

**MINUTES**  
LANE REGIONAL AIR PROTECTION AGENCY  
BOARD OF DIRECTORS MEETING  
TUESDAY–NOVEMBER 10, 2009  
LRAPA MEETING ROOM  
1010 MAIN 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; Andrea Ortiz–Eugene (via phone); Dave Ralston–Springfield; Faye Stewart–Lane County (via phone) (ABSENT: None)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Tom Freeman; Max Hueftle; Sandra Lopez; Sally Markos; Nasser Mirhosseyni
- Other: Amy Peccia, Vice-chair, and Russ Ayers–LRAPA Advisory Committee; Pete Shepherd–LRAPA Legal Counsel; Lisa Arkin and Rudolpho Oliviera–Oregon Toxics Alliance; Jim Daniels–Rosboro Lumber; Timothy Moxly; Becky Riley

*[Both Andrea Ortiz and Faye Stewart participated in part of this meeting via phone. Both had other commitments, Ortiz at 1:00; and Stewart at 2:00.]*

1. OPENING: **Carpenter** called the meeting to order at 12:15 p.m.
  - A. Recognition. Prior to beginning with the agenda, Carpenter announced that this would be Kit Kirkpatrick’s last meeting as a member of the LRAPA Board of Directors. He presented her with a plaque and thanked her on behalf of LRAPA’s board and staff members, for her service on the board over the past two years.
  - B. Order of Agenda. Kirkpatrick requested that agenda item number 9, the dual-site air toxics monitoring, be moved up on the agenda so that Ortiz would be able to participate in that discussion before she had to disconnect from the meeting.

Agenda item 6 also needed to be moved up to allow Max Hueftle to participate and provide information on item 6.B before he had to leave for another commitment at 2:00.

Consensus among board members was to take items 9 and 6 before item 4, the director’s report.

2. PUBLIC PARTICIPATION:
  - A. Lisa Arkin, 1192 Lawrence Street, Eugene, representing Oregon Toxics Alliance, Arkin said she wanted to notify the board that on Friday, November 6, OTA had filed an appeal to the LRAPA board under LRAPA rules, 14-160, for a declaratory ruling. She distributed copies of LRAPA 14.160 for reference. She said the request was that the board review the conditions of permit number 206470, issued by LRAPA to Seneca Sustainable Energy. Arkin said OTA believes that there are four areas in the permit which do not meet the requirements of the Clean Air Act and of 1994 Executive Order 12-898. The four areas include:
    - (1) Major source rules, permitting two pollution sources under one permit.

- (2) BACT analysis. OTA would like to see thorough BACT analyses for emissions of Nitrogen Oxides, and Carbon Monoxide. The permit includes an analysis only for PM, and OTA believes that is insufficient.
- (3) Emissions sampling and standards for Particulate Matter.
- (4) Environmental health protections. Arkin said OTA had testified during the public comment period on this permit and had submitted evidence that there were considerable concerns with emissions of pollutants affecting certain areas of the county, and she said the permit offers no credible evidence to the contrary. OTA would like to have that issue opened up again.

Arkin said there was considerable testimony regarding environmental justice concerns, and a request for LRAPA to meet with the concerned communities. She said one of the main issues under the topic of environmental health was a request from communities in West Eugene and Northwest Eugene to have an air toxics ambient air monitor installed. Arkin said she understood from a recent conversation with Hough that there is now discussion of siting an air toxics monitor in the Gateway Mall area rather than honoring the on-going requests from residents of Eugene. Arkin said many people in Eugene would like to have a discussion about that, and she was at this meeting to ask the board to take this up as it is described in the agency's own rules.

Carpenter noted that LRAPA's legal counsel would likely be reviewing OTA's request and assisting the board in responding within the required time frame.

- B. Rudolfo Oliviera, 2754 Ferndale Drive, Eugene, Oregon, representing Oregon Toxics Alliance. Oliviera said he is a consultant for OTA and that he may participate in a technical discussion to clarify some of the points of the appeal.

Hough said he had planned to introduce the OTA petition during the Director's Report agenda item.

### 3. CONSENT CALENDAR:

- A. Approval of Minutes of October 13, 2009 Board Meeting.

**ACTION: MSP (Ralston/Forge)(Unanimous) approval of the minutes of the October 13, 2009 board meeting, as submitted.**

Monk brought up the subject of voting for at-large members, as discussed at the October meeting. He said Brotherton's legal opinion that, for purposes of voting on an at-large appointment, the board is still a nine-member board and an appointment still requires five votes to pass, even though the at-large members are not allowed to vote on at-large appointments. Monk said he disagrees and believes the board becomes a seven-member board at those times, and a four-to-three vote should be sufficient.

MOTION: Monk MOVED that, within the context of reappointing or appointing at-large members, the LRAPA board is a seven-member board, and only four votes are needed to appoint or reappoint an at-large members. Johnson SECONDED THE MOTION.

Discussion of motion.

Carpenter said he might see the board going that direction in the future, but he does not think the board has the authority to simply vote to change the requirement. He said he believes such a change must be

made within the confines of the intergovernmental agreement. Carpenter added that he did not believe the board has had a good legal analysis of if, in special instances, where statute or regulation reduces the voting attendance a lesser number of people than constitutes the full board, the majority requirements should possibly also drop at that time, to conform to the number of members eligible to vote.

Monk said what Brotherton had told the board was that attorney general's opinions on this point were very clear, that the membership is still nine, even if there were positions vacant. He contended that, because the statute requires that two members may not vote on at-large appointments, the board becomes a seven-member board for those appointments. Four votes should be sufficient to make those appointments. Monk pointed out that, in recent years, at-large appointments have been made by four-to-three votes, adding that the board could face difficulties in making these appointments if five of seven votes are required.

Carpenter said he would vote for Monk's motion, but he would rather postpone that vote and seek a legal opinion from Shepherd, regarding whether or not the board could actually act on such a motion.

Ralston said he was not willing to vote for the motion until the board has a second legal opinion on the validity of the action. He said he would rather postpone the vote until the board has a definitive answer.

Shepherd said he could address the need for a very focused legal analysis on the question of whether this action by the board would have a binding legal effect. He could do that analysis either in advance of a vote or following a vote, whatever the board would prefer.

Stewart asked Monk if he would adjust the motion to give direction to find out what the legal analysis or recommendation is, regarding the intended action, given that the board will not need to vote on an at-large appointment until January or February. He said he would prefer to vote after the legal analysis is provided.

Monk responded that if Shepherd gave the board a legal opinion on this subject, it would be just a legal opinion. The board could choose to recognize that opinion or move forward in some other direction, should they believe it is legally responsible. Monk recognized that Shepherd is now LRAPA's legal counsel, and he said he is all for hearing from Shepherd on this subject. He pointed out, however, that legal counsel has not always, in the past, presented the board with the opinion they would have liked. He said his personal take on the situation is that the director has asked legal counsel for opinions, and the board is, often times, not asking for the legal opinions. He asked if legal counsel is representing the board or the director because, he said, those interests are not always the same. Monk said he was not sure whether it made sense to wait for legal counsel's opinion on this, because he wants to be sure that the board appoints, or reappoints, at-large members in a timely fashion. He said he believed his motion would allow that to occur.

Stewart said it is his understanding that, if the board seeks legal counsel's analysis, and legal counsel gives an opinion, the board can still make its decisions in whatever way they want. He said he would be more comfortable, and that it would be more legally defensible, to ask legal counsel ahead of time and get all the facts before making a decision. Stewart said he would not, at this time, support Monk's motion as stated. He said having Shepherd review the issue and render his opinion at the next meeting would not jeopardize any appointments.

Johnson asked Shepherd to give the board an objective analysis which lays out the options and the consequences of each potential action. Johnson said recent legal opinions have been more definitive in terms of telling the board what it **must** do, and he would prefer that legal counsel lay out the options, along with the risks and benefits of each.

Shepherd said that is precisely the kind of advice he believes it is his job to provide his clients. He said his client in this case is the corporate entity of LRAPA, not any individual officer or board member. Shepherd said there are some kinds of legal questions that have black and white answers, where there is only one course of actions that is legally defensible; however, his experience has been that most legal questions have an array of options and associated risks.

Based on the discussion of his motion, Monk said that, as long as everyone was in agreement about resolving this question at the December meeting, he would postpone his motion until that time. **MONK WITHDREW HIS MOTION. JOHNSON, AS THE SECOND, AGREED.**

Carpenter suggested having an agenda item in December specifically about the issue of Shepherd's analysis of the number of votes it takes to appoint or reappoint an at-large member, given that the statute does not allow the two at-large members to vote on those appointments, reducing the number of voting members to seven.

Stewart thanked Monk for allowing the legal research to be done prior to the vote. He also thanked Shepherd for stating that he works for LRAPA, not for the board. He reminded board members that the director works for the board, and said he is a little concerned about some of the comments that have been made that indicate that people aren't doing what the board might expect them to do. Stewart noted that each of the board members has individual opinions and can agree or disagree in the decision-making process; but he does not want anyone to think that staff are not doing what they are supposed to be doing according the board's direction.

B. Approval of Expense Reports Through September 30, 2009.

**ACTION: MSP (Fortune/Ralston)(7 in favor and 2–Johnson and Monk–abstentions) approval of expense reports through September 30, 2009, as presented.**

4. DIRECTOR'S REPORT:

A. Monthly Activities. The board discussed several subjects from the report.

- (1) OTA petition for declaratory ruling regarding Seneca Sustainable Energy permit. Hough said he did not realize that Arkin was going to attend this meeting during public participation. He had planned to distribute copies of the petition to the board as part of the director's report. He distributed those copies and said he had asked Shepherd to do a legal analysis on the petition, in preparation for the board's December meeting. He said unless the board had another idea of how to proceed, he would recommend that the board follow his request to get the benefit of Shepherd's legal expertise and have this as a discussion item at the December board meeting, possibly in executive session.

Ralston said he thought only Seneca could appeal the permit to the LRAPA board, and he was curious as to how this petition would work. Shepherd said there is a procedure cited in the petition

for a declaratory ruling, which exists in LRAPA's rules alongside other rules that govern the permitting process and the appeals process. He said one of the things he needs to help the board sort out is how the provision for a declaratory ruling fits in the context of the other rules. That is what his legal analysis will attempt to provide in December.

- (2) Flakeboard Plywood MACT. Carpenter noted the information regarding the civil penalty assessed to Flakeboard. He said in previous conversations with Lopez regarding what happened if Flakeboard were given extra time to run a compliance test and then that compliance test showed violations. He said the civil penalty only covered the days of violation from the date of the non-compliant source test to the date that compliance was demonstrated. He thought his discussions with Lopez were that the interim period before that test was taken was open to determination of whether or not they were in compliance, and how they would prevent penalties from taking place in that earlier time period was that they indicated compliance at that date.

Lopez said she had forgotten about that and had treated the violation like any other source test violation. Carpenter said that, should there be an appeal of this civil penalty assessment, he thought it should be made very clear that Flakeboard knew that they may have extra days of non-compliance and that they could be tacked on to any penalty, in the event that they chose to challenge the penalty assessed. Monk said he recalled that conversation and that some board members have an ongoing concern about people requesting and receiving reductions in penalties. Monk suggested that it be made clear that if Flakeboard just paid the penalty, LRAPA would excuse the fact that the calculation did not go back any further than it did. Lopez reported that Flakeboard had already paid the penalty in full. She explained further that the agency must have proof of non-compliance which comes with the results of the source test. In the case of Flakeboard, the facility was non-compliant because the MACT rule went into effect. As staff reviews the enforcement rules for possible further amendments, Lopez said, they will check to see whether this situation is covered and, if not, address that in the amendments.

- (3) Low-Carbon Fuel. Ralston referred to two attachments to the director's report, concerning climate change and Oregon's low-carbon fuel standards. He noted that the fuel article said the program would not mandate the use of any specific fuel. Instead fuel suppliers and distributors can use a mix of traditional fuels and lower-carbon alternative fuels to meet the standards. Ralston said he has noticed, from using the mandated 10 percent ethanol fuel in the wintertime, that his gas mileage has also decreased about 10 percent. He said he doesn't know what is intended to be put into fuel to reduce the amount of carbon that is emitted, but the additives can cause less fuel efficiency and also can cause problems with carburetors and fuel injectors. Ralston said if there is something the board can learn about this, and if they can have some input, he would be interested in doing that, because there is only so much you can do to the fuel before you begin getting diminishing returns.

Hough said those issues were raised by the advisory committee at its first meeting in Portland a week or two prior to this board meeting. The committee includes a group of about 20 individuals from different backgrounds, and there was much discussion about the ethanol requirements used in Oregon in the winter months. Hough said a lot of those issues were raised, because there has been history of getting results that were not fully anticipated and which caused more problems than people had expected. The group knows it must proceed carefully, with a eye toward preventing those negative impacts as much as possible.

- B. Quarterly Financial Report. Hough explained that, in preparing the report for this agenda item, staff had summarized expenditures, on a quarterly basis, as relates to the adopted budget. The format is actual expenditures vs. budgeted expenditures, which is based on the binder format used by the budget committee each year.

Carpenter noted that this review looks at the first quarter of the current fiscal year, after-the-fact. He asked if Hough and Mirhosseyni had five or six items about which they are concerned that they could share with the board. He asked specifically how Airmetrics did in the first quarter.

Hough said Airmetrics has been doing well. One position was shifted from full-time to half-time, which has been helpful. In looking at the agency's budget, overall, there are some items whose expenditures are a little over what they were anticipated to be at this point in the year, and others which have not had as many expenditures as were anticipated. Hough said staff expects those things to equalize as the year progresses. Mirhosseyni explained that much of the reason for the items that ran over during the first quarter is front-loading of such expenses as insurance and other things that are paid in full at the beginning of the fiscal year. Hough gave as an example payment of professional dues for the year. He also noted that the Oregon Ethics Commission now assesses an annual fee of \$500, as a base funding, to state agencies and to some agencies such as LRAPA, who potentially might use their services. That charge must be paid by all of those agencies, regardless of whether or not they intend to use the Ethics Commission's services. This is the first year that fee has been charged, and LRAPA has paid that charge. Mirhosseyni added that LRAPA will not be charged an additional fee as a result of the board's decision to use the Ethics Commission's services this year.

Hough pointed out, in the section which includes local dues, that at the time the report was prepared, the local partner dues had all been billed but not all had been paid. The city of Cottage Grove and Lane County had subsequently paid their dues, and that fund is now at 100 percent received for the year.

Regarding permitting fees, Mirhosseyni explained that the Air Contaminant Discharge Permit fees, which historically were staggered throughout the year, are now billed at the same time and are received in December. That is why the first quarterly report shows nothing having been received, but the second quarterly report will show most of those fees having been received. Mirhosseyni said Title V permit fees had been billed and paid early in the fiscal year, and that fund is actually 4.77 percent above budget.

Carpenter asked about the permits for Country Coach, Monaco Coach and Hynix. Hough said both Country Coach and Monaco Coach have maintained their permits. Hynix cancelled their permit and changed to a General Permit that allows only the boilers to operate.

In summary, Hough said expenditures are about where staff would expect them to be for the first quarter. Some adjustments will happen by themselves over the rest of the fiscal year, and some will need to be made by staff.

5. **ADVISORY COMMITTEE:**

Committee Vice-Chair Amy Peccia reported that the committee talked about Title 44 and were going to recommend that the board adopt the rule, with the caveat of including a reference to on-road vehicles. The committee's discussion clarified that that was the intent. Hough said that was clarified in the definitions in the rules. Peccia said the committee also discussed further changes to the enforcement rules.

Johnson said a lot of the board members wondered about the specific mention of open burning of 15 tires in the civil penalty matrices, and the fact that there is a larger fine if the burning is done by an industrial source than if the burning is done by a residential owner/occupant (*see discussion under agenda item number 7*). Johnson asked if the committee could come back to the board with a recommendation to go to the Environmental Quality Commission and see if they could clear up the rationale for that. Hough said when the board had discussed this a few minutes earlier under Agenda Item Number 7, he had thought about inviting someone from DEQ, who had been directly involved with the development of the DEQ civil penalty matrices, to come and talk to the LRAPA Advisory Committee. He said it might be even better to have that person talk to the board first and then include that in some of the advisory committee discussions about the enforcement rules. Carpenter suggested that, if a DEQ person were to come to talk to the advisory committee, any board members who are interested could attend that meeting.

Ralston commented that it would seem that the intent there was that a business doing that kind of burning would have a financial gain from doing that, and an individual would have less means to pay a larger penalty. Kirkpatrick said perhaps there would be less understanding of the rules for open burning among individuals than there would be among industrial sources. Fortune wondered if burning of 15 or more tires is really a large concern. He said people have their tires changed and pay a fee for the disposal of the old tires, so would there really be people out there hoarding tires and then burning them. Ralston agreed that the rationale behind the reference in the civil penalty matrices is important to understand.

Peccia asked how quickly the board would like the committee to develop a recommendation, and Carpenter said it should be according to Hough's time frame.

Hough brought up topics that he would like the board to assign to the advisory committee. One was GreenHouse Gas Reporting Fees, which Hough said DEQ has on a fast track to adopt emergency rules because those reports are due by March for 2009 GreenHouse Gas emissions. There are fees related to those reports, to cover DEQ staff time to review the report, and LRAPA will have the same general need. In order to follow whatever EQC does as soon as possible, it would be helpful for the advisory committee to look at the information that EQC will consider at its December meeting. The other item Hough mentioned was air toxics monitoring. He said as the details of installing and starting the dual-site monitoring come out, it would be good to be able to bounce those issues off the committee if staff encounters other, more detailed, specific issues. Hough said staff would be trying to involve others in the community, but it would be nice to have a group like the advisory committee that can help sort through some of those issues.

Monk referred to Koenig's suggestion at the October board meeting about the committee's discussing a 20 percent late fee for unpaid civil penalties, stating that his understanding is that DEQ charges a 9 percent late fee. He asked how that would work if LRAPA does not have the ability to have different fees than DEQ has for civil penalties. Hough said he had not yet spoken with Shepherd about LRAPA's authority to do something beyond what DEQ is doing; however, his discussions with Brotherton resulted in advice that LRAPA adopt penalties and fees identical to DEQ's. Hough said the next round of recommendations on the enforcement rules from the advisory committee will likely include something on this subject for the board's consideration.

## 6. REQUESTS FOR AUTHORIZATION OF PUBLIC HEARING

- A. Proposed Amendments to LRAPA Title 44, Area Source NESHAP Rules. Hough reminded the board that there was a general background and preview of this proposed rulemaking in the board's March meeting packet. The proposal is to adopt federal regulations by reference for twenty-some source

categories. The category of most significance is gasoline dispensing facilities, and the major changes to LRAPA's rules would be the detailed rules affecting those facilities. The proposed rules would be more stringent than the federal rules adopted in January of 2008. A key difference is that the proposed LRAPA rule includes vapor recovery requirements on stations with a monthly throughput of 40,000 gallons of gasoline, whereas the federal rules apply to stations with a monthly throughput of 100,000 gallons. LRAPA was involved with DEQ in jointly shaping and evaluating the DEQ proposal. They adopted the 40,000 gallon per month throughput requirement, and LRAPA's rules would be the same. Hough stressed that LRAPA staff looked at the same technical information in coming to that conclusion, as well as needing to meet the "as stringent as" requirement with the state rules. Hough pointed to a one-page flow diagram which was initiated by Don Holkestad of the advisory committee and which has evolved into a document that includes most of the information in the rule and is a very good tool for use by inspectors in determining which requirements apply to different facilities.

Kirkpatrick asked if the proposed rules would require Stage II vapor recovery, as is required in California, and Hough said the rules would require only Stage I vapor recovery, between the tanker truck delivering the fuel and the storage tank at the facility. Hough explained that Stage I is a very cost/effective way to control both air toxics and Volatile Organic Compounds that contribute to ozone formation. Stage II has been useful, historically, in areas that have more severe ozone problems, and it has been required in the Portland area since the early '90s. Hough said he was the lead DEQ staff person drafting those rules and working with the advisory committee that took those rules to the EQC. There was a debate, even then, about whether to include Stage II because it was known that new cars starting in the '90s were going to have onboard vapor controls for those emissions. Hough explained that, in newer cars, the vapors are collected in a canister connected to the tailpipe of the car and are stored and then gradually fed into the vehicle fuel system as the vehicle runs. The vapors are collected and then used as fuel, avoiding emissions into the air as well as using those vapors as fuel to boost mileage. Hough explained further that Stage II is more expensive to install and sometimes requires tearing up the concrete pads at the gas stations. Stage I is less expensive and not typically as disruptive to install. In addition, many tanks already have the necessary Stage I equipment installed because it was anticipated that requirements would eventually come. Hough said because new cars will collect more and more of the vapors, it is not likely that State II vapor recovery will be used anywhere in the country in the future.

Monk said he was part of the discussions when DEQ developed its rules and that they started out their discussions with a 20,000 gallon per month throughput and then modified it to 40,000. He said he believes the cost of installation of the equipment is largely why that modification was made to the DEQ proposal. He said he recognizes that that is important. Monk asked how many facilities with a throughput of less than 40,000 gallons per month already have Stage I compatible equipment. He said EPA is very fond of the technology-based regulation, meaning that if the station has the equipment, they have to use it, and it does not matter whether the throughput is 10,000 or 20,000 or 40,000 gallons. Monk said he saw some of DEQ's health-based risk assessments, and once you get below that 40,000 gallon throughput, the impact to area populations does decrease tremendously, so the 40,000 gallon cutoff makes sense in that regard. He said he was curious, though, how many facilities in Lane County with less than 40,000 gallons per month throughput have and use Stage I vapor recovery equipment.

Lopez said staff was not able to determine that; however, there are about 310 stations, according to databases such as Fire Marshall and Oregon DEQ tanks. Staff mailed out a survey to those and found that 18 are over 100,000, 10 are between 40,000 and 100,000, and 8 to 15 are in the 20,000 to 40,000 range. Lopez said she would have to look at the rule again, because it was her understanding that it contains a requirement that if you have the Stage I equipment, you must use it, regardless of your

throughput. Freeman confirmed that the rule does contain that requirement. Ralston commented that it wouldn't make sense for a station to have the equipment and not use it.

Carpenter commented that another requirement in the rule is that all stations have to register. Lopez said that is important because, as the rules are currently written, if a facility isn't currently listed as needing a General Permit, they would have to get a Standard Permit, which is a more expensive permit, because that rule says that anyone subject to a NESHAPs has to get a permit. Carpenter stated that if a station has seasonal sales that are rather high, even if they are in the 20,000 to 40,000 range, they will still be subject to the requirements of this rule, and Lopez confirmed that would be the case.

Johnson asked about the cost/effectiveness in dollars per ton of HAP. Hough said that information is in the supporting tables, rather than in the graph Johnson was looking at. He said the graph was included to show that the question is not a linear line. The cost to upgrade a station with 20,000 gallon per month throughout would be the same as the cost to upgrade a station with 60,000 gallon per month throughout, making the cost per ton of HAP emissions savings more expensive for the station with the lesser fuel throughput. Lopez explained further that, because the emissions in question are HAPs, the cost per ton of reduction would be significantly higher than what would be paid for reduction of criteria pollutants. Hough said the information Johnson was asking about was in the supporting information for DEQ's rulemaking and that he could get copies of the costs per ton at different size cutoffs to Johnson. Lopez added that, when looking at the costs of compliance, staff considered whether the facility would have to break concrete in order to comply.

Monk noted a statement in staff's presentation that, "more data is needed to characterize above-ground storage tanks." He asked how this rule would impact above-ground storage tanks. Lopez said staff visited quite a few stations with above-ground storage in the under 10,000 gallon range, but staff believes there are some that are in the higher range. Monk asked if the proposed rule will be amended by the additional data, as it comes in, and Lopez said staff would have to come to the board if such changes were made.

**ACTION: MSP (Ralston/Johnson)(unanimous) authorization of public hearing on proposed changed to LRAPA Title 44, at the January 2010 board meeting.**

- B. Proposed Amendments to LRAPA Industrial Permitting Rules. Hough said this is a series of minor amendments to the industrial permitting rules that the board adopted about a year ago. When the board adopted these rules, they asked that staff report back in a year regarding how well the rules were working and if any changes were needed. The proposed changes are what staff has found in fine-tuning the rules over the past year. There are a number of rule citation corrections, some added definitions, and revisions to permitting thresholds. Hough introduced Max Hueftle, who is the primary author of the proposed changes.

Hueftle said there are a number of things that were noticed through implementation of the rules which require changes. The primary things are the need to keep the smaller sources on permit, and so the criteria are expanded on the categories for the basic ACDP sources. Hueftle said there are about six sources that would be affected by those changes, which are coffee roasters roasting less than 30 tons per year. They were on permits before, and staff wants to keep them on permits. The proposed changes would correct the rule so that can happen. There are also a couple of other changes that would keep other small source of permit, as well. The remaining changes are just to correct typos and make other minor corrections.

Carpenter noted that the rules still refer to PM10 vs. PM2.5. and he wondered if PM10 is still the pollutant of concern. Hueftle said that is correct. He said there was a recent conference call, in which he did not participate, with EPA and LRAPA regarding how to implement the PM2.5 rules, and there are still some issues to be ironed out before those changes can be made. Hueftle said there are complications on whether you have a SIP program or a delegated program. He believes Oregon has a SIP program, and implementation must proceed in a certain way. Those discussions are ongoing.

Carpenter said it appears to him that the existing rule included 20 percent opacity on a cemetery crematory incinerator, but the revision changes that to “no visible emissions except for a three-minute period.” It never re-references an opacity reading in that three-minute period, but there is another statement that it can never go over 10 percent. He asked if the three-minute period is limited to 10 percent opacity. Hueftle explained that the way the rule is currently written, it is not as stringent as it should be, and staff is attempting, in the proposed revisions, to bring it back to the proper level of stringency. Carpenter’s concern was for what is allowed to happen during the three minutes. Lopez said she would be very specific in getting back to Carpenter on this subject.

Carpenter pointed to a change in Table I-37.1, from “greater than” to “less than 250 gallons” per month. He asked if that means that when somebody uses one gallon per month, they are in the system. Hueftle said that is one of the basic permit categories. There is a series of pollutants that have de minimus levels, so in Title 12, definitions, is a definition of “de minimus.” One of those is one ton of VOCs, so that one gallon of any VOC- or HAP-containing materials would not kick a facility into the requirement. He said it would capture those sources that have at least one ton of emissions, and up to 250 gallons per month.

**ACTION: MSP (Stewart/Ralston)(unanimous) authorization of public hearing on proposed amendments to industrial permitting rules at the January 2010 board meeting.**

7. PUBLIC HEARING ON PROPOSED AMENDMENTS TO LRAPA TITLE 15, ENFORCEMENT RULES (Civil Penalty Matrices):

Hough provided a brief background of the proposed rule changes, stating that the last time LRAPA’s enforcement rules were amended was in 1995. It has become clear that some changes are needed in the rules, and the board assigned the advisory committee to review the rules and recommend amendments. The committee has separated its review into two sections. One, the section before the board today, is the civil penalty matrices. The other changes are still being reviewed by the committee and will be brought before the board in the next few months. The reason the civil penalty matrices have been brought before the board at this time is because the EQC adopted a new, four-matrix system for DEQ, and LRAPA is still using a two-matrix system. Statutes give EQC authority to adopt civil penalties for use by the state, and LRAPA does not have authority to adopt penalties different from those of the EQC. Hough said the amendments included in this proposed package are consistent with rules adopted by the EQC; and the board, at its September meeting, authorized a public hearing for this meeting. The board reviewed the proposed rules at its October meeting and asked several questions which served to illustrate some of the principles the EQC was considering as they went from a two-matrix system to a four-matrix system. The four-matrix system provides greater flexibility in determining the amounts of civil penalties assessed when people violate LRAPA’s rules. The proposed amendments include a new higher category for more egregious violations or violations of Title V industrial permitting rules and a new lower category which would typically be used in the case of a residential owner/occupant. Hough pointed out that inclusion of the two new categories would serve to satisfy some

of the concerns board members have expressed regarding civil penalties which have seemed either too high or too low. This portion of the amendments to the enforcement rules was put on a faster track so that LRAPA could get its rules in synch with EQC rules as quickly as possible.

Carpenter opened the public hearing at 2:05 p.m. Hough entered into the record affidavits of publication of notice of this public hearing in the October 11 edition of the *Eugene Register Guard* and the October 14 edition of *Cottage Grove Sentinel*. Carpenter then asked if anyone present wished to speak regarding the proposed amendments. One person, Timothy Moxly, of 1134 Stevi Shay Lane in Eugene, rose to speak but had arrived shortly before this portion of the meeting and believed he was providing comments regarding the Seneca Sustainable Energy permit, under Public Participation. Carpenter told Moxly about the discussion scheduled for the December meeting and invited him to return for that. There being no one who wished to speak regarding the proposed rule amendments, Carpenter closed the public hearing at 2:08 p.m.

**MOTION: Ralston MOVED adopting of the proposed revisions to LRAPA Title 15, enforcement rules. Fortune SECONDED THE MOTION.**

#### Discussion

Monk said he had a clarification. He asked Hough to explain the penalty matrices regarding open burning of 25 or more yards of materials or 15 or more tires. He noted that the \$8,000 matrix includes that violation, but it does not apply if it is a residential owner/occupant doing the same thing, which would be covered in the \$2,500 matrix. Tom Freeman confirmed that. Monk and Carpenter both took issue with that, stating that it shouldn't matter who is doing the burning—it is still open burning of 15 or more tires. Carpenter said LRAPA needs to talk to EQC to get some kind of rationale as to why this distinction is made. *[See also comments under Advisory Committee, Agenda Item Number 5.]*

**VOTE ON MOTION: The MOTION PASSED BY UNANIMOUS VOTE.**

8. LEGAL FRAMEWORK FOR LOCAL GOVERNMENTS, PART 3 OF 3: LRAPA legal counsel Pete Shepherd provided information for the board regarding the basic principles applicable to board members as public officials, by state ethics laws. Board members are public officials, by virtue of the fact that they are members of the board of LRAPA, which is a public agency. Shepherd said he would focus primarily on ORS Chapter 244 under which the Oregon Government Ethics Commission operates; however, there are other sources of ethical principles that govern public officials. Chapter 244 is the floor for such rules in Oregon, and public bodies are free to adopt more constraining rules of ethics or behavior for their employees than Chapter 244 provides. In addition to Chapter 244 and whatever rules a public body chooses to adopt for itself, there are criminal statutes that also define conduct that public officials can engage in; however, adherence to Chapter 244 will steer public officials clear of violations of criminal statutes. Board members who are also elected members of other public bodies may have additional ethics rules under which they must operate as city councilors or county commissioners. The basic rule of ethics law is that a public official cannot use, or attempt to use, the official's position or office to obtain a financial gain or avoid a financial detriment, for the official or for others, that would not otherwise be available, "but for the public official's holding the position in office." The "but for" is the test that applies to the ethics laws, and that general principle does not depend on whether the public official's personal use of the office operates to the detriment of their public employer or agency. Shepherd spoke briefly about gifts to public officials, as applied to the general rule of ethics, as well as some exceptions to the rules. He noted that the Legislative Assembly recently changed some

of the ethics rules, and the rules regarding receipt of free admission, food and beverage at a reception, meal or meeting are going to change beginning January 1, 2010.

Shepherd then spoke regarding conflicts of interest, noting that the key distinction is between potential conflicts of interest in a situation where actions, decisions or recommendations **could** be to the private pecuniary benefit of the public official, vs. actual conflicts of interest where actions, decisions, or recommendations that **would** be to the private pecuniary benefit of the public official.

### Discussion

Ralston pointed out that if a board member has had ex parte contact, the board member must declare what the contact was and state whether or not it would affect his/her judgement, and then must not participate in any board action concerning that matter. Shepherd agreed that, even for potential conflicts of interest, it is necessary to declare the conflict; however, he said with a potential conflict the person could still act, decide or recommend, as required by the position as a public official. He also said there are some exceptions to the disclosure rules, as when a legislator is voting on a tax bill that applies to a broad category of citizens.

Carpenter said, in reading the exclusions, it appeared that if a person were sitting on the board of a non-profit and another board, he/she would not have to declare conflict of interest. Shepherd said he had found that interesting, as had Carpenter. He said he was not aware of it before consulting the statute. He speculated that the policy is to encourage participation on boards.

9. DUAL-SITE AIR TOXICS MONITORING, 2010: Hough introduced staff member Tim Sawyer, who prepared the report for the board on this subject. Hough pointed out that Sawyer put a lot of work into using the data from EPA's National Scale Air Toxics Assessment from June of this year, to create a report that is understandable to non-technical people. Hough stressed that staff's purpose in preparing the information for the board was to provide reference materials to help answer questions board members may have regarding staff's plans to locate a second air toxics monitoring site. Hough recapped the discussion staff has had with the board recently, stating that staff has talked about adding a second air toxics monitor in the area, to compare to the historical monitoring at Amazon. It is not staff's intent to move the Amazon site but to complement that site with a second site. The Amazon site needs to be maintained so that the data collected at the new location can be compared to the historical data at the Amazon site. That air toxics monitor was located at the existing Amazon monitoring site. The Amazon site was originally located there primarily to determine the concentrations of particulate matter, which were known to be high in that area which is surrounded by relatively high population density.

The staff report indicated a number of areas where an air toxics monitor could be located, based on air toxics risk assessments. The two top choices would be West Eugene and the Gateway area (which Hough described not as the Gateway Mall area, but the area straddling I-5 which includes the Gateway area of Springfield and a corresponding area of the Eugene on the west side of I-5). Hough said his preference would be West Eugene in the Bethel/Trainsong area, because residents of that area have expressed support for locating an air toxics monitor there; and it would provide a different mix of source impacts than the Amazon site.

Hough said he had spoken with the Oregon Toxics Alliance, to invite them to participate in a discussion of this same information that was being presented to the board at this meeting. At that time he did not want to raise expectations, so he was careful to keep it neutral regarding the actual siting until after he had a chance

to discuss with the board which location should be chosen. Unfortunately, his intention was misinterpreted to mean that he had already decided to site the monitor in the Gateway area.

When siting an ambient air monitor, staff looks for two things: a location with the highest concentrations of the pollutant of interest, because if standards are met in that location staff can be confident that those standards are met everywhere; and an area of high population exposure. Hough said that is not the entire story when looking for a site to locate a second air toxics monitor to complement the Amazon location. Because area sources and transportation sources have been identified as primary risk drivers in all air toxics risk assessments in Oregon and Lane County, it is important to have a mix of transportation, area and point sources where the monitor is located. The Gateway area does not have point sources, whereas there is a cluster of point sources in the area of West Eugene where staff would like to locate a monitor. In addition, there has been a good deal of interest in the potential impacts of the Seneca Sustainable Energy co-generation plant. Hough said staff has had an interest for quite some time in locating an air toxics monitor in West Eugene and tried last year to include that area in an EPA study of air toxics near school sites. Part of the information LRAPA used in that proposal was from the Oregon Health Division work on cancer risk due to air toxics in that part of town. Unfortunately, that effort to include a West Eugene school in the EPA study was unsuccessful.

Hough said he had two specific questions that he wanted to put to the board. First, in which area of Eugene-Springfield would the board prefer to locate an air toxics monitor; and second, which analyte categories should be used at that site, in order to keep costs down and keep the project budget-neutral. The idea has been to do monitoring at two sites for twelve of the 24 months between July 1, 2009 and June 30, 2011 (i.e., calendar year 2010).

### Discussion

Ortiz said she would have to disconnect in a few minutes. She said the West Eugene area has had a lot of attention from the state looking at cancer rates and trends, in hopes of getting enough information to support getting air monitoring in that area. She asked if the same has been done in the Gateway area. Hough said it had not, which would be another plus for locating the monitor in the West Eugene area. Because that area has been studied in more detail, any air toxics monitoring information would be a good complement to that. Ortiz added that there are other areas of Springfield that she would be more concerned about than Gateway. Hough asked Ortiz if it was safe to assume that she would support West Eugene for the air toxics monitor, and she said she absolutely would support that choice. *[Ortiz disconnected from the meeting at 1:53 p.m.]*

Kirkpatrick asked Sawyer to describe his analysis of which group of analytes is perhaps least important for this area, unless the budget concerns are no longer an issue. Hough responded that, for this year, he expects all four analyte categories can be monitored at both locations, without the need to discontinue at the end of 2010 as had been planned, due to a grant from EPA. He explained that EPA had a source of funding available, related to energy development and production facilities. Part of why EPA was receptive to LRAPA's application for those funds was because of all the comments received regarding Seneca's permit application and draft permit. Hough said that is another reason to steer the location decision to West Eugene.

Hough said he wanted to be sure the board had the benefit of the information prepared by Sawyer, to gain a better understanding of the issues involved. He pointed out that the maps in Figures 9 and 10 factor in the area source, point source, and mobile source emissions sources for that area, and some of the major point sources are in Springfield, as shown in Figure 11. But that information, modeled on the National Scale Air

Toxics Assessment, would say that Springfield would not be as likely a site for a second monitor as would Gateway or West Eugene.

Kirkpatrick said she would like to know more about the analyte categories for future use, even though it sounds like all four categories will be used for the next year. Sawyer explain that, when staff was looking at budget constraints, their choice as to which analytes to monitor depended on what results were being sought. Semi-Volatiles (SVOCs) would show combustion by-products, for which wood smoke is the main problem. Point sources emit metals, so you would monitor for metals. SVOCs are also vehicle emissions, so if the study were more roadway oriented, SVOCs would be run. If you are trying to get a fingerprint from point sources, you might choose metals over SVOCs. The VOCs and the aldehyde-ketones are key for just a normal array of toxics seen throughout the Portland Metro area and at LRAPA's Amazon site.

Kirkpatrick said she understood that there would be some kind of lead emissions from the Seneca Sustainable Energy facility, and Sawyer said the last measurement of Lane County's lead levels was still below the new ambient standard that EPA is promulgating.

Hough said a couple of the SVOCs of interest in West Eugene would be the PAH/POM group which are on the "Top Ten" list for this area. He explained that Sawyer had included in his information anything that had a risk of 1 percent, or more, of the total risk. The only metal on the NATA list that has shown up at Amazon is arsenic, which is primarily from background sources rather than from any of the area, transportation or point sources. He said his leaning was toward SVOCs, but staff had some spirited debates regarding which analyte categories to include. Fortunately, the EPA funding has made that point moot, for now. Hough added that, if even tougher economic times are ahead, this may be LRAPA's last, best chance to get a complete array of information from two sites, simultaneously. The funding will allow the full six-day cycle for all four methods.

Johnson asked what is meant by "background." For instance, the Bethel Census Tract shows 34 percent of the cancer risk from background. He asked if that is naturally occurring or from some specific sources. Sawyer said that would be either naturally occurring or atmospherically persistent. For example, he said, carbon tetrachloride is not naturally occurring but it is very persistent, and it is considered background because it is just ubiquitous throughout the area. The numbers in the models are risks, and the background varies because there might be a more toxic compound at one location which eclipses something else at another location. He said the models used monitoring, where available, and they used emission estimates where monitoring data was not available, and input consistent background levels, by pollutant, for our area.

Johnson said that lead to his other question. He said the monitoring isn't really going to help LRAPA to check EPA's assumptions when their background is based on a lot of things that EPA assumes about this region, just based on population, because they assume a certain number of auto body shops and a certain number of dry cleaners and other such sources. Sawyer said his understanding is that EPA used LRAPA's emissions inventory for that year and then they filled emissions that were missing by using TRI data for background. They do have to make some assumptions if they don't have the monitoring data, and Sawyer said he does not know if they apply those regionally or nationwide.

Johnson asked if the LRAPA inventory EPA used was for point sources listed on the map prepared by Sawyer. Sawyer said he believed they used the EI submitted by LRAPA in 2002. Lopez said they used the area source inventory from the DEQ and LRAPA's point sources for Title V sources, from Plant Site Emission Limits. She said EPA is getting more and more accurate with the information, and the EI is better

than it used to be. However, there are some functions that could be within a factor or two. Johnson said he understood that LRAPA has not done an area source EI, and Lopez responded that DEQ has done that and that it is supposed to be very good. Hough added that DEQ used the same methodology for all 36 counties in Oregon so that they would end up with a statewide total. The information is available, also, on a county-by-county basis. Johnson asked if it captures all the non-major stationary sources, and Lopez said it does to a certain extent. Some of them are based on population and some are based on vehicle miles traveled, from the county or from DMV records. Each type of minor source has an assumption based on what relates to it.

Johnson said the reason he asked was because he thinks getting additional funding for monitoring is important but that is only one leg of the stool—that LRAPA is missing a program of going out and actually funding out what businesses are emitting what HAPs. He said it should include not just businesses but also a more accurate inventory of the kinds of activities that are unique to Lane County. Johnson said EPA assumes things about Lane County based on some population-based assumptions, and they will over-estimate some things and under-estimate others. Lopez agreed that such a program would be the next step. Sawyer said staff compared the EPA results to LRAPA's monitoring at Amazon, and the assumptions did over-estimate in some cases and under-estimate in others. They have an assessment, compared to monitoring, for NATA, and they realize it is just a screening tool and not intended to be tuned in to high accuracy.

Hough said LRAPA wants better and better information on air toxics sources, and especially from point sources. The information on Figure 1 is from NATA and is in the same range as what is in the TRI for the years right around that time period. TRI numbers are now available at least through 2007, and they might now include 2008. TRI uses the point source emissions numbers for stack emissions and fugitive emissions. Hough said he does not know if the level of information will ever get to the point where everyone is comfortable that we know everything about all of these air toxics. There is a whole different level of complexity. Hough said there may be better and better tools as time goes by, and Sawyer had done an excellent job of compiling the data into a useful form, but it will be a technical challenge for years to come.

Carpenter asked if Hynix was a major HAPs producer when they were operating, and Hough said they were not. Carpenter asked whether any of the major facilities are orders of magnitude greater than the others that are considered major HAPs emitters. Hough said this is a subject that was addressed in the response to comments received regarding the Seneca Sustainable Energy permit. He referred to the ranking of the 19 Title V source in Lane County, which shows their order of relative criteria pollutant emissions, and in another column their contributions of HAPs. He noted that International Paper in Springfield is at the top of that list. Carpenter said his concern was that, if there were one source that was putting out ten times the amount of HAPs of the other sources, that would skew the risk, if you were looking at just the risk from HAPs. He said, not knowing that, he would be willing to go with the West Eugene site for the second air toxics monitoring site. He does want to keep an eye on the Gateway risk for future years, though. Sawyer commented that the risk in the Gateway area is driven primarily by mobile source, because of the freeways in that area. Point sources are, by far, the smallest contributing category to the air toxics risk in that area.

Kirkpatrick asked if population density had been compared for the West Eugene and Gateway areas, stating that she would think the Gateway area would have high density for a few hours a day because of the shopping center and other businesses, but would not have that same density for 24 hours a day. Sawyer responded that, because of all the apartments and duplexes in the Gateway area, the population density appears to be as great as anywhere else in the Eugene-Springfield area. The population density in the Bethel area, where staff is looking, is average, or greater than average. He said when you look at the scale that the monitoring site would represent, staff thought it was pretty uniform, either way. Hough commented that, if Sawyer had had

his way, he would have produced overlays for the maps with population densities, but it ends up being too “busy” to be useful for conversation purposes.

Monk noted that Sawyer had told the board that area sources and mobile sources are the main contributors. He said until LRAPA has an emissions inventory that can at least assist in that assessment of where the greatest risk is, it is difficult to say where an air toxics monitor should be. He said he assumes that LCOG has a good deal of information, and staff may have information in some overlay that would be very helpful for the board to look at, to determine what part of West or Northwest Eugene would be the most appropriate for an air toxics monitor. He said that is a big piece of the puzzle that is missing for him. He reiterated his point that the Amazon site was located where it is principally to monitor for particulate matter because of wood heat. Monk once again said that area is a concentrated area of wood smoke, but it is not for air toxics. He repeated his opinion that the agency’s funding is mis-used when the air toxics monitor is kept at Amazon. As far as maintaining the historical record at the Amazon site, Monk said there is nothing to prevent the monitor from going back to that site for comparisons. He asked why the monitors can’t have some flexibility, given that the wind blows one way in the summer and another way in the winter. Monk said he believes this conversation needs to be expanded to look at the purposes for doing air toxics monitoring. The funding makes it possible to use all four analyte methods; but the siting is critical to helping LRAPA. If LRAPA develops an air toxics program at some point, everyone would do well to have better information—not just the screening tools that EPA provides, but also some actual overlay maps with the auto-body shops, gas stations, dry cleaners, and various smaller businesses that LCOG could easily help to locate, as well as all the other sources that we are aware of.

Monk asked if, when LRAPA sought funding from EPA for air toxics monitoring near a school, the Bethel School District was approached about hosting that monitor. Hough said LRAPA did approach the Bethel School District and proceeded with the application because of the short time frame. LRAPA could not get approval from the Bethel School District prior to recommending to EPA that a school from that general area be included. Hough said staff felt the key thing would be to get a school for that area on the list, and staff was open to considering a different school or even a different location, as long as it would meet EPA’s criteria for air toxics near schools and the goals that they had for the study.

Hough said the key point is not that the Amazon site remain as an air toxics monitoring site forever. The key operating principle is when you have a valuable data record and want to relocate a monitoring site, you want to have overlapping data to the next site. If you don’t, you sacrifice a lot of the value of that historical investment. The principle is the same with any kind of monitoring site. If the contemplated new site is far enough from the existing site to be considered in a different area of the city, you want to have overlapping data before moving the site. The overlapping data compares the two sites. The time to talk about moving the Amazon site would be after the year of dual-site monitoring, so that the historical data would not be sacrificed.

Johnson asked for an explanation of “overlapping data.” Hough explained that you would have one year of data from the old site and one year of data from the new site, overlapping that same year, so that you would know how the two sites compared during the same time period. Sawyer explained further that it is a spacial analysis. If you just take the monitor from one place and move two monitors to two new locations, you can compare those spatially and temporally, but you don’t know the variation for that year. Pollutants vary through time. If you leave the Amazon site in place and add another site, you see how those compare in space and time. Then you can move the Amazon site.

Johnson asked how that helps the board make a decision about what to do. Sawyer explained that measuring in West Eugene would give you information about West Eugene, and how it compared to information from Amazon. If you've moved the Amazon site, you can't really compare those numbers because you could have an area-wide change in a pollutant over time. You could have a year with low wind speed and high temperature inversions, and the levels of things like benzene that are ubiquitous would be higher everywhere. You would think you had higher benzene in West Eugene when that may, in fact, not be true. It may have been higher throughout the Metro area, but you don't know that because you changed your methodology.

Stewart noted that this is a complicated issue, and there is a lot of energy amongst several of the different members of the board regarding locations of monitoring stations. He said he wondered if it would be of benefit to put together a working committee that might be able to delve into the subject a bit deeper and be able to make recommendations to the whole board regarding different locations, after working through the whole process. There were reasons for locating the current monitoring sites where they are. Are those reasons still valid? Things have changed over the years, so is there validity to moving them to different locations, and what would be the basis for that? Stewart said a working group of board members might be able to move the board forward to get support and handle such issues in a more prudent manner.

Carpenter noted that one of the main concerns for the establishment of the second air toxics monitoring site is that staff hopes to get it up and running by January, which doesn't leave time for a committee process right now. Stewart agreed and said he is not opposed to moving forward with the dual-site air toxics monitoring but was suggesting a committee for the future because this issue will not go away. There are issues in Oakridge, and funding is always limited. There may be something in the future that a committee could be working on, on an ongoing basis, so that the board could be ready to make these decisions when the need arises. If the committee were able to consider other locations which have been documents for need for monitoring, it might strengthen the agency's ability to go after more grants for those needs. Stewart said he did not see such a committee working on the dual-site air toxics monitoring site, but it would be helpful for the future. Carpenter agreed that Stewart's suggestion would be a good idea.

MOTION: Ralston MOVED to accept staff's recommendation to locate a second air toxics monitor in West Eugene, in the Bethel area. Kirkpatrick SECONDED THE MOTION.

#### Discussion of Motion

Monk said he would not support the motion because, even though locating an air toxics monitor in West Eugene is important, the motion implied keeping the Amazon site intact. Monk said he would like to see data which indicates that the Amazon site has valuable air toxics information. He repeated that the site is good for particulate matter, but not for air toxics.

Ralston said there is something to gain by voting to locate an air toxics monitor in West Eugene. There is funding to do everything staff wants to do and to not have to discontinue it after 2010.

Johnson said he would support the motion. He said he tended to agree with Monk but also heard with Hough and Sawyer had said about having a reference monitor with historical data. He did reiterate his concern that LRAPA should move forward with a program to develop an accurate locally based inventory. He also supported Stewart's suggestion of having a work group to work on monitoring.

Carpenter noted that there will soon be a phase-down of benzene in gasoline because of the EPA gasoline containment rule. Those numbers might have to be revisited after that takes effect; but, for now, staff should proceed as planned with the second air toxics monitoring site.

VOTE ON MOTION: The MOTION PASSED BY A VOTE OF 7 TO ONE (Monk).

Following the vote, Hough distributed copies of a map with the potential locations for the monitor in West Eugene. Hough said he had hoped to have a discussion about this location with OTA and would also like to talk to the LRAPA Advisory Committee about it. Staff believes that any of the sites would be good locations. Each has pros and cons, and it will depend on finding willing property owners and making sure there are no implementation barriers such as difficulty getting power to the site. Hough said he did not need feedback from the board but just wanted them to be aware of the potential locations.

Ralston said the two central locations on the map make more sense, because they are in a residential area, than locating it along the rail yard which might skew any kind of results that are hazardous to the population. Hough agreed and said the two sites Ralston had pointed out are around Petersen Barn and would probably be staff's initial preferred sites. There need to be several potential sites in case there are insurmountable barriers with any of them.

10. NEW BUSINESS:

- A. Use of Legal Counsel. Ralston noted that legal counsel has been in attendance for the third month in a row. He asked if LRAPA is paying by the hour for that attendance, or if there is a contract. He said, in light of LRAPA's budget situation, he did not want to see an attorney sitting through three hours of meeting time if he were being paid by the hour. He suggested that, if there is business for which the attorney's presence is needed, the board should take care of that first and allow the attorney to leave.

Hough said he has had begun talks with Harrang/Long to work out an agreement regarding the fees charged for legal services to LRAPA. The reason legal counsel has been at the past three meetings was because of the legal framework information they were presenting to the board. Hough said he had asked Shepherd to be at this meeting because he had planned to introduce the petition from OTA and expected some discussion or questions about that which he might be able to answer. Staff is sensitive to the costs of legal counsel and will be negotiating a contract for more attractive rates. Hough said it is not his intention to have legal counsel present at every board meeting; however, Shepherd will be back for the December meeting because of the items that will be on that agenda.

Johnson said he had read some articles in ABA newsletters about a movement among some law firms to bundle services as a kind of consultant-based model fee-for-service. He said he felt that having legal counsel at the past three meetings had made the meetings more productive and improved the quality of the board's conversations, generally, because they were not operating on a bunch of assumptions.

Shepherd said Harrang/Long would be happy to talk with staff to work out a sensible plan. He noted that his firm does have arrangements with other public bodies, described as a "basket of service." It is a retainer that covers "x" amount of time and is helpful in holding legal costs down. He added that he had attended the October board meeting simply to become acquainted with board members and had not charged the agency for that time.

- B. At-Large Board Position. Ralston asked if staff had advertised the at-large board position representing Springfield, and Markos said the ad would go into the *Eugene Weekly* on Thursday and in the *Eugene Register Guard* on Sunday and again two weeks later. Hough said applications were to be in by November 30, and the board could review them at the December meeting and decide at that time if they wish to interview any of the applicants at the January meeting.
- C. Hearing About a Conflicted Permit. Carpenter said his wife had heard something on TV about a conflicted permit hearing LRAPA is to hold in December. He asked what that was, and Hough said the story may have been the result of an interview with the Oregon Toxics Alliance about the petition that was discussed earlier in the meeting.
11. ADJOURNMENT: The meeting adjourned at 2:55 p.m. The next regular meeting is scheduled for Tuesday, December 8, 2009, 12:15 p.m. in the meeting room at the LRAPA offices, 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

**Merrie Dinteman**  
Recording Secretary