

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
MONDAY–JULY 14, 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; Sandra Lopez; Sally Markos; Kim Metzler; Nasser Mirhosseyni
- Other: Amy Peccia–LRAPA Advisory Committee; Mike Bucci and Paulo Montenegro–Kingsford Mfg.; Doug Keeler and Jerry Ritter–Weyerhaeuser, Springfield

1. OPENING: **Monk** was unable to be at the meeting until 12:20 p.m., and Vice-Chair **Carpenter** called the meeting to order at 12:15 p.m.
2. PUBLIC PARTICIPATION: None.
3. CONSENT CALENDAR:

MOTION NO. 1: Stewart MOVED to approve the minutes of the June 10 meeting, and Patterson SECONDED THE MOTION.

Corrections to Minutes. Carpenter noted two errors. On page 10, item number 7, the second paragraph, in a statement he had made at the June meeting, the word “understand” should be “understanding.” “He said it was his understanding that the facts are closed . . .”. On page 15, the fifth paragraph is a one-line paragraph which says, “Dreiling added that he things LRAPA needs to do a better job.” Carpenter noted that “things” should be “thinks.” There were no further corrections.

Carpenter MOVED to have a friendly amendment to the original motion, to add the two corrections to the minutes. Stewart and Patterson AGREED TO THE AMENDMENT.

VOTE: THE AMENDED MOTION PASSED BY UNANIMOUS VOTE.

Comments on Expense Report. None.

MOTION NO. 2: Ortiz MOVED to approve the Consent Calendar, and Carpenter SECONDED THE MOTION.

VOTE: THE MOTION PASSED BY UNANIMOUS VOTE.

Monk arrived at 12:20 p.m. and assumed chairmanship of the meeting.

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

- A. Air Quality. Hough noted that, often, the most interesting air quality occurs after the normal mid-month to mid-month reporting period. The current report covered the period from mid-May to mid-June. The US Olympic Track & Field Trials were held in Eugene the last of June and first of July, during which time there was agreement with the Oregon Departments of Agriculture and Forestry that there would be no grass seed field burning or slash burning allowed, in order to avoid impacting the athletes with smoke from those sources. Even with those precautions, however, the trials were impacted by smoke carried on southerly winds from lightning-caused wildfires in northern California. The impacts started on the second day of the Trials, and LRAPA staff watched that very carefully.

LRAPA convened two teleconferences. The first involved environmental enforcement people in the Pacific Northwest, to make sure that everyone understood if there was a potential for the smoke to remain at high levels or even worsen. Data from the Department of Forestry indicated that there was potential for the smoke levels to remain high because the California wildfires were growing, and the winds continued to be from the south, contributing to the impacts on this area. Hough said the teleconference was called on very short notice, and the response was very good from the agencies involved. That same afternoon, LRAPA coordinated a second teleconference, regarding health impacts, which included representatives from Lane County public health, Oregon health department, Jackson County and some other areas of southern Oregon which were also being impacted. The objective of the teleconference was to be sure that all participants agreed to a procedure in case the situation were to worsen. It was agreed to use the standard cautionary statements which are a part of the national Air Quality Index system, and that if the situation became worse there would need to be conversations with Olympic Trials planners about the possibility of postponing some events. The Air Quality Index in Lane County got up to the top of the Orange range, which is the "unhealthy for sensitive groups" category. Jackson County experienced higher levels of smoke particulate and did recommend postponing some high school soccer sports camps until air quality improved.

Sally Markos met with the central committee of the Trials organizers, and they asked LRAPA to take the lead and provide daily news releases for the duration of the trials and coordinate everything with other health-related agencies. LRAPA did assume that lead role and, fortunately, air quality in Lane County improved quickly due to changes in wind directions and speeds.

There were some summaries from LRAPA's website in the board's agenda packets, and Hough pointed out how the smoke showed later up in Oakridge and took a little longer to ventilate out. A graphic display of the nephelometer data showed how effective LRAPA's monitoring network is in showing real-time smoke (particulate) monitoring information in Lane County. The data showed the smoke particulate levels rising quickly at the Willamette Valley monitoring locations on Saturday afternoon, while the Florence site was largely unaffected by the California wildfire smoke. Hough explained, further, that there was smoke present for several days, but for most of the time it was kept in the higher elevations of the atmosphere. The reason that the monitored levels increased so quickly on Saturday was that there was some thunderstorm activity during that time which improved mixing and brought a lot of the smoke down to ground level where it impacted the monitoring equipment, as well as the people breathing the air.

Patterson commented that the agreement with Oregon Department of Forestry to avoid slash burning during the Olympic Trials has created some extra buildup of fuel in the forests. Under normal conditions,

much of the undergrowth and debris in the forests would have been burned under controlled conditions by now. This year, the snow pack stayed around longer than usual, and with the snow melt and the current dry conditions, the forests have now gotten very dry and are causing some concern regarding wildfires getting started in Oregon, particularly since many of Oregon's firefighters have been called upon to help fight fires elsewhere. Patterson said there is some concern about what may happen later in the summer, when things get really dry.

- B. Lane County Funding for LRAPA. Hough reported that, as part of measures to balance Lane County's budget, the Board of Commissioners had been required to consider eliminating dues to all intergovernmental entities. The commissioners held a public hearing on the budget in June, at which both Hough and Monk testified on behalf of LRAPA. The commissioners voted to reaffirm Lane County's support of LRAPA, and they restored \$45,000 of the \$118,000 dues contribution for LRAPA for FY 08/09.
- C. Field Burning. Hough reported that DEQ has drafted a bill for the next legislative session which would continue the phase-down of field burning. He said that bill is not as extreme as the bill introduced during the last session which would have eliminated field burning immediately. The DEQ bill, to be introduced by the Governor, would shift the burden to the grass seed growers to demonstrate that there are not sufficient alternatives to burning available to comply with the phase-down.

Kirkpatrick asked if staff could provide the board with information as to what the alternatives to burning might be. She said she has spoken with farmers who have told her less burning would mean more spraying of pesticides; and she wondered what the trade-offs would be. Hough suggested inviting representatives of the Oregon Department of Agriculture to address the LRAPA board, to present both sides of the issue. He pointed out that acreage allowed to be burning has been reduced from about 275,000 acres, historically, down to about 50,000 now; and it could be argued that the other alternatives, including pesticides and other practices, are already in place on the 200,000+ acres which are no longer allowed to be burned each year. He added, however, that there would likely be more pesticide application if burning were prohibited for the final 50,000 acres.

Kirkpatrick also asked what is actually burned—if the tall stubble is cut down so that there is just a couple of inches left to be burned.

Stewart noted that this subject has been discussed by the board of commissioners over numerous meetings. He answered Kirkpatrick's question by saying that the farmers do remove the long stems that they don't process and burn just the stubble. He said it is his understanding that the ground that is burned in the poorest quality ground, and burning releases nitrogen back into the ground quicker. If the field is not burned, nitrogen needs to be added to the ground. Stewart said he has asked these same questions several times, and he has been told by Dr. Sarah Hendrickson (Lane County Public Health Officer) that, in her opinion, the smoke is far worse to your health than the additional nitrogen and pesticides would be.

Carpenter said he recalled that some OSU researchers are preparing a report for the EQC, and it might be best if the board waited until that is completed before having a more in-depth discussion of field burning. He suggested that, when the OSU report is completed, copies be distributed to board members, and then perhaps have someone from ODA come and talk to the board. Ralston said if the ODA comes down to talk to the LRAPA board, he would also like to know how the farmers feel about the subject, so that the board gets a balanced report.

Monk suggested that, unless the board wants to change its position, board members should educate themselves individually on this subject. He said he has a lot of information on the subject which he would be happy to share. Monk questioned whether this subject is possibly not pertinent to the board's workload over the next few months. When the OSU report has been completed, if board members want an array of people to come and address the board, Monk said he thought that would be a great idea, if it fits into the board's schedule. Monk added that the report is to include only economically feasible alternatives to burning, and he thinks it would be difficult to define exactly what an economically feasible alternative is.

- D. Enforcement. Carpenter said that the asbestos-related citations seem to remain consistent each month; however, there are also numerous notices of asbestos abatement projects submitted to LRAPA each month, indicating that the message is getting out to a lot of people that they need to handle asbestos properly. There was some discussion of asbestos violations and the civil penalty matrix in general. (See New Business for that discussion.)

- E. Status of SHINE Report.

Johnson referred to a statement in the director's report that staff has been coordinating efforts to release a cancer report from SHINE and that the dates have been cancelled. He asked if that was the cancer report that SHINE was working on for the Trainsong neighborhood of Eugene. Hough said that is the report mentioned in the director's report, stating that they originally had suggested some dates that they would like to have that type of discussion in this area; however the last word from them is that they have made some additional changes and want ATSDR (the national group under which SHINE operates) to take another look at the report before SHINE is ready to have a public meeting or release that report.

Ortiz asked if SHINE has a time estimate for the release of the report; and Hough said they were hoping that it would not take more than a week or two to finalize the report, but they do not have a precise date for the release of the report. Ortiz noted that the report was due in June and that another group in which she participates has been anxiously awaiting its release.

Johnson asked if it would likely be available by the LRAPA board's September meeting, and Hough said that was his impression. Johnson asked if SHINE had given any indication of what the preliminary findings are, and Hough said there have been different drafts out, and he did not get the sense that it was going to be a dramatic change from the last draft that the LRAPA staff and board members saw. [*Note: The report was received by LRAPA and posted on the LRAPA website on July 21, 2008.*]

- F. Status of Plywood MACT Compliance. Carpenter said it seemed clear from the latest progress report from SierraPine that there are no unresolved issues; however the report for Flakeboard is unclear as to whether they still intend to meet the October 1 deadline. He said it is good to have a status report to know what is happening now; however, it would also be good to know how the current activities will affect the overall schedule. Sandra Lopez reported that the most current information from Flakeboard is that they may meet the October date because the installers had completed work at SierraPine and were to start work at Flakeboard on the biofilter that goes on the furnace. As for the resin blender part of the compliance plan, Lopez said, they will exceed the October 1 deadline. Lopez said Flakeboard got some quick-set concrete and also paid more money as an incentive to some vendors to get the necessary products more quickly.

Carpenter then asked if Lopez had discussed with Flakeboard stipulated penalties to be assessed for the facility's being out compliance as of October 1, as an economic balancing of how far and how long they wish to be out of compliance. Lopez said staff has talked to Flakeboard about the fact that they are going to be out of compliance, and they are getting a modification to their permit that will show that they are going to have this new equipment in and will comply with the new MACT requirements. She said Flakeboard wants the public to know that the facility will be out of compliance for a while for part of its operation. They also wanted to include a compliance schedule in the permit; however, EPA does not want a compliance schedule in a permit when compliance status is questionable at this point. Lopez said LRAPA staff is also concerned that putting a compliance schedule in the permit would give the facility more time. Perhaps by October 1, they will be in a better situation, and LRAPA would want a shorter compliance schedule in the permit; or something else could happen that would cause them to want a longer compliance schedule. Lopez said enforcement will take place on October 1, and the compliance schedule and penalties will be developed based on the status at that point.

Carpenter asked Lopez to get for the board, for its September meeting, a report of how many pounds per day of what air toxics or other pollutants Flakeboard would be out of compliance if they continue to operate as they have been into the October-through-end-of-December period. Lopez said she would do that. She added that part of the enforcement action will be for the company to provide specific information as to what their emissions will be over that period of time.

Patterson asked if the resin blending process is in operation elsewhere, or if Flakeboard will be the first to use it. Lopez said there is a facility in Canada that is using this resination-pollution-prevention-type of operation on a much smaller scale. Patterson asked if the Canadian facility is bound by the same regulations Flakeboard will subject to, and Lopez said they are not, at present. Johnson asked if most other facilities are just using thermal treatment; and Lopez said most other facilities are using biofilters and thermal treatment, adding that Flakeboard is putting in an extra step so that they will use less resin.

5. **ADVISORY COMMITTEE:** The committee did not meet in June, and there was no report.
6. **APPROVAL OF FINAL ORDER IN CASE NUMBER 07-2928, RANDY DREILING, OAKRIDGE:** Hough explained that, following the board's action in June, to uphold the hearings officer's decision in this case, LRAPA's legal counsel had prepared a final order for board approval, to finalize the board's action. Hough said the next step for the respondent would be to appeal the board's decision to the Court of Appeals, and that adoption of this final order by the board would give him the basis for that appeal. Hough said there is also an option for the attorneys to negotiate a potential out-of-court settlement.

Monk noted that LRAPA has already spent a lot of money prosecuting this case and that, if the respondent were to appeal the board's decision, there will be even greater expense to the agency. Monk said he would like to explore, as part of the discussion the board will have regarding the agency's enforcement rules and civil penalty matrix, possible ways to reduce the expenses incurred by the agency. He said he assumed that, in every case where a civil penalty is assessed, the respondent has the opportunity to settle the case with a reduced civil penalty. Hough confirmed that is the case, and Monk said he did not know what else the agency might do. Kirkpatrick asked if Hough had an estimate of how much it had cost LRAPA to prosecute this particular case, and Hough said he could put that information together for the board; however, just in the last round, the legal expenses were in the thousands of dollars which clearly exceeds the amount of the penalty. Hough explained that the agency tries to settle, if possible, in order to save both the respondent and the agency the costs of taking it to a contested case and possible appeal to the board.

Monk said he would like to find a balance between something that will deter future violations and, at the same time, not overly burden someone.

ACTION: Carpenter MOVED approval of the final order in Case Number 07-2928, Randy Dreiling. Monk SECONDED THE MOTION.

Discussion of Motion. Ralston said he expected Dreiling to appeal the board's action. He said he thinks the amount of the penalty is unreasonable for an individual who was trying to do something good and really didn't know what was going on. He said he would not support the motion.

Patterson agreed with Ralston, that the penalty was unreasonable. He said there were extenuating circumstances, and that this action could set some precedents that the board does not want to deal with in the future.

Kirkpatrick commented that the board did not vote at the previous meeting about whether it was reasonable or not, but whether the hearing record supported the hearings officer's decision.

Stewart said he believed the amount of the civil penalty in this case was too high, for a first-time violator. He said he did not agree with it but, because the facts were there, the board had to support the hearings officer's decision. He said he is fully supportive of reviewing the civil penalty matrix and making sure that the civil penalty amounts are appropriate and fair.

Monk said he thinks that, in terms of first-time offenders, there should be a policy to immediately take that to the director rather than coming to the board. He said he thinks there are a lot of improvements the board can make in the whole enforcement process, and that should be on the board's agenda perhaps later this year. Monk also said he thinks the board has done what it was required to do in this case. He brought up a point voiced earlier by Johnson, regarding the fact that Mr. Dreiling was looked at as the operator of the property in this case, when it belongs to someone else. Monk said the option of forcing payment of the penalty through a lien on the property would not work because Dreiling does not own the property. Johnson agreed, stating that the situation puts the agency in a "pickle." Carpenter disagreed and stated that he does not think that is true. He said his sense is that the agency can place a lien on any property that Dreiling does own: it does not have to be the property that's in violation.

Carpenter said if there are inequities in civil penalty assessment, those must be dealt with in the civil penalty matrix system. He said perhaps the issues of fairness and first-time violations and health effects should be programmed into the matrix, but is is not programmed into the matrix currently. He said LRAPA applies the law as it is written—not as the board would like it to be.

Johnson said one thing that struck him was the inequity of LRAPA being represented by skilled attorneys and Dreiling not having anyone on his side. He said he knows that some environmental programs have an ombudsman system so that an advocate can help the respondent negotiate fairly with the agency. Johnson said it seems that LRAPA has a huge advantage over the polluters, particularly first-time violators. He said he thinks they need to learn a lesson, but they should have someone who knows LRAPA's system on their side. Monk said the board should take note of that and see if there is any possibility of getting that kind of help for people like Mr. Dreiling. Johnson suggested a process by which the respondent could go with LRAPA counsel and inspectors to participate in a formal mediation service of some kind to perhaps equalize that disparity in negotiating power when negotiating a settlement. He said he thought it would cost the agency less money in the long run.

Hough explained, again, that one of the three choices given to a respondent in responding to a civil penalty assessment is to request a settlement and provide their side of the incident. He said that is much more commonly used than the contested case hearing and then appeal of that decision to the board. Hough stressed that it very rare for a case to go through the contested case process where legal counsel is more involved. In most cases, a settlement is reached without counsel involved on either side.

Fortune commented that LRAPA has rules regarding asbestos, and he thinks the board might want to review those rules. He said LRAPA goes after people for not getting a permit, and he understands that if there was no permit there was a violation of a rule; however, he wonders if, in fact, there actually is a health hazard to people in the area at the time that the person is cited. Fortune said, in his opinion, the fact that there is asbestos present doesn't necessarily mean there is a health hazard.

Carpenter responded that asbestos exposure is a legacy thing. You might not get exposed to asbestos when you throw it, un-bagged, in a dumpster, because you might be wearing a protective mask. But the refuse hauler would not know the asbestos was there and could be exposed to it when he collects the garbage. He said perhaps the board needs to look at the original federal asbestos rule and the comments and the reason that it is deemed a health hazard. Carpenter commented that there have been hundreds of thousands of cases of lung disease caused by improper handling of asbestos by people working in the shipping industry and other industries. He said the rules about asbestos handling have developed from 30 years of human pain and death. Carpenter said it may look simple on the outside, but when asbestos-containing materials are disposed of improperly, it doesn't just stop when it goes into the trash can. Every time it crumbles up, it can emanate dust that can cause lung cancer or other lung diseases.

Fortune said the rules for asbestos came down after employees were constantly exposed to asbestos in manufacturing of brake pads and other products, without protection. There were a lot of claims by employees that employers had exposed them to asbestos on a constant, daily basis. Carpenter said he thinks the issue is that, when the scientists look at that they decided that it doesn't have to be a constant, daily basis. The rules that were adopted regarding asbestos were designed to be strong enough to protect people in a situation such as someone tearing out their kitchen floor with their toddlers running around the kitchen at the same time.

Monk suggested that this subject be revisited when the board talks about the fine matrices and whether they're appropriate for asbestos, along with any other changes the board might want to make.

VOTE ON MOTION: SEVEN (Carpenter/Johnson/Kirkpatrick/Monk/Ortiz/Ralston/Stewart) IN FAVOR and TWO (Patterson/Ralston) OPPOSED.

7. REVIEW OF LRAPA'S KEY PRIORITIES--LOOKING AHEAD: Hough explained that it had been about a year since staff had discussed priority issues with the board as part of strategic planning. He presented an updated list of priorities for board review and discussion during the next few months, in preparation for beginning development of next year's budget, within the context of fiscal realities and what is possible for the agency to do. Another document provided for the board was an updated list of agency successes which was prepared by staff. A third document was a list of priorities as seen by staff, incorporating recent board discussions and carrying over some high priorities such as reducing PM2.5 levels in Oakridge. The second priority on the list was dealing with air toxics and ozone precursors, especially with the tightening of the federal ozone standard. The third category on the list was general agency administration on things that are not pollutant-specific. Hough said the purpose of presenting this information to the board at this time was

to initiate discussion and give the board some initial information of how staff sees the agency's priorities, based on what the agency has been working on and what staff has been hearing from board discussions.

Stewart said the list of priorities looked good to him; however, he would like to see finding different sources of funding as a higher priority, rather than as the last item on the list, given the county's fiscal situation and knowing that the cities are also facing financial problems. Stewart said the board and the agency need to do everything they can to work with legislators in the coming legislative session to solidify LRAPA's revenue structure. Hough responded that staff's intent was not to order any item above others, that the items on this particular list are all considered high priorities. He said that item could be moved up higher on the list to give it greater emphasis. Stewart said he would like to see funding listed first, even before particulate matter or air toxics, just so that it is highlighted and appears to be very important.

Monk agreed with Stewart, stating that staff should be looking over the next months at what opportunities there might be for additional funding. He stressed that there are already bills at Legislative Counsel, and staff needs to begin working right away with Lane County's legislative delegation, to be ready for the '09 legislative session.

Ortiz said the city of Eugene looks at what its priorities are and then lobbies people in both national and state legislatures as a part of a group called, "United Front," or IGA. She asked if LRAPA is a part of that. Hough responded that LRAPA is not, and that this agency's interaction has been with the Oregon Department of Environmental Quality and the Oregon Environmental Quality Commission. He said both DEQ and EQC are required to work through the governor's office, and LRAPA negotiates with them and gets concurrence on what the high-priority air issues and then works with them as they take that to the governor's office, on its way to the Oregon Legislature. Ortiz asked if LRAPA has any input into what DEQ's priorities are, and Hough said LRAPA is an active partner in those discussions. Ortiz asked if there are any priorities through that process. Hough said that, even though LRAPA was very successful last year in getting restoration back to historic state General Fund funding levels through DEQ, the request that went to the governor's office was greater than what came out of the governor's office, and he believed that the request from the governor's office was higher than what was approved by the legislature. While LRAPA has not had a problem getting its priorities included in DEQ's funding request, there is trimming that takes place at each step in the process, which is probably typical of any state agency or any regional agency like LRAPA working with a state agency like DEQ.

Patterson wondered if there are other funding sources—not necessarily governmental—that would be supportive of LRAPA and might be willing to help fund the agency's programs. Hough responded that there are three main sources of funding for LRAPA. One is EPA, but EPA is struggling to maintain the status quo right now regarding their support of state and local agencies. Another source is grants, and staff continues to look for opportunities there. The third source is the Oregon Legislature. Hough said the legislature has been made aware by county commissions of financial problems and needs for additional state funding. The legislature knows that the loss of federal timber receipts has impacted several counties in Oregon, and Lane County's shortfall is of interest to them. They recognize that the counties' problems throughout the state are going to indirectly affect state programs and budgets. They have asked LRAPA for periodic updates on how our budget is doing over the past couple of years.

Monk suggested putting this topic on the board's agenda sometime this fall and encouraged board members to give some thought to what kind of opportunities there might be to help with LRAPA's funding shortfall and come to a fall board meeting prepared to talk about those possibilities. He also suggested that Hough

attend an IGA Committee meeting to discuss this, because that group has a full-time lobbyist at the Oregon Legislature.

Monk brought up statutory language changes which might benefit LRAPA, specifically the statutory requirement that civil penalties collected by LRAPA go to Lane County's General Fund. Monk said he would like to explore the possibility of getting the statute re-written to allow those resources to be reallocated to some other direction. He acknowledged that a drawback of being allowed to retain those funds would be public perception of LRAPA fining people to improve its funding situation. Johnson commented that all of Washington state's local air programs retain their fine money and use it for anything they wish. Hough commented that one thing that was in the legislative session last time was a program called, "Heat Smart," which would have taken part of DEQ's fine amounts and made that available for woodstove replacements, indicating that there has been some conversation at the legislative level about using those funds for environmental programs. He added, however, that the way those fine monies are handled in Oregon has been in place for decades, and it may be difficult to overcome, even if other states are successfully doing it differently.

Stewart said if the board is going to talk about statutory changes, he would like to talk about makeup of the LRAPA Board of Directors. He said a nine-member board is quite large for an agency the size of LRAPA, and the only way to change that is to look at the statute that governs membership of the agency.

Monk stated that the board needs to discuss legislative priorities such as funding possibilities and board reconfiguration as soon as possible, and he would like to have that on the agenda for September or October. Several board members indicated agreement. Hough commented that the September agenda would be busy because of the continuation of the industrial permitting rules hearing scheduled to begin August 26.

Carpenter brought up more effective use of LRAPA's website for educational opportunities. He said carbon dioxide equals fuel economy and fuel efficiency in automobiles, which leads to less auto pollution, generally. He would like to explore putting some links to fuel efficiency and related information on LRAPA's site. Before putting time into that, however, Carpenter said he would like to know how many hits LRAPA's website gets, to see if there is enough interest in the site to warrant the extra work. Metzler said she thought the website contractor would have that information and that she would talk to him. Carpenter also asked if there is information regarding asbestos permits on the website, and Metzler said she had just met with the Operations Section staff and that they were going to work on further improvements to the asbestos section. She said staff would be putting some on-line forms on the site and repairing some broken links.

Patterson said he has always had a problem with mandates that come down from federal or state government but include no funding to carry out the responsibilities. He said he'd like to see a lobbying effort to ensure that funding would be included from whatever entity mandates a new requirement for LRAPA so that the agency does not have to abandon something that the agency sees as a higher priority for Lane County in order to accommodate an unfunded mandate.

Johnson agreed with Patterson, stating that a good example of an unfunded mandate would be the state's GreenHouse Gas Reporting requirement rule just passed by DEQ which includes required action by LRAPA for Lane County sources. He said LRAPA staff will be required to spend time collecting the information, but the state is not allotting any money to pay for that work. Johnson agreed with Patterson that, any time the agency is required to do more work, there should be some dollars associated with that. Hough commented that when DEQ put together its budget for the 2009 Legislative Session, it included some additional work on GreenHouse Gas program development. At LRAPA's request, DEQ included LRAPA in its request for

funding, at about 15 percent of what they would get for that program. Hough said that is a fair split, taking into account the types of sources and the amount of work involved, adding that this is an example of DEQ recognizing that this is an unfunded requirements but working with LRAPA to ensure that its needs get met in their rulemaking process. Johnson responded that LRAPA needs to be careful because of the critical mass issue of the number of affected sources; that if DEQ has 100 sources paying fees, they might be able to fund a full-time person to do the necessary work. If LRAPA gets only 15 percent and the number of affected sources in Lane County is 15 percent of the rest of the state, the fees paid by the program would pay for only a fraction of an FTE. That would mean that existing staff would have to absorb that workload.

Hough reported that the Operations section has taken on a couple of OSU graduate students as interns for the summer. LRAPA often has students from the work/study programs at the U of O and Lane Community College who help with some of LRAPA's work; however this is the first time OSU student interns have been hired. One reason is to develop a stronger rapport with OSU's engineering program so that graduates from that program would consider working for LRAPA. The two students who are here for the summer are juniors, one of whom has been working to create on-line forms for different parts of LRAPA's programs for use on the agency's website.

8. NEW BUSINESS:

- A. Enforcement and Civil Penalty Matrix. Monk commented that the fines for asbestos in the civil penalty matrix are, perhaps, decades old in terms of the fine values. He asked whether the board should talk about giving that to the advisory committee at some point to study and come back to the board with recommended changes. Monk added that one of the things he's been promoting is the idea that the board have a more thorough look at the fine matrix and be specific in its direction to the advisory committee. Stewart commented that he also believes the penalty matrix needs to be revised.

Hough noted that a few month ago staff presented a general overview of the enforcement rules, and the board discussion at that time was to revisit that at the board level once there is more time on the schedule. Hough said it would be sometime after September that it would come back to the board. Hough said that would be an opportunity for the board to give some general direction to the advisory committee of the things they would like the advisory committee to give special attention to, such as first-time violators, asbestos violations, etc. The board could give a little more direction rather than just requesting a general update and review by the committee.

Carpenter suggested that staff present the board with a primer of the matrix before the board gives the advisory committee any tasks involving the civil penalty matrix. He acknowledged that staff has previously presented some information but he had missed that meeting. Monk said consensus at that time was that the matrix was pretty good, in terms of looking at responsibility and putting weighted values on different aspects of responsibility and severity of the violation, etc. He said there should be some consideration given to first-time offenders, and the amount of the fines should be updated to be more of a deterrent of activity that violates LRAPA's rules.

Kirkpatrick acknowledged that there are people who are trying to remodel a house and don't know they need to get a permit for abatement of asbestos; but there are others who own businesses and who save themselves money by operating out of compliance with LRAPA's rules. She said she would like to look at that commercial vs. individual distinction. Monk said some board members had an issue with the relatively small amount of the fine levied against Hynix; and he suggested that staff use that case in its

presentation regarding enforcement and the civil penalty matrices, in terms of economic benefit and how that is factored into staff's determination of the amount of the penalty. Monk suggested having that on the October agenda, and Hough said he would rather not be tied to a certain time frame because he needs to educate himself and work with staff to identify the issues and compare LRAPA's program with what DEQ has done in the rest of the state over the past few years, since LRAPA's enforcement rules were last updated. Monk agreed and said it would be okay to put that on the board's agenda whenever Hough thinks it is appropriate.

Johnson asked if LRAPA's civil penalty matrices have ever been compared with DEQ's, and Hough said his understanding was that the two were virtually identical at one time. DEQ has made changes in its rules, in trying to deal with all environmental programs. He said he had not gone back and looked at how significant all those changes have been, with respect to just the air program; however DEQ has made at least a couple rounds of changes since LRAPA last changed its rules. Hough said he wants to be sure to compare the LRAPA and DEQ rules and be sure he fully understands the similarities and differences before bringing it to the board, so that he will be able to answer the board's questions. Johnson said, in addition to the civil penalty matrices, he would also like to see the procedural difference between the two agencies. He said DEQ offers "fresh start" agreements, or a kind of start over option, where they let a current violation go and say they will start over on the enforcement action. He said he wants to know if DEQ has an ombudsperson that people can go to as an advocate or quasi-advocate.

Carpenter commented that if the violator does not request a settlement conference, he does not think it is LRAPA's duty to try to force the violator to come in so staff can talk to them. He stressed that when LRAPA issues a civil penalty assessment, the document includes the option to have a settlement conference. Hough confirmed that, stating that LRAPA outlines three options for the violator, including paying the penalty and putting it behind them, contesting the case and asking for a contested case hearing, or requesting a settlement and providing their perspective on the history of the case.

- B. Ortiz said she sits on the board of HPRN Northwest, and they recently got a grant to look at the environment in the Trainsong Area. She said the intent is to look at how the (human) built environment in that area affects childhood asthma, cancer rates, obesity in children, and the basic quality of life in that area of Eugene. Ortiz said that, for the grant application, the group used as background material some of the information produced in connection with the J. H. Baxter and rail yard evaluations in which LRAPA has been involved. Ortiz said the grant will be used to look at ways to make that area a better place for people to live.
- C. At-Large, General, Board Position. Monk said Glenn Fortune would be going from the at-large, general, board member to the Oakridge/Cottage Grove board member in February, which means the board will need to look at a new appointment for the position. Monk said he would like to start soliciting applications in the fall and possibly go back to the applications that were submitted two years ago to see if any of those individuals are still interested in appointment to this board.

Ralston asked Patterson when his current term as a city councilor expires, and Patterson said it expires this year. Monk asked when the switch happens from Cottage Grove to Oakridge for the shared board seat, and Fortune said it happens February 1. Monk asked if Fortune would likely take over that seat in February when it once again falls to the city of Oakridge; and Fortune said it would be up to the Council, but he would likely take it. Monk said the board would need to revisit the preference, if any,

it would want for representation for the at-large, general, seat; and he would like to have that item on the board's October agenda.

Ralston commented that he still thinks it makes a lot of sense to rotate that seat between Cottage Grove and Oakridge so that both of those cities maintains a seat on this board at all times rather than switching every two years. He said he would set a priority for a Cottage Grove representative for the next appointment. Carpenter said the position is an at-large, and everyone gets to apply. He said Ralston can vote his preference as he chooses. Ralston responded that the board decided that it was logical to have the at-large seat rotate between the two cities so that they are both kept in the loop.

9. **DIRECTOR'S ANNUAL PERFORMANCE AND MERIT REVIEW:** Monk announced that the board would go into executive session, pursuant to ORS 192.660(2)(i) for the purpose of reviewing and evaluating the employment-related performance of the LRAPA director. He said the criteria to be used in the evaluation were adopted by the board at the regular open board meeting on May 12, 1998, at which time there was an opportunity for the public to comment on the criteria, prior to adoption. Monk said representatives of the news media and designated staff would be allowed to attend the executive session, but all other members of the audience would be asked to leave the room. He added that representatives of the news media were specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session, as previously announced. He added that no decision may be made in an executive session.

Monk said there were two options for the end of today's meeting: the meeting could end at the end of the executive session, or the board could go back into open session. Stewart said he thought the board should reserve the right to go back into open session.

THE BOARD WENT INTO EXECUTIVE SESSION AT 1:40 P.M. OPEN SESSION RESUMED AT 2:47 P.M.

There was no discussion in open session of details of the performance evaluation. The discussion in open session concerned salary adjustment.

Ralston stated that he would never advocate a maximum increase and that even a 5 percent increase would be inappropriate at this time. Ralston said he does not get that kind of increase. He suggested a 2.5 percent step increase because he does not believe Hough has been exceptional. He said it could be argued as to whether or not Hough has been above average, but he was opposed to giving a 5 percent pay raise on top of a COLA.

Monk said that one of the most critical parts of Hough's responsibilities is to manage staff, and there have been ongoing references to the fact that that has not been adequately done in some cases. He said that, while Hough may do many, many things very well, one of the critical components of his job has not been successfully addressed. Ralston agreed. Both agreed, also, that this situation has existed for two years with no resolution.

Stewart asked about the COLA, and Hough said it was an across-the-board COLA for all staff, which was included in the budget approved by the board.

MOTION: Given the current budget situation, with Lane County being unable to fully fund its contribution for this year, STEWART MOVED to leave Hough's salary with just the COLA which Hough received as July 1 of this year, with no further salary increase. RALSTON SECONDED THE MOTION.

Discussion of Motion. Monk started by saying he did not think the motion was a reflection on Hough's performance as a manager, as much as a reflection on potential fiscal difficulties the agency faces. Patterson agreed, stating that he did not think the agency has the funds at present to give Hough more than the 3 percent COLA that was already given to all staff for this fiscal year.

Carpenter asked whether Hough is entitled to a longevity increase, under the agency's salary policy. Mirhosseyni indicated that the next step, according to the personnel policy, would be to award a 2.5 percent longevity increase to an employee who is not at the top of the pay range, which Hough is not. Hough said it is his understanding that the personnel policy manual details the process to be followed for regular employees; however, the board has more flexibility with regard to the director's salary. Carpenter said he understands that hiring and firing follow different procedures for the director than for other employees; but he asked if everything else in the personnel policy applies to the director, as it does for other employees, and if he should be entitled to everything to which other employees are entitled. Mirhosseyni said the same policy should apply to the director as to other employees. Carpenter then said that, according to the policy, Hough should be entitled to the 2.5 percent longevity increase. Mirhosseyni said the longevity is not a given, and a manager can deny that to an employee. He explained that salary increases are divided into two parts: a 2.5 percent longevity increase; and up to 2.5 percent merit increase. The longevity increase is generally the minimum amount awarded, and the merit increase can be given in half-percent increments, up to 2.5 percent additional. Carpenter said he would want to look at the employee handbook to make sure he understands the policy correctly.

Carpenter then stated that the board has found Hough to be deficient in one area out of ten being evaluated. He said that some of the evaluations of Hough's performance which he received from staff and advisory committee members have rated Hough lower on that one criterion, but they have given him high ("exceeds expected performance") ratings in all the other areas. He said he could not vote for something which essentially tells Hough that the agency is in financial straights and, while he is the best administrator the agency has had in the past ten years, the board is not giving him a raise and we hope he'll stick around.

Ralston argued that Hough did get a pay raise in the form of a COLA. Carpenter countered that a COLA is a cost-of-living adjustment, not a raise. He said if everyone else on the staff got the same COLA, even those who may be under-performing, he does not consider that to be a pay raise for Hough. He suggested giving him at least 2.5 percent increase above the COLA.

Hough said he had been waiting for the open part of this session to request that there be no longevity or merit increase for him this year, in light of the budget difficulties the agency is facing.

Carpenter said he would like to offer the increase, which Hough would be free to refuse.

Monk thanked Hough for his comments.

Ortiz said she was originally not going to support the motion, but with Hough's request she would support it.

Fortune said if the financial situation improves, the board can certainly consider a future pay raise for Hough.

Johnson said he agreed with Carpenter, that Hough deserves a raise, above the COLA, but given Hough's request, he would support the motion.

Monk commented that Hough had received prior increases since he has been in the position of director and has also been acknowledged for his achievements.

Fortune called the question.

VOTE ON MOTION: THE MOTION PASSED, WITH ALL BUT CARPENTER IN FAVOR.

10. ADJOURNMENT: The meeting adjourned at 3:10 p.m. The LRAPA Board of Directors will not meet in August. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, September 9, 2008, 12:15 p.m., in the LRAPA Meeting Room at 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary