

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–APRIL 14, 2008
Library Meeting Room, Springfield City Hall
225 5th Street, Springfield, Oregon

ATTENDANCE

- Board: David Monk, Chair–Eugene; Bill Carpenter, Vice-Chair–At-Large, Springfield; Glenn Fortune–At-Large, General; Drew Johnson–Eugene; Kit Kirkpatrick–Eugene; Andrea Ortiz–Eugene; Pat Patterson–Cottage Grove/Oakridge; Dave Ralston–Springfield
(ABSENT: Faye Stewart–Lane County)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Sally Markos; Kim Metzler; Nasser Mirhosseyni; Debby Wineinger
- Other: Russ Ayers, Chair, and Amy Peccia–LRAPA Advisory Committee; Bob Houston–LRAPA Budget Committee; Paulo Montenegro–Kingsford Mfg.

1. OPENING: **Monk** called the meeting to order at 12:52 p.m., following the conclusion of a LRAPA Budget Committee Meeting at the same location.
2. PUBLIC PARTICIPATION:

Bob Houston, Department of Oregon Geology and Mineral Industries (DOGAMI). **Houston** said he is the main reclamationist for DAGAMI in Lane County. He said DOGAMI considers regulation to be out in the field, talking with people and resolving real-world issues, face-to-face. Houston said he and LRAPA inspector **Tom Freeman** conducted a joint field inspection of the Wildish Sand & Gravel Company’s main plant site in Eugene last spring, in response to a dust complaint associated with that site. **Houston** said he and **Freeman** went to the site, spoke with the permittee, and resolved the dust issue, at least as far as DOGAMI’s authority was concerned.

Houston said he wanted to let the LRAPA Board of Directors know that he was thoroughly impressed with **Freeman**’s knowledgeability, adding that LRAPA’s field inspection staff are a hard-working group of people. He said what brought this to mind was the discussion in the earlier budget committee meeting regarding whether or not to fill the position for an inspector to help the existing staff to have a greater field presence and provide greater complaint response. He suggested that perhaps the agency could hire a temporary or limited-duration person if there is not sufficient funding available for a permanent hire. **Houston** reiterated that LRAPA’s field staff is excellent and said would like to have them on his own staff.

3. CONSENT CALENDAR:

Corrections to Minutes. **Monk** pointed out a typo on page 9 of the minutes of the March 14, 2008 meeting, the first word in the last sentence in the first paragraph, “. . . identify th toxics programs that are within . . .”, stating that it should be “problems,” rather than “programs.” Other board members agreed, and **Max Hueftle**, who had made the statement at the March meeting, also agreed that the word should be “problems.”

Comment on Expense Report. None.

ACTION: MSP(Ralston/Patterson)(unanimous) adoption of the minutes of the March 14, 2008 board meeting, as corrected, and approval of the expense reports through February 29, 2008, as presented.

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

- A. Home Wood Heating Curtailment Season and Advisories. **Hough** noted that there were a few relatively high levels of particulate matter in early March, following the Home Wood Heating Curtailment season which ended February 29. Since its not unusual to have occasional high AQIs for particulate matter in late October and/or early March, **Hough** said staff are considering starting the wood heating advisories two weeks before the November 1 start of the curtailment season, and continuing the advisories for two weeks following the end of the season, the last day of February, each year. **Hough** stressed that it would not be necessary to change the city and county ordinances because it would just be a matter of calling a Yellow advisory if the particulate levels began to near the standard. No Red advisories would be called during those two, two-week periods because that time would not actually be a part of the mandatory curtailment season. The extra advisory days would simply compliment the mandatory season.

Kirkpatrick asked if the period could be extended longer if the weather were to remain cold, and Hough responded that the period of extra advisories, provided as an extension to the curtailment season, could be very flexible and respond to the weather in any given year.

Ralston acknowledged that this year was particularly cold, and snowfall extended longer than usual; however, he said he would hope that LRAPA would not change any of the rules or ordinances, but just make adjustments in providing the daily advisories to accommodate the weather conditions.

Ortiz said she was happy to hear that staff is looking into extending those advisories because, even though the agency would not be doing enforcement during that time, the advisories would let the community know what's going on with air quality.

- B. Fire at J. H. Baxter Facility in Eugene. **Ortiz** said she had heard that J. H. Baxter experienced a fire at its West Eugene facility and asked if that was true. **Hough** responded that one of the more significant changes that J. H. Baxter made to the facility in recent years was the addition of a carbon adsorption unit to control vapors after they're collected from various points of the process. During January, Baxter replaced the carbon in that unit. On February 18, the unit experienced a fire, the cause of which is unknown. At first, Baxter thought the unit could be repaired; however, upon thorough inspection after the fire was completely out and the unit had cooled, it became apparent that the damage was extensive enough that the unit would need to be replaced. **Hough** said the carbon adsorption unit was replaced the week prior to this board meeting, and that LRAPA staff had met at the end of that week with **Lisa Arkin** of the Oregon Toxics Alliance and some of the residents of the neighborhood adjacent to the facility, to explain the sequence of events. **Hough** said there were a number of reports prepared during the 51-day period between the fire and the installation of the new unit, and that he would make that information available to any board members who wished to see it.

Ortiz said that, because she lives in that area of town, this event is significant to her, and she would like to see the information. She was concerned that she had not heard anything about this event from LRAPA and only found out about it through a chance conversation with someone who had heard about it.

Kirkpatrick said she had also heard about this event, and what concerned her about it was the fact that J. H. Baxter knew the carbon adsorption unit was not working but continued to operate and emit pollutants into the air. She asked if there are rules that cover operations at a time when a main control

unit is ineffective. LRAPA Operations Manager **Sandra Lopez** explained that if a facility has an occurrence that is not in their control—such as this fire—they have an affirmative defense, which means that an investigator went out to the facility and made sure that the carbon was in good order when the fire occurred. **Lopez** said as far as LRAPA staff can determine, this was an accidental occurrence, and the actual cause is just not known. It could have been something like a spark or heat going through the unit, that was not in the operator's control. **Lopez** added that the facility is allowed to continue operating and emit pollutants during those periods. If they had not met that affirmative defense, LRAPA would have issued an enforcement action, in which they case would probably still be allowed to emit, under LRAPA rules, until the case went through the enforcement process.

Monk asked if the carbon adsorption unit was installed under the Best work Practices Agreement with LRAPA. **Hough** said it was. **Monk** then asked if that changed the affirmative defense scenario **Lopez** had described. **Lopez** said she had asked that question, because it is not in their current permit. The response she got was that it does not change that scenario. Those are enforceable conditions, and LRAPA has the authority to investigate the cause and make sure it was not something that was overlooked on the part of the facility. **Monk** said it seemed to him that because J. H. Baxter is operating under a Best Work Practices Agreement, which was mandated because of problems in the area of the facility, LRAPA should have the authority to tell them cannot operate with the equipment not functioning, or to at least give the facility a tight time table to rectify the situation. **Lopez** said she would agree with that, if the inspector's review determined that this was something the facility could have controlled. She said, again, that as far as LRAPA staff knows at this time, the situation was out of Baxter's control.

Referring to this situation as an “upset defense,” **Carpenter** asked if there is a time limit by which the facility has to use some kind of expedited, good-faith effort to bring the unit back into compliance. **Lopez** said there is, and that J. H. Baxter has done that in this case. She said they are also required to notify LRAPA and report on the situation; and **Hough** confirmed that the report of their progress came in to the office on Thursday of the week prior to this board meeting. **Carpenter** asked if they were out of compliance for 51 days, and **Hough** said the carbon adsorption unit was back on line 51 days from the time of the fire, and the facility did not stop operating at any time during those 51 days. **Hough** added that the facility's production was at lower levels during this time than they were in 2003. **Ortiz** noted that 60 to 70 percent of Baxter's business is gone, and the poles are no longer being treated at the West Eugene facility, so to use 2003 as a reference is not a realistic comparison. **Hough** explained that he had learned during discussions the previous week that the business is sold, and the poles are owned by Stella; however the poles are still being processed, under contract, at the Baxter facility in Eugene. **Ortiz** said that was not the information she got when she toured the facility. She said the production figures she received on the tour were very different from the figures from three or four years before. **Hough** said that he, too, previously had a very different impression of what the sale to Stella-Jones meant as far as production at the Eugene facility, and it was clarifying to him to hear a more detailed discussion of that. He added that the current production figures are lower than some of the peak numbers in recent years.

Monk asked about requirements for a source to report to LRAPA when something like the fire at the J. H. Baxter facility occurs, and how long they have to report the incident. **Hueftle** responded that they are supposed to report by phone or fax within one hour, and then follow that up with a written report within about seven days. **Hough** said plant personnel's immediate focus was entirely on getting the fire stopped and that it was several hours later by the time they notified LRAPA of the fire. He said the reporting requirement is, basically, to report as soon as possible. **Lopez** commented that rules usually

include that provision that the first priority is to take care of safety and respond to the issue, and then report to the environmental control agency as soon as possible once the situation is under control. She said LRAPA's current rules do not include that provision. **Monk** commented that perhaps LRAPA should consider putting that in, since the agency is currently involved in rulemaking.

- C. Oakridge Particulate Matter Levels. **Carpenter** noted that the numbers used to determine an area's compliance status with federal standards for particulate matter are taken from a three-year running average of the 98th percentile and asked if that ever becomes the seventh-highest number recorded during that time. **Hough** responded that LRAPA monitors continuously with a nephelometer, which is not the official EPA reference method. The official method is to monitor with filters, which the agency does on an every-third-day basis. In order to get the 98th percentile, you can count two percent of the days and take about the eighth highest day. The figure can be approximated from the data points on the monthly reports provided to the board as part of the director's report, because those data are continuous, even though they are not the official method. **Hough** said the official number will probably be based on the every-third-day filters, adjusted for the 98th percentile. It should give a similar result, but you cannot just look at the monthly report chart and read it directly from that. **Carpenter** noted that Oakridge is out of compliance with the new, tighter particulate standard, and **Hough** confirmed that Oakridge will be clearly out of compliance. He added that 2007 is probably the lowest year on record; and the last three-year period is the lowest three-year period on record. **Hough** said he thinks the efforts of the city and LRAPA and the other partners in the Warm Homes/Clean Air program in Oakridge are making a difference in the city's air quality; however, there is still a need to do whatever is possible to achieve whatever additional reduction is possible in order to comply with the new standard.
- D. Plywood MACT. **Monk** said the latest progress report seemed to indicate that Rosboro, in Springfield, missed their deadline and received a two-week extension from LRAPA; and it does not appear to be certain that they will make that extended deadline. **Lopez** said Rosboro did meet that extended deadline. **Kirkpatrick** said that she, too, had some concerns about Rosboro and asked if there is any kind of retribution for having missed their deadline. **Carpenter** commented that he did not think the actual deadline was until October, and **Lopez** confirmed that is the case. **Carpenter** said Rosboro is actually ahead of everyone else in the program, even though they did say they thought they could install the necessary equipment by April 1. **Lopez** said it had more to do with what is reasonable. She said she believed Rosboro had a problem with one of the technicians that they had hired from outside the company to do the installation, which was the reason the installation was not completed by the original deadline.

Carpenter said he had an issue with Flakeboard in Eugene because it almost looked like the city of Eugene was not processing their required permits quickly enough for Flakeboard to stay on schedule. He said that seems to be a disconnect between the two governing bodies, where one of them cannot help the other get a project going and on line. He asked if that happens very often. **Lopez** responded that when she first became aware of this problem, she contacted the city planner, who discussed with her the electrical diagrams and other things that they needed in order to meet the April 4 deadline that would help keep Flakeboard on track to complete the necessary changes. **Lopez** said she called Flakeboard right before they submitted the latest progress report and told them to let her know if they were having issues with the permits from the city of Eugene so that she could go over and talk to the planner and try to help resolve the situation. **Ortiz** said that if facilities were out of compliance because the city is not doing the permitting in an appropriate time frame, that would be problematic for her and she would like to know about it. She said she would like to know if this is a trend or a one-time thing. **Lopez** said this was the first time the problem had been brought to her attention, so she could not speak to whether or

not it is a trend. She told **Ortiz** that she would let her know if she finds that there are issues that could have been handled better.

- E. Enforcement Action Report. **Monk** called **Hough**'s attention to an enforcement action against Reinard Pollman in Florence. The report stated that a hearing was held October 24 and that the charges regarding the asbestos survey and burning at a solid waste disposal site were withdrawn, which changed the amount of the civil penalty. He said he assumed that LRAPA had withdrawn those charges, and he asked **Hough** to explain what that meant. **Hough** said he would have to find out about that and get back to **Monk**. **Monk** responded that **Hough** did not have to do that.

Monk said he was more concerned about an enforcement action taken against Swanson Brothers for a fire at their plant site. He asked if LRAPA had just given that facility Synthetic Minor Permit status about a year ago, and **Hough** confirmed that. **Monk** said it seemed to him that LRAPA staff worked with the facility to help them find a way to get down to Synthetic Minor status and save them some money; but Swanson Brothers did not reciprocate the good-faith effort, because this fire seems like intentional waste disposal. **Lopez** said that was why they were issued the Notice of Violation, adding that she is scheduled to do an inspection at that facility. **Monk** told **Lopez** not to go easy on Swanson Brothers regarding this violation.

- F. Budget Officer Appointment for FY 2008/09. **Hough** referred to the LRAPA Budget Committee meeting which had preceded this board meeting, stating that when **Mirhosseyeni** introduced himself as the LRAPA Budget Officer, it reminded **Hough** that the board usually appoints a budget officer each year, prior to the first meeting of the LRAPA Budget Committee; but that was not done this year. **Monk** asked if that happens every year, and **Dinteman** said it has been for the past few years. Because this is an internal appointment with no competition from outside the agency, there was no need to give prior notice of the appointment. The board decided to take care of it at this time.

ACTION: MSP(Fortune/Carpenter)(unanimous) appointment of Nasser Mirhosseyeni as LRAPA's Budget Officer for 2008.

5. ADVISORY COMMITTEE:

- A. Air Toxics Rule. **Markos** said that staff member **Hueftle** had prepared a comparison of the DEQ rule with other local and state rules. The points that were compared were derived from earlier committee discussions and what members said they wanted to compare. **Markos** said the subcommittee decided to do a summary report of everything that was discussed and take it to the full advisory committee, so that the committee could take the air toxics rule to the next step. That was covered in the minutes of the last subcommittee meeting.

The full committee met on April 1, and most of that meeting was devoted to discussion of the proposed adoption of the DEQ air toxics rule. There were a lot of questions and answers, and then a round-table discussion which allowed each committee member to express their views regarding the proposed air toxics rule. The minutes of that meeting were also available for reference. **Markos** said there was a motion to adopt the state rule, and staff wanted to include some information along with that vote; however, the question was called, stopping the discussion. The committee voted to recommend adoption of the Oregon DEQ air toxic rule, by a vote of 12 to 1. **Markos** said **Ayers** wanted to talk to the board about some of the discussion that went along with that vote, because the next step for the

committee will be to look at the four issues that were brought up during that discussion and do a summary with majority and minority views to present to the board.

Ayers noted that **Carpenter** had attended the subcommittee meetings and heard the group's discussions. **Ayers** called attention to the second-to-last page of the notes from the April 1 full committee meeting, stating that it contains the vote and then lists the four items that **Hough** had taken from the committee's discussion as being the issues which need further committee review and discussion. **Ayers** said the committee ran out of time at the April 1 meeting and will come back to those issues at its next meeting. **Ayers** said the committee will try to complete its discussion and develop a majority and minority report for the board in one meeting, but it might take two meetings to complete everything.

Discussion

Ralston said the summary in the meeting notes looked good to him.

Johnson said he had noticed something in the March 12 meeting notes, regarding how Oregon's program uses an emissions inventory (EI), rather than the NATA (National Air Toxics Assessment) data. **Johnson** said he is concerned that the proposed air toxics rule, as well as the proposed industrial permitting rules, do not include a mechanism to fund LRAPA's doing the EI work. He said he would have trouble supporting the Oregon air toxics rule, and the industrial source permitting rules, until there is some clarity regarding how EI would be funded. He noted that the board had just heard, in the earlier budget committee meeting, that the agency will not be funding the EI position in the coming fiscal year. Consequently, **Johnson** said, he sees this rulemaking getting LRAPA nowhere toward reducing toxics, or even identifying them.

Carpenter said he thinks the majority of the advisory committee members have strongly urged that LRAPA get an EI going; however, he does not think the air toxics rule says what you have to use to form the baseline in the geographic area. **Ayers** said the EI is just a part of doing a good assessment, and consensus on the committee is that the assessment should be based upon a good local EI.

Ralston agreed that the EI is important and suggested that development of the local EI could be done in conjunction with industrial permit processing and issuance, using information that is submitted by the facilities as part of that process. **Hough** said he expects the agency to continue to make progress on the industrial EI, even without a dedicated EI position. The dedicated position was very helpful in fulfilling the agency's every-third-year EI requirement to EPA for certain specific things, getting the Title V sources inventoried, at least for criteria pollutants, and in making some headway toward an inventory of air toxics from those sources. **Lopez** agreed that the EI position started a base inventory that was sorely lacking, and now the information can be updated as permit writers go through the permitting process; however, the area sources are more difficult to inventory and are not done through the permitting process. **Monk** agreed that doing a good EI for area sources will be a huge undertaking, and that is why he thinks **Johnson** has concerns about fitting that work into the agency's already tight budget.

Monk asked if the committee uses Robert's Rules of Order, and **Markos** said it does. **Monk** asked about the way the votes were taken at the last full committee meeting, stating that the committee were given a number of choices for action. **Markos** said there were two separate votes, to narrow down the choices, and then a final vote. The final vote was eight votes in favor and two votes against. **Monk** said he was just curious as to whether that is a formal process which is always followed by the committee.

Ayers said it is not. The group tries to follow Robert's Rules all the time. **Monk** replied that he does not think that kind of process is consistent with Robert's Rules. **Markos** said she thought it was more of an informal vote, just to narrow it down. She said they were just trying to figure out the best way to get to the final vote. **Monk** said he would look at the notes from the last meeting and bring this back to **Ayers** and **Markos**, because it was something he was going to bring up before but there was not time to do that.

- B. Committee Reappointments. **Markos** said there were four members whose terms were expiring. **Maurie Denner, Earl Koenig, and Jim Leary** were all eligible for automatic reappointment because they were all finishing their first terms on the committee. **Larry Dunlap** was completing his third term and needed to reapply, which he had done. She distributed copies of **Dunlap's** application.

Patterson asked if the balance of representation is still being maintained on the committee, and **Markos** said it is. She said the only area of representation that is lacking is agriculture, and that she is having a hard time getting someone to fill that slot. **Ayers** commented that **Dunlap** is a doctor representing public health on the committee.

MOTION: Ralston MOVED to reappoint Maurie Denner, Larry Dunlap, Earl Koenig and Jim Leary to new three-year terms on the LRAPA Advisory Committee. Ortiz SECONDED THE MOTION.

Discussion of Motion

Carpenter said he was curious to know what the attendance records of these individuals has been. He said there have been times in the past when the committee has operated at less than a quorum because some members were unable to attend some of the meetings. **Markos** said that, since the advisory committee has been assigned the work of reviewing the industrial permitting and air toxics rules, attendance has gone up dramatically. Members who had not been attending meetings regularly are coming back on a regular basis and are contributing quite a lot. **Markos** said the only person who has not been attending regularly has been **Dunlap** because he has been traveling out of the country. She said **Dunlap's** presence is good because he is a physician, and his input is important. The public health position is another one that is hard to fill, and **Dunlap** has committed to coming back.

Ralston said that satisfied any questions he would have, and the information did not change his motion at all.

Carpenter then asked if there is a pool of applicants for each of the positions on the committee. **Markos** said she has a pool of applications from last year. He asked if any of those applications is from a person in a health profession, and **Markos** said there is one from a nurse. **Carpenter** said that was sufficient discussion to answer his questions.

VOTE: THE MOTION PASSED BY UNANIMOUS VOTE.

6. REQUEST FOR AUTHORIZATION OF PUBLIC HEARING REGARDING PROPOSED INDUSTRIAL PERMITTING RULES: **Hough** said both he and **Lopez** had been involved in this process; however, **Max Hueffle** had led the effort for the last two or three years, to get the process to where it is today. He asked **Hueffle** to present the issue and walk the board through the summary of the rulemaking proposal package.

Hueftle first described the background to this rule development, stating that the agency's industrial permitting rules have remained essentially unchanged since their formation following the 1990 Clean Air Act Amendments. The proposed rules were developed in the mid-1990s by DEQ and LRAPA through work groups, and the state adopted most of these changes in 2001. LRAPA is essentially playing "catch-up" now. **Hueftle** said there are three major reasons behind the proposed changes: to streamline by making the rules simpler and more effective, while maintaining the same emission standards and thresholds of significance that trigger additional action; to align the rules federally and across the state by making EPA-required changes to general pollutant definitions and excess emission rules; and to provide internal alignment among LRAPA sources that are subject to stationary source construction permitting rules. **Hueftle** said the largest sources (Title V sources) currently follow the state's Division 210 Stationary Source Requirements and notification requirements, whereas LRAPA's smaller sources (ACDP sources) follow LRAPA's more vaguely worded Title 34. There is a disconnect, there, that will be addressed by this rulemaking. The proposed rules would also make minor revisions to update references, correct typos and update authority to implement federal standards. **Hueftle** then spoke briefly regarding each of five major concepts of the proposed rule changes, listed as A through E in the summary document. **Hueftle** noted that the subsequent pages of the summary document provided more detail for those general groups, including the four-criterion evaluation that was developed by input from the Advisory Committee. Those criteria are the rule stringency, air quality impact, and revenue and workload analyses.

A. Permitting. The two most significant items in Section A are:

- (1) The increased use of General Permits that apply to types of facilities that are subject to the same requirement, such as rock crushers, sawmills, or asphalt plants. DEQ estimated about 70 percent of their existing sources switched over to these general permits, resulting in about an 8 percent savings in FTE.
- (2) Adoption of the construction permitting notification requirements is also part of the package. That will be helpful because currently some sources follow DEQ's construction rules, and some follow LRAPA's.

Monk asked why a facility in Lane County would follow DEQ's construction rules instead of LRAPA's. **Hueftle** responded that, when the Title V program was developed, LRAPA chose to adopt the state rule by reference. All Title V facilities follow DEQ's rules, and within the Title V rules, any construction that occurs to a Title V source is referred to DEQ rules for construction permitting. Sources that are not subject to Title V requirements follow LRAPA's construction rules. That is a disconnect.

Monk asked for clarification regarding major modifications. He said his understanding was that, at present, if it is a major modification or construction at a facility, pre-construction modeling is required to determine if there would be increased emissions as a result of the modification. He said it seems to him that the new rule would only require post-construction assessment. **Hueftle** said a lot of that has to do with New Source Review, and it depends on the pollutants and the attainment status of the area where the facility is located. **Hueftle** said there are still provisions for pre-construction monitoring, and **Monk** asked if that would only apply if it is in a nonattainment area. **Hueftle** said he would have to look that up to provide an answer; however there have only been three sources that have been impacted by the New Source Review rules in the past ten years, so it does not happen much. [Note: *Pre-construction modeling is currently required by way of the "General Requirement for Major Sources and Major Modifications" in LRAPA Section 38-010-2 and the specific requirements for sources/ modifications in "Attainment or Unclassified Areas" in Sections 38-020-1.B, 38-020-5 and 6. A more detailed*

*version of these requirements would be maintained by way of the provisions specified in proposed Sections 40-0045 and 40-0050. In both the existing and proposed rules, sources may be exempted from pre-construction **monitoring** if the source provides a demonstration that proposed impacts will be less than the significant monitoring concentrations specified in existing 38-020-5.B and proposed impacts will be less than the significant monitoring concentrations specified in existing 38-020-5.B and proposed 40-0050-4.A(3).]*

Kirkpatrick referred to the example Hueftle had given of rock crushers using General Permits. She commented that it seems to her that permit costs to rock crushers should vary according to the volume of their business. **Hueftle** said that, in essence, they do. He said the pollutant of concern for rock crushers would be particulate matter, and any source that emits below what is called a Significant Emission Rate (SER) would get the one type of permit; and any source that emits above the SER would get a different type of permit. The system streamlines the permitting because there are not source-specific requirements for each facility.

Hough asked if equipment requirements and fees would be more substantial for facilities emitting above that SER. **Hueftle** said for some source categories that would be the case; but it is not likely with rock crushers because they are not able to operate all year due to the seasonal nature of paving activities.

Lopez asked if there is also a cap on who can get a General Permit, above which you would have to get an ACDP instead of a General Permit. **Hueftle** said that what Lopez was referring to is that sources that want to retain their baseline credits would have to have site-specific Plant Site Emission Limits (PSEL). The baseline credits are for sources that existed in 1978 and emitted more at that time than they do today. The 1978 emission rate is the baseline emission rate, and if a facility had a five-ton baseline, the SER would be measured from that five tons instead of from a zero measurement for sources that did not exist in 1978.

- B. Plant Site Emission Limits (PSEL). **Hueftle** explained that the new rules would create generic PSELs which set emission limits for criteria pollutants and Hazardous Air Pollutants (HAPs) at one ton below their SER, and the threshold at which additional evaluation or impacts would apply. They would also limit the PSEL to a Potential to Emit limit by changing to a twelve-month rolling limit instead of a calendar year limit. Short-term PSEL would also be eliminated in most facilities where there is no underlying authority to approve or deny an increase in the short-term limit.

Short-Term Limits. **Carpenter** noted that there used to be short-term limits for the criteria pollutants and the health standard, and he asked if there would be no short-term limits under the proposed new rules. **Hueftle** said that was what was intended to serve as a kind of relation to the 8-hour and 1-hour standards under the National Ambient Air Quality Standards (NAAQS). He said he thinks that, when the permitting rules were initially created, they looked at short-term emission limits to provide some assurance of compliance with the NAAQS; however, that turned out not to be the case, and it is looked at on an annual basis, where the modeling is done. **Lopez** commented that short-term limits also have an enforceability issue. For example if the limit is a pound per hour or so many pounds per day, it is very difficult to measure. But there are some built-in short-term limits like the grain loading that comes with certain rule requirements, such as .01 grains per dry standard cubic foot. That is done under the specific rules that would have applied to the type of equipment at the facility, and those conditions also appear in the permits.

Carpenter said his question would be, will there not be any more short-term limits in any of these types of permits with the proposed new rules. **Hueftle** said there are some short-term limits, such as hourly

limits on boilers because they can track their hourly input to heat basis, or a daily limit on the total amount of pollution a facility can emit; however, those basically arbitrary limits (which have no effect as to whether they were modified) have been created because the thresholds for SERs do not kick in unless there are annual thresholds.

Ayers said he thought there was some confusion about short-term facility-wide PSELs, which are being eliminated by the proposed rules, vs. short-term limits on individual units such as a boiler. **Ayers** said Weyerhaeuser's permit is full of short-term limits. **Hueftle** agreed and said that the emission standards are not changing with the new rules. Under the proposed rules, all permits would still have the same emission limits and the same requirements that limit pollution on both short-term and long-term bases.

For clarification, **Carpenter** noted that there are annual PSELs, but in the past there used to be shorter-duration numbers that would trigger the permit classification into which the facility would fall. **Hueftle** responded that it is set on an annual PSEL, divided by, say, twelve months, and multiplied by 25 percent to determine the number allowed for some short-term flexibility. **Carpenter** said there would be only a annual PSEL under the proposed new rules; and **Hueftle** said that is correct, that the new rules would streamline permitting so that there is less work creating and setting up those PSELs and tracking compliance with them.

Monk stated that there is currently no existing authority to add short-term PSELs and asked **Hueftle** if a permit writer or compliance officer would find any value in having the authority to place short-term limits anywhere when a permit is being written. **Lopez** responded that there is value, but staff already does that. She gave a couple of examples of this: writing a grain loading into a permit to make it easier to determine compliance; or adding a requirement that continuous emissions monitors (CEM) be installed for an annual rate. The CEM would collect data on emissions from the equipment every fifteen minutes, which is essentially short-term PSEL. **Lopez** referred to **Hueftle**'s statement regarding the 12-month rolling limit, stating that this essentially gives a new set of data each month, which is also a short-term limit. **Lopez** also confirmed that the agency used to have more authority before Title V and that it was a lot easier.

Carpenter commented that the agency actually does not have authority, even with the monitoring data, if the limits are only annual limits, because someone could shut down in November or December and still meet an annual limit, even though they may have exceeded monthly limits for the first ten months. **Lopez** said the short-term information is what is wanted. The short-term information is needed to meet the annual limit. **Carpenter** replied that there is one that you can regulate if you have the numbers, and the other would be just monitored and the agency would have no authority to impose anything less than the annual limit. **Lopez** agreed. **Carpenter** said he can also see **Ayers**'s point, that the individual equipment has much shorter-duration compliance on it.

Construction Permits. **Johnson** stated that EPA has said that a Title V permit is simply an operating permit that incorporates construction approval requirements; and, in the past, in Oregon, Air Contaminant Discharge Permits (ACDP) have been analogous to construction permits. He asked if that would still be the case. **Hueftle** confirmed that that would remain the same. **Johnson** asked, if a source had ACDP or construction approvals in the past, and they went to a generic permit, what would happen with regard to the plant site-specific construction since it appears that under the new rules the construction approvals would be taken away. He said it seems to be inconsistent with EPA policy that

construction approval limits remain in place perpetually. **Hueftle** responded that this is difficult to explain. He said any source that wanted to come in and create a new source would trigger a Type 3 change if it was less than the SER. That would call for a construction ACDP to be issued prior to operation. It would serve as the construction approval before they can break ground, and then that construction ACDP would, within twelve months, become whatever type of permit the facility wants (generic or some other site-specific permit), thus maintaining that construction permit according to EPA policy.

PSEL for Unassigned Emissions. **Hueftle** said that the rules would also create PSEL provisions for unassigned emissions, whereby they could be more effectively combined and would reduce to zero within five years of the rule adoption. He explained that unassigned emissions are essentially the amount of actual criteria pollutant emissions the facility had in 1978 that are in excess of what they emit today. They are basically unused credits that a lot of facilities have, and that will be addressed by this rulemaking.

Monk asked if facilities have to pay for those unassigned emissions, and **Hueftle** said they do not. They typically are Title V facilities that usually pay fees on permitted emission limits unless they have a verified site-specific emission factor.

Carpenter asked for clarification regarding the unassigned emissions. He said the staff report talked about some of these emissions being bankable and others not being bankable. He asked what the existing rules say about this and how it will change. **Hueftle** said it is really a definitions issue because the current rules do not have a definition for unassigned emissions, so the issue is really not addressed. There is a kind of understanding that any source that has baseline emissions in excess of what they can emit now has unassigned emissions because they are not part of the PSEL or the permitted emission limit. **Carpenter** asked if this is an old Prevention of Significant Deterioration (PSD) increment that an individual facility could consume in their permit now, and that would include any facility that had a permit in 1978 and had higher emissions limits than they do now. **Hueftle** said yes, that it is actual emissions for that calendar year less some other year that was more representative of data. He added that if a rule were adopted that required you to reduce your emission limit on a boiler to a certain amount, those reductions would also reduce their baseline number. **Hueftle** said that reduction is called "setting their netting basis," so that instead of a baseline emission rate, it is reset and called a "netting basis"; and additional increases are measured against that number. **Carpenter** asked if that meant that the facility does not, then, get extra credits for what happened before that, because setting the netting basis put a new emissions floor on them. **Hueftle** said that is the case.

Carpenter then asked, if a facility has those 1978 numbers, and the plant runs lower than those numbers, and they have not been restricted to run lower by any regulations, what can they do with those unassigned emissions, now, under the proposed new rules. **Hueftle** said if they wanted to use them they would have to go through the construction review, and any modification to their facility that exceeded an SER would require additional ambient impact analyses. In other words they would apply through the normal permitting requirements, to use those emissions to increase their current PSEL. **Carpenter** asked how long they could use those unassigned emissions into the future, and **Hueftle** said the proposed rules would reduce those unassigned emissions to zero within five years of adoption of the rule. It would freeze their baseline at the current PSEL and would eliminate all unassigned emissions by 2013. **Hueftle** added that DEQ did this for their sources by July 1, 2007. **Carpenter** asked if he was correct in his

understanding that this is a kind of phase-in to bring industry to a more stringent baseline from what they have been doing since 1978. **Hueftle** said that is correct. It is intended to allow the agency to better track what the airshed is capable of handling.

Johnson asked if Title V sources that have already been following these streamlined construction rules through the state have been dealing with the issue of the baseline, or if they have getting the best of both worlds. **Hueftle** replied that the unassigned emissions reduction is a part of state's PSEL rules, which are not a part of LRAPA's current rules. They are not part of the construction requirements or notification requirements. So Title V facilities that are in Lane County have not been required to reduce their unassigned emissions. It is only those Oregon facilities that are subject to Oregon's PSEL rules. From **Hueftle**'s response, **Johnson** concluded that Title V facilities became subject to the construction and procedural rules but not to the PSEL rules. **Hueftle** confirmed that the state's Title V rules do not refer to DEQ's own PSEL rules—just to the construction rules.

Kirkpatrick asked if the unassigned emissions are transferrable, and **Hueftle** said they are site-specific and not transferrable to another facility.

Ralston stated that there were an awful lot of questions about these rules, and that board members were trying to micro-manage this too much. He suggested that if board members have specific questions about this, they should get together with **Hueftle** outside of board meeting time to have their the questions answered. He said, as far as he was concerned, all the board was supposed to do at today's meeting was to authorize staff to schedule a public hearing in June. He said the discussion is interesting, but he did not feel it was necessary. **Kirkpatrick** responded that the authorization should only be given after board members have their questions answered.

Carpenter said he understood **Ralston**'s point; however, he said the board is authorizing hearing regarding specific rule language. If board members have reservations or concerns about specific wording in the proposed rule, they cannot authorize a hearing on it. He asked if the board wanted to table the rest of the items on today's agenda so that they could get through this discussion and make a decision today; or should they let **Hueftle** finish his presentation and then table this discussion and the decision regarding authorization of public hearing until the next meeting. **Ralston** reminded everyone that the May board meeting will be another long one, because it will be preceded by a meeting of the LRAPA Budget Committee, just as today's meeting was. **Patterson** suggested that any board members who have further questions submit them to staff in writing, to be answered at the next meeting. **Ortiz** asked **Hueftle** if he would have time to do that, along with his regular workload, if board members got their questions to him within a couple of weeks. **Hueftle** responded that it would not be a problem.

Monk said if there were no objections, **Hueftle** could finish his presentation, and board members could get their questions to him in the next couple of weeks. That way, the board could finish the other items on today's agenda. There were no objections.

C. New Source Review. **Hueftle** said the proposed rules would define the rule applicability requirements and add more specificity with the analysis of ambient air quality impacts and emission offsets and reduction credits.

- D. Public Participation. **Hueftle** said these changes are not as significant as those in items A, B and C. The proposed rules would provide additional allowance for the public to provide comments on the more significant changes.
 - E. Other Rule Clean-up. **Hueftle** said these are some cleanups to correct typos and reduce redundancy. He said a lot of these changes were just adopted by DEQ last year to clean up a few things in the state's rules.
7. CONTINUATION OF DISCUSSION REGARDING DEQ'S GREENHOUSE GAS REPORTING RULES (Financial Impact on LRAPA): **Hough** said this item was put on today's agenda because he had brought it up at the March meeting, and several board members had expressed interest in hearing more about it. He said these rules were developed in response to the governor's request to the EQC last summer. DEQ asked **Hough** to be a non-voting member of their advisory committee, and he has been involved in the discussions and development of the proposed rule. **Hough** said it is important that there be statewide consistency with whatever rules or program is developed, and that it be done as efficiently as possible. He said he had, in accordance with a legal opinion from LRAPA's legal counsel **Glenn Klein**, recommended to DEQ that they make it clear in their rulemaking that these rules also apply within LRAPA jurisdiction. That provision is included in the state's proposed rule, and there will be a series of public hearings in May. A public hearing is scheduled at the EWEB community room on Thursday, May 8, at 6:30 p.m.

Johnson asked if the wording that the rules will apply in Lane County would mean that DEQ would be responsible for funding and implementation, or if LRAPA would have some kind of Memorandum of Agreement with DEQ, that LRAPA would take on that responsibility. **Hough** said this will probably require a short contract between LRAPA and DEQ, but he did not yet know exactly how it would be handled. **Hough** said he anticipates that the emissions reporting would come to LRAPA, and LRAPA would forward it to DEQ for consolidation into statewide data.

As far as the resource question, **Hough** said this is not budgeted activity, and both LRAPA and DEQ are absorbing the cost of this program and charging them appropriately to, primarily, Title V or ACDP. He added that DEQ is planning to ask for General Fund money for this program at the next session, and LRAPA has asked for about 15 percent of what DEQ is asking from the state General Fund. That would be about 0.5 FTE to work on this program. **Hough** said LRAPA and DEQ expect that if there is any rulemaking involved, there would be fees associated with that. There might also be new programs that both LRAPA and DEQ would do that would generate the fees to include this as an ongoing activity.

Ralston asked if **Hough** knew where the fees would come from, and **Hough** said the ACDP and Title V permit holders were the ones who would be reporting, and fees would likely come from them. The missing category is utilities, and neither DEQ nor LRAPA has the authority to ask the utilities for that reporting if it is electricity generated out of state but used here in Lane County or in Oregon. He said he did not yet know much about that at this point because it is all fairly preliminary; but his understanding is that, while utilities might get woven in somehow, it is a possibility that utilities might not be required to pay any fees or even do the reporting..

Hough said no board action was necessary at this time. He was just taking an opportunity to update the board on this subject and to provide copies of a DEQ fact sheet on the subject that includes contact names and numbers at DEQ and at LRAPA.

Carpenter asked that LRAPA allow DEQ to do as much of the work on this as possible. LRAPA might be able to get some grant funding for education or something in the future, but the agency is resource-limited now.

8. NEW BUSINESS:

A. Appeal to Board of Hearings Officer's Order in Enforcement Case No. 07-2928, **Randy Dreiling, Oakridge**. **Hough** informed the board that **Randy Dreiling** of Oakridge has appealed the hearings officer's order in an enforcement action involving asbestos violations. **Hough** said the necessary paperwork has been completed on both sides, and staff plans to put this item on the board's May agenda. The board will review the record of the hearing and the appeal document and appeals briefs from both **Dreiling** and LRAPA. **Hough** said **Dreiling** has asked for the opportunity to present oral argument of his appeal, and the decision of whether or not to allow that is up to **Monk**, as this year's board chair. He said **Monk** might wish to get clarification from LRAPA's legal counsel before deciding. **Hough** said one problem with hearing oral argument is that new information, that was not presented to the hearings officer and the board is therefore not supposed to hear or consider, might be introduced by the appellant.

Johnson asked how much time board members would have to review the hearing record before the May 12 meeting, and **Hough** said that information would be sent out right away to give board members as much time as possible to read through the entire record.

Monk asked if there is a time line which requires that the board hear this appeal in May. **Hough** said the final paperwork was assembled as of March 19, and the normal timely scheduling of that would be the May 12 meeting. It could be postponed a month, but it would be best to do it in May. **Monk** said the only reason he asked was because there is another budget committee meeting in May, and the board still has to resolve the industrial permitting rule proposal.

Ralston asked if the agency is required to give **Dreiling** an appeal hearing, and staff responded that it is required by LRAPA's rules. His next step is to appeal to the Board of Directors and, if he is still not satisfied, he can appeal the board's decision to the Oregon Court of Appeals.

Monk suggested that he and **Carpenter** talk about the scheduling of the appeal. He said he thought if staff could get that material out in the next week, board members should have plenty of time to review it.

9. ADJOURNMENT: The meeting adjourned at 2:20 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Monday, May 12, 2008, 12:15 p.m., in the Library Meeting Room in the Springfield City Hall at 225 5th Street, Springfield, Oregon. The board meeting will be preceded on that date by a LRAPA Budget Committee meeting at 11:00 a.m. in the same location.

Respectfully submitted,

Merrie Dinteman
Recording Secretary