

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–DECEMBER 8, 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); Faye Stewart–Lane County (via phone)
(ABSENT: Dave Ralston–Springfield; one of the Eugene citizen appointments was vacant at this time, after Kit Kirkpatrick left in November)
- Staff: Merlyn Hough–Director; Merrie Dinteman; Tom Freeman; Max Hueftle; Matthew Lee; Sandra Lopez; Sally Markos; Nasser Mirhosseyni
- Other: Earl Koenig, Chair, Russ Ayers, Chuck Gottfried and Gery Vander Meer–LRAPA Advisory Committee; Pete Shepherd–LRAPA Legal Counsel; Lisa Arkin–Oregon Toxics Alliance; Jim Daniels–Rosboro Lumber; Timothy Moxly; Dale Riddle and Tom Wood–Seneca Sustainable Energy

[Drew Johnson attended the first part of the meeting in person but had to leave before the meeting was over. He participated in part of the meeting via phone.]

1. OPENING: **Carpenter** called the meeting to order at 12:16 p.m.
2. PUBLIC PARTICIPATION:
 - A. Gery Vander Meer, 2604 J Street, Springfield, Oregon, Vander Meer said that the Climate Research Unit of the University of East Anglia in Great Britain has been the primary data repository for much of the world's climate research and primary source of much of the United Nations Intergovernmental Panel on Climate Change (the IPCC). Based on this data, the IPCC has been a leading advocate of mitigating the impact of man-made global warming. Vander Meer said that, in recent the weeks, a whistle blower has released e-mails and documents originating with the Climate Research Unit, revealing, in their own words, how they have knowingly manipulated research and data to document a corrupted conclusion. He said it is known that they represented their conclusions as factually accurate when they knew they were lying, and that they illegally destroyed material legally demanded, in both the US and UK, under Freedom of Information laws. He said it is also known that they colluded to destroy the reputations of honest scientists and scientific journals who oppose their dogma and that they thwarted legitimate peer review at every turn. Vander Meer said it is known that greed motivated their corrupt agenda, driven by scientists who were rewarded with millions of dollars in grants and research funding, and that legitimate science is less trusted in the public's eyes as this scandal continues to grow.

Vander Meer noted that funding for LRAPA comes, in part, from the public in the surrounding communities, and these communities trust their contributions will not be squandered on programs that are based in what has been revealed to be junk science. He said the LRAPA board needs to continue to be seen as a prudent spender of public resources and, to move the dialogue forward, he will be proposing to the LRAPA Advisory Committee that they forward a resolution to the board requesting the board consider opening a dialogue with the staff, to identify existing programs or policies that have been associated with this known illegitimate data. He said, as part of that dialogue, he hopes a program

will be developed for a notification procedure of the staff to identify this data in future matters and let the board know so that the board will not go on record as supporting what would appear to be, at best, criminal and obviously fraudulent data.

- B. Tom Wood, Stoel Rives, 900 SW 5th Avenue, Portland, Oregon, representing Seneca Sustainable Energy. Wood spoke to the petition received the previous month from the Oregon Toxics Alliance (OTA) for a declaratory ruling under LRAPA Section 14-160, with reference to the Seneca Sustainable Energy permit. Wood explained that a declaratory ruling applies if someone wants a determination as to a rule or a statute, and that it is not a procedure that applies if someone is asking about the efficacy or legitimacy of a permit. In addition, a declaratory ruling applies in a prospective manner. It is a mechanism set up by Oregon law, that allows a person to ask an agency to give advice on how a particular rule or statute would apply to a particular facility. Wood said LRAPA has full discretion as to whether it says yes or no to the request for a declaratory ruling; however, the key part is that a declaratory ruling is a forward-looking application of rule or law.

Wood explained further that this law comes out of a common bank of model statutes that have been adopted by a number of western states. Among those states, other high courts have looked at declaratory ruling in very similar context and have decided, consistently, that you cannot use a declaratory ruling to attack or question a permit that has already been issued. Wood pointed out, specifically, that the Hawaii Supreme Court, which has this same statute, just recently said, "It cannot seriously be maintained that the declaratory ruling procedure was intended to review already-made agency decisions." He said that is what the LRAPA board is facing with the request from OTA.

Wood said he was at this meeting, representing Seneca, to say that, for their renewable energy facility, they encourage the board to decline the request for a declaratory ruling. They believe that to grant the request would just serve to use a large amount of agency resources. There are legitimate means to question a permit, if one has issues with the permit, and it is not through the declaratory ruling process. Wood added that another issue to consider is that, in accepting the declaratory ruling petition, the agency opens itself up to a whole other pathway of litigation, because it would be potentially considerable by the court. Wood also reiterated the strong support from Oregon's governor, and from others, for the Seneca Sustainable Energy facility. He distributed copies of a letter from the governor expressing his support for this project as something the state needs.

3. CONSENT CALENDAR:

- A. Approval of Minutes of November 10, 2009 Board Meeting.

MOTION: Fortune MOVED approval of the minutes of the November 13, 2009 board meeting, as submitted. Ortiz SECONDED THE MOTION.

Discussion

Monk pointed out a typo on page 3, in the last sentence on the page, the word "option" should be "opinion." Others present agreed.

VOTE: THE MINUTES WERE APPROVED, AS AMENDED, BY A VOTE OF SIX IN FAVOR AND ONE (Ortiz) ABSTENTION.

B. Approval of Expense Reports Through October 31, 2009.

MOTION: Fortune MOVED approval of the expense report through October 31, 2009, as presented. Ortiz SECONDED THE MOTION.

Discussion

Monk noted that under General Expense & Other for Airmetrics, expenses are about 95 percent of the amount budgeted for the entire fiscal year. He asked for an explanation. Mirhosseyini responded that a large part of those expenses has been for legal fees associated with Airmetrics.

Monk asked why Everybody Wins Materials & Contract Services is at 150 percent of the budgeted amount. Mirhosseyini explained that the contract with LCOG was completed near the end of the previous fiscal year, but some of the invoices were not received until after the beginning of the current fiscal year.

VOTE: THE EXPENSE REPORT WAS APPROVED, BY A VOTE OF FIVE IN FAVOR TO 2 (Johnson and Monk) ABSTENTIONS.

4. DIRECTOR'S REPORT:

- A. Oregon Toxics Alliance Request. Hough distributed copies of a request from OTA for a contested case proceeding regarding the permit issued to Seneca Sustainable Energy.
- B. Cascade Sierra Solution Costs. Hough included in the written report a listing of the Cascade Sierra Solutions (CSS) costs during its formation, as requested by the board. He said most of the details were in the attachment to the report, but he had tried to mention in the text some facts to put into perspective the relative dollar amounts compared to some of the other extra budget-related funding LRAPA has received recently.

Hough said one of the major items was the building in which CSS was initially housed in Coburg. The cost for that was \$15,800, and it was reimbursed to LRAPA in 2006. Some of the other more significant costs were either legal fees associated with establishing some of the original formation and bylaws for CSS, or fees associated with establishing a website for CSS. Hough described the ethanol distribution program (85 percent ethanol and 15 percent gasoline) which was initially established by Sharon Banks and Angelique Dodaro when they were still with LRAPA. When Banks and Dodaro went to CSS, it was logical for them to wrap up that particular work. Most of that is pass-through dollars, as incentive to get that network established; but there are some administrative, implementation funds related to that, which are split between LRAPA and CSS. Hough said Banks will be present at the board's January meeting to give a brief overview of what is happening at CSS. He said there is a progress report on their website that would be a good attachment for board review, as well as, perhaps, the LCOG study report. Hough said the report contains good information for expanding some of those technologies on the long-haul diesel fleet. He said there have been a number of interesting developments that staff has held in the queue because of other, more pressing issues.

Monk said he appreciate staff's providing the accounting of the funds used to establish CSS, because it was something that the board unanimously asked to see. He said the board also asked that any funds contributed by LRAPA to form CSS be repaid to LRAPA. Monk said the section in the director's report

regarding CSS indicated there needs to be a decision as to whether to invoice CSS for those costs. He acknowledged that the amounts of those contributions are not large, and Hough had spoken about trading services as a way to get that money back; however, Monk asked what kind of trading should happen, and should that be a staff decision or a board decision. He said he would contend it should be a board decision, and he is glad to have the opportunity to talk about CSS in January.

- C. Enforcement. Carpenter asked about two cases described in the enforcement report attached to the director's report. A Christian camp was assessed a much larger penalty for an asbestos-related violation than a rock quarry was charged. The penalty to the rock quarry had been reduced from \$1,800 to \$500. He wondered about the specifics of those cases, and Hough said the Christian camp had contested the case and was scheduled for a hearing later this week. Because of the potential for the hearings official's decision to be appealed to the board, Hough said he did not want to discuss the specifics of that case with the board.

Monk asked where the contested case hearing would take place, and Hough said it would likely take place at LCOG because the hearings official is an LCOG employee. Monk asked if there would be any problem with board members attending contested case hearings. Shepherd said there is no problem with board members attending such hearings; however, it is conceivable that some information might be excluded from the record, based on some ruling by the hearings official. If that were to happen, and the matter subsequently came before the board, any board members who had been present at the hearing would have to be especially rigorous in basing their decision, as a board member, only on the things that had been admitted into the record at the hearing.

5. **ADVISORY COMMITTEE:** Committee Chair Earl Koenig reported briefly on the committee's activities over the previous month. The committee usually meets on the last Tuesday of the month. Because of Christmas, the committee decided to postpone its December meeting until January 5. They will meet again on January 26. The committee discussed the potential locations for an additional air toxics monitoring site and found it to be an interesting subject because of the many variables involved in placing a monitoring site. Carpenter asked if the committee had come to any conclusion regarding siting the second air toxics monitor, and Koenig said they had simply looked at the potential sites and not come to any conclusions regarding which might be the best location. Hough said staff had distributed to the committee the map of the four potential sites that staff is moving forward with, to see if there are any barriers to locating at any of them. He said staff planned to have another community meeting December 18 and then talk to the advisory committee again on January 5.

Koenig said the committee will be doing further review of Title 15 (enforcement rules) and will probably be taking a look at the GreenHouse Gas Reporting rules at some point. Hough agreed the GreenHouse Gas Report rules would be coming up in the next few months. He said one thing staff realized, in preparing to talk to the advisory committee, is that some of the fee changes on GreenHouse Gas Reporting may not require separate action for LRAPA rules because LRAPA adopted DEQ's Title V fee schedule by reference. That may make LRAPA rulemaking action less urgent, and LRAPA might parallel the regular rulemaking DEQ and EQC will do later this year, rather than trying to fast-track the emergency rulemaking that DEQ has in front of the EQC later this week. Staff expects to have an advisory committee review and discussion about that.

6. **LOCAL PARTNER DUES FOR 2010/11:** Hough said this item was put on the board's December agenda because this is the time of year when the county and the participating cities want to get LRAPA's input regarding what the dues requests will be for the coming fiscal year. The proposal before the board at this

meeting was identical to last year's request for dues from LRAPA's local participants. Staff was asking for board concurrence so that there will be a request to give to the local participants as they develop their budgets, with the recognition that each one of those is subject to the case-by-case negotiations which take place each year. Staff's proposal was to hold dues to last year's levels, with no adjustments for population or inflation.

MOTION: Stewart MOVED approval of the staff recommendation. Ortiz SECONDED THE MOTION.

Discussion of Motion. Ortiz said she is almost positive that the city of Eugene will be able to contribute at the requested level. Stewart said the county commissioners had held a leadership meeting earlier in the day; and the budget shows the county being able to maintain the contribution to LRAPA at the requested level for the next three years, provided there are no big changes in state or federal revenues to the county.

Carpenter noted that the proposal shows the per capita dues amount dropping down in all districts, implying that population growth was identical in all of the participating cities and the county. Hough responded that the average is as outlined, but there may be some variations between the county and the various cities.

VOTE ON MOTION: THE MOTION PASSED BY UNANIMOUS VOTE

7. INFORMATION AND DISCUSSION ITEM: SENECA SUSTAINABLE ENERGY (SSE) PERMIT PROCESS: Hough explained that this item had been requested by board members several months previous to this meeting. Hough said he would present the strategic planning portion, followed by Sandra Lopez's presentation of the process, from acceptance of the permit application to issuance of the permit, itself; then, depending on time considerations, he would present some of the basics of environmental equity considerations. He handed out documents to help facilitate those presentations and discussions.

Strategic Planning. Hough said he wanted to tie the process followed in permitting this facility into the strategic planning discussion the board had in 2007/08. Much of the same content has been used in communicating overall airshed issues, locally, to the county's Health Advisory Committee and to the Central Latino Americano group, and the air Quality Management Team at DEQ. There was also a joint meeting with EPA, DEQ and LRAPA on permit-related issues. The responses to the people who commented on the proposed permit for SSE drew from all of those other meetings and interactions.

Hough showed slides to illustrate the strategic planning process which identified pollutants of concern in Lane County and sources of those pollutants, and ranked each source as to relative contribution to the levels of various pollutants, noting whether each source was a major, moderate or minor contributor to a particular pollutant level, and whether each pollutant was a high, medium or low airshed priority for LRAPA. He gave a summary of each of the major criteria pollutants with which Lane County has historically had issues, and how those issues have responded to programs to reduce them. For example, lead used to be a problem, but the phase-out of lead in gasoline has reduced those levels in the ambient air to the point where they are hardly measurable.

Hough then explained how staff determined whether the various pollutants anticipated to be emitted by the SSE facility were priority issues when reviewing the SSE permit application. He described where monitoring has been done by LRAPA for specific pollutants of interest over the years. In the case of carbon monoxide (CO) he said monitoring for CO has been done at the LCC downtown campus site at 11th & Willamette in Eugene for many years. A second site was established when Sacred Heart Hospital put in its parking garage, because that had the potential for generating higher levels; and, in fact, the levels were slightly higher.

However, once levels got well below the federal standard, the hospital site was shut down to save funding. The 11th & Willamette site was maintained because there is a longer record at that location. He showed that monitoring at the Amazon site in south Eugene also shows levels of CO well below standards. Monk asked Hough to what he would attribute that, and Hough said it would be attributable primarily to better pollution control equipment on motor vehicles, beginning in the '70s with catalysts and continuing with better controls and cleaner fuels since then. There have been progressively tighter standards on cars since 1968 which have helped to reduce the effects of exhaust from motor vehicles and keep CO levels down. Carpenter commented that ethanol blends probably have also helped in reducing CO levels, and Hough agreed. He said the ethanol blends have been required during winter months since about 1992.

Hough said the historical problem area for CO is the downtown Eugene business district, and that is the area LCOG uses for planning for CO purposes. He called attention to another map which included a footprint of the modeled impact area for the proposed Seneca so-generation facility. He showed how the graphs indicate CO levels to be well below the standard in the area of impact for the facility and, consequently, CO was not one of the priority issues when staff reviewed the SSE permit application.

Johnson asked Hough what happens to CO in the environment—whether it stays around or breaks up quickly. Hough said the carbon in the fuel is converted to either elemental carbon (soot) or CO or CO₂. A complete combustion process maximizes how much of the carbon in the fuel is converted to CO₂. Johnson commented that CO₂ is very stable, and that's why there is a climate change problem, because CO₂ remains in the atmosphere. He asked if CO converts in the atmosphere when it is emitted. Hough said he believes it does oxidize, eventually, to CO₂, and then it becomes uptake for vegetation or adds to the load of CO₂ concentrations in the atmosphere. Lopez added that CO₂ is predominantly in the lower atmosphere and is prevalent.

Hough then showed several pie charts which depict the relative contributions of various sources to specific pollutants in Eugene-Springfield, showing charts for CO, VOC, O₃, NO_x, and PM₁₀. He noted that, when you look at the scale of what the total emissions are for the airshed, it helps put the SSE emissions in perspective. Hough pointed out that the focus has changed from PM₁₀ to PM_{2.5}. LRAPA has shown successful reductions in levels of fine particulate in every place the agency has monitored, in the urban area. He added that a number of saturation studies have been done throughout the area using the Minivol samplers manufactured by Airmetrics. The critical PM₁₀ site has been determined to be the "Key Bank" site at 99 & Roosevelt in Eugene; and LRAPA has continued monitoring there, to demonstrate that the strategies put in place to reduce levels of fine particulate have, in fact, been successful throughout the area. The pie charts for each of the pollutants included the anticipated contribution from the SSE facility, and demonstrated the fact that the SSE contribution will be very small in comparison to other sources.

Stewart asked if the materials reflect a reduction of open burning of the forest slash materials to be burned at the SSE facility, and Hough said it did not. The information presented was based on 2005 historical data, and the Seneca piece was added artificially to put it in perspective. He explained that the next emission inventory that will be done will be for 2008 emissions, and it probably will be done sometime in 2010. The 2005 data was the most recent emission inventory that was available at this time.

Johnson asked if staff has an inventory chart like those presented, for PM_{2.5}, and Hough said EPA has not made as much progress, nationally, as they had hoped to have on emission factors. He said AP42, which is basically the handbook of emission inventories done by EPA, has not yet been fully updated for PM_{2.5} emission factors. He said PM10 is still widely used as a surrogate for PM2.5, until there is a comprehensive way to come up with a PM2.5 inventory. Some categories, such as home wood heating or forest slash burning,

would probably be very similar if you looked at PM₁₀ or PM_{2.5}; but when looking at a mix of industrial emissions, there might be some that are combustion-related, or smoke range, which would be PM_{2.5}. A dust range would be PM₁₀ but probably would not show up on PM_{2.5}. Hough said PM_{2.5} has been LRAPA's focus; and the last tightening of the standards, from 65 µg/m³ down to 35 µg/m³ was one of the most dramatic tightenings of standards that has ever occurred. Prior to the adoption of the new standard, all areas of Lane County were well under the standard, but with the tightening of the standard, it is clear that further improvements are needed in Oakridge, and Eugene/Springfield and Cottage Grove no longer have the margin of safety they had under the old standard. That was why, in the strategic planning, the board recognized PM_{2.5} as one of LRAPA's highest priorities.

In discussing the Hazardous Air Pollutant emissions inventory depicted on one of the maps, Hough pointed out that there was no specific SSE contribution provided; however, the HAP emissions from SSE would be less than 25 tons added to the point source emissions of HAPs. Johnson asked if staff had attempted to determine how that map would change, if at all, from the impacts of the SSE facility. Hough responded that the SSE footprint was in an area a couple of miles from the area depicted on that particular map. The modeling showed that particulate a couple of miles in that direction would be a fraction of a microgram per cubic meter, compared to the 35 µg/m³ standard, a relatively insignificant impact that far from the facility. Johnson asked if the SSE contribution would create any new colors on the respiratory health risk analysis depicted on one of the maps. Hough said he would not expect adding the SSE contribution it to have any visual effect on the map. He said the coloring on the map would probably be from a combination of area sources, including woodstoves and fireplaces, and transportation sources that would contribute to any of the non-cancer pollutants.

Hough said one question that has come up during the processing of the SSE permit application is whether there are—or have ever been—any other existing co-generation facilities in this area. The closest example staff has is when the EWEB the power plant produced steam for the downtown area and the U of O power plant produced steam for the U of O campus, both operated until the 1990s. There were times when EWEB also produced electricity. If those two were added together, they would be very close to the amount of steam production and electrical production from the SSE facility. The 202 tons of CO anticipated to be emitted from the SSE facility is much lower than what was emitted by the two other facilities when they were operating. The PM emissions from the SSE facility also are much lower than from the other two facilities. Both of the older facilities used pre-70s technology, compared to the state-of-the-art technology to be used at SSE. Hough pointed to a graph which showed the dramatic difference in emissions for PM and CO, and the less dramatic but still smaller emissions of NO_x. Referring again to the strategic planning methodology for assigning priorities, Hough pointed out that, if that same process were applied to the SSE facility, the result would be that SSE is a minor contributor because, even though it contributes toward all the airshed issues, its contribution to each is a small percentage.

Permitting Process Followed for Review of SSE Permit Application

Lopez described the process, from the beginning, stating that Seneca requested a pre-meeting to discuss their project and what LRAPA wanted to receive in the application to determine completeness. In December of 2008, SSE met with LRAPA to discuss application content related to permit processing. Based on SSE's project overview, LRAPA requested a lot of specific information. As an example, Lopez said separate facility permit basis for a contiguous site must make its case and pass legal review. LRAPA required specific information for such things as modeling protocol, technical justifications and data, and fuel analysis, which SSE submitted with its application in January of 2009. Lopez explained that the evaluation process is an iterative process, and staff asks the applicant for specific information but then also evaluates specifics, such

as verification with other agencies. LRAPA staff contact Oregon, Washington, California, New Hampshire and Ohio air agencies, along with EPA Region 10 and EPA headquarters in Research Triangle Park, North Carolina to confer on pending and existing similar facilities in those places, or permits or experience that were transferrable to the SSE application. Staff also contacted suppliers of the equipment and controls for its review of SSE information. As responses came from different agencies and staff reviewed published data, staff would sometimes go back to SSE, or go through another contact, to verify what was proposed.

Staff looked at the proposed emissions and evaluated the calculations—the technology that’s being proposed—and their factors. For example, staff checked to see if what they were proposing was conservative for that particular source or that particular unit, and if it is current technology instead of something that is out-of-date. Staff makes every effort to see if there is testing and reporting and verifiable information to be collected from other facilities. Staff also looked at the regulations for both EPA and LRAPA, that apply. For instance, LRAPA requested modeling protocol revisions and adjustments, and SSE made those changes. Staff reviewed the controls, in terms of whether it is proven and its level of control, and contacted the suppliers. Staff also reviewed the proposed monitoring, including parametric monitoring. Because this is a pre-construction evaluation, the monitoring to be required is very important, because each site is specific.

Lopez then explained what triggers different levels of control. She said CO required Best Available Control Technology (BACT) at the emissions level SSE proposed, and staff did a BACT analysis. SSE is going to use sophisticated combustion controls. Staff also looked at an oxidation catalyst and contacted the only supplier of that system. A couple of facilities in New Hampshire, as well as the air agency in New Hampshire, were also contacted, regarding the use of that system and the control levels achieved. Staff also checked an EPA clearinghouse where, throughout the U. S., people have to report their latest determinations for control technology. BACT, when that requirement is triggered, is essentially the best control out there, on a site-specific basis. The control system must be evaluated on a very specific basis because, for example, if a facility uses two types of fuels, a particular control system may not be able to operate because one of the fuels “poisons” something.

Johnson noted that staff had concluded that sophisticated combustion controls were BACT for CO, but the oxidation catalyst was not. He asked why that is. Lopez said when you do a BACT determination, your evaluation can take into account cost/effectiveness, and the specifics of the permit application for a facility. For the Pacific Northwest, CO is not a big pollutant of concern from stationary sources. When staff contacted the sole supplier, they were asked to confirm cost information for what it would take to install that technology on this facility. Staff concluded that the cost was prohibitive, based on South Coast BACT cost/effectiveness values per ton of emissions reduction. Staff also considered what current, or new, technology can do as compared to older technology. As part of the BACT analysis, staff looked at New Hampshire sites and their levels of control; and why requiring that control was contingent on the NO_x having controls. LRAPA was not allowed to require control on the NO_x. Lopez said two facilities have oxidation catalysts as BACT, but those were not in the clearinghouse when she did the BACT review. The facilities that had installed them had done so due to tax incentive legislation; however, now it is being determined as BACT. Hough noted that numbers 11 to 15 in the Response to Comments documents goes into some of those details. Number 13 has some of the dollars per ton information that was reviewed. Lopez asked board members to let her know if they wanted her to expand on anything, because it would be easier for her to go through the information if she knew exactly what they were looking for.

Carpenter noted that this is an attainment area for CO, and he asked if the plant were to go into a non-attainment area, would they need more stringent controls because they would not be allowed to produce a net increase to the CO emissions of the airshed. Lopez said that was correct. There are two regulatory

programs: one for clean areas, to keep them clean; and one for areas that are out of compliance with federal standards. For the clean areas, the requirements is BACT, and the discretion is left up to each agency; however, that discretion must be reasonable. For a non-attainment area, the requirement is Lowest Achievable Emission Rate (LAER). The reductions must be achievable and demonstrated. Carpenter asked if that is the requirement that it must be in the upper 15 percent of the technologies known, and Lopez said Carpenter was thinking of MACT (Maximum Achievable Control Technology) where you have the top highest 12 percent of technologies. She said EPA was required to go out and look at all existing facilities that emit that pollutant, and take the 12 percent top best-performing controls and require everyone to do that. Carpenter asked if that is only for Hazardous Air Pollutants, and Lopez said that is the case.

Lopez said CO required modeling, and that was performed. Staff also required a Continuous Emissions Monitor as part of the combustion controls. Lopez explained that some of the older systems don't know what the air-to-fuel ratio is, because they don't monitor how much fuel goes in. They base the ratio on a back calculation from the steam. The system to be used at SSE will have real-time data.

For Nitrogen Oxides (NO_x), Lopez said BACT was not required, but modeling was required and performed. Seneca elected to install proven controls which is currently BACT technology for some places. LRAPA was not able to require additional controls because that is beyond the agency's discretion to do that since the facility did not trigger the requirement.

For PM₁₀, Lopez said SSE has chosen to install proven controls. What they have proposed is for modeling purposes and has almost become a standard. She said it is still BACT; and she believes that, before long, all facilities will have it for PM₁₀. Hough asked if any Oregon sources currently use that technology, and Lopez said there are none; however all of the ones she has looked at in the past five years, in California and Washington, do have it. Lopez added that BACT was not required for PM₁₀, for SSE, and the proposed emission controls are above and beyond. She said the controls are LAER, where you design the equipment to its potential. They have also added a fourth field to the Electrostatic Precipitator. In addition, most facilities are only required to test once every five years. LRAPA pushed for annual testing for SSE, and the company agreed to every two years. That request for more frequent testing was a result of strong comments received during the public comment period, and Lopez said the comments really served their purpose, to help LRAPA get what it wanted. Diane Dietz of the Eugene *Register Guard* asked if SSE had agreed to the every-two-year testing, and Hough replied that it is in the permit and SSE did not appeal the permit.

Johnson asked if there were any offsets required of this facility, and Lopez said there were not. She said the only pollutant in LRAPA's rules that would have required offsets was PM₁₀, but the facility's projected emissions are below the Significant Emission Rate (SER) for PM₁₀, so they did not have to supply those. Staff has focused on PM₁₀, because of the level being so close to the SER. If the facility goes over the SER, they will have to supply the offsets and come in for a permit modification.

For sulfur dioxide (SO₂) and VOCs, Lopez said BACT was not required. The emission estimates are conservative, based on AP42 factors that are an average of older units, like from 1980 and 1990. Based on source tests staff has looked at, even for existing permitted facilities, SSE had over-predicted those emissions. LRAPA is requiring testing of those, because all pollutant levels have to be verified through source testing. Lopez said it is important that the VOCs be quantified, because SSE will not be a major source. If one of those compounds tests higher than the estimate in the current permit, that value will go up, because the permitted limits have to be at the maximum anticipated.

Monk said he noticed that including the sawmill in the permit is an EPA requirement, because it is a contiguous facility. Lopez confirmed that the regulations, for the purposes of HAPs (Hazardous Air Pollutants), combine the HAPs emissions from the two facilities. Monk further confirmed, from page 6 of the Permit Review document, "Major Source HAPs applicability is determined on the combined HAPs emissions from SSE and the Seneca Sawmill because of contiguous sites." Lopez agreed with this for HAPs, but pointed out that the one versus two permits is different for criteria pollutants (i.e. non-HAPs). Monk said the reason he had asked the question was because he had been told that LRAPA and Seneca Sawmill negotiated a lowering of the sawmill's HAPs emissions, prior to this permitting process for SSE. He said he was curious, if that did take place and, if there were a combination of two facilities under one permit, it could be that they would be a major HAPs source. Lopez said most facilities have compliance margins to maintain flexibility; limits can be lowered, but to do so they must be enforceable, which was the case with the sawmill. Throughput and other parameters must be documented to demonstrate that the lower limits can be achieved. Recent test data is available from OSU that provided better emission factors for kiln emissions, and have been applied to other sawmills locally. In some cases, the emission factors were higher than originally thought. Overall, the emission data is better than in the past.

Environmental Equity Considerations

Hough said Lopez's work on reviewing the permit application was designed to basically ensure that air quality was not a problem anywhere; and environmental justice became, for this specific project, not a significant issue. However, staff believes that environmental justice warrants additional exploration, here, for the Eugene-Springfield urban area in the future. Hough explained that there were three main sources of the environmental equity maps used by staff, all based on 2000 census data. One map is from a program called "Enviromapper," which is EPA's environmental justice geographic assessment tool. Another source of the maps is LCOG. He pointed out that the Trainsong neighborhood has a distinctive shape and shows up on most of the maps, for one thing or another. Hough said looking at Trainsong and Whiteaker, and the Beltline loop would orient board members on the series of maps he used to illustrate LRAPA's evaluation of environmental justice impacts of the SSE facility.

Ortiz commented that the Trainsong area is a very mobile community, where the population is 70 percent renters which change every two or three years. Lopez said staff did find, in the executive order, that it needs to be based on current demographics when you decide about a facility.

A third source of the maps is the Eugene-Springfield Consolidated Plan which was published in 2005. He noted that, again, the Trainsong, Whiteaker, and Beltline loop areas are clearly visible on the map. He pointed out the areas designated "disabled," and "minority," and said there is also an "elderly" category which sometimes gets combined with the other categories. On the Consolidated Plan map, minority and disabled stand out in the Trainsong area, and that is near the area LRAPA focused on for air toxics monitoring. He said the area staff is targeting for monitoring has open spaces in the middle of a large residential area, which staff prefers, in order to meet neighborhood siting criteria. Another map, from "Enviromapper," concentrated on income/poverty, and some of those same areas of Trainsong show up on that map. Hough said he wanted to be sure Springfield does not get ignored in all of this, because it is more than just a west Eugene issue. He also confirmed Ortiz's comments, stating that one of the maps indicated a high percentage of renters and low percentage of owner-occupied housing. All of the potential monitoring sites staff has been looking at are in that area around the Trainsong neighborhood.

Fortune asked why minority areas are being highlighted, if this is an air quality issue, which affects everyone. Hough said that, traditionally, minorities have been under-represented, as far as legal representation, and there has been good evidence that waste disposal sites tend to be located near people who are less well represented. He added that sometimes language has been a barrier for people to understand what is being proposed. That is why it is necessary to be sensitive to environmental justice issues. On the other side, from an air quality standpoint, LRAPA's strategies are designed to make air quality healthful everywhere. In many ways, LRAPA is already neutral and protective of everyone, in developing air strategies. Carpenter and Johnson agreed that that was a fair characterization of why environmental equity should be considered.

Hough pointed out that staff had overlaid the footprint of the SSE facility onto the maps, to show the proximity of the modeled emissions to environmental equity areas. He stressed that the LCOG maps were not done specifically for LRAPA but were done by LCOG in 2007 for transportation planning and other LCOG purposes. LRAPA staff used these maps, along with the others, to get as much information as possible; but the bottom line is that Lopez's work was designed to protect everyone, so that there would not be any possibility of disproportionate impacts.

8. EXECUTIVE SESSION (UNDER ORS 192.660(2)(F) TO CONSIDER RECORDS THAT ARE EXEMPT BY LAW FROM PUBLIC INSPECTION: The board went into executive session at 1:50 p.m. and reconvened the open session at 3:30 p.m. *(Johnson left the meeting prior to the end of the executive session.)*
9. RESPONSE TO OREGON TOXICS ALLIANCE PETITION FOR DECLARATORY RULING REGARDING SENECA SUSTAINABLE ENERGY PERMIT: During the executive session, a question was raised by Diane Dietz, of the Eugene *Register Guard*, regarding whether or not reporters who attend executive sessions should be able to view documents which are distributed to board members in the closed session. Dietz said it made no sense to be able to attend the session but not to be able to see documents on which the discussion was based. She asked that the board make a decision about that for the future.

Hough said staff did not provide a recommendation in its report for this agenda item because he was looking forward to the executive session. Following that session, Hough said his recommendation would be for the board to decline to issue a declaratory ruling, based on the reasons outlined in Exhibit B attached to the staff report.

MOTION: After lengthy discussion in executive session, and on advice from legal counsel, Stewart MOVED that the board decline to issue a declaratory ruling. Ortiz SECONDED THE MOTION.

Discussion of Motion. Ortiz said she would support the motion, if Stewart were to modify it to refer only to the petition that was given to the board by OTA.

Shepherd began to respond to Ortiz's comment when the phone rang and Johnson rejoined the meeting via telephone. Shepherd explained that there were two alternative orders in the materials in the board's agenda packet for this item. One of the alternatives is a final order declining to issue a declaratory ruling, and it is specific to declining to issue a declaratory ruling on the petition submitted by OTA. If this motion were passed, it would have no effect on a future declaratory ruling on some other petition.

Monk said he wanted to let Johnson know that Stewart had placed a motion on the table to decline to issue a declaratory ruling, and that Ortiz had seconded the motion. Monk said legal counsel had given the board some clarification on the matter, and Monk's opinion is that the board does have the authority to initiate this

process. There would be very little risk because the board could terminate the process at any time. Monk said he felt it was important for the board to be responsive to concerns from the public; and, whereas he does not believe the remedy requested by OTA is valid, he thinks the request, in general, to review the specific points raised, is valid. He said he would not support the motion.

Ortiz said she was under the impression that there would be another request for declaratory ruling. Monk said he would vote to support the motion, if there were a simultaneous motion that would initiate a declaratory process to determine whether LRAPA's rules have been appropriately applied to the Seneca Sustainable Energy permit application. He said he believed that was what Ortiz was referencing. He said it was what he was getting to, that he thinks it is an appropriate process and that there is very little risk to initiate the process. *(The phone rang again at this point, and Johnson rejoined the meeting after having been disconnected.)*

Carpenter said he thought there was some confusion because, if the declaratory ruling process were to be applied to the SSE permit in any way, it would be no different than the OTA ruling that the board was looking at deciding at that time. Monk said he didn't say there was a difference. Carpenter said anyone could move for a declaratory ruling, as to how the board would apply future determinations to a situation where you have contiguous sites and an intermixing of raw resources and finished products, and whether it should be one permit or two separate permits. However, Carpenter said, Monk wanted to apply the declaratory ruling process to how the agency ruled in the SSE permit matter.

Monk said he did not think the board is restricted to declaratory rulings in a forward-thinking fashion. He thinks the language in LRAPA 14.160 is clear and unequivocal in that it is within the board's discretion to issue a declaratory ruling as to the applicability to any permit. He said what he was suggesting was that SSE is subject to any rule or statute enforced by LRAPA, and the word "enforced" says, to him, past, future and present.

Carpenter said he could not get to the same conclusion in his reading of the rule. He said he focused on the words, "as to applicability," and it seemed that if it were intended to apply to past activities, it should have said, "as to applicability or have been applied." Carpenter said that declaratory rulings in law are rarely retrospective, in his experience. They are always prospective and, base on legal counsel's advice, and on his own thinking regarding the risks of potential legal impacts from taking this on, he would support Stewart's motion. Carpenter said his problem with Monk's thought is that, despite legal counsel's opinion that the board could pull out at any time, he does not see, once the board would start the declaratory ruling process, how it would be possible to pull out of it without looking suspect. Some person would always argue that the board did not give it the full review that it was due. Carpenter added that OTA has a number of different forums in which to raise its argument, and he does not think this is the best forum. He said OTA should get a circuit judge to determine the validity of the permit because that judge would have more legal expertise than this board has. Carpenter said he would support Stewart's motion.

Ortiz commented that, looking at the way the permit was issued, through the declaratory ruling process, would not change the outcome of the permitting process. *(At this point the phone rang again, to reconnect Johnson to the meeting.)* Ortiz said her thought from earlier comments was that OTA's request was meant to change the outcome, or challenge the permit, and so she was confused about how OTA's request fit into the rules under which it was requesting action by the board.

Monk said he did not believe the a declaratory ruling by the board, as to the applicability of agency rules to this permit, would give the petitioner any relief because the board cannot modify or revoke the permit. What

he did believe it would do would be to demonstrate to the public whether the agency's rules have been appropriately applied in this context. Monk repeated that he thought initiating a process for declaratory ruling is a valid thing to do, because this is an important issue that the board should deal with. Monk said that, from his reading, there would be no legal risk for terminating the process before completing it because it is within the discretion of the board to terminate it at any time. He said it was just like the ADR process that was proposed a couple of months ago, that the board could pull out at any time, once they had more information. Monk said he thought a more thorough assessment of staff's thinking on some of these issues, regarding this specific permit application, would inform the board immensely with regard to whether a declaratory ruling would be an appropriate way to continue.

Johnson said he had missed part of the discussion because he had gone through a "dead zone" and had been disconnected. He said when he had been cut off, Monk was saying that he would support Stewart's motion if there were a subsequent motion. He asked if that option had gone anywhere and was told that it had not. Carpenter said his problem with that was that the subsequent motion would be identical to OTA's petition, because it would continue to apply the declaratory ruling process to the SSE permit.

Carpenter asked Johnson if he wanted to make any comments regarding Stewart's motion, and Johnson said he did not need to do that. To be sure Johnson was not confused, Monk explained that, whereas he believed OTA's petition was clearly seeking redress and some remedy, he did not think that was appropriate for the board. What he was suggesting was that the board should initiate a declaratory ruling, and that process should look at the appropriate application of the agency's rules to the SSE permit. He added that, since the action would be in response to the OTA petition, it should focus on the facts delineated in that petition.

Fortune called the question.

VOTE ON MOTION: THE MOTION PASSED ON A VOTE OF 5 (Carpenter/Fortune/Johnson/Ortiz/Stewart) to 2 (Forge/Monk).

Following the vote, Johnson said he agreed with Stewart, that the board needs to make sure the agency is doing things right, and so he would hope that the board could, at a subsequent meeting, revisit the question of proper permitting and the use of discretion by the staff, and the board's ability to make policy. Johnson said he thought the board was left out of the process with regarding to the permit issued to SSE. He supported Stewart's motion because he did not believe the petition, as it was worded, with the relief that was requested, was something the board can legally do at this time.

10. REVIEW OF APPLICATIONS FOR AT-LARGE (SPRINGFIELD) BOARD POSITION, AND DECISION REGARDING WHICH APPLICANTS TO INTERVIEW AT THE JANUARY 12, 2010 MEETING: Carpenter recused himself from the discussion because he was one of the applicants. He turned the meeting over to Vice-Chair Fortune. Forge wondered whether he should, as an at-large member, also recuse himself, and Carpenter said Forge could participate in this discussion and vote on it.

MOTION: Stewart MOVED to interview all three applicants, at the January meeting. Monk SECONDED THE MOTION. THE MOTION PASSED BY UNANIMOUS VOTE.

11. NEW BUSINESS:

- A. Legal Advice on OTA Request for Contested Case Proceeding. Stewart noted that LRAPA had received a request for a contested case proceeding on the SSE permit, and he requested that legal counsel look into the request and report back to the board at the January meeting.
- B. LRAPA Board Makeup and Possible Legislative Actions. Fortune said he would like to place on the January agenda a discussion regarding the makeup of the board and any legislative actions the board may wish to put forward in that regard.
- C. Request for Decision Regarding Documents in Executive Sessions. Carpenter brought up the request from Diane Dietz for a decision on how the board should handle documents that are used by the board in executive session, and whether the media should be entitled to also see those documents. He said the question might more properly be whether or not the board can legally keep media people present in executive session from seeing those documents.

Dietz commented that if the documents are from the agency's legal counsel, the board could probably not share those; however, if the media representatives hear the discussions, does it make sense to keep the documents from them? Shepherd said he believes he can help the board make the proper determination.

- D. Second Air Toxics Monitor. Monk said that in the board's last discussion regarding siting of the second air toxics monitor, he took issue with the value of the Amazon site. He said he would be asking staff for the area source inventory that DEQ has done. He said that information is apparently very important to the agency's decision about the siting of the second air toxics site, and he has not been privy to that information. He said he would also follow up with Hough, individually, because it seems to him that if Amazon data demonstrates wide variations from one year to the next, then the argument that it is important to keep it there for comparison works. If the data is fairly consistent over time, putting the seasonal variations aside, he thinks his argument is valid, and the agency's minimal resources should be used for air toxics monitoring elsewhere. Monk said he would be following up with staff, to gather that information, and will bring that back to the board at some future date, for assessment.
11. ADJOURNMENT: The meeting adjourned at 4:00 p.m. The next regular meeting is scheduled for Tuesday, January 12, 2010, 12:15 p.m. in the meeting room at the LRAPA offices, 1010 Main Street, Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary