in the Oregon Bulletin published by the Secretary of State's office. "Under the proposed amendments, LRAPA would provide for additional control of open burning activities in Lane County to address the need to reduce particulate emissions. The proposed changes include the following: prohibit open burning within the Eugene/Springfield Urban Growth Boundary during the months of November through February; address small recreational fires such as patio fireplaces, providing for how and when they can be used; provide clarification for several definitions and add definitions for 'nuisance' and 'recreational fire'; correct the LRAPA name change; provide for end time of daily burning advisories, to be set prior to sunset; add Hazeldell and Siuslaw RFPDs [Rural Fire Protection Districts] to the list of fire districts in the special control area; and restrict the open burning season in the outlying areas of Lane County to the October 1 through June 15 period. LRAPA Title 47 is included in Oregon's State Implementation Plan. If adopted by the LRAPA Board of Directors, the amended rule will be forwarded to DEQ for adoption by the Oregon Environmental Quality Commission. If the EQC adopts the rule, it will be submitted by DEQ to the U. S. Environmental Protection Agency as a revision to the State Implementation Plan."

LRAPA had received authorization from DEQ to serve as hearing officer for the EQC, and this was a joint LRAPA/DEQ public hearing.

Hough noted that the Mohawk RFPD had requested that the reference to Marcola RFPD in 47-015-2.F be changed to Mohawk Valley RFPD. In addition, EPA had made some comments regarding minor clarifications it would like to see in the proposal. After subsequent conversation with EPA staff, LRAPA staff had revised the draft rule to accommodate some of those suggestions. Both **Kit Kirkpatrick** and **Andrea Ortiz** had send e-mails requesting that the decision on this rule proposal be postponed until the March meeting so that they may participate. **Ortiz** also indicated in her e-mail that she has some concerns about the outdoor pit burning provisions.

Monk then opened the public hearing at 12:53 p.m. **Thomas Lightning Bolt** had signed up to speak to this item, and **Monk** asked him to come forward to make his comments.

- A. **Thomas Lightning Bolt**, 2986 Oak Street, Apt. 208, Eugene, representing himself. **Lightning Bolt** said he is a member of Native American tribe whose religion includes sweatlodge ceremonies. The ceremony involves a pile of stones which is covered with wood which is then burned for a specified

period of time, depending on the nature of the ceremony. The burning can last up to twelve hours, although that would be a very rare occurrence. **Lightning Bolt** said he spoke to someone at LRAPA who said exceptions can be made to LRAPA's rules, for religious ceremonies. A friend of his also called the agency and was told that there are no exceptions made. **Lightning Bolt** pointed out that, according to public law number 95-341, the American Indian Religious Freedom Act, he is guaranteed his Constitutional and Congressional rights to practice his religion, including the sweatlodge ceremony. He added that, if the sweatlodge is within city limits, and the city says there is no open fire allowed within city limits, then there is a problem, which he would like to see resolved very peaceably. **Lightning Bolt** said one of the members of his Native American community has suggested that someone will need to have a fire and get busted so that it would go to court and test the regulations. He said he would not like to see it come to that.

Lightning Bolt explained further that sweats are held once or twice a month and can be held in the morning or the afternoon or at night. He said he was present at this public hearing to express, before witnesses, his concern that Native American rights get recognized and respected with regard to open burning. He said he understands completely that people are concerned that no one be allowed to burn trash. The ceremonial sweatlodge burns use only clean combustibles and absolutely no trash, because the ceremony is sacred.

- B. **Link Smith, Oregon Department of Forestry, PO Box 157, Veneta.** **Smith** expressed concern about the provision in the proposed rule amendments to shorten the actual burning season. **Johnston** explained that the change **Smith** was referring to would affect only the area inside the Eugene-Springfield Urban Growth Boundary, and **Smith** seemed satisfied with that clarification.

There being no one else present who wished to comment regarding the proposed amendments to LRAPA Title 47, **Monk** closed the public hearing at 1:07 p.m.

Discussion

Monk pointed out that the language of the rule clearly provides for ceremonial fires. He said his only concern was that such fires take into account the burning advisory on a given day, and he ask **Hough** to speak to that. **Hough** said the agency does have the ability to authorize such ceremonial fires under its special letter permit provisions.

Ralston said recreational and ceremonial fires should both be included in the exceptions to the open burning rules. He said people who want to have bonfires can ask for a special permit, but other than that, he likes the way the proposed rule is written.

Fortune expressed concern about the size of a fire to be treated as a bonfire, or under ceremonial or religious fires. **Carpenter** said some ordinances have been found not to violate religious freedoms. He said he sees two problems with not defining an exception specifically for religious purposes. One is that it should be ceremonial, but even so could conflict with Yellow or Red home wood heating advisory days in the Urban Growth Boundary. The rule should include a specific exclusion for those types of fires. The other problem he sees is that the rule needs to be written in such a way that it is not broad enough to allow a Christian Youth group to fire up a bonfire on New Years Eve and claim that they are actually conducting a religious ceremony. **Carpenter** added that he thinks these Native American sweatlodge fires should be an exception to the rules so that the participants do not even have to come to LRAPA for a permit. He suggested perhaps writing that part of the rule to a specific size of fire for a religious purpose.

Johnson said he agreed with everything **Carpenter** had said. He suggested wording such as, “. . . exempt fires conducted for religious ceremonial purposes, where the fire is integral to the specific ceremony,” so that having a fire is a component of the ceremony. He also agreed that they should not have to apply for a special letter permit.

Patterson commented that, since American Indians are a federally protected group, and the sweatlodge fires fall under their religious rights, perhaps the rule should include citation of the federal law which protects those rights. That might be a way to separate this specific exception from any other religious references.

Hough introduced **Kathryn Brotherton** of LRAPA’s legal counsel firm, Harrang/Long, who advises the agency on most of its enforcement cases. He said **Brotherton** had reminded him that the city of Eugene has an ordinance banning open burning within the city limits, and that ordinance might be the most restrictive requirement in this instance. **Brotherton** reminded the board that, even though LRAPA’s rule can be written in a way which would provide this exception, local rules can be more restrictive than LRAPA’s rules, and that may be an issue in the city of Eugene.

Monk asked **Brotherton** whether the city’s ordinance has any exemptions in it, and she said she did not remember at that moment, but she did not think so. **Monk** said he had spoken with the mayor of Eugene and that she is trying to create some consistency between the city’s ordinance and LRAPA’s open burning rule. He said the city’s ordinance allows burning for cooking food, only. He said his sense of the city’s ordinance is that it is not that well written and is difficult to enforce. He believes that people who know what the ordinance says have a marshmallow or a hotdog handy whenever they have a fire so that they can say they’re using the fire for cooking. **Monk** added that fire personnel who respond to these fires are put in a tough spot as to how to interpret the rules. **Monk** said LRAPA needs some requirement in its rule regarding ceremonial fires, at a minimum, and should also be talking to the city of Eugene to try to coordinate the effort. **Patterson** said the city should adopt its own ordinance, independent of LRAPA’s rule.

Brotherton said she worked with LRAPA staff to try to come up with terms such as “bonfire” and “recreational fire” to attempt to capture small fires and certain things that were outright exempt, as opposed to other fires which are not exempt. She said the rules can be easily tweaked to address the things raised at this meeting. The requested American Indian ceremonial fires can be included as an outright exemption. She said the only thing she wanted the board to recognize is that other entities have their own rules and their own enforcement processes.

Monk asked if there was consensus among board members, to take the ceremonial fires out of the letter permit requirements, and **Ralston** agreed, saying it should be put in as 47-005-2.C, after the exemptions for recreational fires in designated recreational areas and for outdoor barbequing. **Carpenter** said it should be noted as a religious ceremonial fire, as opposed to a Boy Scout ceremonial fire which would still need a special letter permit. **Brotherton** said it can be narrowly tailored to fit the meaning the board intends. Board members indicated agreement with adding an exemption for the American Indian religious ceremonial fires with language specifically identifying the types of fires allowed under the exemption.

Patterson stated, for clarification, that the individual cities within Lane County still have the ability to adopt their own ordinances to handle open burning as they see fit within their own jurisdictions. **Monk** agreed but stated that he would very much like to see LRAPA work with those jurisdictions to see if there is a way to have some consistency in the ordinances that are appropriate to their specific locales. **Ralston** commented that in order to see more consistency between local jurisdictions, Eugene will need to relax some of its rules, because Springfield will not change its rules to be stricter. **Carpenter** said LRAPA’s rules are like the floor

and that other jurisdictions can adopt additional, more restrictive requirements that are specific to their own needs; however, if a city chooses not to adopt its own open burning requirements, the LRAPA rules still apply in that city.

Brotherton asked for clarification as to whether the board wants to have some restriction on the size of fires to be allowed under the American Indian Religious Ceremonial Fire exemption. **Monk** said he thought there should be a size restriction and that a three-foot diameter fire should be sufficient. **Johnson** said he was a little bit uneasy with the idea of putting a specific size restriction in the exemption for ceremonial fires. He said his reaction is that, if the fire is integral to the ceremony, then the size should be determined by the people who are conducting the ceremony. They know how big their fire has to be, and they're not going to build a fire that's bigger than what they need to conduct their ceremony. He said he would prefer to let the size of the fire be dictated by the ceremony.

Ralph Johnston asked how LRAPA is to know that the fire is integral, and **Carpenter, Johnson** and **Ralston** responded that the agency would have to trust the people conducting the ceremony. **Johnston** said he was speaking broadly, from an air pollution perspective. For instance, how would the agency handle a situation where a new religion was formed and decided it needed a 20-foot bonfire as an integral part of a religious celebration. **Ralston** said if that happened, the people of that new religion would have to come to LRAPA to request a rule revision to accommodate their needs. **Johnson** said **Johnston's** point is a legitimate concern; however, he thinks in setting up this exemption, the burden is on LRAPA, as the enforcers, to say are we going to grant this exemption based on what the person has told us is needed. If they say it is for a religious ceremony, and LRAPA does not accept that, then the burden is on LRAPA to prove that it is not a religious ceremony.

Monk asked **Lightning Bolt** about the size of the fires required by his sweatlodge ceremonies, and **Lightning Bolt** said the average size of the fire would be sufficient to cover 28 stones, but there could be a need to use up to 50 stones in a particular ceremony. He said he has never seen a fire any wider than four feet, maximum; however, the spirits tell the person running the sweat ceremony how many stones need to be used for that person to be healed, and that is how many stones would need to be used. Those stones might not fall within the three-foot diameter fire suggested earlier in this discussion. **Monk** said **Johnson's** point was well taken, and he asked if larger parameters could be put into the rule.

Johnson said he did not think there should be a size restriction. **Carpenter** disagreed, stating that without a size restriction, the loophole gets much too large. Someone could pile up Douglas Fir trees and have a fire like the students used to do at Texas A&M and claim it was for religion. **Carpenter** said at some point this is not an absolute religious rite. He said he does not mind moving the restriction to four feet in diameter, but he really thinks there needs to at least be some trigger for enforcement, especially to keep fires from interfering with the home wood heating restrictions during the wintertime curtailment season.

Ralston commented that if the ceremonial fires would be within the Eugene-Springfield Urban Growth Boundary, he agrees that unlimited fire cannot be allowed. However they will have the sweatlodge fires wherever they can have them. He speculated that if they know they will need to have an especially large fire, they would try to find somewhere outside the Urban Growth Boundary where they could do that. He added that having a very large fire in the middle of a neighborhood does not seem like a religious environment to him. **Carpenter** said there may be a religious site within the Urban Growth Boundary. He said he has worked with some Indian tribes in Arizona and has learned that you cannot say yes to this spot and no to that spot because it is very vague. **Johnson** said that is his problem with the size restriction and who is to determine what size is acceptable.

Patterson brought up how the fire departments would accept these fires. He said they are likely to consider the neighborhood makeup and other factors, and they have their own rules and guidelines with which they have to comply, especially within an urban area.

Monk concluded that the board might have to have more time to consider this request, because there are a lot of factors to think about. **Brotherton** said she could bring to the board a couple of ways of dealing with the American Indian ceremonial fires. Since the full board will be at the March meeting, they could take a look at both options and decide how to handle it. **Monk** agreed that this would be a good option, stating that the options should be presented with and without size restrictions since that is the issue the board seems to be grappling with at this meeting.

Fortune asked **Lightning Bolt** how many sweatlodge ceremonial fires he has done and whether they have been held in Lane County. **Lightning Bolt** said he has held some ceremonial fires in Lane County, and there were probably three in 2007. He said having a place to hold them is a little difficult because he does not own his own land.

Fortune asked how many complaints LRAPA has gotten about smoke from sweatlodge ceremonial fires, and **Hough** said he was not aware of any complaints.

Monk said he had been under the impression that the ceremonial fires would be completely exempt and that he was confused by **Carpenter**'s comment about the Yellow and Red home wood heating advisory days. He asked if the agency would have the right to restrict ceremonial fires on those days. **Brotherton** said the agency can write its rules that way if it wishes to do so. **Monk** noted that there has been only one Red advisory day in Eugene-Springfield since the beginning of the curtailment program and asked if the board would like to be able to restrict ceremonial fires on a Red advisory day. **Fortune** and **Patterson** said that would likely open the agency up to legal action. **Ralston** agreed, stating that he thinks the sweatlodge ceremonial fires should be completely exempt from LRAPA's open burning rules.

Monk asked if board members were okay with **Brotherton** bringing back a couple of options, based on size restrictions and not site or location. No one objected to that.

Monk then stated that he does not think burning of construction/demolition debris should be allowed. He reported that he and Hough and several other staff members had met with **Rusty Rexius** of Rexius Landscape Service and **Oren Posner** of Lane Forest Products to discuss how LRAPA might encourage people in the rural areas of the county to bring their yard trimmings to these two companies rather than burning that material. **Monk** said the meeting had identified more problems than solutions and that it will not be easy to accomplish that. He said he had spoken with a Lane County representative earlier today and found that the county has a great desire to see as much yard debris material recycled as possible because the county gets federal money and state money for having done that. **Monk** recognized that it will take some time to figure out the economics of this and a mechanism by which more of the materials can be captured; however, he would like the board to think about this before adopting any open burning rule. He suggested that over the next couple of years LRAPA could seek federal money, or the county could use tipping fee money for diversion to provide incentives to individuals to bring the material to a transfer station rather than burning it. He asked **Hough** to speak briefly about the process if the board adopted something in March along the lines of what has been proposed and then in two years' time changed the rules to incorporate greater recycling of yard debris into the rules. He asked if that could be done easily or if it would require another whole rulemaking process.

Hough explained that the board had four options for the current rulemaking action.

- A. It could adopt the rules at the March meeting, with minor revisions, which would not require another public hearing.
- B. If significant changes were made to the draft rules, it would need to be put out on public notice again and would require another public hearing.
- C. The board could adopt the rules with minor changes and then use policy to determine if alternatives to burning exist or to expand incentives to make yard debris recycling more feasible to a great part of the county, or some other policy option.
- D. If the board desired to make wholesale changes to the rules, the current draft could be adopted with minor revisions now, and the board could give direction to staff and the advisory committee to work through whatever the new direction should be. It would probably take several months to do that, and it would trigger a new rulemaking process. However, the changes currently being proposed would be in place until further changes were developed and adopted.

As far as construction waste, **Hough** drew attention to page 7 of the current draft rule, at the top of the page. He said there are basically three levels of control of burning of construction/demolition debris.

- A. Within the Eugene-Springfield Urban Growth Boundary, that kind of burning is prohibited.
- B. Within any of the fire district in Lane County, that type of burning can only be done with special letter permit from LRAPA. The fire districts cover a large portion of the county, and some of them extend out to fairly remote parts of the county. Part of the process to get a letter permit from LRAPA is to demonstrate that no feasible alternatives to open burning are available. The board could adopt a policy that, for example, if an alternative means of disposal costs \$20/yard or less, it is considered to be a reasonable alternative available. That could be done as a policy decision, outside of the rulemaking, itself.
- C. In areas of the county outside of established fire districts, construction/demolition materials may be burned without a permit from LRAPA, but the burning must be done in accordance with all general provisions for open burning in Lane County. And all reasonable alternative disposal means must be explored.

Ralston said he is completely satisfied with the way the current draft rule is written. He said he would prefer to make the permit fee \$100 and encourage recycling of the material. **Ralston** said as long as the burning is to be done outside the high impact areas, he does not want to get too restrictive and make wholesale changes when he thinks it is already defined well.

Patterson noted that the rules already prohibit burning of tree stumps and a lot of other materials, and he thinks the rules provide good guidelines on construction/demolition burning. He added that, with the salvage value of lumber today, not many people will burn 2 x 4s that are over six feet long.

Carpenter asked **Hough** to find out what percentage of the county is not covered by fire districts. **Johnston** brought in a map of Lane County which shows all of the fire districts and the area covered by each. The map showed that the areas not covered by specific fire districts are in the remotest areas of the county where population is low.

MOTION 1: **Carpenter** MOVED to table this discussion until the March meeting.

Patterson asked why **Carpenter** wanted to table the discussion, and **Carpenter** responded that two board members who could not be at this meeting had requested that action on this item be postponed until March so that they could participate in the decision

Johnson SECONDED THE MOTION, stating that he has a lot more to say.

VOTE on Motion 1: Three (**Carpenter/Johnson/Monk**) in favor and three (**Fortune/Patterson/Ralston**) opposed. THE MOTION FAILED.

MOTION 2: **Carpenter** MOVED to say that any board member who is absent from this meeting may participate in the vote in March, if they listen to the tape of the public hearing that was just concluded and the board's discussion at this time. THE MOTION DIED FOR LACK OF A SECOND.

MOTION 3: **Ralston** MOVED to approve what has been presented, with possible revisions to the exemptions for religious ceremonies, and make the decision today. **Patterson** SECONDED THE MOTION.

Fortune asked **Hough** to repeat the possible actions the board could take on the proposed amendments to Title 47. **Hough** repeated the options.

Monk said he would like to go around the table to get comment, because **Ralston** would see that he would get another 3 to 3 vote. He said he has all kinds of reservations about the rule as drafted, and he thinks the board needs to have another discussion about it. He stressed that there are two board members who have requested that the decision be postponed so that they can participate next month.

VOTE on Motion 3: Three (**Fortune/Patterson/Ralston**) in favor and three (**Carpenter/Johnson/Monk**) opposed.. THE MOTION FAILED.

MOTION 4: **Fortune** MOVED to postpone any action on the open burning rules. **Carpenter** SECONDED THE MOTION.

VOTE on Motion 4: THE MOTION PASSED BY UNANIMOUS VOTE.

Monk said he expected **Brotherton** to give the board a couple of options on the ceremonial fire exemption. He said he would try to prepare a document describing his reservations about the current language in the rule and some suggested language revisions and try to get that document to the board a week in advance of the March board meeting. **Ralston** said he didn't know, specifically, what **Monk's** objections are, and he would like to see those in writing prior to the next board meeting.

Brotherton said she could also prepare some sample motions for the board to use, for instance, if the board wants to make changes to the language presented for the ceremonial exemption presented to the board, and a board members wants to be able to propose changes as motions.

ACTION ON THIS ITEM WAS POSTPONED UNTIL THE MARCH 2008 BOARD MEETING.

7. OVERVIEW OF LRAPA ENFORCEMENT RULES: **Hough** said that LRAPA's enforcement rules are very closely patterned on the DEQ rules before they made changes just a few years ago. He said he intended to show the board where the rules are still similar and where they are now different.

Hough explained that increasing levels of compliance are used until compliance is achieved. The first level is the Notice of Non-Compliance, then the Notice of Violation, then the Notice of Civil Penalty Assessment. Another tool is the order, and the one most commonly used is the Stipulated Final Order. **Hough** presented outlines of how the steps are being used in specific cases. **Hough** said the \$10,000 matrix is the highest matrix used by LRAPA, in cases where the violation is determined to be Class I, Major. He said in 1995 that matrix was identical to DEQ's, and in preparing for the March meeting, he would take a closer look to see how that compares now.

Ralston said he would like to know what DEQ charges as a fine, and where LRAPA got the \$10,000 matrix. **Hough** said he would provide more information on that, adding that he expects the two agencies to still have much more similar fine matrices than different. **Ralston** said he would have no problem matching whatever level DEQ's fines are after their rule changes of recent years; however, he does not want LRAPA's fines to be higher than the state's. **Carpenter** said LRAPA is independent and could have its own fine levels, and **Patterson** agreed.

Hough described Compromise or Settlement of Civil Penalties, stating that most of those are done directly by him, as the agency director. Cases which are deemed to be Class I, Major violations and are based on the \$10,000 matrix require board approval for settlement, and there have been a couple of those in the last couple of years that have come to the board. **Hough** said the same criteria apply to all cases which are settled, whether they are settled by the director or go through the board. He said there is also a last category which can be used in extreme cases, which could impose penalties up to \$100,000. That would be for a flagrant problem with imminent likelihood for an extreme hazard to a public health or extensive damage to the environment. **Ralston** asked if that has ever happened, and **Hough** said it had not, to his knowledge.

Johnson asked if the fine is per violation/per day on the matrix, and **Hough** replied that is was. **Johnson** asked if a fine of \$10,000 could result in a fine of \$300,000 for thirty days of violation, and **Carpenter** said there would be the original civil penalty, and an additional civil penalty of up to \$100,000 could be added to the original penalty. **Johnson** asked if the matrix is per violation/per day, base penalty, with factors, and no cap on the ultimate amount. **Carpenter** said there would be no cap. **Monk** said he thought there was a cap on the \$10,000 per day fine, and **Brotherton** said there is a cap on the per day, but there is not an overall cap for the violation. There is a per violation/per day cap.

Hough went through the examples to walk through the process for the board and explain how staff arrives at a specific base fine and then goes through the aggravating and mitigating factors to arrive at the amount of the actual civil penalty that gets assessed to the violator.

Patterson said he thinks LRAPA receives a little hostility from some of the people who get fined, because no one explains to them how to mitigate the fines. **Hough** explained that the letter that is sent to a violator when a civil penalty is assessed explains the choices the violator has in responding to the civil penalty assessment. They can just pay the penalty. They can contest the violation and request a contested case hearing. Or they can explain their side of the situation and request a reduction in the amount of the penalty. **Hough** said if LRAPA encourages any of the three options, it would be the third. He explained several reasons for that. The violator has to accept responsibility for the violation, they have to outline what they will do to prevent the same situation from happening again, and they request a reduced fine amount.

Brotherton added that, even when they request a hearing, they must do so within a particular time frame, and in the letter the agency sends in response to that request, the agency once again proposes the option of settlement. Even after they request a hearing and the hearing gets scheduled, LRAPA will settle the case the day before the hearing if possible. **Hough** said in other cases, the person contests the hearing, and the hearing is held. LRAPA has the hearing officer's decision, and the respondent will decide to appeal to the board. LRAPA is still open to discussing settlement at that stage. Any respondent has three opportunities to ask for a settlement and a reduction of the penalty amount.

At this point, **Monk** noted that time was getting short and asked if the board wanted to go through the other example. **Ralston** and **Carpenter** both agreed that when you look at the numbers and walk through the process it is easy to see where staff gets the amounts of the fines. They agreed that explanation was good enough for them.

Johnson asked if the agency's policy to obtain compliance, protect public health, and prevent future violations is weighed in those settlement discussions. He said he understands that settlement is always better than a hearing and appeal because of the costs associated with that process. He said the whole reason the board was talking about this because they have looked at the enforcement history and reports and keep seeing settlements that have not seemed to make sense to board members. He said the board is not seeing the logic or reasoning behind the process, and he suggested that staff talk a little bit about the thinking that goes into how settlements are approached. **Hough** said his interpretation of board discussions about this topic has not been a concern that LRAPA would reduce, by up to half, in a settlement, because that's typically done even with traffic violations in order to get them settled and move on. He said, to him, it has been more about the disparity between settlements in specific cases, where one individual ends up paying \$550 and another pays \$700 for what appears to be the same kind of violation. **Hough** said the only way to really explain those kinds of differences is to be familiar with the aggravating and mitigating factors, because that is where the differences occur. The differences involve such things as whether a person has a prior violation, or whether they were cooperative in extinguishing a fire or correcting the violation condition immediately, or whether the act was inadvertent or intentional. **Hough** said it is a very structured process, and there is room for debate, which comes up in the settlement process.

Johnson gave an example of someone burning tires and going into the matrix at a certain level, and someone else not extinguishing a fire overnight. They are clearly two different open burning violations, in terms of the impact on public health and the environment. **Johnson** said he wonders where the rules don't pick up that distinction between burning tires and the health effect of that vs. some other type of violation. He asked if that factors into the settlement a little bit. **Brotherton** said she takes her cues about the numbers from **Hough** when they want to settle. She said she wanted to bring to the board's attention the importance of the relative strengths and weaknesses of the agency's case such as what kinds of evidence they agency had gathered.

Those are the issues she looks at. She would refer other issues to **Hough** and the enforcement staff. **Brotherton** said the severity of the offense is generally captured in the amount of the fine. She said she has always seen a general tracking when she looks at the amount of the fines and at the impact of the violation on the general health and welfare. That is why asbestos violations are generally significantly higher than open burning violations.

Monk commented that he may not have articulated adequately what his concerns were, adding that his concerns are very much along the lines of what Johnson had just described. He said his concern is in the settlement amounts. Specifically, he said he clearly found economic benefit in Hynix's violation of their permit, and he did not think a fine of \$800 would deter them from future violations. He said it would not deter any large emitter from thinking they had made the amount of that fine in the first ten minutes of the violation period, and carried on for several months before coming to LRAPA and saying they thought they were violating their permit. **Monk** said the fine matrix in LRAPA's rules is outdated and needs to be adjusted for inflation. He said if there is question about the strength of the case, then settling clearly saves the agency money. But when the violation is flagrant, and it's a Class I violation, and the agency has a strong case, he does not see the value in settling because he thinks that impedes using that as a deterrent for future violations by that individual and others. **Monk** said he had at one time suggested the LRAPA use some of that money to somehow notify the public that this is taking place, to serve as a deterrent, because if no one knows about it then it is not a deterrent. **Monk** said the process seems good, that it is pretty well defined and has a lot of variability that allows the agency to bring in all kinds of issues. It is the dollar amount of the fines that concerns him, because he believes the amounts are too low. He said perhaps what the board is trying to get from this discussion is what direction the board might give to the advisory committee in looking at the enforcement rules and the fine matrices. **Hough** said he would ask the board to withhold that direction until there has been a little more discussion about the enforcement rules similarities and differences between DEQ and LRAPA. **Monk** agreed to that.

Hough commented that the longer he is involved with directly reviewing enforcement actions under LRAPA's rules, the more impressed he is with the methodology. He said there is disagreement with some of the dollar amounts and whether they should be periodically indexed; however as far as a tool to deal with what otherwise could be a very subjective exercise, it is a very objective framework for trying to be consistent in applying LRAPA's rules and coming up with a penalty when a violation occurs. **Monk** said he believes the board is pretty much in agreement that the process is a good one. Other board members agreed.

Fortune commented that he thinks the reactions of board members are more subjective than objective. They react to the amount of a fine to a multi-million-dollar company as opposed to an individual doing open burning. **Fortune** said he thinks the formula and process get rid of that subjectiveness. **Johnson** said he agreed, except that the decision to prosecute a violation or settle a violation is very subjective. **Monk** agreed with **Johnson**.

Hough said the choice is do we hold fast to our assessment of the case, or do we settle. It is not a decision of whether to go ahead and prosecute or not, because the penalty has already been assessed. It is whether the agency should hold fast and force them to go to contested case, vs. settlement.

Fortune asked what it costs LRAPA to go through the whole contested case process vs. settling a case. **Carpenter** said it costs a lot. In response to those comments, **Monk** asked if there is a way the agency can recover its costs.

Hough said **Brotherton** had reminded him of something that has been discussed and might be worth considering, and that would be to charge interest. When someone is past due on a penalty amount, there is currently no mechanism to charge a fair interest rate that would penalize someone that is recalcitrant in making payment. **Brotherton** said this is something the board should seriously consider putting into the rule, because it is not there now. She gave an example of a person who is fined \$1,000, does not pay the fine, and a lien is put on the person's property. Twenty years later, the fine is still \$1,000. The agency has lost the money, and the respondent has benefitted from not having paid the fine. **Brotherton** said the agency should be collecting interest on that money, and the agency is well within its statutory rights to do that.

Monk commented that, in his opinion, the deterrent value is lost when someone requests a hearing and the agency goes to a lot of work to prepare a case, the board gets a packet of information and prepares for the hearing; and then, at the last minute, the respondent decides not to do the appeal to the board and asks to settle instead, and the amount is what they could have settled for from the very beginning. **Monk** said he does not think the agency should go back to the original settlement amount with that individual.

Discussion of the open burning rules will continue at the March board meeting.

8. CONTINUATION OF DISCUSSION—AIR TOXICS RULES: **Carpenter** agreed with **Patterson's** earlier statement, that LRAPA does not necessarily want to just adopt Portland's rule, but instead wants to adopt a rule that is applicable to situations in Lane County. He said the problem in Lane County is actually in east Springfield, where the first and fourth highest emitters of air toxics in the county are right next to each other. **Carpenter** said Weyerhaeuser is the number one emitter in Lane County, and SierraPine is the fourth highest emitter. He said the second highest emitter is Borden Chemical in west Springfield. He said the problem he has with the rules, as written by DEQ, is what would be called the "hot spot toxics site." He speculated that levels of carcinogens or hazardous chemicals may be between five and ten times the baseline in the areas around those facilities. **Carpenter** said he does not know whether the permits for these facilities provide for adequate control of the toxic or hazardous air contaminants from their operations. **Carpenter** noted that the air toxics program is supposed to be a safety net, so that if all the federal regulations miss a particular source of air toxics, and all the state permitting regulations miss them, the air toxics program is supposed to be there to make sure that there are not significant health hazards in the area. **Carpenter** said that, according to the 2002 air toxics release data, Weyerhaeuser was the third largest emitter in the state of Oregon, and SierraPine was the 26th largest emitter. He added that, because of the city of Springfield's demand to do in-fill housing, there is actually, today, more residential housing and schools that would be in the downwind area around those facilities, compared with the situation many years ago when the plants began operating, when that conflict between residential neighborhoods and industrial facilities did not exist. **Carpenter** also mentioned that the Monaco Coach facility in Coburg was the sixth largest emitter of air toxics in 2002, although at a much lesser level of emissions than Weyerhaeuser or SierraPine; and J. H. Baxter in west Eugene was shown as emitting much less than Weyerhaeuser or SierraPine, even though Baxter was the subject of many complaints for several years. **Carpenter** said the 2002 air toxics release data report showed J. H. Baxter at 100,000 pounds per year, as opposed to the combined emissions of Weyerhaeuser and SierraPine at 1.4-million pounds, which he said demonstrates the potential problems in east Springfield.

Carpenter said he did not have a problem with the way the state air toxics rules are written, but he does have a problem with how the rules address hot spots that are found in the communities. He explained that, if the hot spot is out of your geographic area, you get three years to control it under the state program; but if it is part of your urban growth boundary or what is called your "geographic area" that you have decided to put

into your air toxics plan, it potentially does not get controlled for ten years. In addition, **Carpenter** said, when there are side-by-side facilities, under the state program when it is outside the geographic area, the contributor to air toxics has to be the sole contributor to be able to be rolled into the hot spot program. This would allow a company to divest itself of another company and create a giant loophole for itself in the Oregon Air Toxics Program, because then there would be two companies generating the toxic pollutants, and it is not the sole source that is a requirement to be a “safety net” company that would have to be controlled. **Carpenter** said he would want that to be in LRAPA’s air toxics rules, so that if a new chemical came on the horizon the agency would not have to scramble around and revise the rules to be able to control that. He does not want to see spinoff companies getting out of the control requirements. **Carpenter** said he does not think the Oregon Air Toxics Program actually meets the public health needs for Lane County, the way it is written, without having to evaluate a potential hot spot within our community.

Ralston responded to **Carpenter**’s comments about specific air toxics emissions in the 2002 report by stating that the data is old and that in 2002 Monaco was in a lawsuit with the people who lived next to that facility, because Monaco was emitting fumes. He said that situation has been corrected. Secondly, **Ralston** said, **Carpenter** was trying to invent problems where they don’t exist, and that there is not a hot spot in east Springfield. **Carpenter** asked how **Ralston** knows there is not a hot spot, and **Ralston** responded that those companies are subject to MACT standards and are using the best-known methods to keep the air clean. **Ralston** said keeping the air as clean as possible is why LRAPA issues permits and regulates those facilities. LRAPA is a regulatory agency, and he thinks **Carpenter**’s speculation is just a lot of talk about non-existent problems.

Patterson agreed with **Ralston**, stating that the housing that went in around the J. H. Baxter facility should never have been allowed to be built there. At the time that facility was built, there was no housing in that area, and the housing was allowed to build up around it, as with other facilities in other communities. **Patterson** said he has a problem with government penalizing companies that were already there before people started building their homes in the areas around the plants. He said those companies have upgraded their facilities and worked to reduce emissions from their operations, but the communities continue to grow up around them. **Patterson** agreed that there are portions of the state rule which apply to the Portland area which do not apply in Lane County.

Johnson said he does not like the DEQ rules for a couple of reasons. First, he said, it does not inform this discussion, specifically. He said the state’s rule does not get to an assessment of what is happening in Lane County and that an air toxics rule for Lane County should start with identifying what is happening in our own airshed. He said LRAPA needs to be creative and not penalize people before knowing, for sure, what Lane County’s problems are with regard to air toxics. **Johnson** said LRAPA should start with an inventory of air toxics, and the rules should include how that is to be done; and the agency should look outside of Oregon at what solutions have been used elsewhere and determine whether those would make sense for Lane County. He added that the inventory should be accomplished in a way which is cost/effective, where the agency and staff are paid to do that work. **Johnson** said the inventory should be based on more than just major point sources, because there are many synthetic minor source who take limits to stay just under the major source threshold and avoid federal regulations. He said there is a big gap of both stationary sources that are emitting contaminants but can avoid the federal regulations for toxics and also a lot of area sources that just would not be subject to federal regulations. **Johnson** said before LRAPA even begins talking about regulatory schemes, or any other kind of scheme for addressing the toxics problem, the toxics problems must be identified; and that needs to be done on a scale that is reasonable and appropriate. **Johnson** explained that inventory of air

toxics is not like criteria pollutants, where you can look at the whole airshed. Health effects from air toxics happen on a neighborhood scale, and that is how it needs to be assessed.

Ralston responded that **Johnson** was talking about potentially changing the rules on businesses that already have Best Practices involved. He said he will never consider making stricter rules to punish those companies for doing business. He said he thought **Johnson** was trying to create problems where none exist. He said trying to find out what the inventory is would not tell LRAPA anything, and that the permit levels are already in place on the federal level; and he is not willing to make LRAPA's rules stricter than the federal rules.

At this point, **Hough** said the more he understands of the design of the state's air toxics program, the more he believes it is a good approach. He said the state program complements the MACT requirements that have been put on industrial point sources, as well as the control of area sources such as gasoline stations which was discussed earlier in this meeting. The program also complements the fuel improvements such as the reduction in benzene that LRAPA testified on a year ago, the new vehicle standards which are proceeding for both gasoline and diesel vehicles, and the improved diesel standards for low-sulfur diesel and biodiesel. **Hough** said he has also spent some time interviewing EPA people who look at programs across the country, and they speak very highly of the Oregon approach and would, in fact, like to see that program consistently applied across the country. EPA thinks Oregon's air toxics program is an effective way to evaluate if there are any remaining problems, after these other programs are implemented, and they consider it effective in putting resources where they are needed the most, getting those reductions in the critical places. **Hough** pointed out that LRAPA has been involved in shaping the state's program, and previous LRAPA directors were involved in the Hazardous Air Pollutant Consensus Group that finished its work in 1999 and the Air Toxics Advisory Committee that finished its work in 2002. He said the intent has always been that this would be an Oregon program. It would not be a DEQ program or a LRAPA program. It would be an Oregon program that would have the flexibility to apply throughout the state, and it could help figure out a Portland problem or a Eugene problem or a Medford problem or a Corvallis problem. **Hough** said he considers the state air toxics program to be an ambitious program, and he supports it, particularly recognizing LRAPA's resource limitations, because by doing the Oregon program LRAPA would be able to leverage other DEQ and EPA resources. He said he thinks that ability to leverage resources that a small agency such as LRAPA does not have is critical for this to work.

Hough asked **Hueftle**, who has been the lead in the LRAPA adoption process for both the state air toxics program rules and the industrial streamlining rules, to participate in the discussion. **Hueftle** said the board discussion has brought out some good points, such as the fact that LRAPA needs to get inventory data to make the decisions necessary for the air toxics program. **Hueftle** said the rule actually has that built in. The second element of the program is to calculate a good emissions inventory and figure out what your area's specific problems are. He referred to **Carpenter**'s comments regarding Weyerhaeuser and SierraPine being the largest sources of air toxics in the county, stating that it is also important to distinguish between point sources and area and other types of sources. Looking at the National Air Toxics Assessment, **Hueftle** said, industrial point sources contribute a surprisingly low amount to the total problem, depending on the specific pollutant. He said that is just one thing LRAPA needs to be careful about.

Carpenter said it may be that Weyerhaeuser and SierraPine are not a hot spot, but he thinks there needs to be a provision in the rule, in the event that a hot spot is found. He said that seems to be lacking, from his reading of the rule.

Monk commented that he likes **Johnson**'s neighborhood scale comment because, in some cases, a stack is two hundred feet tall, and the emissions from the stack are floating a long distance, and in some cases, for whatever reason, that is not the case and the impact might be most felt by those living closest to the facility. He said when the emissions are concentrated, as **Carpenter** had described, the potential for harm is greater by virtue of that. **Hueftle** agreed. He said the local plans incorporate monitoring where available, adding that monitoring is more expensive than modeling, and good modeling is used often, as a surrogate for monitoring. **Johnson** commented that good modeling requires an inventory for the model to be good, and **Hueftle** agreed that monitoring is a key element.

Fortune asked how long LRAPA has been in existence, and Hough said LRAPA has been here since 1968. **Fortune** then asked how long Weyerhaeuser has been around, and **Ayers** said it is been here since 1949. **Fortune** said if LRAPA has not figured out, in all those years, what Weyerhaeuser is emitting into the air that is harmful to people and vegetation and the environment, LRAPA should get out of the business. **Monk** responded that regulatory agencies do not try to determine that. He said agencies are using models that try to demonstrate whether given risk assessments on certain chemicals could potentially impact the populations, but if you don't an inventory and haven't tested along the fence line, you don't know what the risk is. **Fortune** asked why regulatory agencies exist if they aren't trying to determine what is being emitted into the air. **Johnson** responded that the science has changed, and more is known about the health effects of different chemicals than was known in 1949 or 1968. He said he thinks that is why it is important to establish some mechanism for knowing what is happening in the county with regard to air pollution from different sources such as motor vehicles, manufacturing facilities, large-scale major sources. He said his concern is just how LRAPA would pay for that. He said if the board adopts a rule that has a provision that doesn't come with a funding strategy, then they would be adopting a rule that can't be implemented due to the agency's financial constraints. He said that is why he thinks the air toxics rules need to be integrated with other rulemaking efforts, so that the funding piece is front and center.

Due to time constraints, **Monk** suggested that further discussion of the air toxics rules be tabled.

9. POSSIBLE CHANGE OF BOARD MEETING SCHEDULE: There was discussion of board members' availabilities for regular board meeting dates, due to **Andrea Ortiz**'s inability to meet on the second Tuesday of the month at noon. There had been e-mail communications during the previous month between board members and staff, to try to determine a different day when everyone would be available

Ralston said he could make the second Monday of the month, and he did not recall anyone having said they could not make that day. **Monk** said he knows the Eugene City Council sometimes has work sessions on Monday at noon, but that will have to be clarified with **Ortiz** as to which Monday's those meetings might be. **Ralston** commented that **Ortiz**'s schedule is the reason that the board is trying to reschedule its meetings, and it is interesting to note that she is the only person that did not provide the information of availability during the e-mail correspondence.

Fortune said he does not think the board meetings should be bouncing around from month to month, and that he likes meeting on the second Tuesday. He added that, somewhere along the line, there should have been some communication between **Ortiz** and **Mayor Piercy** regarding whether **Ortiz** was able to make the LRAPA board meeting schedule. **Monk** agreed and said he was sorry that that conversation did not take place.

Monk pointed out that the meeting day was changed to accommodate Commissioner **Stewart's** schedule during the period last year when the Lane County Board of Commissioners had Measure 37 hearings on Tuesdays. He said the second Tuesday works well for him, as well, but he would like to try to accommodate **Ortiz's** request if possible.

There was brief discussion of meeting on a Thursday since that was one of the days when **Ortiz** would be available. Several board members would not be able to make Thursday meetings. Wednesdays were out, as well, which left Fridays. **Monk** commented that no one had said in the e-mail correspondence that Friday would not work. **Carpenter** said **Stewart** had indicated that Friday would work for him.

MOTION: **Fortune** MOVED to leave the meeting date on the second Tuesday of the Month. THE MOTION DIED FOR LACK OF A SECOND.

Monk stated that he wanted to give rescheduling the meeting date a chance. He said he heard **Ortiz** say she was taking off work on Mondays and Wednesdays to serve as a city councilor, but that she had evenings off. He said **Ortiz** is a board member now, and the board must figure out whether the meeting time can be changed to accommodate her schedule. He said it seems to him that Mondays might work for everyone, but that Monday might not be **Ortiz's** preference.

Ralston commented that, without hearing from **Ortiz**, this decision is very difficult. He would suggest going with the second Monday; however, if Friday works better for **Ortiz**, that would be acceptable. He said he wants to be accommodating, but **Ortiz** needs to be a part of this discussion instead of just saying she cannot make Tuesday meetings and not participating further.

Carpenter pointed out that **Stewart** was not at today's meeting, either. He said he would suggest either the second Tuesday or the second Monday, and then address it again at the next meeting. **Ralston** said he would prefer to make it the second Monday. **Monk** pointed out that **Stewart** had indicated that he has a variable schedule, but it might be that he might be unable to make only a couple of meetings a year on the second Monday of the month. He agreed that the second Monday would be the first choice, and a Friday meeting would be the fallback choice.

10. NEW BUSINESS: None.

11. ADJOURNMENT: The meeting adjourned at 2:47 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Friday, March 14, 2008, in the LRAPA Meeting Room at 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary