

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–MAY 12, 2009
LIBRARY MEETING ROOM
SPRINGFIELD CITY HALL
225 5th Street, Springfield, Oregon

ATTENDANCE

- Board: Bill Carpenter, Chair–At-Large, Springfield; Glenn fortune, Vice-Chair–Oakridge/Cottage Grove; Brian Forge–At-Large, General; Drew Johnson–Eugene; Kit Kirkpatrick–Eugene; David Monk–Eugene; Dave Ralston–Springfield
(ABSENT: Andrea Ortiz–Eugene; Faye Stewart–Lane County)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Max Hueftle; Matthew Lee; Sally Markos; Nasser Mirhosseyni; Debby Wineinger
- Other: Russ Ayers, Chair, Diana Bollenbaugh, Larry Dunlap, and Chuck Gottfried–LRAPA Advisory Committee; Barbara Allen; Jim Daniels–Rosboro Lumber; Kathy Ging; Erik Silverberg

1. OPENING: **Carpenter** called the meeting to order at 12:30 p.m.
2. PUBLIC PARTICIPATION:
 - A. **Erik Silverberg** of Eugene, Regarding Seneca’s Proposed Co-Generation Plant. **Silverberg** did not give an address. He said he lives in an unincorporated area of Eugene and might soon be moving. **Silverberg** said he would like to see a hearing date set regarding Seneca’s proposed co-generation plant in west Eugene. He would also like to know when the deadline is to receive public comment regarding the proposal.

Carpenter interrupted **Silverberg** to explain that the LRAPA Board of Directors can listen to comments people want to make about the proposed source; however the board is a quasi-judicial body which might be in a position to hear challenges to the issued permit for the source. He said that if board members were to discuss specifics of the proposal at this time, they could be accused of bias and asked to recuse themselves from any decisions made by the board later in the permitting process. **Carpenter** said he wanted **Silverberg** to understand before continuing with his comments that the board would likely not be able to respond to those comments at this time.

Silverberg said he appreciated that and said he had no problem with it. He said it is very common for companies like Seneca to spray their slash with pesticides, and he is not aware of any assurances that the materials they plan to burn in the proposed boiler would not have those pesticides on them. He said Seneca should be required to provide specific information regarding pesticides used on the trees and slash that might be going into the boiler. **Silverberg** also said Seneca has not disclosed information regarding gases the plant might emit which are precursors to greenhouse gases. He said he wanted to know exactly what those emissions are and get some numbers on that.

Carpenter commented that minutes of previous meetings have indicated that staff plans to hold a public hearing on the permit for the proposed facility. He asked **Hough** to elaborate on that. **Hough** confirmed

that staff plans to have a public hearing because of the level of public interest in Seneca's proposal. Once the permit draft is complete, it will be put on public notice, and LRAPA will announce the public hearing information in the newspapers. He said at this point, staff anticipates holding that hearing in June, and there will be at least 30 days' notice given prior to the hearing, to receive public comment. **Hough** added that the public comment period is sometimes extended beyond the actual hearing date to give people extra time to provide their comments.

Kathy Ging, who was also present to comment regarding the Seneca proposal, said some people at the University of Oregon are concerned that the public hearing will take place after the University gets out, and the process will miss the intelligence of the staff and the students at the university. She encouraged staff to push the hearing date up a little bit, if possible.

- B. **Kathy Ging, 2878 Harris, Eugene.** **Ging** said that 11 percent of Lane county residents have asthma and that the population center is mainly in Eugene/Springfield. She said the air flows north and south, right from where Seneca's facility will be located into the downtown, Trainsong and River Road neighborhoods, and that the asthma rate is probably greater there. **Ging** called attention to "score card" statistics available through Eugene's Toxics Right To Know website, stating that when the score card statistics were compiled in 2002 Lane County was in the highest 10 percent in the country for polluted air, and that the pollution comes from a number of factors. **Ging** said it is known that emissions from both Weyerhaeuser and Borden Chemical have been reduced since that time; however, the airshed is already compromised and is currently not far below the federal air standards for particulate matter. She also called attention to the American Lung Association's annual report, in which Lane County got grades of D and F for particulates and ozone. She encouraged the LRAPA board to check their website and look into that information.

Ging also encouraged LRAPA to do air monitoring in west Eugene in general and, specifically, air monitoring should take place if the Seneca proposal gets approved, which she said she hopes it does not. **Ging** referred, also, to an Earth Week program on OPB regarding poisoned water, in which a toxicologist said we really don't know what the combined synergistic effects are of different toxics in the water. **Ging** said that is also true with air.

Ging also brought up environmental justice, stating that a lot of the residents in the affected areas probably do not realize some of the scientific or health issues that are affecting them, and it is important for the community to be aware of those issues in those neighborhoods.

Ging said she wants to be sure she has the exact date of the public hearing, noting that she is on an e-mail list to receive that information.

Board Discussion. **Monk** asked **Hough** to clarify a couple of things for him. He said it is his understanding that Seneca would be the only party with the ability to appeal a permit condition to the Board of Directors. **Hough** said there is a permit appeals process for other than the permittee.

Monk then stated that, while a person could request that a board member recuse themselves from discussion of an appeal of the permit, he thinks it would be an issue before the board, as to whether that member should recuse themselves. He said a person cannot require a board member to recuse themselves, and he was not even certain whether the board could make that decision. **Johnson** said it seems to him that it is an appealable thing, that if someone says a board member is biased and they don't like the board's decision, then they can appeal the decision of the board, based on a biased decision maker.

Monk then asked about the agency's obligation regarding the timing involved in issuing a permit, specifically the time limit to issue a permit, once the application has been deemed to be complete. **Monk** said he was concerned that the time line is getting constrained because the public hearing is not expected until June. **Hough** said there is a thirty-day period from when the permit application is first submitted, during which the agency must determine whether or not the application is complete. He said he would get specific information regarding any time requirements for the next steps of the permitting process.

3. CONSENT CALENDAR

MOTION: Fortune MOVED approval of the consent calendar, including the minutes of the April 14, 2009 board meeting and the expense reports through March 31, 2009. **Ralston** SECONDED THE MOTION.

Discussion of Motion

- A. Minutes. There were no changes requested in the minutes.
- B. Expense Report. **Carpenter** noted that in the General Fund, the category of Rent & Repairs is now at 250 percent of what was budgeted for the current fiscal year. He asked for an explanation of that.

Mirhosseyni said that was because the cost of re-roofing the building was originally budgeted at less than \$20,000 but ended up costing over \$30,000. He said there was also some unanticipated cost involved in removing some shrubs and extending the fence on the north side of the building, for security purposes. He added that LRAPA received a grant from the insurance company to cover 90 percent of that cost because the fence extension reduced the agency's liability.

Carpenter also noted that the Filter Weighing Services under Airmetrics is at \$31,000 out of a budgeted \$80,000 at three-quarters through the fiscal year. He asked if that category will be very low at the end of the fiscal year, and **Mirhosseyni** said it probably will. He said he usually over-estimates this at the beginning of the year in order to avoid having to come back to the budget committee for a supplemental budget if Airmetrics brings in more contracts than what were anticipated when the budget was developed. He said the majority of the time, it will end up closer to what is in the "Actual" column. **Carpenter** commented that that might be too much of a cushion to build into the budget.

Mirhosseyni explained further that Airmetrics had its best-ever year in 2005, and he has put the budget together since then based on those figures. He said since Airmetrics is an enterprise fund, the over-estimation provides the agency the authority to spend money that comes in from new contracts, where it would not have that authority if the budgeted amount were lower, without adopting a supplemental budget.

Kirkpatrick asked if more contract services come at the end of the calendar year, and **Mirhosseyni** said that could sometimes happen; however, those revenues are pretty even throughout the year. He reiterated that since this is an enterprise fund, the dollars are spent on filter weighing service, as the money is received. If there are no new contracts, it does not affect the general operations of the enterprise. **Carpenter** commented that he would like to be as accurate as possible with the budget figures.

Carpenter then asked about grant revenue in the Everybody Wins program. He said only \$73,000 has been received, to date, but there should have been \$111,750. **Mirhosseyni** explained that when LRAPA

originally proposed the grant, EPA approved it based on what was proposed. The majority of the grant was to pay the interest on the loans LRAPA received from the Oregon Department of Energy to operate the Everybody Wins programs. He said a couple of months ago, EPA realized that under their rules they were not supposed to approve expenditures to pay interest, and they asked LRAPA to hold off requesting that money until they involved the auditors in it. The auditor said LRAPA could ask for a deviation, which LRAPA did. **Mirhosseyni** said when he last checked with EPA they had spoken with their general counsel and had received authority to go ahead and approve the deviation for the expenditures. Once their written approval is received, LRAPA will request the amount that has been held back, and the accounts will come into balance.

VOTE ON MOTION: THE MOTION PASSED BY A VOTE OF SIX TO ONE (Monk). **Monk** explained that he wanted to see the accountant's request to the agency for this adjustment, because it is so large.

4. **DIRECTOR'S REPORT:** Several items from the written report were discussed briefly.

- A. Diesel Retrofit Grants. **Hough** reported that staff has applied for a diesel retrofit grant in the amount of \$546,690 which would retrofit diesel trucks in fleets belonging to several cities in Lane County, as well as Lane County Public Works. The grant is part of the stimulus package, and it is on a fast track. The funding is targeted to maintain or increase jobs, as well as to reduce emissions. **Markos** said the decisions on the grants are supposed to be made by the end of May and, if LRAPA gets the grant, work will begin in July.

Hough said DEQ has also applied for a similar grant from a different funding sources, and they have included in their request ten Lane County vehicles that would fit within the criteria for that grant, which has already been approved.

Kirkpatrick asked if LRAPA would be hiring additional people to work on the diesel retrofit programs, and **Hough** said under the first part there may be a need for some contract help or an intern on a short-term basis, to administer the program. Most of the work, however, will be done by fleet owners or by a contractor working for them to install the equipment.

- B. PM_{2.5} Standards and Residential Wood Heating Alternatives. **Hough** reported that LRAPA was scheduled to host a workshop on May 19 to update people regarding what has been happening with PM2.5 standards and residential wood heating alternatives. He said it would be held only if enough people signed up to attend.

- C. National Association of Clean Air Agencies (NACAA) Update of Funding Needs. **Hough** called attention to a report attached to the director's report, published by NACAA, which updates what is needed to sufficiently fund state and local agency programs. The report asserts that current federal funding is really less than half of what the Clean Air Act originally envisioned and that inflation erosion over the last 15 years has widened the gap. NACAA has requested an additional \$46-million in federal funds. LRAPA's portion of the national total of federal funding to air agencies is about 0.1 percent.

Johnson said he had tried to access the NACAA website to do some research on some issues and could not get to it. He said he called them and was told the website is available to members, only, and that he, as a board member, was not eligible for membership. He asked if LRAPA pays a membership fee to NACAA, and **Hough** responded that DEQ has historically covered LRAPA's portion of the membership

fee for Oregon. **Johnson** said there is a wealth of information available on that website, and he wondered if that is something that other board members could also use. He asked **Hough** to follow up on that for him, to see if there is a way board members can access the site. **Hough** said his understanding is that there are two levels of access and that a wide variety of official, final documents, including the report he had provided to board members, are available for public access at the first level. The second level, however, is accessible only to members, because of the type of proposals that get drafted on that site.

- D. Flakeboard Plywood MACT Progress. **Carpenter** noted that the progress report from Flakeboard indicated that, while they have had some issues with accumulations of materials, they are still planning to test the system June 1. He said that was good news.
- E. Enforcement. **Monk** asked about Senate Bill 105A, which would increase the maximum allowable civil penalty state agencies can assess. He asked if there is more to the bill than just that. **Hough** said there is more to the bill, and it would allow LRAPA additional flexibility if the agency chooses to use it; however, there is nothing that binds LRAPA to the provisions of the bill. **Hough** explained further that it would expand LRAPA's options, especially as the enforcement rules are reviewed and revised in the year ahead.
- F. Ways & Means–Natural Resources Subcommittee. **Hough** reported that **Bill Carpenter**, as the board chair, represented LRAPA at a subcommittee hearing regarding DEQ's state General Fund budget, and explained to the subcommittee who LRAPA is and why the agency is here.

5. ADVISORY COMMITTEE:

- A. Committee Activity Report. Committee Chair **Russ Ayers** reported that the committee will begin at its next meeting to discuss LRAPA's civil penalty matrix. He said DEQ has revised its enforcement rules within the last couple of years, and they have a four-level penalty matrix system which seems to provide more flexibility than LRAPA's current rules do. The committee will be looking at DEQ's rules and comparing them to LRAPA's rules, with an eye toward possible revisions to improve LRAPA's enforcement rules.
- B. Committee Appointments. **Markos** reported that **Jim Leary**, who has been on the advisory committee for the past few years, stopped coming to committee meetings when his employer, Country Coach, shut down in recent months. When the company started up again, **Leary** went back to work and began attending committee meetings again; however, **Leary** has now taken a job with another company and has left the area. **Markos** reminded the board that they had discussed at a previous meeting whether or not they could find a place on the committee for a new applicant, **Diana Bollenbaugh**, who works for Forrest Paint. Currently the committee has two members who represent the larger, Title V industrial sources, but has no representative of the small industrial sources who have Air Contaminant Discharge Permits (ACDP). Forrest Paint is an ACDP source. **Markos** asked if the board would like to consider appointing **Bollenbaugh** to fill that spot on the committee.

Monk asked if criteria for committee appointments include one representative for Title V and one for ACDP permits. **Markos** said industrial sources must be represented on the committee, and that LRAPA has had separate representation for the two categories of permits; however, there is no specific language about how many representatives there should be for each category, as long as there is balance on the committee between industry and the general public. **Monk** asked how many industrial representatives

are currently on the committee. **Ayers** and **Markos** replied that there are currently two Title V representatives and, with **Leary's** leaving, none for ACDP. **Ayers** said there have been two ACDP representatives in the past.

ACTION: MSP(Monk/Forge)(Unanimous) appointment of Diana Bollenbaugh to the LRAPA Advisory Committee, representing holders of Air Contaminant Discharge Permits.

6. PRIORITIZATION AND ASSIGNMENT OF ISSUES FOR ADVISORY COMMITTEE REVIEW: Over the past year or two, the board has discussed many issues and has sometimes said that a particular issue should be assigned to the LRAPA Advisory Committee for further review and recommendations to the board. Most of those items were never officially assigned to the committee. Staff presented a list of those topics for the board to review and decide whether any, or all, of them should be assigned to the committee.

Ayers commented that the staff report that listed those topics included the agency's enforcement rules and civil penalty matrix. Under that topic was a list of the specific issues the board had brought up about those rules, and **Ayers** said that would be very helpful to the committee, for any topic assigned, so that they don't leave anything out of their discussions.

- A. Enforcement Rules. **Monk** asked what the time line is for the committee's review of the enforcement rules and civil penalty matrix. **Hough** explained that the first meeting on this topic was devoted to an overview of how the current system works. The next meeting will contrast the changes DEQ has made since the LRAPA rules were first adopted. A third meeting will be devoted to attempting to formulate recommendations as to whether LRAPA should revise its rules to bring them in line with DEQ's rules, or perhaps come up with a third alternative.

Monk said it seems to him that every topic the board assigns to the committee comes down to a very truncated meeting at which they are expected to make their decisions. He would like to see the committee take more time to formulate its recommendations to the board. **Monk** said he saw several good ideas in the round table section of the committee's meeting notes, and he would like to see them have enough time to explore those.

Carpenter commented that the notes from the last committee meeting indicated some interest in rolling the appeals process into the review of the penalty matrix. He said that would be a complicated subject on its own, and he said that, for now, he would rather not have the committee include the appeals process in its discussions. **Ayers** said the committee could just receive some education regarding how the agency's appeals process works, as part of the overall enforcement rule review, and not make any recommendations to the board in that regard.

Hough explained that when LRAPA issues a civil penalty, there are three choices outlined in the letter to the respondent, including: pay the fine; request a reduction in the amount of the civil penalty and provide the respondent's perspective of the incident; and contest the case and request a hearing before a hearings officer. **Carpenter** stated that the appeals process is somewhat separate from the penalty matrix and the setting of the amount of a civil penalty; and the discussion of the appeals process could take as long as the discussion of the penalty matrix, if the board wanted to change the appeals process at some point. He said that is why he would like to keep the two separate, addressing just the penalty matrix at this time. **Hough** said that was good clarification for staff, if the board wanted to focus just on the civil penalty matrix, for now, and leave the appeals process for later.

There was some discussion of **Johnson's** earlier suggestion that LRAPA provide an ombuds-person to help respondents navigate the enforcement rules and decide on their best option in response to receipt of a Notice of Violation and Notice of Civil Penalty Assessment. That person could also help the individual negotiate a settlement. **Hough** said if the respondent chooses to request a reduction in the penalty, that usually involves a conversation with him in which they present their case and introduce any information they might have. If they contest the case, that is where LRAPA's legal counsel gets involved, in preparing the agency's case for the contested case hearing. The respondent may also have legal counsel involved at this stage. Sometimes a settlement is reached prior to the scheduled hearing, to avoid having to go all the way through the hearing process. The settlement involves more negotiations between the two sides.

Johnson said he would be interested in having the advisory committee help the board understand what DEQ's process is, from the time the civil penalty is issued until it gets to a hearing before a hearings officer, and possibly an appeal to the EQC (or to the board, in LRAPA's case). He stated that the appeals process would be dictated by statutes and administrative hearings rules, so it is the process in between where he believes an ombuds-person could be helpful to the respondent. **Johnson** said he thinks having an ombuds-person would help to keep LRAPA's costs down because it would avoid bringing in legal counsel at the wrong time and incurring legal expenses for something an advocate could do instead.

Monk said he shares **Johnson's** thoughts about an advocate and that he assumed that all of the board members felt the same way. He said he wanted the advisory committee to look at what DEQ does and see whether they have this type of advocate. **Monk** also said he has been frustrated by the fact that, in so many of LRAPA's enforcement cases, the agency has incurred a lot of legal bills preparing for a contested case and then settled the case at the last minute, before it goes to hearing. In those cases, the agency loses money, and **Monk** said he would like the agency to go to the Legislature and ask if something can be structured to use the fine money to pay legal costs or to do the agency's enforcement and compliance work. **Monk** said he does not think the agency should be losing money in negotiating settlements, and the system should be structured so that, once legal counsel gets involved, the option to reduce the fine is no longer offered. He said he would like the advisory committee to look at a system that is fair to the respondent but also protects the agency's bottom line.

Mirhosseyani clarified that LRAPA does get to take its legal costs out of fine money received in contested cases, before the money goes to Lane County. **Monk** acknowledged that fact but said he would like to see the process improved to avoid incurring the large legal costs in these cases.

Kirkpatrick said she assumed there would also be some costs involved in having an ombuds-person, although not as much as is paid to attorneys. **Johnson** said a person would have to be paid to fill that role. He said that, although he believes DEQ no longer has a person in that position, he believes they used to have a person on staff who filled that role in addition to doing small business assistance and outreach work. He suggested that LRAPA, as a small agency, could see if there is someone at Lane County or some other government body who could do that.

Fortune commented that there have not been a lot of appeals to the board, and he does not see that as being an ongoing problem. **Hough** agreed that most cases get settled either by paying the fine or by requesting a settlement with a reduced penalty amount. He said that in the years that he has been with LRAPA, there have been two potential cases of appeals of contested case decisions to the board, one of which was settled at the last minute.

Carpenter said he does not know whether the agency would pay for the ombuds-person, or if it would be a 50/50 split between the agency and the respondent. He asked if this service would be offered to everyone, including major industry, or if it would be intended just for the “little guy.” **Carpenter** added that once attorneys are involved on both sides, they can elect to settle the case at any time. The attorneys determine the strength of the case and whether or not a settlement amount is worth it. **Carpenter** said he would not be in favor of having an ombuds-person if the agency had to pay the whole amount for that service, because LRAPA is not the violator. He likened it to when counties have to prosecute murder cases and spend money on attorney’s fees, and the taxpayers never get any of that money back regardless of the outcome of the case.

- B. Other Topics. **Carpenter** suggested that board members look at the list of possible topics for assignment to the advisory committee and bring back to the June meeting their top three topics, to be assigned after the committee has finished its work on the enforcement rules. He said the board should decide at that time, first, how extensive the committee’s evaluation of the civil penalty matrix and enforcement rules should be and, second, three topics to assign to the committee after they are finished with enforcement.

Hough said he wanted to add discussion of the area source NESHAP rules to the list of topics, stating that it is more critical than the other topics. He said staff is planning a stakeholders’ discussion soon and, because it will involve new rules, it will be something that should be reviewed by the committee. **Hough** reminded the board that the information regarding the proposed rules was in their packets for the last meeting, and said he would be happy to distribute that again if the board wanted to have further discussion on that before deciding on its list of priority topics for assignment to the committee. **Hough** explained, further, that the area source NESHAP (air toxics) rules would affect mostly gasoline dispensing facilities, as well as some other, less common, sources.

Monk said he was glad **Hough** had brought that up. He said that, rather than just picking from the list of topics provided by staff, he would like to bring other potential topics to the table in June for discussion. **Carpenter** suggested that new topics be limited to two, at most, and **Monk** agreed.

Ralston said if there are to be new topics, he would like them to be submitted to staff in the next two weeks so that they can be included in the packet that comes out before the June meeting. That way board members can be thinking about them before the discussion so that they are not expected to make a decision on something that’s introduced at the same meeting.

In summary, **Carpenter** said the board will discuss, at its June meeting, the list of topics, as well as what the board would like the committee’s discussion of the enforcement rules to include. He added that any new topics that are not included in the staff report presented at this meeting must be submitted to all board members and to **Hough** and, at **Hough**’s request, to **Dinteman**, within the next two weeks. The board will decide on its first three priority topics for assignment to the committee following its review of the enforcement rules.

7. PROCESS FOR ANNUAL EVALUATION OF DIRECTOR’S PERFORMANCE: Staff requested confirmation that the board wants to follow the same process it has done for the past few years for its evaluation of the director’s performance over the past fiscal year. Board members agreed that advisory committee and staff members should, once again, be asked to fill out performance evaluation forms and get them to the board, to help the board in its evaluation of **Hough**’s performance. They also agreed that people should be able to choose from the short and long versions of the evaluation form, as they prefer.

Monk commented that very few evaluation forms were received by board members last year, and he said he wanted to try to encourage more staff members to participate since they are the people who interact the most with **Hough**. He said it is very helpful for him to be able to read what staff members have to say.

Ralston commented that he has been through this process nine times and that there have been years when the board has received a lot of response, anonymously, which is usually an indication that there is something wrong. He said the fact that the board has not gotten a lot of responses in the last few years is an indication, to him, that there are no big problems.

Johnson said he recalled talking about this last year and the problem of protecting the anonymity of the person submitting the evaluation, but also wanting them to sign their names so that the board can contact them and follow up, to provide some legitimacy to their comments. He suggesting having people submit their signed forms to the board chair so that their anonymity will be protected since this is a personnel matter; however, the board would only consider comments on forms that are signed. **Ralston** agreed with that.

Carpenter said the forms probably should go to someone other than the board chair, because he is one of the people who will be voting on the outcome of the evaluation and salary adjustment discussions, and because the chair should not have any more specific knowledge than any other board member. He suggested that a validation process could be accomplished by having the signed forms go to the agency's legal counsel, who could redact the names of the evaluators and then distribute copies of the forms to the board members. **Ralston** agreed with **Carpenter**'s suggestion, because that would ensure that someone had verified that there was a name on each evaluation, and there would be a way to verify facts if the board had any questions about comments received. **Monk** asked if it would be fair to ask one of the advisory committee members to take on that task, and he suggested **John Tamulonis** because **Tamulonis** has done the agency service evaluation surveys for several years. Board members agreed that **Tamulonis** would be a good person to verify that any evaluation forms received were signed. **Carpenter** asked **Hough** to contact **Tamulonis** and see if he would be willing to do that, and **Hough** asked that **Dinteman** call **Tamulonis** in order to keep himself as removed from the process as possible.

Carpenter asked what the board would want to do if **Tamulonis** declined the board's request, and **Monk** suggested another advisory committee member. **Hough** suggested that LCOG would be another possibility, noting that **Milo Meacham** does contested case hearings for LRAPA's enforcement program and is, consequently, familiar with the agency. **Carpenter** agreed that LCOG would also be a good alternative. He said it should just be someone who is independent and would not charge a large fee to do it.

Dinteman agreed to contact **Tamulonis** first and, if he is unable or unwilling to do it, to contact another advisory committee member or LCOG. **Ralston** and **Carpenter** stressed that it should be someone who will do the work at as little cost as possible to the agency.

8. LRAPA RESOLUTION NO. 01-09, AUTHORIZING EXPENDITURES FOR GENERAL AND SPECIAL-PURPOSE FUNDING FOR FY-08/09: **Mirhosseyani** explained that staff had planned to hire a new permit writer at the beginning of the current fiscal year; however, that did not happen. He reported that a new permit writer had been hired recently. In the interim, LRAPA contracted with two individuals with DEQ permit writing experience, to help with the backlog of Title V permits. Resolution No. 01-09 would authorize staff to adjust the budget to cover the money spent on the two contractors.

Carpenter said he had noticed that personnel expenses were down about \$130,000 from where they were expected to be by this time in the fiscal year, and asked if that was from not filling the vacant position. **Hough**

said that was part of the savings, which was also increased because there were two resignations for which new people were not hired. **Monk** asked if the 5.8 FTE in the budget document was not real, and the agency had fewer FTEs than that. **Mirhosseyni** said that was the case, because there was not sufficient funding to be able to cover all the positions. The FTEs are left in the budget so that, if the money comes in, the agency is authorized to fill those positions. **Monk** asked if the funds for those positions is sitting in the General Fund or the Title V Fund, and **Mirhosseyni** said it is in the Title V fund.

ACTION: Fortune MOVED approval of LRAPA Resolution No. 01-09, authorizing the director to make expenditures in the amount of \$50,000 in the category of Materials & Services for Title V special-purpose fund. **Ralston** SECONDED THE MOTION.

Discussion of Motion. **Carpenter** suggested two changes in the wording of the resolution. He said he thought the account should be "Supplies & Services," rather than "Materials & Services," because he did not think there was a category called "Materials & Services." He also said the sentence that read, "Each year the agency proposes certain supplemental budget authorizations," should be "Some years . . ." because he did not recall the board acting on supplemental budget authorizations each year. **Mirhosseyni** said he would change the wording. **Ralston** said supplemental budget authorization resolutions have been a regular occurrence for this board, and he did not have a problem with it. [*Later in the meeting, Carpenter said Fortune had pointed out to him that there is a category called, "Contract Services." Carpenter suggested that "Materials & Services" in the resolution should be changed to "Contract Services."*]

Kirkpatrick asked if most of the money devoted to the new Title V permits is for the Seneca permit, or if it is for general use with the Title V permitting. **Hough** said it is for general use, adding that the permit for Seneca's new facility has been assigned to a regular staff person (i.e., not to one of the two contractors)..

Johnson said he did not know whether he could support the motion, because he had brought up during the audit report the question of whether or not the auditor was looking at the Title V funds to see if the expenditures were all consistent with the statutory requirements for Title V expenditures. **Johnson** said the auditor had referred to an "approved cost allocation plan," and that he had asked the auditor what that is and how it relates to the agency's budget. He said he had not yet heard back from either **Mirhosseyni** or the auditor regarding those questions. **Johnson** said he did not recall the board ever approving a cost allocation plan for Title V funds.

Mirhosseyni responded that the agreement is between LRAPA and EPA. **Hough** said staff had met the previous week with the auditor and with some EPA people, to make sure LRAPA's understanding is correct. He said he had thought the auditor would send a respond to **Johnson** prior to today's meeting. **Hough** said he understands that the official response will say that LRAPA's allocation plan was a part of the EPA's audit in 2006, and that LRAPA's internal management of the program was a part of that audit process. The allocation plan can be done in different ways, but the key consideration under Title V is that it be a reasonable allocation plan. LRAPA's auditor has supported LRAPA's plan, and EPA has not disagreed with it.

Hough explained further that EPA's audit of the Title V program involves the actual technical administration of the program, and that part of that is the internal management, including the financial auditing. He said EPA looks at the financial allocations in a much more relaxed manner than LRAPA looks at its allocation plan, and anything that is reasonable is acceptable to them. LRAPA's auditor went through several different approaches

used by different clients for whom his firm performs audits, to determine how LRAPA's plan compares. His conclusion is that LRAPA's allocation plan is very reasonable.

Mirhosseyani added that EPA has a matrix upon which state and local agencies' cost allocation plans must be based. The matrix says that, as long as the cost is justifiable, it meets EPA's requirements. He said he confirmed that with the EPA people with whom staff spoke the previous week. The cost allocation plan was approved by EPA in 2006, and LRAPA has continued to use that plan.

Johnson asked if LRAPA's auditor does work for other agencies that do Clean Air Act work, and **Mirhosseyani** said they do not, to his knowledge. **Johnson** said that gets to the heart of his concern, because the auditor, in his recent presentation to the board, referred to Title V as a grant-funded program, when it is an industrial fee-based program. There are statutory requirements for how those dollars get spent. **Johnson** said if EPA did look at all of LRAPA's funding mechanisms and at how LRAPA is dividing the Title V revenues, and assuring that Title V funds are not being spent for other activities, that would be good; however, he has not seen the 2006 audit report, and he is not at all familiar with EPA's having done that. **Johnson** commented, further, that EPA will not see another local agency like LRAPA, with the enterprise funds LRAPA has. **Mirhosseyani** said the auditor had acknowledge his mistake in referring to Title V as a grant-based program and intended to make that change in the audit report.

Hough said the priority for EPA is that the funding for Title V be sufficient to run an adequate Title V program. There is a presumptive minimum performance, and if an agency falls below that presumptive minimum and there are problem signs in the administration of the program, such as big backlogs and faulty permits, that is where EPA's concern is. Beyond that is the matrix of how certain activities are separated between Title V fees and the federal base grant; and if an expense is related to Title V, then Title V fees are supposed to pay for it. If it's related to non-Title V sources, then the General Fund is supposed to pay for it. In the instance of monitoring, there is no clear guideline, and you can make a case that all monitoring is necessary in order to have a Title V program, or you can say that it is sufficient for Title V to only pay based on its revenue portion of the overall budget, or its proportion based on emissions.

Hough said EPA is somewhat confused at the questions LRAPA has asked. **Johnson** said EPA does not have the fiduciary duty that the LRAPA board has, to make sure that the agency is properly allocating its funds, according to the statutes. **Hough** responded that EPA has developed fees for themselves because they also use Title V permit fees for some parts of their own programs, such as the Tribal programs. Because of that, EPA needs to be sure that they know what sufficient fees are, and that they allocate them appropriately within their agency. They recognize that day-to-day, minute-by-minute is not a reasonable expectation to have and that there needs to be an allocation method.

Mirhosseyani stressed that LRAPA keeps the Title V fund separate, and those funds are restricted. The funds are used for Title V, only, and the Title V reserves are carried over from year to year. Those reserves cannot be used to supplement General Fund needs.

Monk asked **Hough** if he thinks it is reasonable to use Title V funds for monitoring, and if LRAPA does that. **Hough** responded that LRAPA does use Title V funds for monitoring and, in fact, the agency would be criticized if it did not allocate some of the monitoring costs to Title V.

VOTE ON MOTION: THE MOTION PASSED WITH A VOTE OF 5 TO 2 (Johnson and Monk).

9. NEW BUSINESS: None.
10. ADJOURNMENT: The meeting adjourned at 1:52 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, June 9, 2009, LRAPA meeting room at 1010 Main Street in Springfield, Oregon at 12:15 p.m.

Respectfully submitted,

Merrie Dinteman
Recording Secretary