

MINUTES
LANE REGIONAL AIR PROTECTION AGENCY
BOARD OF DIRECTORS MEETING
TUESDAY–AUGUST 23, 2010
LRAPA MEETING ROOM
1010 MAIN STREET
SPRINGFIELD, OREGON

ATTENDANCE

Board: Glenn Fortune, Chair–Oakridge/Cottage Grove; David Monk, Vice-Chair–Eugene; Bill Brommelsiek–At-Large (Springfield Area); Brian Forge–At-Large (General); Drew Johnson–Eugene; Scott Lucas–Eugene; Andrea Ortiz–Eugene; Dave Ralston–Springfield; Faye Stewart–Lane County
(ABSENT: None)

Staff: Merlyn Hough–Director; Ben Miller–LRAPA Legal Counsel; Ryan Beltran; Merrie Dinteman; Max Hueftle; Matthew Lee; Sandra Lopez; Sally Markos; Nasser Mirhosseyni

Other: Earl Koenig, Chair, Amy Peccia, Vice-Chair, and Russ Ayers–LRAPA Advisory Committee; Jan Nelson; Stephen Riley

1. OPENING: Board Chair **Fortune** called the meeting to order at 12:15 p.m.
2. ADJUSTMENTS TO AGENDA: There were no adjustments to this month’s agenda.
3. PUBLIC PARTICIPATION: None.
4. CONSENT CALENDAR:
 - A. Approval of Minutes of July 26, 2010 Board of Directors Meeting. **Mirhosseyni** said he had one correction to make, in a discussion regarding fringe benefits. He was actually referring to the June 28 meeting minutes, page 4, in the second-to-last paragraph, where **Monk** had asked him if he was saying that the 401K contributions are in the Fringe Benefits and not in the General Fund, and **Mirhosseyni** had said that was correct. **Mirhosseyni** said he had misunderstood **Monk**’s question, and his response was not actually correct. He explained that there are two items in the General Funds Expenditures: “Benefits Plan” and “Other Fringe Benefits.” The Benefits Plan includes things such as insurance premiums which are run through a pre-tax Section 125 plan; and the 401K contributions are included under Other Fringe Benefits. Both are, however, included in the General Fund. [*A note has been added to the official copy of the June 28 minutes, as well as to the copy that is on the agency’s website, to clarify that point.*]

There were no corrections to the July 26, 2010 meeting minutes.

ACTION: MSP(Brommelsiek/Monk)(unanimous) approval of minutes of July 26, 2010 Board of Directors meeting, as presented.

- B. Approval of Expense Reports Through June 30, 2010. There were no questions regarding the expense reports.

ACTION: MSP(Brommelsiek/Ortiz)(unanimous) approval of the expense reports through June 30, 2010, as presented.

5. EMERGENCY RULEMAKING FOR PM_{2.5} PERMITTING: **Hough** explained that this emergency rulemaking proposal had been previewed with the board several times during the past few months, and that the proposal was consistent with what the Oregon Environmental Quality Commission had adopted the previous week. He asked **Max Hueftle** to provide the board with additional details about the proposed rules.

Hueftle said the proposed temporary rules are necessary because EPA has proclaimed that the federal rule which allowed PM₁₀ to be used as a surrogate for PM_{2.5} will be revoked in the next two months. The temporary rules would address PM_{2.5} permitting for new, increased or modified, sources at industrial facilities. Without the temporary rules in place, any increase in PM_{2.5} would trigger extensive review and cost. **Hueftle** said there was no public comment period for these temporary rules; however, LRAPA did get some stakeholder comments last month and made two changes in the proposal as a result of those comment.

One of the revisions to the proposal was to make the temporary rule effective on the date EPA revokes their surrogate policy, rather than on the date on which LRAPA's rule is adopted. This gives sources a little more time. The other revision was to extend the date at which the PM_{2.5} baseline is frozen in permits. **Hueftle** also described a change on page 4 of Attachment A in the board's agenda packet for this item. The definition of "netting basis" is changed by marking, in red, items C and E of the definition, which are removed for the version that the board was being asked to approve at this meeting. There were also a couple of minor typos in numbering and wording which were corrected in the version that was on today's agenda. **Hueftle** said he could outline those changes, if the board wanted him to do that, or he could just make those corrections on the final version of the rule.

Johnson noted that the staff report said that, without this change, there would be a burden on the regulated community and LRAPA, increased workload with no appreciable environmental benefit. He asked for more details about what analysis was done on environmental practices. **Hueftle** responded that the statement to which **Johnson** referred means that, essentially, if the rule did not have a 10-ton Significant Emission Rate for PM₁₀, any increase, at all, of PM_{2.5}, would trigger major New Source Review. The review fee for that is approximately \$42,000, and it is an 18-month review time for things as simple as a minor increase.

Johnson then asked if the reason that the review is higher is because that is when the agency determines whether or not additional emissions controls are needed, and if it would be unlikely that additional controls would be needed for emissions under 10 tons. **Hueftle** said sources may need to put on controls like baghouses, just to even meet the grain loading standards or opacity standards.

Johnson said his question was, does this rule make it more or less likely, or affect the likelihood of additional controls being added to facilities. **Hueftle** said it could potentially do that. The rule increases the Significant Emission Rate from zero to ten tons.

MOTION: Ralston MOVED adopting of the temporary rules, as presented, according to the staff recommendation. Brommelsiek SECONDED THE MOTION.

Discussion of Motion.

Brommelsiek commented that SO₂ and NO_x are precursors for PM_{2.5}; however, the temporary rule referred only to SO₂. He asked **Hueftle** to explain why that was the case. **Hueftle** explained the rules allow for what's called "inter-pollutant trading offsets," so that, if there is an increase of PM_{2.5} you can offset that with a certain amount of a precursor, SO₂ or NO_x. For the temporary rule, only SO₂ is being included, because that is what is required to be included, by EPA. But NO_x will be included in the permanent rulemaking, to

be adopted, hopefully, sometime in March of 2011. **Hueftle** said that the temporary rules would sunset in six months, and that staff would be coming to the board in the next couple of months with a request for public hearing on permanent rules. The permanent rulemaking would go through the full public notice and comment process.

Monk asked if **Hueftle** foresaw the possibility of an industrial source coming to LRAPA with a request for an extension to continue to use PM_{10} as a surrogate for $PM_{2.5}$, since these temporary rules would not take effect until EPA revokes its surrogate policy. **Hueftle** said there might be a case where EPA has not yet finalized the modeling protocols, or the required testing method isn't yet finalized, and the source wants to continue to use the existing conditions until those things happen. **Monk** said there would likely be no environmental impact from allowing that delay until the modeling protocols and testing method are in place; and **Hueftle** said if you assume all of your PM_{10} is $PM_{2.5}$, you essentially conservatively estimate your emissions. He added that it is very safe.

VOTE ON MOTION: THE MOTION PASSED BY UNANIMOUS VOTE.

6. APPEAL TO BOARD OF HEARINGS OFFICER'S DECISION IN CASE NUMBER 2009-3021, CAMP CHRISTIAN (ASBESTOS VIOLATIONS): Legal Counsel **Ben Miller** explained to the board that this item was an appeal to the board of a civil penalty that was assessed against Camp Christian. The case went before a hearings official in December of 2009, and the hearing official issued a written proposed order in January. That proposed order, and a record of the hearing, were given to the board at the July meeting, in preparation for today's appeal. **Miller** explained that the board could not make any changes to the proposed order. Based solely on the hearing record, the board had two possible courses of action. If they felt the decision was supported by the hearing record, they could affirm the hearings officer's decision. If they felt that there was not substantial evidence to support a particular finding of fact, or conclusion of law, they could remand the case back to the hearings official. If the board chose to affirm the hearings official's order, **Miller** said he would prepare a final order for the board chair's signature. He said reversing the hearings official's decision and order was not an option available to the board.

MOTION: Brommelsiek MOVED to affirm the findings and order of the hearings official. Forge SECONDED the MOTION.

Discussion of Motion

Monk asked **Miller** why he, as LRAPA's counsel at the hearing, did not refute the respondent's testimony that ownership of the trailers had transferred. He said the bill of sale really didn't say that, although he could see where Camp Christian might have assumed that ownership had transferred. **Miller** responded that he would caution the board, that they are limited to the record that was before the hearings official, and it would be inappropriate to consider any additional evidence at this time. **Monk** said he thinks the respondent has a legitimate claim, and then the hearings official said as soon as one piece of demolition debris landed on the respondent's property that they were potentially liable. **Monk** said **Miller** did not have to answer his question. He was just curious as to why **Miller** did not challenge the respondent's claim.

Monk then commented that, while the respondent did have control over the demolition and were clearly a party to this infraction, it seemed to him that the person doing the demolition, Mr. **Running**, was, likewise, a party to it and, yet, LRAPA did not cite him.

Ralston said he was glad **Monk** had brought that up, because he had similar questions. He said he really did not feel good about the way this case was handled, and he thinks Camp Christian has a legitimate argument regarding transfer of ownership. **Ralston** said he was more inclined to remand the case, to sort those issues out, rather than penalizing someone who was trying to do what they thought was right and got penalized \$6,000 for it. He added that he thought Camp Christian should have had better legal representation, because he did not feel that all of the facts were brought out in a way that would bring justice.

Johnson said he recalled another case that was similar, in that someone burned some things on someone else's property. He said he recalled that, if the rule violation takes place on your property, you are liable for it. He said that, to him, it is right that the property owner is liable, and he thought the Court of Appeals would create case law so that in the future there would be some certainty about who is liable.

Lucas said he agreed with **Johnson's** comments but thought it seemed that Camp Christian tried to make it sound as if they expected the structures to be lifted up, whole, and removed from their property. You wouldn't expect much chance of pollution from that activity; however, it looks like they agreed to the dismantling of the structures on site, at which point there should be some awareness that the activity could result in contamination of the surroundings. **Lucas** said he was less sympathetic to their claim that they did not know this would happen because they had a different agreement, given the fact that they did give permission to dismantle the structures on site.

Fortune asked for an explanation of the difference between demolition and dismantling. **Monk** said he would define the difference as: in demolition, you take a tractor and plow it over and push in into a big pile and burn the debris; whereas, if you dismantle a structure, you go in and take apart pieces of it and tear it apart manually instead of with a piece of equipment.

Forge read finding number two, "The buyer agrees to remove the three (3) mobile homes from the camp . . ., leaving site clear of debris." But then they changed the agreement, to demolish the mobile homes on-site. He said it seemed to him that there is some responsibility for it's being done on-site.

Monk said it seemed that the location of the trailers made removing them quite difficult, because they were up a steep hill and were quite large trailers. For that reason, he said it seemed clear that Camp Christian understood that the structures would not be removed intact. They hired a nephew of one of the Camp Christian board members instead of hiring a licensed, bonded contractor to do the job for them. **Monk** said Camp Christian made a series of poor judgements about removal of the trailers; and that agreeing to allow the trailers to be burned also showed a lack of oversight over the process. **Monk** concluded that, even though he saw their point about their assumption about transfer of ownership of the structures, he had equal reservations about the believability of Camp Christian's version of the facts.

Fortune said he shared some of the same thoughts and ideas, stating the case had to be about ownership and at what point you are exercising control over the whole process. He said he did not think you would have to be there to supervise if you hired someone to come in and do a job for you; however, there are a number of things that took place, and it looked like Camp Christian had a certain responsibility regarding that part of it. **Fortune** added that the question of ownership was still uncertain in his mind.

Brommelsiek said he was surprised that no one from Camp Christian went to the site after learning that the fire department had responded to a fire on the property. If they had gone out there, they would have seen what was taking place and been able to respond to the issue about doing proper testing for asbestos in a

timely period. He said, to him, Camp Christian chose to not take responsibility, even though this was occurring on their property.

Lucas said he was less troubled by the ownership issue than others might be, because, even if the mobile homes had not existed, if someone had said they wanted to store some asbestos on the property and then said they were going to burn it or do something else with it, that would trigger some idea that the property owner should find out what is happening and make sure that it is done properly.. **Lucas** said he was inclined to affirm the hearings officer's decision and order because it was done on Camp Christian's property, regardless of the question of transfer of ownership of the source of the pollution problem.

Monk said he thought there were some contradictions in Mr. **Riley's** (Camp Christian representative) testimony, such as that fact that he did not allow LRAPA's inspector, **John Morrissey**, onto the property, saying that he needed to talk to his other board members first. **Monk** said that was questionable, given that there had been a fire. **Monk** said he questioned the accuracy of some of the statements **Riley** made, which lead him to support **Brommelsiek's** motion.

Ralston said it was obvious that there were a number of errors made; and he thought it was unfortunate that, when it was determined that the mobile homes could not just be moved as originally planned, they did not get a contractor that knew how to dismantle the structures properly. **Ralston** said he did not know whether those decisions were done on purpose or not, but he likes to give some people the benefit of the doubt. He said he did not believe Camp Christian had done this intentionally. He thought they were not on top of it as they should have been, but perhaps they did not realize they needed to be. **Ralston** said he was more inclined to believe that Camp Christian made some mistakes and did not get a fair shake because they did not defend themselves very well at the hearing.

Lucas said he would be more in favor of a remand if he thought something productive would happen on remand; however, he thought the facts have been developed and the board knows what those facts are. He did not think that there was factual question that was not answered, and that he would not support remand.

Ortiz asked if LRAPA is aware of whether Camp Christian has cleaned up the debris that was left over after the mobile homes were destroyed. **Miller** responded that, as of the time of the hearing, which was a year into the case, nothing had been done to remediate the site.

Monk said another thing had crossed his mind regarding **Riley's** testimony. He said the reason things did not get cleaned up or moved forward was that they did not have the money. **Monk** pointed out that **Running** had just given them \$2,000 cash, in the agreement for the bulldozer to remove the trailers. Clearly, they had the money to do an asbestos survey. **Monk** pointed out that there are some pretty large entities in Lane County who do not seem to realize they are responsible for a survey before doing any demolition or remodeling; and so this is not uncommon. However, **Monk** said he thought it was disingenuous of **Riley** to suggest that they did not have the money as an organization. Unless that \$2,000 had already been allocated for something else, they did have sufficient money to do the survey. **Monk** suggested that **Morrissey** could have taken some samples and expedited the testing for them.

Stewart arrived at the meeting during this discussion and was asked what his thoughts were on this item. **Stewart** said he was trying to weigh this case against previous decisions the board has made, to be consistent. In another case, the agency went after someone who did work but did not go after the landowner; but in this case the agency has gone after the landowner instead of the person who did the work. **Stewart** said, in the interest of full disclosure, that he has helped Camp Christian in the past with permit issues for things such

as bathroom renovations. Camp Christian has continually explained to him that their financial situation is not good, and he said he would not come to this meeting and say that he thinks they have the money to pay the fine because he does not know whether they do or do not. **Stewart** said the county has tried to help Camp Christian because it is a non-profit that provides a good service for the community. He said he is still troubled by the fact that someone was hired to do this job and did not do a good job, and perhaps Camp Christian should have done a better job of finding out what needed to be done and what the person's responsibilities were. **Stewart** said the Legislature passes 1,500 laws every session, and local governments also pass ordinances and rules, and people are expected to know those rules. If they don't know or understand the rules, they are penalized. He asked if there was a warning issued in this case or if LRAPA went directly to the civil penalty. **Stewart** said he could see a large fine for someone who has broken the rules repeatedly; however, he felt more compassion in this instance.

Johnson said he had that previous case in mind, as well. He thought that LRAPA had gone after the property owner, but **Stewart** was right in that LRAPA went after the person who did the work. There is a difference in how LRAPA handled two cases with similar circumstances. He asked if the brief has any case law on the question of whether the property owner or the doer of the deed is liable. **Miller** responded that the owner, as defined under Section 43.005 of LRAPA regulations, is any person who owns, leases, controls or supervises a facility being demolished or renovated. Certainly, that could include both the land owner and the actual contractor; however, the way LRAPA's regulations are currently defined, it is anyone who controls or supervises, in addition to what you might traditionally think of as the owner.

Brommelsiek said the whole issue is who had control, and he thought both parties had control. He said it is clear that, whether it is a demolition, or dismemberment, structural members were removed and that triggers the asbestos rules. He said that, while there might be shared culpability, he had trouble finding that Camp Christian was not culpable.

Lucas asked if the material was burned before **Morrissey** went to the site; or if it was burned between the time he first tried to gain access to the site, and was refused, and the time he was actually allowed access to the site. **Miller** said he believed that the record reflects that there was a fire, and the fire truck was summoned. The fire personnel noticed the potential violations. **Morrissey** then went to the location and was denied access. He went out later, and at that time could hear equipment working. **Miller** said he did not know if there was any other evidence in the record regarding more burning.

Monk commented that the record indicated that **Running** told **Morrissey** that he had not intended to burn the second or third trailer, but the fire got out of control. **Monk** said he had trouble believing that as a legitimate story because if you're doing that kind of work you need to take the proper precautions. **Monk** said it was clear to him that there was shared culpability in this case, and that he thought the board should affirm the hearings officer's proposed order. **Monk** then pointed out the section on page 13 of the proposed order where the hearings official suggested that the agency director consider entering into a payment schedule with the respondent that provides for the suspension of payment while the respondent is actively pursuing clean-up of the site, and forgiveness of the penalty when the site is cleaned up. He said that is a way that LRAPA could move forward with affirming the hearings official's decision, provide financial relief to Camp Christian, and ensure that the property gets cleaned up in a timely manner. **Monk** commented further than he assumed the property still looks like it did in the photographs in the hearing record, and that is unbelievable to him. He said one of his frustrations with this case is that **Running** should have been cited because the manner in which he did that work was really abominable. **Monk** added that, with the previous case, LRAPA cited the worker but then had no way of forcing payment of the fine. Citing the property owner is a way for LRAPA to collect the fine if that is what the agency chooses to do.

Fortune said the difference he saw between this case and the previous one was that the owner of the property was out-of-state and was not on site. In the current case, there is the respondent who owns the property and the person doing the work, and they are pretty closely associated.

Stewart said he was interested in what **Monk** pointed out as an option to suspend the payment and include some forgiveness of the penalty once the property is cleaned up. He asked if it is appropriate to amend the motion to add that requirement, or if that would be a separate motion, following the one currently on the table.

Miller said the decision the board made at this time would be whether to affirm or remand the hearings official's proposed order. It would be perfectly appropriate to follow that decision with a suggestion to the director that he negotiate with Camp Christian as suggested in the proposed order. **Miller** added that, while it is not part of the record, staff could relate to the board their efforts to resolve this issue with the respondent, prior to their appealing the civil penalty.

VOTE ON MOTION: The MOTION PASSED, ON A VOTE OF 7 TO 2 (Ralston/Stewart).

Follow-Up With Respondent to Clean Up Property

Ortiz said she would like to direct **Hough** to work with Camp Christian according to the recommendations in the hearings official's order, to help clean up the mess. She said she would also like to hear what the agency has proposed to the respondent in that regard. **Lucas** said he was just going to ask for the same thing, stating that he would like to hear what has happened, so far, and what the outcome has been.

Hough said **Miller** might know the details better than he did, but there were multiple efforts to try to settle this case and try to get the site cleaned as part of that settlement. **Miller** said LRAPA initially sent **Morrissey** to make contact, but the whole goal has been to see that the property is cleaned up. Certainly, as part of the appeal process, LRAPA has issued several offers saying that LRAPA is willing to reduce the civil penalty if Camp Christian would submit a plan for how they plan to clean up the property and remediate that. To date, there has been no response from Camp Christian indicating that they intend to clean up the site. Instead, they chose to proceed through the appeal process.

Ralston said he would strongly suggest that, since the board has made its decision, and Camp Christian has a choice to make—to either pay the \$6,000 or clean up the mess—LRAPA should encourage them to consider what they can afford to do.

Johnson said there are other environmental laws that don't allow them to leave the property in that condition. He pointed out that the property is used as a camp, and they are bringing children there when it has friable asbestos laying around on the ground. He said they have a substantial obligation beyond the fine they owe LRAPA. **Johnson** said it is a pretty kind offer to say LRAPA will forgive a penalty for doing what they have to do, anyway.

Hough repeated that offers were made along the way, and those were essentially rejected by pursuing the appeal, rather than entering into a settlement. At this point, there are no offers being considered; but, if the board directs him to explore that further, in order to ensure that the site is cleaned up, he is ready to accept that direction.

Ralston said he would support giving that direction to **Hough**.

Monk said one of the things the board has talked about in the past, regarding enforcement, is the issue of a respondent foregoing the opportunity to settle with the agency at the beginning, and then the agency spending time and money to move that case forward; and then the respondent wanting to settle the case after having turned down previous offers to settle. **Monk** said it is his sense that this is not the way LRAPA should function. He said Camp Christian's decision to appeal the case instead of negotiating a settlement was foolhardy, to say the least. **Monk** said that, while he has sympathy for their situation, he does not think LRAPA should be negotiating with a respondent at this late date, given what the agency has expended to prosecute the case.

Lucas said taking that kind of action would seem to remove the teeth from any sort of enforcement action. If the down side to ignoring offers of settlement is to later do what the agency asked you to do in the first place—and not to have any fine on top of that—the next time LRAPA asks someone to follow through on their obligations, they won't have much incentive to do that. **Lucas** said he would be more inclined to forgive the fine if Camp Christian had been working during this time to clean up the mess. However, **Lucas** said, he thought LRAPA had been put in a tough situation to consider forgiving the civil penalty at this point, after LRAPA has expended significant resources to prosecute the case—especially if there has been no effort on Camp Christian's part to remediate the asbestos-containing materials on the property.

Fortune said he could look at it from Camp Christian's side. If they did not have the money to pay the penalty, or to hire a licensed asbestos abatement contractor to clean it up, what options does that leave LRAPA.

Ortiz said she heard what people were saying. She does not like to think of LRAPA as “having teeth,” but rather would prefer to think of the agency having a helping hand to explain what the rules are and help the respondent to comply. She said when the City of Eugene has complaints about a nuisance property, they sometimes have to go in and clean it up, and then they put a lien against the property. **Ortiz** said Camp Christian obviously does not have the money to pay the civil penalty or to hire someone to clean up the property, but the property is still a concern for the whole environment because the friable asbestos can blow anywhere. She asked if Lane County or LRAPA have any means to help Camp Christian clean up the property, or to see that it gets done.

Stewart said Lane County has a nuisance abatement program that has some funds in it, and he suggested that the LRAPA board write a letter to **Patty Hansen** in the Waste Department and include pictures of the situation, and ask if there is a way for Lane County to help in cleaning up this property. He said in the past when Lane County has stepped in and cleaned up a nuisance property, it has put a lien on the property. **Stewart** said he thought if Camp Christian had known what was going to happen, they would have insisted that the trailers be taken off the property so that this would not have happened.

Forge commented that Camp Christian is right on the McKenzie River, above where Eugene gets its drinking water, making this not just an air quality issue. LRAPA should be reimbursed for the time spend on this case, but the main issue is that the property needs to be cleaned up as expeditiously as possible.

Lucas said he had no feel for what a cleanup like this would cost and asked if the \$6,000 amount of the penalty would cover it or if it would be more like \$26,000. **Brommelsiek** responded that it would more likely be in the neighborhood of \$150,000 to \$250,000 because all the dirt must be removed. They would need to put together a sampling plan to satisfy EPA for both solid waste and air quality. Just dealing with contractors would easily cost \$50,000, without removing anything from the property.

Lucas asked if LRAPA has a way to put a lien on the property if they were to spend resources cleaning this up, and **Miller** said LRAPA does have the ability to put a lien on a property for a civil penalty, but he was not certain whether or not they could do so for remediation work. He said he would research that and get back to the board. **Lucas** asked if there is any kind of statute that would allow LRAPA to pursue **Running** or his business for his part in this. **Miller** responded that there are continuing violations of the rules because the material is still on the property. He said there is that potential, and that there certainly are a number of different claims that Camp Christian might have against the contractor.

Monk said **Riley** seems like a very competent individual, and he could have developed a plan to say how Camp Christian could plan to take care of the contaminated ground and worked with LRAPA. He said **Riley** had obviously spent a good deal of time representing Camp Christian in this case, so he should have been completely capable of working with LRAPA to try to prevent this from coming this far. **Monk** said he liked the idea of writing a letter to Lane County to determine whether there is any funding to help resolve this problem. If the county can do that, LRAPA should try to expedite that cleanup process as quickly as possible.

Brommelsiek asked, if there had not been a fire, and someone from the county had come upon the demolition and resulting asbestos contamination, would that have gone to some department of the county such as the waste management group, and would the county have gone after someone for the cost of the cleanup. **Stewart** said what would have taken place is that, if the county person had no knowledge of this activity, then demolition permits would have been searched. Demolition permits from the county include information about asbestos. If Camp Christian had gone through the proper process, they would have known what the rules are, and this problem probably would not have developed. If the county had become involved and had cleaned up the property, they probably would have gone after the landowner to recover the costs involved. He said the property belongs to the landowner, Camp Christian, and they should have gotten a permit to do the demolition work.

Brommelsiek said he was inclined to recommend that the board direct staff to contact the county and ask them to assist in addressing the cleanup.

Johnson said he had lost track of the issue at hand, because the discussion began as a question of forgiving \$6,000 and had progressed to something very different. He said he supports connecting agencies to do environmental projects, but he would not necessarily support forgiving the \$6,000 civil penalty.

Stewart said there might also be some programs through EWEB that might be helpful in dealing with this situation. He added that he thought the LRAPA board should be the ones to make the contacts, because he does not think Camp Christian would get very far if they were the ones asking for assistance with this cleanup.

Forge suggested also contacting the McKenzie Watershed Council to see if there is anything they can do to help.

Ortiz said it would be good to contact these other entities; however, she wondered if Camp Christian is willing to work with LRAPA. She asked if LRAPA has any kind of jurisdiction, without their involvement, to see that this cleanup takes place. **Hough** responded that this effort would require the cooperation of the landowner. He added that there are some exceptions in the state and federal funding of Superfund-type cleanups, but the project must be high enough on the priority scale to warrant allocation of those funds. He

said he did not think this situation would meet their threshold and be able to compete with the priority sites on the list.

Fortune said he was hearing from board members that it is the board's intention to direct **Hough** to contact other agencies, and the landowner, to see if there is any help available to Camp Christian, to clean up their property. Board members agreed that was what they wanted to do.

Miller asked if **Fortune** would like him to prepare a written final order, and Fortune said he would. *[Miller left the meeting after this agenda item and prepared the final order, which was signed by Fortune after the meeting adjourned.]*

MOTION: Ortiz MOVED to direct staff to prepare a letter for the board to sign off on, to go to Lane County, EWEB, the McKenzie Watershed Council and any other organization that might be able to help facilitate the cleanup of this property as soon as possible. Forge SECONDED THE MOTION.

Discussion of Motion

Stewart asked what LRAPA's role will be, taking the suggestion of the hearings official. He asked if there would be a work plan and how the cleanup would proceed. **Hough** said LRAPA will file a lien against the property if the civil penalty is not paid. He said he was interpreting the board's action as direction to explore what the possibilities are with the county, EWEB, and the McKenzie Watershed Council, making sure the property owner is aware of any of those options, and then helping to facilitate a solution. **Hough** said the penalty is still a pressure point, and he was hearing different ideas from different board members regarding whether to forgive all or part of that penalty when the property has been remediated.

Stewart asked if there is a clock ticking right now with regard to the fact that there is an ongoing violation occurring on the property as long as it has not been cleaned up. **Hough** responded that LRAPA's primary interest at this point is that the problem is corrected, and then to prevent a recurrence. He said the civil penalty system is a tool to help ensure that those things take place.

Forge said he has a problem with LRAPA spending a lot of time leading the respondent through the system. They should have taken some initiative to follow up on LRAPA's suggestions and the other opportunities that were available to them. It was their error, and they needed to correct it.

Monk said there is clearly some division among board members regarding the forgiveness piece of this discussion. He said his sense is that all board members want to see the agency contact the county, EWEB, the McKenzie Watershed Council, and the property owner; however, he wanted to resolve the forgiveness issue so that there is no question in **Hough's** mind about what the board wants regarding forgiveness of the civil penalty.

Ortiz said the best outcome, for her, would be that **Hough** would contact the property owner, and the property owner would jump at the chance to work with LRAPA to remediate the problem, and she would not be opposed to forgiving the penalty if the owner of the property did that. She said she thinks part of LRAPA's job is to support different businesses and different organizations when these kinds of things occur. **Ortiz** said she does not want to believe that there was mal-intent, but wants to believe that there was perhaps lack of sophistication around the problem and that they were taken by surprise. She said it sounded like there were some steps they could have taken differently to have a better outcome, but they didn't do those things.

Ortiz said, if the property owner works with LRAPA and the problems gets resolved in a timely manner, she would not be opposed to forgiving at least a part of the penalty. She said she would still want the penalty to sting, but does want it to bite. She said she does not know whether that can be done at a later date. **Miller** responded that the discretion to reduce a civil penalty is left with the director, and that he was certain **Hough** heard what board members were saying.

Ralston said he agreed with **Ortiz**'s point of view. He is concerned that, with the potential cost of cleanup, Camp Christian could walk away from the property. There would then be no partners in this issue, and it would still need to be cleaned up. **Ralston** added that the property owner has to understand the situation they're in, and that the contamination is still there and still needs to be cleaned up. If they were to lose their property, Lane County would be losing a potentially beneficial non-profit organization.

Monk said he still did not see any consensus regarding the forgiveness of the penalty. He said his sense is that, from an agency viewpoint, it is very important that LRAPA maintains seriousness about following the agency's rules. The \$6,000 is a very small amount, in terms of the cost to Camp Christian from dealing with this, but the agency must consider what forgiveness of that amount would mean to its reputation as a serious environmental enforcer. He recommended that the board vote on the motion and then deal with the forgiveness issue separately.

Brommelsiek said he thinks the responsibility belongs with the property owner and the contractor. He said he would not like to see staff spend an inordinate amount of time trying to help Camp Christian solve this problem, because staff has a lot of other work to do. He said he would prefer that **Hough** contact the other agencies and then advise Camp Christian of the options available to them, and then back away and let Camp Christian take care of it.

Stewart said LRAPA has a role to play in this, as far as working with the county, because a request for consideration of a nuisance cleanup coming from the LRAPA board and the agency would get much farther than if a private individual or non-profit tried to do that. LRAPA would need to stay involved throughout the process.

Brommelsiek and **Lucas** both asked **Stewart** if he had an idea of whether this type of situation would likely be funded through the county, and whether there are a lot of projects lined up competing for those funds. **Stewart** said the county has a fleet that will clean up a site if it rises to a level where there is a public nuisance or a potential safety hazard. He said they have cleaned up an old service station site where the soil was contaminated from the underground tanks, as well as a property with lots of old cars on it. Some economic development money was used for the service station cleanup. Generally the funding comes from Waste Management, through tipping fees for the waste department.

Johnson said he likes the idea of LRAPA playing the role of a facilitator, but he doesn't think it is appropriate. He said he thinks what is needed is an ombudsman—a county-wide person who works with citizens and businesses to walk them through the maze of agencies and regulations. Since there is no such person, **Johnson** said he thinks LRAPA should take that role; however, because there is an ongoing violation, LRAPA is not neutral. He said perhaps he will come to the board with a proposal for an ombudsman.

Ortiz said she viewed the motion as a kind of vehicle, and that LRAPA is currently the driver of the vehicle. She said she would hope that Camp Christian can be made to understand that, while LRAPA will be a participant in the process, the Camp Christian board has to be the driver in this situation. She said it sounded

like Camp Christian has been given more than adequate opportunity to develop a plan to deal with the contamination, which they have not done. If they choose to walk away from the property because of the high cost of resolving the contamination problem, the county will become responsible for it in another way. **Ortiz** said she would not like to see that happen but would also be okay with it.

Hough said that, to put this case in perspective, his sense is that if it had been addressed properly from the start, the cost of cleaning this up would be much less than the fine now. He said his guess would be that, at this point, the cost will be the range of thousands to tens of thousands of dollars. It will, however, be far less than the value of the property, so it is not like the value of the property is tipping on the edge of this issue.

Monk stated that the motion did not speak to forgiveness of the penalty, and **Ortiz** confirmed that it did not. **Monk** said he assumed that, under this motion, the fine would stand as is, and **Ortiz** agreed with that.

VOTE ON MOTION: THE MOTION PASSED BY UNANIMOUS VOTE.

7. OLD BUSINESS:

- A. LRAPA Board Makeup–Status Report from Committee. Nothing new to report.
- B. Organizational Dynamics and Collaborative Approaches–Committee Recommendations on Responses Received by Potential Facilitators. At its July meeting, the board formed a committee to review the proposals received in response to the Request for Qualifications/Request for Proposals. The committee consisted of **Forge**, **Johnson** and **Ortiz**.

Ortiz said two groups, Chadwick & Associates and Community Mediation, have done work with the City of Eugene in the past. She said she had spoken with **Alan Zelenka** and **Hough** had spoken with **Rusty Rexius**, and both of them had good things to say about both companies. **Ortiz** said the work **Chadwick** has done with the city is more similar to what the LRAPA board needs than the work Community Mediation has done with the city. For that reason she was recommending that LRAPA hire Chadwick & Associates.

MOTION: Ortiz MOVED that the group, Chadwick & Associates, be hired to work with the board as a facilitator. Forge SECONDED THE MOTION.

Discussion of Motion

Ralston asked if there is a cost associated with this, and **Mirhosseyni** said it was not to exceed \$10,000.

Johnson said he decided not to participate in the selection process, after all, because he knows some of the people who submitted proposals. He said he has studied dispute resolution and that the agency had received five excellent responses. **Johnson** said, while all of the applicants use similar tools and techniques, the proposals fell into two groups, for him, with two in the organizational dynamics realm with which LRAPA's board needs assistance, and the rest dealing more with policy decisions, or bringing a large group of stakeholders together to come up with a guideline around implementing a regulation. **Johnson** said he would not be voting on the motion but did support the recommendation from the committee.

Fortune asked **Johnson** why he would not be voting, and **Johnson** said he has potential future conflict of interest because of the current relationships he has with some of the applicants and the fact that he and they have similar professional aspirations.

Ralston said the only problem he could see was if **Johnson** had potential future plans with Chadwick & Associates.

VOTE ON MOTION: THE MOTION PASSED WITH ONE ABSTENTION (Johnson) AND THE REST IN FAVOR OF THE MOTION.

- C. Get-Together for Board, Committee and Staff Members. No discussion.
 - D. Air Toxics Committee. No discussion.
 - E. Personnel Policy Review Committee. No discussion.
8. DIRECTOR'S REPORT: **Hough** reviewed a few of the items in the written report.
- A. Air Toxics Program. **Hough** reported that **Brommelsiek** and several members of the LRAPA Advisory Committee had attended the Portland Air Toxics Solutions Advisory Committee (PATSAAC) meeting in Portland, and that several members of the advisory committee were also able to attend. He said committee chair **Earl Koenig** would report on that later in the meeting.
 - B. Tour of Airmetrics Shop. As a follow-up to discussion at the July board meeting, **Hough** said he would like to plan a tour of the Airmetrics facility following the September board meeting. He said staff planned to keep the agenda for that meeting as light as possible to allow time for the tour, which would give board members a better sense of what is involved with the sampling units. **Hough** said Airmetrics staff would do the final assembly of a unit so that the board can see how they are put together. He said unless board members objected to the tour, he would schedule the tour and encourage as many board members as possible to attend. **Mirhosseyini** added that staff would be available to transport people to the shop and bring them back to the office, unless board members would prefer to drive their own vehicles to the shop and leave from there.
 - C. J. H. Baxter Permitting. **Hough** said that, as part of the issuance of the permit renewal for J. H. Baxter, staff would be holding an informational meeting at the Red Cross Building at 862 Bethel Drive in Eugene on August 26, from 6:00 to 9:00 p.m. On September 22, the formal public hearing will be held, also in the Red Cross Building. Staff plans a brief informational session just prior to opening the public hearing, for any follow-up questions people may have. **Hough** explained the attachments to the director's report which will be used for the August 26 meeting, including a fact sheet that details the changes in the permit. A key part of the changes is incorporation of the Best Work Practices Agreements which have been developed in recent years, into the permit. **Hough** commented that he believes the renewal provides a much-improved permit. Also included in the attachments were: a time line of what has happened over the past 60 to 70 years, and particularly what has happened in the last several years; a summary of complaints received by LRAPA, by year; and several other documents that have been generated since about 2003 or 2004, specific to either J. H. Baxter or the West Eugene area near the facility. **Hough** said board members are all welcome to attend both the information meeting on August 26 and the public hearing on September 22.

Brommelsiek asked if board members are expected to attend a public hearing for issuance of a permit. **Hough** responded that board members are not required to participate in public hearing and, in fact, are cautioned not to participate too much. He explained that board members must be careful because the permit could be appealed to the board, putting the board in a quasi-judicial role. Therefore, it is important that board members maintain objectivity throughout the process.

Ortiz commented that she had received the information regarding these meetings through an e-mail, and she wondered what other forms of media staff has used to notify the community-at-large. **Markos** said she had placed display ads in both newspapers and had also contacted the heads of all the neighborhood associations in that area and asked them to put the announcement in their newsletters, or to use their phone trees or e-mail trees to get the word out. **Ortiz** asked which neighborhood associations were included, and **Markos** said she had contacted the Active Bethel, Trainsong, West Eugene Community, and River Road associations. **Ortiz** said she would get it to the Whitaker Neighborhood Association. She added that the neighborhood associations are pretty active in getting information out to residents of their areas. **Ortiz** asked if any TV stations had been notified, and **Markos** said she doesn't usually issue a news release on meeting because TV stations rarely pick that up as a news story. That is why she tries to use other resources to get the word to residents. **Ortiz** commented that media are quick to jump, in a negative sense, on issues dealing with J. H. Baxter. **Hough** added that LRAPA's website also has links to all of the documents which had been provided to the board, and **Markos** said there is a news update box on the home page, as well. **Hueftle** added that the proposed permit, as well as the review report, are also available on the website, and that there are physical copies of the documents at the Eugene Library, the Red Cross Building, and at LRAPA's office.

Monk suggested, based on his perception of the information meeting on the Seneca Sustainable Energy permit, that staff develop some information in handout form so that people will understand LRAPA's authority and the permitting process, so that people will have a document to help them as they prepare comments for the public hearing. **Hueftle** said he has a PowerPoint presentation of about 11 slides to go through, and one of the slides includes ways for people to comment that are helpful, and those that are not so helpful. He said copies of the slides will be provided as a handout that people can take home.

9. ADVISORY COMMITTEE: **Koenig** said the committee met the day after the board's July meeting and discussed advisory committee representation on the board's two new committees. He said members who had volunteered to serve on the Air Toxics Program Development Committee include **Russ Ayers, Larry Dunlap, Chuck Gottfried, Paul Engelking** and **John Tamulonis**. Members who volunteered to serve on the Personnel Policy Review Committee include himself and **Maurie Denner**.

Koenig reported further that **Engelking** has provided a very comprehensive report on the PATSAC meeting in Portland, based on their PowerPoint presentation. He asked if board members had received copies of the PowerPoint slides, and **Hough** said they had not yet received that but that **Brommelsiek** has a list of things for the board's Air Toxics Program Development Committee to cover. **Hough** added that he would be putting out Doodle Survey to try to schedule meetings of the two board committees prior to the board's September meeting.

Koenig distributed copies of a large column of black smoke which he had photographed along I-5 and which turned out to be the recent fire at the Short Mountain Landfill near Goshen. **Hough** commented that, to his

knowledge, this is probably the largest fire that landfill has experienced. **Stewart** said the landfill staff and fire crews did a great job of getting the fire under control very quickly.

Koenig said the committee would not meet in August but would resume its meeting schedule in September.

10. EXECUTIVE SESSION [Under ORS 192.660(i)] TO EVALUATE THE DIRECTOR'S JOB PERFORMANCE OVER THE PAST YEAR: **Fortune** announced that the board was going into executive session, pursuant to ORS 192.660(i), for the purpose of reviewing and evaluating the employment-related performance of the LRAPA director. The criteria to be used in this evaluation were adopted by the board at its regular board meeting on May 12, 1998, at which there was opportunity for the public to comment on the criteria prior to adoption. **Fortune** said representatives of the news media and designated staff would be allowed to attend the executive session, but all other members of the audience were asked to leave. He cautioned that representatives of the news media were specifically directed not to report on any of the deliberations during the executive session except to state the general subject as previously announced. He said no decisions may be made in executive session, and that the board would reconvene the open session following the executive session and invite the audience back into the room.

Open session reconvened at 2:59 p.m.

11. RESULTS OF PERFORMANCE EVALUATION AND MERIT REVIEW:

Performance Rating

Fortune asked each board member to say what their overall rating of **Hough**'s performance has been, giving a score of 1 to 5, with 1 being the worst and 5 the best. The scores given were as follows: **Ortiz** 4.5; **Johnson** 4.0; **Forge** 4.5; **Lucas** 4.5; **Brommelsiek** 4.0; **Monk** 3.0; and **Fortune** 4.5. [*Stewart had had to leave before the open session reconvened. The composite rating, with only eight members giving ratings, was 4.1875.*]

Merit Review

The second part of the annual performance evaluation is a merit review to determine whether the director should receive an increase in pay.

Ralston said that **Hough** is doing a good job as director of the agency; however, in light of the financial position the agency is in, he would not favor increasing **Hough**'s salary, and certainly would not go for a 2.5 percent increase.

Lucas asked if it is true that **Hough** has foregone raises for the past two years, due to budget considerations. **Mirhosseyani** confirmed that is the case. **Hough** added that he requested no increase for the past two years; however, there is provision in the personnel policy of 2.5 percent increase for longevity, and then another 2.5 percent for merit, and up to an additional 2.5 percent for exception job performance. **Lucas** asked if, under the policy, **Hough** qualifies for the 2.5 percent longevity increase. **Mirhosseyani** said that is the case as long as a person is not at the highest step in their range. Once an employee reaches the top of his/her range, longevity and merit increases are no longer available.

Ralston asked if other employees have gotten raises this year, and **Mirhosseyni** responded that employees who are not at the top of their ranges did get increases this year; however, most employees are at the top of their range and did not receive longevity or merit increases. **Ralston** asked if there was a Cost of Living Increase, and **Mirhosseyni** said there was a 2 percent COLA which applied to all employees' salaries.

MOTION: Forge said that, while the economy is still not in good shape, he would not have a problem giving Hough a 2.5 percent increase, based on the fact that he not had a longevity or merit increase for the past two years. Forge said he would make that a motion, and Lucas SECONDED THE MOTION.

Discussion of Motion

Lucas said if financial times were good, it would be easy for him to justify a 2.5 percent increase in salary. He said he agreed with **Ralston's** opinion; however, the fact that **Hough** has foregone a raise for the last two years makes an increase at this time very justifiable. He said he would support the motion.

Monk said that, unlike the rest of the board members, he is a little concerned about **Hough's** accepting the presidency of the Air & Waste Management Association. He pointed out that, in the agreement between **Hough** and LRAPA, **Hough** agreed to devote full time and attention to the duties of the director. **Monk** said he would wait to see what **Hough's** plan is for making sure that his responsibilities are well taken care of, as he takes on that responsibility. He said he would not support the motion because **Hough** has received the 2 percent COLA provided by the new budget.

Lucas asked if the A&WMA presidency is a volunteer position, and **Hough** confirmed that it is.

Ortiz asked for confirmation that **Hough** received the 2 percent COLA because he is an employee of LRAPA, and **Hough** said that was correct. **Ortiz** said she would support the proposed 2.5 percent increase.

Johnson said he would support the motion, but he also supported **Monk's** caveat and hopes the board will see, next year, a budget and staffing plan for how **Hough** will backfill and still maintain high morale and do the management work that needs to be done for LRAPA. **Hough** said he will serve as president-elect in 2011, but the major work load will be 2012 when he serves at president.

VOTE ON MOTION: The MOTION PASSED ON A VOTE OF SIX IN FAVOR AND TWO (Monk/Ralston) OPPOSED.

12. NEW BUSINESS: None

13. ADJOURNMENT: The meeting adjourned at 3:15 p.m. The next regular meeting is scheduled for Monday, September 27, 2010, 12:15 p.m., in the LRAPA Meeting Room at 1010 Main Street in Springfield, Oregon.

Respectfully submitted,

Merrie Dinteman
Recording Secretary