

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
MONDAY–JUNE 9, 2008
LRAPA MEETING ROOM
1010 Main Street, Springfield, Oregon

ATTENDANCE

- Board: David Monk, Chair–Eugene; Bill Carpenter, Vice-Chair–At-Large, Springfield; Glenn Fortune–At-Large, General; Drew Johnson–Eugene; Kit Kirkpatrick–Eugene; Andrea Ortiz–Eugene; Pat Patterson–Cottage Grove/Oakridge; Dave Ralston–Springfield; Faye Stewart–Lane County (ABSENT: None)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Sally Markos; Kim Metzler; Nasser Mirhosseyni
- Other: Russ Ayers, Chair–LRAPA Advisory Committee; Kathryn Brotherton and Glenn Klein–LRAPA Legal Counsel; Mike Bucci and Paulo Montenegro–Kingsford Mfg.; Randy Dreiling

1. OPENING: **Monk** called the meeting to order at 12:15 p.m.
2. PUBLIC PARTICIPATION: None.
3. CONSENT CALENDAR:

Corrections to Minutes. **Hough** called attention to the top of page 5 of the minutes, plywood MACT at Flakeboard. He said he had talked about three options, describing the third as being a process change. **Hough** said there are actually five options, and they are more complicated than what he described. He said the process change, itself, is not an option; however there is a wet electrostatic precipitator already on the dryer, and the process change will increase its potential to comply with the MACT requirements. **Hough** said he would work with **Dinteman** to craft a better explanation to add to the minutes as a note of clarification.

Comments on Expense Report. None.

ACTION: MSP(Carpenter/Kirkpatrick)(unanimous) adoption of the minutes of the May 12, 2008 board meeting, with the note of clarification discussed today, and approval of the expense reports through April 30, 2008, as presented.

4. DIRECTOR’S REPORT: Several items were discussed.
 - A. Plywood MACT Compliance Extensions. **Hough** noted that the status report attached to the director’s report provided more information this month than in previous months, partially in response to questions at the last board meeting. Carpenter had asked at the May board meeting to have some process diagrams to explain how the process change in Flakeboard’s operation will work to meet the MACT requirements. Staff had prepared those diagrams, and Lopez spoke to the differences in the diagram of the current process and the diagram of the proposed changed process. She pointed out that the dryer does not change in the two diagrams. Because Flakeboard has a wet electrostatic precipitator, EPA will consider that a control device. The dryer is still subject to the MACT requirements, and it will emit some formaldehyde, just from drying the wood. They are currently building a blender, where the resin will be blended in (instead of being mixed with the wood in the dryer, with its high temperatures), and it will go through its normal process. The next place along the process which will generate emissions is the press, which is where Flakeboard is adding the bio-filter.

Discussion. Patterson indicated a resin wax and scavenger on the diagram and asked what those are and what they do. Lopez said urea-formaldehyde is injected at the blender area and mixed by mechanical means with wood, to bind it together when it goes through the press. The current system blows the resin into the wood mixture in the dryer, and the heat of the drying process drives off some of the volatile organic compounds and helps to blend the wood and binders.

Kirkpatrick mentioned seeing a story on *60 Minutes* the previous evening regarding dust explosions and big fires that result from dust, because OSHA doesn't have enough staff to look at all the parts of manufacturing operations. She asked if LRAPA might look at dust accumulations in some of the manufacturing facilities it permits. Lopez said LRAPA does not look at the inside of a factory. Kirkpatrick commented that a fire like that changes the nature of an airshed in a heartbeat, and Lopez said the fire departments look at those facilities pretty closely. Hough added that indoor air quality in the workplace is under Oregon OSHA jurisdiction, to protect workers. LRAPA's responsibility is with what the facility emits into the ambient air.

- B. Follow-Up From May Board Meeting–Kingsford Production and Emission Limits. Hough presented information in response to a request by Carpenter at the May meeting, regarding an enforcement action with Kingsford, concerning their being out of compliance with the emission limits in their permit. Hough said the facility was out of compliance with the 10-pound emissions limit per ton of charcoal produced. Carpenter had asked for the daily production and emissions figures for the facility. Staff had prepared a report with that information and provided it to all board members. Hough said Kingsford is looking into ways to improve their emissions so that the facility not only complies with their permit but also has a margin of safety.
- C. Enforcement Report. Carpenter called attention to a particular enforcement action which resulted in a civil penalty being assessed, and the respondent requesting a hearing and then the hearing being cancelled. He said it has been on the report for over a year and asked why the case is still pending. Lopez said she believed the respondent in that case is out of state, and it has been difficult to get in touch with him. She said she thought the case was going to be settled. Carpenter said he only asked because Oregon state courts—and Lane County courts—have a policy of trying everything within one year of when it is initially filed. He said he thought it might be a good goal for LRAPA to try to resolve cases within one year from when the issue is first identified.
5. ADVISORY COMMITTEE: Hough said the advisory committee had, about a week prior to this board meeting, completed its work on the proposed air toxics rule. The committee's recommendations on those rules were to be presented to the board during this agenda item. Hough said staff had decided to provide a little context to the committee's recommendations by having Sarah Armitage of the DEQ at today's meeting to repeat a presentation she made to the committee in December regarding DEQ's air toxics rules.
- A. Presentation of DEQ Air Toxics Rules–Sarah Armitage. Armitage said she works in DEQ's Air Quality Planning Section in Portland and has, for the past nine to ten years, worked on developing DEQ's Air Toxics Program. She is now working on implementation of that program. Armitage said DEQ has had several advisory committees since 1999 and has made significant progress on setting up a framework in the state to assess and deal with air toxics, statewide. Air toxics are different from the more familiar criteria pollutants, for which there have been standards for the past 23-plus years. There are hundreds of pollutants which are known or suspected to cause more serious health problems, in general, than the criteria pollutant do. Armitage said that, while criteria pollutants can cause health problems, many of

the air toxics pollutants are either known or suspected to cause a range of health problems, such as different types of cancers, reproductive problems, developmental problems, or respiratory problems. She said much is known about the specific health effects of some of these pollutants, and very little is known about others. The term, "Air Toxics," includes the 189 hazardous air pollutants listed in the Clean air act, as well as some other important pollutants. In 1999 the State of Oregon saw a need to do something about these pollutants. There was a federal program being developed at that time, which included pollutants from specific industrial sources, as well as pollutants from "area source," which include pollutants from activities of people in their houses, in their motor vehicles, and in practices such as open burning. DEQ and its advisory committees have spent years thinking about whether Oregon wants to go beyond what EPA is requiring to deal with air toxics and, if so, what.

Hough commented that previous LRAPA directors Barbara Cole and Brian Jennison both were involved in helping to shape DEQ's air toxics program, from the time when it was initially developed and adopted.

Armitage said EPA has taken information that states and local authorities have provided about pollutants in their areas and put them all into a national model which looks at where the pollutants could end up. It estimates concentrations of air toxics, by census tracts, for the whole country. She said the most recent study DEQ has is based on 1999 data which they received in 2003 or 2004. There is another national model about to be released, based on 2002 data. When DEQ first looked at the nationwide data, they saw elevated levels of many air toxics, which varied from county to county, that caused concern. The highest concentrations are in populated areas, with mobile sources and open burning being the biggest contributors to those levels in Oregon. Armitage said DEQ realized that it must figure out how to understand the problems, and there is developing science regarding a lot of different pollutants helping them to do that. DEQ has also been communicating with others about those risks and working to establish a framework to assess the severity of air toxics problems in Oregon, prioritize those problems, and figure out how to deal with them. DEQ has also realized that air toxics in Oregon are not fully addressed by the federal program because the air toxics program established by EPA in the Clean Air Act Amendments of 1990 focused mostly on industrial sources. That program is also called National Emission Standards for Hazardous Air Pollutants (NESHAP). Armitage explained that EPA looked at the top 12 percent of industry in each category and how well they were controlling air toxics. Those controls were put into law at MACT (Maximum Available Control Technology) standards. She explained that EPA is now in a follow-up state, during which they are still issuing new standards, based on the risk remaining after controls have been put on paper mills and foundries and other large industry. This phase will determine what risk is still out there, and how to address that risk through another set of standards. EPA is working on smaller, or area source NESHAPs. She said both DEQ and LRAPA are devoting quite a lot of attention to them.

Armitage noted that DEQ has been concerned that the list of 189 air toxics in the Clean Air Act does not include some of the HAPs of concern in Oregon, such as diesel particulate (or any form of diesel pollution), or hydrogen sulfide. DEQ has come up with some stakeholder recommendations for HAPs which Oregon should address which are not on the EPA list. Their first advisory committee developed conceptual recommendations. The second advisory committee worked to develop the rules which adopted in 2003, to set up a framework for analyzing and working on air toxics problems in Oregon. DEQ then adopted a set of benchmarks in 2006, including air concentration levels for 51 air toxics that are of concern in Oregon. Armitage explained that the benchmarks are levels that a person could breathe for a lifetime with no non-cancer health effects. There are also levels for the cancer-causing pollutants below which you would not experience cancer in your lifetime for 70 years after breathing that concentration. DEQ put the benchmarks in place as a measurement tool. Air toxics can be measured

throughout the state through monitoring, such as at the air toxics monitoring site in Eugene; and air toxics can also be estimated through modeling. The benchmarks provide the measurement against which the monitored values can be compared.

DEQ also has a science committee, the Air Toxics Science Advisory Committee (ATSAC), made up of an epidemiologist, public health people, and experts in air toxics monitoring measurement, who looked at data statewide, and at EPA data (California values), and came up with the concentration levels, based on what they thought was the most robust data for each pollutant. Armitage said those levels will be re-evaluated in a couple of years, because the science continues to evolve. She stressed that the benchmarks are not standards. They are not enforceable, but they do make the rest of the air toxics program run and serve as goals for emissions reductions. They will be re-evaluated periodically and used as guidelines and measurement tools.

Patterson asked if the benchmarks are for the state of Oregon or national benchmarks. Armitage said they are Oregon benchmarks, for air toxics emissions in Oregon; however, they are based on federal data and other best data sets DEQ could find. She explained that EPA does not have standards for air toxics, either, and that they use an epidemiological database called IRIS to guide their actions. It is the job of DEQ's science advisory committee to pick the best studies and stay up-to-date with what is happening around the country, in order to guide the Oregon air toxics program.

Armitage showed a slide depicting the elements of the DEQ air toxics program adopted in 2003, including the federal MACT and NESHAP standards which apply to industrial sources. She said DEQ implements those standards by permitting those sources through its Title V and Air Contaminant Discharge Permit programs, as well as through a number of general permits for some of the smaller, more numerous sources. Hough added that LRAPA does that same thing in Lane County. The slide also showed the federal Mobile Source Program through which EPA is looking at what can be done to make cars cleaner and what types of pollutants are in fuel and what can be done to change that. Armitage said many rules and standards have come out of that program and that cars are, in general, getting much cleaner. EPA has developed a number of standards for diesel engines, to deal with mobile source air toxics, and those standards are taking effect. Hough added that LRAPA's Everybody Wins program is an example of programs which reduce diesel emissions. Armitage said the state's Oregon Clean Diesel Initiative is an umbrella for the state's efforts in the area of mobile source emissions reductions, and legislation was adopted during the last session to set aside funds to help people retrofit diesel vehicles. DEQ has developed a grant program and is about ready to begin awarding some of that money, statewide.

Armitage explained the concept of geographic areas, stating that once DEQ has identified a high-priority area where there are a number of air toxics above the benchmarks, and where there is a large population of people experiencing risk, DEQ will ramp up the scientific studies. They will use modeling and monitoring to get the best information they can regarding what pollutant levels are and what the sources are, and then work with stakeholders in the community to develop an emissions reduction plan. DEQ has selected the highest-priority community—Portland—as the first geographic area to use the air toxics program to look at source categories and rules and strategies for reducing the air toxics concentrations in that community. Armitage said the goal of a local reduction plan is to get to the one-in-a-million benchmark levels within ten years, with three-year milestones. It might not always be possible to reach the intended reductions within ten years, but that is the goal. Hough commented that the key parts of LRAPA's proposed air toxics rules involve the geographic program.

Patterson said he understands trying to work with communities to find out where air toxics problems exist and what can be done to reduce them. He asked, however, what a community is supposed to do if an air quality problem, such as ozone, comes from outside that community. Hough responded that there is a fair amount of overlap between the precursors of ozone and air toxics. Some strategies might need to include more than one area. Armitage commented that, if the producers of ozone could be controlled, it would help to reduce a lot of air toxics, as well, which are more concentrated locally and do not tend to move around as much as ozone. She said air toxics do not form photochemically in the atmosphere and drift as much, so they are generally right around a geographic area with the highest populations.

Johnson said he assumed that, if LRAPA adopts the proposed air toxics rules, the agency could initiate a geographic program in Lane County, and Armitage confirmed that. Johnson asked what the costs to LRAPA would be for what would need to be done in a geographic area. Hough asked Armitage to describe what is happening with the Portland geographic area since it is the furthest along.

Armitage said DEQ looked at all three counties in the Portland area, and parts of a fourth county. They are looking at where development is likely to move in the next twenty or thirty years, to make sure the plan is comprehensive enough to include that and not have to be redone. She said DEQ has had about six monitoring sites at different times and has a background of air monitoring data. They are currently doing a statistical analysis of that to try to understand any trends and different forms of pollutants that could be coming from specific sources. They are looking at metals and Volatile Organic Compounds and the whole range of toxics. In addition to the monitoring and data analysis, there is modeling information using all of their estimates. The information includes emissions inventories from industrial activities and motor vehicles, plus any background pollution that might be drifting in from other places. In addition to that information, you look at where pollutants move because of topography and weather, to get estimated concentrations. This can be done on a fairly resolved level, such as by census blocks or census tracts or parts of counties. Once the sources and the distribution are understood, you can work with a committee of representative stakeholders to develop reduction strategies to get to the benchmarks. Armitage said the technical analysis probably takes about six months to a year, and then the committee process would take about another year. She stressed that the process should be kept moving and not allowed to stretch out too far. Armitage estimated that it will take about two-and-a-half years for DEQ to complete the process for the Portland geographic area. Once the plan is established, the work to achieve the benchmarks would be spread out. For instance, local government could have an ordinance. There could be a business incentive program or any number of other alternatives. It isn't necessarily the air quality control agency that has to do all the work.

Johnson noted that Portland did a Portland Air Toxics Assessment, which gave them a head start. He asked if the fact that Lane County does not have that type of assessment would add to the estimated time required to develop and implement plans to reach the benchmarks. Armitage said she did not know what LRAPA's capability would be. She said DEQ did the Portland Air Toxics Assessment as a pilot, to see if the results would yield any different information from what is in the National Air Toxics Assessment produced by EPA. They determined it actually is worth it to do a local assessment, and DEQ thinks it would be simpler for Lane County to do an assessment. Johnson asked if the local assessment adds value to what is available through the national assessment, and Armitage said DEQ thinks it does.

Johnson asked if the Portland geographic program is being funded through the Legislature, or through permit fees for that purpose, or by something else. Armitage said the funding is coming mostly from the state's General Fund. Patterson commented that with a large community the funding can be hidden;

however, the small communities do not have the money to do this, and the funding will have to come from somewhere else. Armitage said the Portland Air Toxics Assessment was actually funded with a grant from EPA, which covered most of the cost. She said the studies can be expensive, and the funding sources need to be determined before an area starts on that process. She said the study could also be scaled instead of being a huge assessment. Patterson asked if this is being initiated by the federal government or the state government, and Armitage said it was the state government. Patterson said the state should figure out a way to pay for it.

- B. Committee Activity Report and Air Toxics Rule Recommendations. Markos reported that the committee met the Thursday prior to this board meeting, and Huefle presented some minor changes to the industrial rules, concerning agricultural sources that will no longer be exempt from permitting under the new rules. She said some operations—of which Lane County currently has none—such as large confined animal operations, might need air quality permits from LRAPA under the new rules

Most of the committee's last meeting was devoted to discussion of the proposed air toxics rules and developing recommendations for the board, including majority and minority viewpoints. Markos said the recommendations, which took the form of a letter, were included in the board's agenda packets. Markos said there were a number of votes at that meeting, and she wanted to clarify what they were for. The full committee was present for its April 1 meeting, and there was a motion at that meeting to approve the air toxics rule for adoption by the board. The vote was 12 to 1. The committee elected to hold the discussion over for one more meeting so that the one person who voted against the motion could get their views out. The committee met again on April 29, but that person was not available for that meeting. The committee used that meeting to draft the letter with its recommendations. At the committee's June 3 meeting, the person was there and was able to express their concerns and viewpoint. Markos said the report to the board ended up not really being a minority and majority report. It is divided into three parts. Markos said Huefle went through all the meeting notes and prepared a draft recommendation letter which included comments in favor of adopting the rules, comments of concern regarding the draft rules, and comments against adopting the rules. Markos said there was a comment added that week from a committee member who is concerned that the geographic plans could be implemented in an inappropriate manner that would target certain people and not others, or perhaps there could be plans that would be too broad and would affect too many businesses that aren't really a problem source.

When the recommendation letter was completed, it was approved by a vote of 9 to 1. Because the committee really wanted to get consensus on this recommendation, there was further discussion and a second vote in which the recommendation letter was approved unanimously. Markos then said Hough would like to talk to the board about the last four points in the letter.

Hough said he thought the reason that the group did not have to go to minority and majority reports was that they were able to get consensus on the four communication points at the end of the recommendation letter. He said that it appeared that everyone who had concerns that were expressed earlier in the report felt that if the last four items were communicated to the board, and then from the board to those charged with the next step of implementation, that the concerns expressed earlier were properly addressed.

Carpenter commented that there were 13 people voting at one time, and the last vote was 10 to 0. Markos and Ayers explained that two members were missing from the meeting, and one who was there at the beginning had to leave before the final vote was taken. Carpenter asked if there was a sense that those individuals would have voted for the final version of the recommendations to the board, and Ayers

said they had already voted for it. He said there were only two people who dissented and that the document was changed based on their input. Markos added that she had previously gotten e-mails from those individuals in support of what the committee was doing, as well as hearing their support in previous meetings.

Kirkpatrick asked how the committee expects to effect the changes listed under number 2 under concerns. Markos said she thought those concerns were taken out of the notes from previous meetings, and that they were taken care of with the last four points at the end of the report. Hough added that, recognizing that implementation depends on the strategy developed, that should focus on mobile, area and point sources, to make sure that the full spectrum is addressed. The items listed under concerns were examples of essential sources that should be included in the evaluation.

Johnson said it appeared to him that, the way the ATSAC is set up, and the way benchmarks are established, are part of the state's rule. He asked, if the LRAPA board adopted the state's rule, would they have any say in that. He asked what is the legal relationship between that committee and these rules, if LRAPA adopts these rules. Hough said the ATSAC benchmarks would apply to this area, and ATSAC would be looked at as a resource under the rules. For example, if there are additional air toxics identified in Lane County, those would be proposed to ATSAC for their review. If there is additional information on multiplication effects or synergistic effects, ATSAC would be asked to incorporate the most recent information available in that regard. It is not intended that LRAPA would try to duplicate the ATSAC group.

Johnson asked who appoints the ATSAC members, and Hough said they are appointed by the Oregon Environmental Quality Commission. Hough explained the group's members have very specific credentials and tend to be statewide experts. They would typically be PhD or special engineers, or combinations of those things. Hough said it could be that LRAPA would actually have a spot on that committee in the future, adding that he knows it has been considered.

Ayers provided a brief statement as a formal handoff to the board on this rule package. He distributed copies of the document to the board members. Several points were made in the statement:

- (1) The committee was handing off the air toxics rule package, as it had the industrial rules package three months before; and the air toxics rule review by the sub-committee, and later by the full committee, represented some really good work by the LRAPA Advisory Committee.
- (2) The committee appreciated the opportunity to review and rules and hoped that their work would assist the board in its decision at a future meeting to authorize a public hearing and to adopt the Oregon air toxics rules.
- (3) The rulemaking process would allow for a public comment period prior to the public hearing and adoption.
- (4) The committee expressed appreciation for great support from staff members Max Hueftle, Sally Markos, and Merlyn Hough, as well as Sarah Armitage of the DEQ, to review the Oregon rules, consider other models, and work through several meetings to reach consensus on recommendations to the board.

- (5) The sub-committee considered other models and learned that the Oregon rule is one of the best in the country. It includes the best aspects of the other models the group reviewed. Ayers said he assumed the support documents provided to the committee by staff would be included in a future packet for the board's review.
- (6) The committee made several recommendations that should be passed on to the local advisory committee that is formed to implement the Oregon Air Toxics rules, including the development of any local geographic plan in Lane County.

Hough said he wanted to reinforce Ayers's point about the help the group got from several individual, in particular Sarah Armitage. He said one of the reasons he wanted to invite Armitage to give the LRAPA board an overview is to illustrate what a tremendous resource she has been to LRAPA staff and advisory committee members throughout this process. Hough said her presentation helped to provide continuity between the discussions that have happened for the past several years and the work of the advisory committee in Lane County. Hough expressed gratitude to Armitage for all the work she has done.

Monk asked when Hough expected to bring the air toxics rule before the board for discussion and request for authorization of public hearing. Hough said he planned to put this on the board's agenda for a future meeting so that staff could give board members more complete information, as was done with the industrial rule package. He said this item would come before the board some time in the next few months, depending on other issues competing for time.

6. PUBLIC HEARING AND ADOPTION OF LRAPA BUDGET FOR FY 08/09: Mirhosseyni said the LRAPA Budget Committee met on April 14 and again on May 12 and recommended the budget, as it was proposed, for board adoption. He offered into the meeting record the affidavit of publication of notice for the three meetings which were held, including today's public hearing.

Monk opened the public hearing at 1:12 p.m., asked if anyone present wished to ask questions about or comment on the proposed budget. There was no response. Mirhosseyni noted that, since the first publication of notice about the FY 08/09 budget, LRAPA has received no questions or comments from the public. There being no one who wished to speak, Monk closed the public hearing at 1:14 p.m.

MOTION: Fortune MOVED adoption of LRAPA Resolution No. 08-06, adopting the FY 2008/2009 budget, as approved by the LRAPA Budget Committee. Ralston SECONDED THE MOTION.

Discussion of Motion. Johnson said he had heard that the city of Eugene had written LRAPA out of its budget, and that Lane County also has budget problems. He asked if there had been any resolution to those problems.

Ortiz said the city of Eugene had restored LRAPA funding to its continuing budget. She said it is not guaranteed that it will be in there every year, because any councilor can put a motion on the table.

Stewart said funding for LRAPA is in the county's budget for the coming year, but if the county does not receive the federal funding this year, he would imagine that the county will not be able to fund LRAPA next year.

Monk reminded board members that he was the lone no vote on the budget committee for approval of the budget for adoption by the board. He noted that the budget is 95 percent staff costs, and he sees some difficult times ahead, depending on what the local governing jurisdictions do regarding funding. In particular Monk stressed the need for staff to implement the air toxics rules if the board adopts them, and the need for someone to do emissions inventory to clarify the condition of the county's air quality and where the agency needs to direct its efforts. Monk said he will suggest, as the next fiscal year progresses, that LRAPA do a different process to try to get a sense of how to prioritize some of the staff positions around the activities the board wants to focus on. He said he wants to look at whether there is enough funding to hire an additional staff person, and he will perhaps make recommendations to Hough to reassign staff to work on some specific issues. Monk said he would like to get a better sense of the duties being assigned to staff members and whether they are accomplishing what the board is asked the director to accomplish, as well as the statutory mandates to which the agency is obligated. Monk said he was bringing this up because staff costs are a huge part of the budget, and the agency need to be as efficient as possible with the funding it has.

Stewart said he believes the board should make it a priority at the start of 2009 to work within the structure at the state to find some additional funding there. He said he thinks it is highly probable that Lane County will not be able to be a financial partner in LRAPA, at a minimum, come this next year. He said the agency needs to do everything it can to replace that revenue.

Ortiz asked Stewart what the county's commitment is to participate in LRAPA, revenue aside. Stewart responded that he was not sure, because the board of commissioners has not had that discussion. Ortiz said she heard that, in the past, some participants have had trouble making financial contributions but had continued to participate as a partner. Ortiz said Ralston has made comments in the past that LRAPA should not count on Springfield, and she is concerned about what it would mean if the Lane County Board of Commissioners cannot provide financial support but then also did not find value in participating with the agency at all. Stewart said that, during the transition period from the previous director to Hough, there were some real concerns among some of the commissioners as to how LRAPA was going and what its goals were. He said he believes those concerns have been addressed; however Commissioner Dwyer made a statement that one of the things he tried to do with the Legislature was to do away with LRAPA, and he was unsuccessful in that effort. Stewart said he does not know what the feelings are, there, but he thinks LRAPA provides good service to the citizens of Lane County. Ortiz indicated she agrees, absolutely.

Stewart said he is concerned that if Lane County cannot step up and be a financial partner, there is a fairness issue with the county not having to pay to participate when the other partners are contributing financially. He said that is something that this board will need to work on through the coming year. Ortiz said she did not disagree with Stewart, and that it is hard to expect the smaller communities to donate when their budgets are smaller. She repeated that the city of Eugene is okay for this year; however, the budget committee will have three openings next year, and it is unknown which way the political winds will blow. She agreed that the board needs to talk about trying to get additional funding from the state.

Patterson commented that Cottage Grove and Oakridge had in-kind agreements with LRAPA for many years, where the cities provided services in lieu of cash contributions. He said the smaller communities have much smaller budgets and have to determine what is really necessary and what they need to pay for. Patterson said he is not a proponent of letting the air quality control function get out of local control; however, there is only so much money in each of the jurisdictions, and those communities have to do the best they can with very limited resources. Patterson said there are too many unfunded mandates from the federal government, and funding for services such as LRAPA will be difficult for smaller communities until both state and federal legislatures realize that.

Carpenter called the question on the motion on the table.

VOTE: The motion passed with 7 in favor and 2 (Johnson and Monk) opposed.

Monk said he assumed all board members are in agreement that the board needs to start talking about how to approach the state to get additional funding for LRAPA. He said he assumed the director is, traditionally, the person to interact with DEQ staff and with Lane County's legislative delegation to see what opportunities there might be to get additional revenue. He suggested that the board discuss this in the fall, prior to the next legislative session, and see if there are some bills being proposed to which LRAPA might add a request for additional funding.

7. **APPEAL OF HEARINGS OFFICER'S DECISION IN CASE NUMBER 07-2928, RANDY DREILING, OAKRIDGE:** Hough introduced Randy Dreiling. He also introduced Kathryn Brotherton and Glenn Klein from LRAPA's legal counsel firm. Hough said Brotherton has represented LRAPA throughout this contested case process, and Klein was at the meeting to explain process.

Klein asked if the board had reviewed the second page of the information in the appeals package, which essentially described what the board may and may not do in deciding whether or not to uphold the hearings officer's opinion in this case. Carpenter suggested that, since the two attorneys present work for LRAPA and are taking a position against the applicant, perhaps board members should ask any specific questions they might have about process. Klein said that would be fine. If everyone had read the document, it was not necessary for him to take the time to review it.

Carpenter said there are facts and there are LRAPA rules in the case. He said it was his understanding that the facts are closed and assumed from the hearings officer, and what the board is to do is to determine whether the hearings officer applied the correct rules to the facts that were presented to him. He asked for confirmation that the board could not reopen any of the facts. Klein responded that the board has the authority to decide whether the factual findings are supported, based on the evidence that was presented in the contested case hearing. What the board could not do is to consider any new evidence not presented at the hearing. Klein said there were two issues for the board: the first was to decide whether the hearings officer made a mistake in the factual findings that he arrived at, based on the evidence he had before him; and the second was to determine whether the hearings officer misapplied the law, in applying the law to those facts.

Monk asked if the board could remand the decision back to the hearings officer if they thought there was some correction that could be made. Klein said that could be done for a procedural irregularity. If the board decided that the factual findings were not supported, or that the hearings officer misapplied the law, the board could either decide the case or remand it. That choice would depend on the basis for why the board found the hearings officer made a mistake.

Monk then decided to limit oral argument on both sides to five minutes.

Respondent's Statement and Discussion. Dreiling read a statement into the record. He said a friend of his, who lives in California, owns the property. Dreiling said it took two years in court to get squatters out of the house, after which they locked the house up. The squatters broke in and took up residence again. Dreiling said the house was unsafe and did not have sewer hookup. He took the walls out of the house to make it less

comfortable for the squatters. Dreiling said he had no idea he needed a permit to take some walls out of a mobile home. He did not remove anything hazardous from the structure. Dreiling said other people don't know about having to have a permit, either. He said he has driven by a place where a trailer is being torn down, and he knows that there is not permit for that. He said that project did not get a fine from LRAPA, adding that his fine was complaint-driven by an individual with a grudge against the city regarding a lawsuit. Dreiling is on the Oakridge City Council. Dreiling asked, if the site was so hazardous, then why, when LRAPA staff, as well as CRS (asbestos abatement company) staff were present at the site, none of them wore any protective gear. Dreiling said there was a fire about 40 feet long by ten feet wide. The item in question was a car gasket that got in the fire by accident. He said he was also cited for having shingles in the fire. He said those also got into the fire by mistake. He asked if it wouldn't be better for LRAPA to educate someone like him instead of fining him. He said the hazardous material company came to the site, they picked up the item and raked up a small square of material, and then told him he would have to haul the rest of the material off, himself, including the shingles.

Carpenter asked Dreiling if he contested any of the facts in the hearings officer's report, or if he thought any of those were applied incorrectly. Dreiling said he contested some of the facts. He was accused of breaking up the tile on the floor, but the tile was already that way. The trailer was in ruins. Dreiling said the hearings officer's decision concluded that he was causing more hazard by removing the tile and vinyl and other materials, which he was not doing. He said he got fined \$1,600 for having a car gasket and a couple of shingles in the fire, and that was a month-and-a-half of pay for him.

Kirkpatrick said she wanted to know more about the shed, from which the shingles came, that fell on the flames. Dreiling said it was a chicken coop about four by four. They tried to pull it down while the fire was going. When they pulled it, intending to pull it away from the fire, it fell into the fire. She asked if the shingles were composite, and Dreiling said they were asphalt.

Stewart asked if the property is inside the city limits of Oakridge, and Dreiling responded that it is outside the city, in the county. Stewart then asked if Dreiling was aware that, in the county, it is necessary to get a demolition permit when you tear a structure down. He added that, when someone gets such a permit from the county, the application includes information about asbestos. Dreiling said he did not realize that.

Johnson noted that the paperwork on the case indicated that Dreiling is not the owner of the property. Dreiling said he is not. He was just trying to help out a friend. He said there was a property across the street from this property where a store was red-tagged and a good-sized fine was assessed to the city for that property. The people were kicked out of that building and went across the street to his friend's property. Dreiling said that was when he took the action, to take the trailer down for his friend.

Patterson referred to a series of pictures in the case record. He pointed to one building and asked if that was what the building was before Dreiling started tearing it down. Dreiling said it was partially collapsed, and he finished collapsing it. Patterson pointed to a section of flooring in one of the pictures and asked if Dreiling had anything to do with its being torn up. Dreiling said it was like that already. Patterson asked if the roof was already in the state it was in the pictures, and Dreiling said it was collapsing already and it collapsed more after he took out the walls. Patterson asked about a section of wall, and Dreiling said he did take some siding off that wall and recycled some of it.

Kirkpatrick asked if the civil penalty was assessed 100 percent on Randy Dreiling, or partially on the owner, William Siemon. She commented that it seemed that Siemon had been quite negligent in this situation.

Dreiling answered that Siemon was also fined. He added that he thought it was strange that both of them were fined. Several board members asked for an explanation of that. Brotherton said the reason that information was not included in the material the board reviewed was that it was not a part of the hearing for this case. She said the subject of whether or not another party was assessed a separate penalty should not be in front of the board for this appeal hearing. There was some discussion among board members about this subject, and Hough confirmed that a separate penalty was assessed to the owner of the property.

Johnson said he was still not clear on why both people were fined, and Monk reiterated that the separate fine against the owner of the property should not be relevant to this appeal hearing. Dreiling insisted that it should be relevant in this case, and Carpenter asked Dreiling to point out where, in the hearing record, the separate fine was introduced. Dreiling said it was not in the record but should have been. He said he knew about the separate fine from talking to the owner. Carpenter responded that the fact that the separate fine was not brought up at the hearing before the hearings officer meant that it was not a part of the record. Because the hearings officer did not have that information, it cannot be considered now by the LRAPA board. Monk agreed.

Monk referred to Dreiling's assertion that he did not know he needed a permit to do the demolition on the building. He said that was taken into account by the hearings officer, who reduced the responsibility factor on the fine matrix to zero. He commented further that it has been an ongoing question for this agency, as to whether the agency is successful in getting that information out to the larger public. He said he would say the agency is not successful in that effort, adding that said he thinks that is a legitimate concern and that the hearing officer was right to reduce the responsibility factor because of that.

LRAPA Statement and Discussion. Brotherton stated that there were two penalties assessed against Dreiling: one for failure to conduct an asbestos survey prior to the demolition of the facility; and one for open burning of prohibited materials (the asphalt shingles that were part of the shed that fell into the fire). The hearings officer reduced the penalty by \$200 by reducing the responsibility factor to zero because Dreiling said he did not know he needed to get an asbestos survey. Brotherton said that the issues raised by Dreiling were considered by the hearings officer, and his findings of fact are supported by the evidence presented at the hearing. The hearings officer's conclusion, that there was a violation of failure to get an asbestos survey prior to pulling off the sides of the mobile home, is supported by the facts. His conclusion, that the respondent burned asphalt shingles off the roof of the shed, is also supported by the fact.

Noting that the board's options were to uphold the decision, or reverse it, or to remand it, Stewart asked if the board could affirm the hearings officer's decision but reduce the fine. Klein responded that the board cannot do that, unless the board concludes that the hearings officer erred in how he applied the penalty matrix. If the board doesn't think the amount of the penalty seems fair, and that use of the current penalty matrix does not produce a result that seems appropriate, the board can deal with that outside the context of—and completely separate from—this appeal hearing, by changing the rules. But for this case, changing the fine, absent the conclusion that the hearings officer erred, is not an option for the board. Stewart added that changing the rules would help with future cases but would not affect the current case, and Klein confirmed that.

Ralston asked if there were a hardship component in this case, and Klein said there was not for this case. The director had authority to try to settle the case and take into account everything that happened before the contested case hearing. In this case, the board may affirm the hearings officer's decision, or ask the director

to see if there is a way to settle this, to avoid any additional appeal. Klein reminded the board that Dreiling has the right to appeal the board's decision in this matter to the Court of Appeals.

Stewart asked if the board could conclude that it is not prepared to make a decision on this case at this meeting, and ask the director to work with Dreiling to see if a settlement can be reached in the next thirty days. Klein said that would be an option for the board. The director would come back to the board and report either that the case had been settled or that it had not been settled and the board would need to make a decision at that time.

MOTION 1: Stewart MOVED to defer this matter to the next LRAPA board meeting and, in the interim, ask the director to see whether he can settle the matter. Patterson SECONDED THE MOTION.

Kirkpatrick asked Dreiling what course of action he took after the building with the asphalt shingles fell into the fire. Dreiling said they did not realize it had shingles on it. They let the fire burn. The fire department came but did not put the fire out. Dreiling said he assumed they could keep on burning. He acknowledged that it was their mistake to allow the shingles to burn, but he did not think it was a \$1,600 mistake.

Johnson asked if it was determined that Dreiling was the owner or operator, under LRAPA's rules, for purposes of the citation. He said he was wondering about whether the hearings official correctly interpreted the rule and correctly applied the rule as to who has to get the survey. He said he was concerned about whether two parties were fined for not getting a survey on the same property. Brotherton said she could not answer that question because she did not know what the property owner was fined for. Carpenter said he did not think the hearing record even showed that there was a second fine, and he thought the board had to be specific to the record of the hearing, which had no evidence in the record. Dreiling said it clearly is in the record, and Carpenter asked him to point to that part of the record where he brought up the fining of the owner. Dreiling said it was not up to him to find that, because LRAPA had assessed the fine and should have it in their records.

Johnson said that was not his question, and Brotherton said it sounded like Johnson wanted to know if Dreiling was the owner or operator for purposes of the rules under which the penalty was assessed. She said he was considered the operator because he was acting on behalf of the owner in taking care of the property for the owner.

Ortiz said she would like to support the motion because it made sense to try to deal with the matter and get it off the board's agenda. Dreiling had come to the board and spoken his case, and then the conversation got off track with discussion of the matrix and the fact that there is a desire by the board to improve the matrix. She was concerned about whether the settlement would reflect something different than what the hearings officer had put in place. Brotherton explained that settlement of a fine for a lesser penalty amount, after the hearings officer had made his decision, is not unprecedented, and the board has the authority to ask the director to try to settle with Dreiling.

Carpenter said the violation was between "moderate" and "minor," based on the length of it. The minimum amount of \$1,200 for the asbestos violation was assessed. There is a discussion in the hearings officer's decision document regarding what he thought the respondent should have known at the time. With all those together, Carpenter said, he did not see that the board needed to do anything more on this case. He said Dreiling had not raised any issues that would cause him to make any determination that the hearings officer

made any mistakes that would necessitate at remand. Carpenter said he would vote against the motion and rule on the appeal today.

Monk said that, while he appreciated Dreiling's coming before the board regarding his case, he could not believe what he was reading regarding the manner in which Dreiling had pulled the building into the fire. He said some board members have taken great issue with staff reducing fines when LRAPA is trying to create the message that people need to be careful with these materials. Monk said that burning them obviously is not being careful with them. Monk agreed with Carpenter, stating that he would not support the motion and would prefer to just deal with the appeal today.

VOTE ON MOTION 1: The MOTION FAILED on a vote of 4 (Fortune/Patterson/Ralston/Stewart) in favor and five (Carpenter/Johnson/Kirkpatrick/Monk/Ortiz) opposed.

MOTION 2: Carpenter MOVED to affirm the hearings officer's decision as being consistent with the law and facts. Monk SECONDED THE MOTION.

Stewart said he would reluctantly vote in favor of the motion because he believes it is the law; but the reason he had placed the previous motion was that he thought that this fine was too high. He said that, as a Lane County Commissioner for that area, he deals with homelessness and with people breaking the law. He thought Dreiling's attempt to try to deal with a larger issue was legitimate, and he would like to have tried to reduce the fine.

Klein pointed out that, under LRAPA's rules, the board will need to adopt a written final order. He said that, if the current motion passed, he would prepare a document that would come back to the board for approval and signature. Klein said that, if Dreiling should choose to appeal the board's decision to the Court of Appeals, that would be the document from which his appeal would be filed.

Johnson said he would support the motion, but he did have some reservations about it. What bothered him was the fact that Dreiling was not the owner, and that the language of the rule seems to implicate owners of property. He said he is uncomfortable with that.

Ortiz said she had the same reservations. She said LRAPA needs to be responsible for the message it's trying to send to the community, and she does not know that fining them is the best way to do that. Ortiz said she was uncomfortable with the fact that she did not think the board had the full picture, and she would support some way to send the case back to the hearings officer to get a fuller picture or somehow defer action until the board can get a fuller picture. She said she did not know how to do that, because that is not what the board is supposed to do in this case.

Kirkpatrick said she had the same hesitation and would hope that Dreiling would communicate with the property owner, William Siemon, and that Siemon would help Dreiling pay this fine.

Patterson said he would not support the letter of the law. He said if there had been continued violations of this kind, he would support the fine; however, he felt that there were extenuating circumstances in this case, and he did not believe LRAPA needed to carry it to this magnitude. He said that was why he voted for the first motion, to give the director an opportunity to try to settle for a reduced fine amount.

VOTE ON MOTION 2: The MOTION PASSED by a vote of 6 (Carpenter/Johnson/Kirkpatrick/Monk/Ortiz/Stewart) to 3 (Fortune/Patterson/Ralston).

Dreiling, specifically addressing Carpenter, asked that the board make sure it has all the facts in the future, if there are cases that are connected. He said he had assumed that the board had all of the information and that it was not his responsibility to show that Siemon had also been fined.

Carpenter said he thought Dreiling had a point; however, the board is not the trial court. The trial was before the hearings officer, and all the information should have been disclosed at that time. The board does not have the ability to open the record and look at new facts. He told Dreiling that, in the future, Dreiling would need to make sure that everything he wants to have in the record gets into the trial record.

Dreiling added that he thinks LRAPA needs to do a better job of informing the public of its rules.

Stewart pointed out that the board has had the subject of the fine matrix on its future agenda items list for a long time, and this case is one of the reasons that there has been a desire to discuss it. He said in this case there was a person with no prior violations, who was trying to do something right, and got fined for it. He said he could not find a way, within the constraints of the law, to vote against the hearings officer's decision. He said he did not think the fine was correct, and he had tried to give the board an out by delaying action until the director had time to negotiate a settlement. Stewart said he was a little puzzled at some of the comments made by board members who voted against his motion, and he hoped that the fine matrix can be addressed and made a little more equitable.

Ortiz said her concern was twofold: the fine matrix and how things get to the board. She said she felt the board should have had the full picture, and she hoped that Dreiling would go back and appeal his case and then come in with the full picture. Carpenter explained that the full picture was created when the hearing was held before the hearings officer. He said there will not be a full picture if Dreiling appeals the board's decision. The Court of Appeals will look at the same record that he developed with his testimony. The board does not act as a hearings official, and so does not see the full picture because they're not supposed to. Ortiz thanked Carpenter for his comments, but said that, as a citizen of this community, Dreiling has the right to speak to whatever he wants to at a public meeting.

Ralston said he thinks it's unfortunate that a case should get to this point. It had cost the agency a lot of money in attorney's fees and staff time for something that he thinks is wrong. He said he hoped that Dreiling would appeal the board's decision. Ralston said he still believed Dreiling should have been given the option to settle. He added that if Dreiling appeals the decision, it will cost the agency a lot more than the amount of the fine.

Fortune said the city of Oakridge paid a big fine to LRAPA, all stemming from a citizen making a complaint. The city believed the property owner when he said there was no asbestos in his trailers, and the city demolished the trailers and removed them. Fortune said he is not concerned about exposure to asbestos when he does remodeling in his own home, and he knows that a lot of people do this kind of work in their homes without getting permits or having asbestos surveys done ahead of time. Fortune said LRAPA makes too big a deal about asbestos, and it costs people a lot of money. He added that he doesn't think any amount of advertising regarding asbestos abatement will make the people out there understand what they need to do.

Carpenter noted that it had been said that the city of Oakridge was fined for asbestos violations, and he wondered if that was before Dreiling did the work on the mobile home. Fortune said it occurred at the same time. Carpenter expressed concern that every asbestos violation civil penalty assessment will be brought to an appeal if the board begins to say the hearings officer erred and reduces the fines by half or tries to negotiate a settlement after the case has already gone through contested case hearing.

8. CONTINUATION OF DISCUSSION, REQUEST FOR AUTHORIZATION OF PUBLIC HEARING REGARDING PROPOSED INDUSTRIAL PERMITTING RULES: Ralston and Stewart both said they would like to move forward on this rulemaking by authorizing staff to schedule public hearing.

Johnson said he was not at all comfortable with moving forward. He said he had spent hours going through the proposed rules, and he had found places where definitions from previous rules have changed, and they don't match the DEQ's definitions. He said he wanted to know why that is. He said he wanted to be able to talk to staff about all of these changes. He said Hueftle had given the board a breakdown of all the changes and that the package was, in Johnson's opinion, far too big for the board to adopt. He said he was quite confident that no one on the board had gone through all of these rules and all of the changes, and has a grasp of what they would be approving. Johnson said he did not think the board could approve for public hearing something that they did not understand, themselves. He said the rule changes would change industrial source permitting policy in Lane County, and that there are significant changes that the board should discuss.

Carpenter said the Clean air Act is one of the most convoluted acts he has ever looked at, and it has been going for thirty years. He said a past LRAPA permit writer had posed 55 questions a week before this board meeting, when the board had suggested that those questions should come in much sooner, if they were substantive in nature. Carpenter said he had looked through Johnson's questions and Hueftle's responses, and he was willing to go forward to a public hearing. Carpenter commented that he does a lot of study of LRAPA's rules, but Russ Ayers is on the LRAPA Advisory Committee, and he knows much more about these rules than Carpenter does. He said here the LRAPA Board of Directors is, citizens, trying to micro-manage what the agency does. He said if some industries get an ACDP instead of a Title V permit, it should be reviewed in a year to see what impact that has on the airshed. Carpenter said it is up to the public to bring to the board specific issues they might have with the results of these rule changes. He added that Johnson could continue to raise his concerns but, if the board is spending six months of meetings to have a change in air pollution of three tons a year with differing permits, it seems that the board should be getting on to different things. Carpenter said he thought the board should move forward and let the public make their comments on the proposed rules and see where that leads.

Patterson agreed with Carpenter.

Ortiz said she was one of those board members who have not waded through the entire proposal. She asked if there would be an opportunity for board members who have concerns to meet with staff to go through those things, on their own. She also suggested sending the rule package to a sub-committee, put the public hearing on the calendar, and have the sub-committee speak to what the issues are and submit their recommended changes at the time of the public hearing.

Monk said his understanding was that, if there are substantive changes in the proposal after it has been put on public notice, the notice would have to be published again for a different rule proposal, and a second hearing would have to be held.

Ralston noted that LRAPA has experts that have waded through the whole proposal, and that he has also read the entire proposal. He said he had compared language between DEQ's rules and LRAPA's proposal, and what LRAPA's rules are now and what they would be with these changes. He said at some point, the board has to trust the experts who are doing all this work, because board members are not experts at this. He said he wanted to move forward and let the public make their comments.

Johnson said the definition of "opacity" is different in Lane County and there is not a permit that LRAPA issues that does not have an opacity requirement. He was concerned that the proposed rules have a new definition for opacity that does not match the current LRAPA definition and also does not match the DEQ definition. He said that is one example and that there are others, such as "baseline period." Johnson said there are things in the proposal that are inconsistent with the overall theme of the rules, which need to be discussed by the board and fixed. He said the problems he sees in the rules are major things. He agreed that experts have looked at the package and said he does trust the staff to do a good job; however, the board is being asked to put forward for comment 383 pages of revisions that have complex and technical meaning, and the board owes it to the public to give this their full attention and not to rely on experts. Johnson said he is really emphatic that the board should be discussing and considering some of these changes.

Patterson said the advisory committee was established because the board does not have the time, nor the expertise, to go through this kind of rulemaking package, page-by-page. He said the committee was given a specific job to go through and evaluate the proposed rules and suggest changes that might be needed. They have spent a year going through all of the proposed rules. Patterson said he has heard it said that, even if the rules go to public hearing, there may be some points which might need to be revisited for clarification. Patterson said he thinks that is the way it should be done. Patterson also said he saw problems with the board not putting the advisory committee to its intended use and, rather, trying to micro-manage the rulemaking process.

MOTION: Stewart MOVED to authorize staff to set a public hearing for the September board meeting. Patterson SECONDED THE MOTION.

Discussion of Motion

Stewart commented that setting the hearing in September gives three months for further questions by board members. He added that the fact that there is a public hearing does not mean the board has to adopt the rules that day. The process can be extended to get more information, if necessary. But the board needs to move the process along.

Carpenter commented that, if there are issues with the proposed rules at the public hearing, and the board elects not to adopt the proposal, the existing rules will stay in place. The board could adopt parts of the package but not adopt others, without having to publish notice of that. If some issue were to come up, the board could simply not adopt the proposal 100 percent; but the rulemaking process, in general, would be advanced.

Ralston said he does not think LRAPA has to have exactly the same definitions that DEQ has, and Carpenter said that is true. He said the opacity definition that Johnson brought up is okay as long as it meets federal requirements.

Monk commented that, on the one hand, staff has told the board that this rulemaking is an attempt to be consistent with DEQ. Then, for whatever reason, some of the definitions are not consistent, but he did not see a need to belabor the point too much.

VOTE ON MOTION: The MOTION PASSED, on a vote of 6 (Carpenter/Fortune/Ortiz/Patterson/Ralston/Stewart) in favor and 3 (Johnson/Kirkpatrick/Monk) opposed.

[Johnson left the meeting at this time.]

9. NEW BUSINESS:

Board Meeting Schedule. Not all board members had responded to staff regarding the best day for the regular board meeting schedule, following the discussion at the May board meeting. Monk asked that those board members who had not, yet, responded do so as soon as possible.

10. ADJOURNMENT: The meeting adjourned at 2:25 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Monday, July 14, 2008, 12:15 p.m., in the LRAPA Meeting Room at 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary