



3104 E. Augusta Avenue, Spokane, WA 99207 → (509) 477-4727 → Fax (509) 477-6828 → www.spokanecleanair.org

## SPOKANE REGIONAL CLEAN AIR AGENCY BOARD MEETING MINUTES

**March 4, 2010**                      **9:00 a.m.**  
**Spokane Clean Air's Conference Room**  
**at 3104 E. Augusta Ave.**

### **BOARD MEMBERS PRESENT:**

Mayor Edward Crockett  
Councilmember Rose Dempsey (Chair)  
Commissioner Bonnie Mager (VC)

### **STAFF MEMBERS PRESENT:**

William Dameworth, Director  
Ron Edgar, Chief of Technical Services  
Barbara Nelson, Finance & Personnel Admin.  
Matt Holmquist, Compliance Administrator  
Chuck Studer, Engineer  
Michelle Wolkey, Legal Council  
Mary McDermott, Secretary

**WORK SESSION:** There was no work session.

**BOARD MEETING:** The board meeting was called to order at 9:13 a.m.

### **1. Advisory Council Report – Ray Kelleher**

Most of the discussion was on the registration full-cost recovery program. Ray has been contacting the City Mayors in this area and most people are unaware that the cities are picking up the tab between what the Agency collects for the registration program and what it costs to run programs. It will be another 60 days before there is input from all of the cities. Ray has been in contact with Airway Heights, Medical Lake, Cheney and it was also discussed at the government affairs group meeting.

### **2. Director's Report for February – Bill Dameworth**

We received comments from Southwest Clean Air Agency and the Department of Ecology that they are also considering changes to their odor/nuisance rules and regulations to incorporate language from Puget Sound Clean Air's rule just as we are proposing to do. There was no indication on when they plan to propose the changes. This is an attempt to make this rule

more uniform statewide. We are in the process of incorporating the State Department of Health's comments into our draft assessment of rail yard impacts on air quality and health in Spokane County. We are also revisiting our air toxics study and incorporating pertinent data from that study into the report. The report will be sent out to the railroads for their comments in March. We will also be requesting that they develop plans to reduce emissions of diesel particulate and will offer to partner with them if they need a sponsor for grant money or other assistance. An agreement with US Bank has been signed to take Visa, MasterCard and Discover Card credit card payments for filing asbestos notices of intent and paying the appropriate fees. There will be software changes to our website to switch from PayPal, which is what we were using previously, and expect the changes to be effective in March. This system should reduce errors and make it simpler for contractors to file the necessary paperwork. Bill presented the agency's Clean Air Award to Fiber-Tech Industries at the annual Spokane County CTR "Way to Go Awards" ceremony. The rebate from Avista for the heating, ventilating and air conditioning system was received and was in the amount of \$2,175.00.

**3. Activity Report for January 2010 – Ron Edgar**

Ron gave a brief overview of the complaint summary, enforcement action summary, burning permits issued, inspections, surveillance, asbestos, NOCs, registration and air quality issues for the month. January and February were pretty good months for air quality. Ron went over the air monitoring equipment and air quality from Deer Park.

**4. Treasurer's Report for February 2010 – Barbara Nelson**

Barbara gave an overview of the treasurer's report. The state wood stove campaign for \$7,000 is a reimbursable grant and reimbursement has been requested for that. The NOC permitting cost recovery program has been running behind as budgeted and there have been two NOCs a month since the beginning of our budget year, July 1<sup>st</sup> and everything else is on track.

**5. CONSENT AGENDA – ACTION ITEM** – Approval of the February 4, 2010 Board Minutes. Approval of Vouchers for February 2010 – Numbered 4587 through 4645 totaling \$29,247.18 and February Payroll of \$120,191.79 for a Grand Total of \$149,438.97.

Commissioner Mager moved to approve the Consent Agenda and Mayor Crockett seconded it. Motion passed unanimously.

**6. Resolution 10-04 – Amendment to the Agency Board of Directors By-Laws – Bill Dameworth**

This is something discussed at the last board meeting that resulted in changing the service terms for the board members. It was approved to change those terms and now they need to be incorporated into the By-Laws.

Commissioner Mager moved to approve Resolution 10-04 and Mayor Crockett seconded it. Motion passed unanimously.

**7. PUBLIC HEARING: Resolution 10-05 – Amendment to Regulation I, Article VI, Section 6.04 Odors and Nuisances – Bill Dameworth**

Councilmember Dempsey opened the public hearing at 9:28 a.m.

Chuck Studer gave an overview of the applicability of Article VI, Section 6.04 General Nuisance Rule. It applies to all persons in Spokane County. Person means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency. It applies to all air contaminants in Spokane County. Air contaminant means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. There are two rules that cover nuisance in the State's Clean Air Act. RCW 7.48.120 defines nuisance as unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. RCW 7.48.130 defines public nuisance as one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. RCW 7.48.140 defines public nuisances enumerated as a public nuisance to erect, continue, or use any building, or other place, for the exercise of any trade, employment, or manufacture, which, by occasioning obnoxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public. RCW 9.66.010 defines public nuisance as a crime against the order and economy of the state. Every act unlawfully done and every omission to perform a duty, which act or omission (1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or (4) Shall in any way render a considerable number of persons insecure in life or the use of property; Shall be a public nuisance.

Chuck gave an overview of the present rule and the draft rule presented to the Board in August and November. Commissioner Mager asked why something has to be by reference instead of just seeing it clearly stated because that means that you have to figure out where to go to find the reference and it is cumbersome. Why don't we just leave it? Chuck replied that there is a rule that limits Spokane Clean Air's authority with agriculture and originally we put all of the wording into our rule and it makes the rule longer and for the most part it deals with agriculture. Commissioner Mager stated that if we eliminate it and do it just by reference, then the reference should be a hot link on the Agency website so that the public does not have to think we are hiding something. The Board and staff present agreed on having a hot link.

The Board directed staff to make a few non-substantive clarifications to the proposed rule at the November board meeting. We added a reference citing Spokane Clean Air's authority for the rule; Section 6.04.D "With respect to odor, the Agency may take enforcement action, pursuant to Chapter 70.94 RCW . . ."; a brief description was added of what the affidavit would contain related to making determinations, Section 6.04.D.2 ". . . 2. An affidavit from a person making a complaint that demonstrated that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent

possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and a new subsection E. clarifying what information Spokane Clean Air would use to determine whether or not a violation had occurred, E. "With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation." Chuck gave an overview of the steps taken for these proposed rule revisions. Chuck also stated that by state law, Spokane Clean Air can be more stringent.

## **PUBLIC COMMENT**

Doug Krapas: Good morning Board Members, thank you for allowing me to speak on behalf of Inland today, I appreciate that. First, I would first like to preface by saying that Inland Empire Paper Company (IEPC) is not opposed to a new rule, we would simply like to make sure that it is consistent with State law and legally defensible. IEPC appreciates the opportunities that it's had over the past several months to comment on the proposed odor rule. Unfortunately staff has not addressed our concerns in the draft rule now before the Board. Inlands concerns are very simple; the odor rule should be based on two objective findings by an agency's inspector. One, that the odor is unreasonably interfering with use and enjoyment of someone's property; and two, that the air emission source is not using recognized good practice and procedures to reduce odors to a reasonable minimum. The language requested by Inland is already a matter of state law. This is exactly what state air regulation WAC 173-400 040 4 that Chuck pointed out earlier, requires to take enforcement action against an air emission source based on odors; and I quote from that particular rule. "Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum." The proposed rule is not consistent with state law and it is unfair. Under the proposed rule, a violation can be found based on a potentially subjective and arbitrary opinion of one person who is complaining about an odor where the agency inspector simply detects the odor and its source. There is no requirement under the proposed rule that the inspector make any kind of independent determination that an odor is unreasonably interfering with anyone's use and enjoyment of their property. Nor does the rule require the inspector to determine if the air emission source is using recognized good practices and procedures to reduce odors to a minimum. Inland respectfully asks the Board to reject the proposed rule or amend the rule to require objective and independent determinations by the Agency that there is a nuisance. I would also like to pose the following question as to why SCAPCA's usurping the state law in favor of their own more subjective and ambiguous language. Thank you.

Commissioner Mager: Could staff respond to that because I thought basically what we went over here seems a little bit like we would have to document more, not less.

Bill Dameworth: I think what Doug is referring to is the State Ecology rule; state law is not the same as an Ecology rule and state law doesn't talk about whether or not you are just applying good practices, it says you are not allowed to endanger somebody's use and enjoyment of life

and property and Ecology themselves I think they're recognizing at this point that they may need to change the rule that you're talking about. I think as far as documenting and having a finding by the Agency that the odor does constitute a nuisance is in the rule now and basically relies on the affidavit of the person and they have to testify in court that they have an issue and they have to provide us with documentation. We also have to come in and say do we concur with that. Not just on their complaint do we say we're going to give a ticket because this person complained, we're going to have to document that the odors are there and where they come from and make a finding that a nuisance has occurred. That's all in the rule and actually that is probably more protection for you than the Puget Sound rule has, as they are silent on those issues. Also, it says the Agency will decline to pursue enforcement action if you put in the best practicable control technology. The rule provides notification to the public that if you've done the best job that you can, we are not going to issue you a ticket and that was put in there so that the public will understand that they can't just go file a complaint and have us go shut somebody down; that's not the purpose of the rule. The purpose of the rule is really to provide a better framework and the more positive actions that we have to take in order to go ahead and issue somebody a ticket. Right now everything is pretty vague and we've been fairly conservative in our approach to the rule and I guess if we were willing to be more aggressive, we could just go issue people tickets, take them to the hearing board and take them to Superior Court and that would be the way to let some judge decide. This provides the framework that everyone should be able to understand what it's going to take to go forward with a NOV.

Doug Krapas: Well, according to our attorney there is an illegal standard for some of the terminology that's used within the rule. Enjoyment of life, there's no legal standard for enjoyment of life and also why change what is already approved legal standard language that's included within that WAC, which is basically unreasonable interference with a property owner's use and enjoyment of their property. We have made recommendations to the rule in our previous comments that Chuck pointed out that we had made and these are those comments to the rule. They're not very significant as far as trying to change the overall complexion of the rule, but to just try and make it more legally defensible on behalf of the Agency. Because the first time something like this comes up, an odor complaint or if it's taken to the extremes that could potentially be done by this document, we are going to legally challenge it and if it's not based on current legal standard that's accepted language that just opens you up and us up for attorney's fees. So all I'm asking is that you change the language to be consistent with the state law and I don't think that's much of a change to go from enjoyment of life to unreasonably interfere with property owners use and enjoyment of their property and then the other one which is the persons using recognized good practice and procedure to reduce odors to a reasonable minimum. Again, all of these things have been put through the legal system and are acceptable language. Your statement here, all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed, really opens up a can of worms. What is all controls and operating practices to the greatest degree practicable? I mean we could put a dome over our facility and someone could say that's the greatest extent of all controls. In essence, that's what it's opening us up to unfortunately. Then, the other statement that you made about that the Agency has to, there's language now included that the Agency has to make the determination that the use and enjoyment of somebody's property is being affected, is not included. The only one who,

according to your language right now, the only one who has the ability to be able to make that adjustment is through the affidavit of the complainant. We have actually asked for an inclusion under D for a number 4 to be included that a determination by the Control Officer that the odor may unreasonably interfere with property owner's use and enjoyment of their property be added so that the SRCAA officer has to actually make that assessment.

Bill Dameworth: It says here in Section E, "With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred . . .", so we still have to make the determinations claimed by the affidavit; the affidavit is just evidence that we would use in making the determination of whether a violation occurred. It is still up to us to make that decision. It is not just up to the person filing the complaint.

Doug Krapas: But what is constituting the violation has occurred, that's the items up above in D. and so it doesn't state that you have to make that assumption that the odor may unreasonably interfere with the property owner's use and enjoyment of their property. This is somebody complaining that this is bothering me, I think it is necessary for the Agency to say come on now is this really bothering them.

Bill Dameworth: That's what we would do. The purpose of this isn't just to have somebody complain and have us go take action against you; we still have to provide a reasonableness test which means we still have to make a determination of whether or not a violation has occurred, in spite of the affidavit.

Doug Krapas: I appreciate that.

Commissioner Mager: Is your concern that whoever is going to receive this complaint is not going to physically go out and inspect where the person lives.

Doug Krapas: No. What we're saying is that SRCAA gets a complaint from someone who says this odor is really bothering me, it's affecting my property and my enjoyment of life; they sign an affidavit, as such, and then provide it to SRCAA. There's nothing in here that says that SRCAA has to make that determination that the odor may unreasonably interfere with that property owner's use and enjoyment of their property, but specifically the subjective view of the complainant.

Commissioner Mager: That's not how I read E. though. It says, "With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation." It seems to me that says that the Agency is going to take this seriously, we're going to do an actual investigation and that they are going to make the decision based not just on the affidavit but on the information that they get as they investigate. Is that not correct?

Doug Krapas: Well there's nothing that specifically states that they have to per this WAC rule make the determination that that odor is unreasonably interfering with the property owner's use and enjoyment of life and property. Simple matter, it's just basically a legalese issue and

like I said we just actually added that phrase under D., because they have to look at D., make the assessment based on all of these factors under D. and all we've added is that the determination by the control officer that the odor may unreasonably interfere with the property owner's use and enjoyment of their property. Make it to tie it into that WAC rule.

Bill Dameworth: The WAC is a rule and you keep referring to it as state law and state law is not the same as a rule and the authority for us to do this comes from state law and we can be talking about what it says in state law and what the definitions and what all the terminology in state law is and it's not the same as what's in the WAC rule. What we have done is go back to state law which is our authority, not the WAC rule, because we could do nothing and enforce the WAC rule just as it sits and in some respect it's probably more stringent than the rule that we have now, which we are supposed to be enforcing as opposed to ours in some places. But if you go back to what the state law says, the RCW, that's what you should do and your lawyer is take a look at the state law as opposed to what's in the WAC rule. We have done nothing to exceed our authority based on what's in state law. This says that a person has the right to enjoy life and their property and it doesn't talk about any of these other things that are in the WAC rule. I think this Puget Sound rule has put together the framework that is pretty clear for the public, the agency and the regulated businesses as to what it's going to take to constitute a violation. We've put in some additional language about making sure that we make the determination, that we still have the authority to decide yay or nay on whether or not a violation has occurred and if somebody has put in all of the reasonable controls that they can, that in our view is reasonable, we don't get to argue about reasonable. But if you've done a really good job, and some of the people complaining about this rule have actually done a pretty darn good job and right now Inland is in that group. Maybe you have a fear of somebody coming in and saying I can use this to get you. That is not the intent here and it's pretty clear that our intent is that if you've got good pollution controls on, we're not, in spite of the fact that somebody may have complained, we aren't going to take action against you because the purpose for taking action is to get you to do something different than you are already doing and it is not our intent to shut you down and take you out of business and if there isn't any additional pollution control equipment that we expect that you should really be able to install, we're not going to do anything. That's our intent and it is very clear in here, even though it doesn't sound clear to you and your lawyer. He needs to go back to state law as opposed to the WAC rule. According to what Chuck was saying, Ecology is probably going to change the WAC rule anyway; they're in the process of reviewing that whole section and that they include this particular rule.

Chuck Studer: The WAC is an administrative rule that tells Ecology how to administrate the law. In WAC 173-400-020 it specifically says "... (2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations." (Chuck stated RCW 70.94.011 Declaration of public policies and purpose).

Councilmember Dempsey: If our citizens are required to follow the WAC rules and Ecology enforces them, then what.

Commissioner Mager: Our Agency supersedes them. Doug will you read your suggested language.

Doug Krapas: Some of this doesn't apply anymore in that we picked up on what you said earlier Bonnie was that you actually included the language for each one of the references within there. But basically we are looking at, under C. our change was "it shall be unlawful for any person to cause or allow the emissions of any air contaminant in sufficient quantities and of such characteristics and duration which may unreasonably interfere with a property owner's use and enjoyment of their property", again, to be consistent with the WAC 040. I don't have, you know going back now Chuck, I don't have any problems with listing out those three that you have there. The enjoyment of life was one that our attorney was hung up on, was that enjoyment of life definition. So in essence I think we could have taken that unreasonably interfere with property owner's use and enjoyment of the property out and not include it.

Chuck Studer: If your attorney has a problem with that Doug, he needs to take it up with the State Legislature.

Doug Krapas: Basically what we asked for is that under D. an item 4. be added that "A determination by the Control Officer that the odor may unreasonably interfere with the property owner's use and enjoyment of their property." just to define what the assessment of the Control Officer is and performing whether a violation has occurred.

Commissioner Mager: Michelle, do you think it is a bit redundant because in my mind that is covered in E., but if that were to be included, would that be in anyway significantly changing what we have already put here.

Michelle Wolkey: I would concur with Commissioner Mager. I think it's covered with what is there already. I don't see that it makes a significant difference one way or the other because that's what we are going to be doing.

Commissioner Mager: If we were to include that language so that Doug's lawyer can rest easy, would we have to go back out and have another hearing or extra steps.

Michelle Wolkey: The determination is whether it is a substantive change.

Commissioner Mager: So if we feel it's sort of redundant but we're willing to put it in, you think we would be okay?

Michelle Wolkey: I think that we would be okay. I'm always hesitant because there is somebody else out there that wrote this.

Bill Dameworth: It has so much to do with Doug's lawyer's wording and Spokane Clean Air's wording trying to accomplish the same thing. I think that we did carefully look at what Doug's lawyer suggested and this is what our lawyer came up with to deal with that. I don't really see any difference, it basically says that the Control Officer still has to make the

determination whether a violation has occurred and Spokane Clean Air thought that's what Inland was after. We wouldn't just say that the complainant determines whether or not a violation's occurred, which is what I think Doug was suggesting the original proposal would have, that the complainant could decide. The complainant can't decide; Spokane Clean Air has to decide and I think it has always been that way and I know that's how Puget Sound enforces their own rule. They have to physically go out and investigate what the complainant's situation is and determine where the odors are coming from, determine that it is significant; we have to still go through fact finding and make a determination. Once we do that, then we can issue you a ticket. I don't see a whole lot of difference between the two sets of language except different lawyers wrote it.

Michelle Wolkey: The purpose of the affidavit is to make sure that we are investigating and taking action on complaints where the complainant is prepared to sign an affidavit.

Bill Dameworth: We can still investigate complaints that are anonymous, but in order to issue a ticket under this particular regulation, you have to have the affidavit. Now if we found out through an anonymous complaint that somebody was violating some other rule and regulation such as the opacity standard or a dust standard or some other standard, we could issue an NOV on that. But this standard here, you have to have the affidavit and the person has to be willing to testify in court as to how this has injured them, they will be cross examined by a Judge and the opposing attorneys and all of that stuff. I think that is a high enough standard that a lot of people will not do frivolous complaints. They are going to have documentation and reason to believe that this is the case. I think that the one case Doug's attorney brought up, the woman may have suffered from some sort of a medical condition where her doctor could probably say yes this is in fact causing this person health problems. It isn't going to be frivolous. It is going to have to be something significant before Spokane Clean Air even moves forward with it. We are not looking to get this change and then issue 100 tickets in the first month. It is just providing the framework for Spokane Clean Air to follow in order to be consistent.

Councilmember Dempsey: This regulation points out that if an authorized representative has documented all of the following and so it doesn't say, it just says as long as the documentation is there under this section, all he wants us to add is his determination statement of the Control Officer.

Commissioner Mager: The intent of this is to make sure that a thorough investigation has been done and the person investigating will testify to the fact that they are the ones who agreed with the complainant. I believe it is stated in E.

Bill Dameworth: E. refers to C. which goes back to state law which I believe is the same thing that Doug is talking about.

Michelle Wolkey: We have to be careful not to build in an inconsistency if we do make changes and add E. to make a D.4.

Bill Dameworth: The C. sections are all out of state law.

Commissioner Mager: Are you satisfied Doug?

Doug Krapas: By inference what you're saying is there, I think we we're just looking for clarification because we believe it to be somewhat ambiguous or open. That you are going to make this evaluation but without actually specifying what exactly it refers to. I see what you are saying Bonnie. But having that addition as item number 4 would certainly provide further clarification for us and I think it nails it down and fills that legal hole.

Bill Dameworth: Because of Ecology's rule you don't want to eliminate any of the items under 2. which are in state law. So the Ecology rule is actually less inclusive than the state law is.

Commissioner Mager: What I would like to do, as long as Spokane Clean Air doesn't have to go back and amend the process like publishing in the newspaper and all of those things. If we can use this language with the addition that it's really repetitive so that we don't create another loophole, then I would be fore putting that in there just as a measure of good faith, basically that here is what we intend. Now this is all on record now so you can get a copy of what our intent is, but I think none of us are trying to create a problem, we just need to have an ordinance that we can honestly enforce.

Bill Dameworth: If the language is less inclusive than the language we used, then ...

Doug Krapas: I am not asking for that and in essence, I see what Spokane Clean Air is saying in E. it is referring back to C. which takes into account all three of those constituents. The issue was, I think at hand, primarily in saying that for determining whether to take formal enforcement action in D. Basically the issue is that in D. that, I'm looking in Section F. actually. When determining whether to take formal enforcement action authorized in subsection D above (Doug read subsection D). So we go into subsection D and so in there the only thing that requires a reference back to C. is the affidavit from the complainant. So they're the only ones that actually have to say that "yes, this is bothering me, it unreasonably interferes with my enjoyment of life and property". You need to add C. into F. basically or add an item number 4 under D. which refers back to C. In fact, maybe the best way to do it is to say that "A determination by the Control Officer that the odor", basically refers back C. but the items in number C. are actually the case. So the Control Officer would have to make the determination whether 1. It's injurious to the health or safety of human, animal, or plant life; 2. It's injurious or cause damage to property; or 3. Which unreasonably interferes with enjoyment of life and property.

Bill Dameworth: I would really rather not do that because it basically says ...

Doug Krapas: All we have to do, all the Control Officer actually has to do is, under item number 1. determine that the odor is distinct and definite and the unpleasant characteristics are recognizable. So, the Control Officer's very subjective, says "No, it smells, I don't like it."

Bill Dameworth: That's under E., but then under E. it says you still have to make a determination of whether subsection C. has been violated and we still have to then go back to C. 1., 2., and 3. We have to see if any of those have happened. So that's what E. does.

Doug Krapas: Okay, then how about under item F. we say "When determining whether to take formal enforcement action authorized in subsection D. and E. above,".

Bill Dameworth: That's fine; I think that F. is supposed to be pretty inclusive.

Commissioner Mager: That's sounds easy, lets do that.

Doug Krapas: Now one other issue on the language change. It was the other one that I brought up and I just wanted clarification as to where your language came from for employing; let me find the language here. "All controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed." Where did that language originate from?

Chuck Studer: The nuisance rule specifically says that a nuisance has to be abated. It doesn't say anything else, it has to be abated.

Councilmember Dempsey: Isn't the operative word there practicable?

Bill Dameworth: Yes, the question is whether to use a word like practicable or a word like reasonable. I think practicable is a little higher bar then reasonable because unreasonableness you can always say "Well I don't think it's reasonable." and another person can say "Well I think it is reasonable." and so it's about a 50-50 thing. Where practicable, I think puts a little higher test that if somebody else has done it someplace and it's been shown to work, then that becomes practicable. If it's never been done and it's just somebody's idea, then it's not practicable.

Commissioner Mager: We did argue about this part of it because from the other angle, from the citizens angle is the concern that the Agency is on the side of the corporation and that if it's going to cost them any money then too bad they can sell their house and move, whether they were there first or not. I think practicable is what we decided on because it sort of says well "just because it's going to cost a company money, but it has to be within reason as Bill said, not just that okay you have to go out and do R and D and come up with something. Rather that there's something out there in the market that you could employ and therefore would satisfy the requirement.

Doug Krapas: Okay, so what is wrong with the state language that has been legally tried and true, which is "Must use recognized good practice and procedures to reduce these odors to a reasonable minimum?"

Bill Dameworth: That's the Ecology rule and they're thinking of changing it because you get back to what is a reasonable minimum and then you end up in court. What I think a

reasonable minimum is isn't what you think it is or what the public thinks it is. So that's not a very high bar and that is what my thought is.

Doug Krapas: And I return the same argument on the other one.

Bill Dameworth: Of course.

Doug Krapas: All controls and operating practices; All is a pretty all encompassing word in itself. All controls and operating practices to prevent or minimize odors to the greatest degree practicable.

Bill Dameworth: I think that the greatest degree practicable is language that is often used in the water quality business. I spent some time there and it's not an unusual word to use there. And it is a little higher bar and I can understand why you would argue against it; but I would think that the Ecology rule is probably a fairly low bar and we could use our existing rule which is basically not much discussion at all and we could just take these all to the hearing board. I don't want to do that.

Councilmember Dempsey: The "All" is referencing a criterion rather than the controls and operating practices in that sentence.

Doug Krapas: That's not how I interpret it. "All controls and operating practices" demonstrates to us in those sections that "All controls and operating practices to prevent and minimize odors to the greatest degree practicable.

Bill Dameworth: So what we are saying is that some of these things may be just the way you operate; as to whether you should develop some controls, say you have a scrubber and you didn't put any water in it. I think that the purpose of that is to make sure you've done the best job you can do and it is applicable; and if you have, then we're not going to do anything. That's passively what Puget Sound does; they just didn't say it in here. I think that's why we put this in here is so the public wouldn't expect us to force you to shut down or force you to invent something new that hasn't been out there to deal with this problem. If you were there legally and you've done everything you can do, we're not going to do any more than that and that's basically what we're trying to say here. But we're not going to just argue over what's reasonable in front of a judge, we're going to say that the standard has to be that if it's practicable, if other people have put it in, if it works, then we're going to expect you to at least, if you have to, to go to that level to deal with the issue and if you don't get any complaints, you don't have to do anything. It is complaint driven, but this whole thing has been done for years and we are trying to proceduralize this thing; come up with a process for dealing with it that you understand, that the public understands, that we understand that we have to go through all of these steps.

Doug Krapas: Again, bottom line, it's just the legal issues again to get it. If we end up getting to a complainant who becomes a nuisance complainant because they can, they don't want you to know their, whatever have you, they utilize this rule against us and you know we have done a very good job at not being the target of such an aspect; but then all of a sudden now

you know we have this particular person that's moved into the area and they don't like nobody in there and they use this and now they want us to do all these things. Bill: I got to tell you if all they want is for us to get rid of you, that isn't going to happen. People have tried that before and it hasn't happened then either. So our goal is not to close you down or do anything to you that would interfere with the way you do your business. We do expect you to raise the bar up as high as you need to; I think you have actually, to reduce the odors so that you don't impact the community.

Councilmember Dempsey: What would happen if we shifted the practicable to just before controls, "All practicable controls".

Bill Dameworth: Then you miss the greatest degree part.

Doug Krapas: I understand that Bill. The greatest degree is part of the issue. What is the greatest degree?

Bill Dameworth: You don't have a lawyer that can go over and say yes we have case law that says this is what it means.

Doug Krapas: That's right and that's what I'm trying to do is fill another legal hole here. Again, trying just to close the legal loopholes, is that basically just use the language that has been legally tested.

Bill Dameworth: I don't know. How often has Ecology's rule been to court?

Chuck Studer: As far as I know it hasn't and as far as I know Ecology doesn't even enforce it; because they can't enforce it the way it's written.

Bill Dameworth: I think it is good to have discussion back and forth. (The Board then moved onto the next public commenter.)

Kent Rudeen: I'm not going to take more than three minutes. First of all, thanks for having us here and doing what you're doing. One of my questions is we talked about citations or tickets or whatever and are there fines for those now and are you collecting fines.

Bill Dameworth: When we issue a NOV, there is a penalty, we have a penalty policy and we do issue penalty/dollar amount with it.

Kent Rudeen: Because at one time you did not collect the money.

Bill Dameworth: Ever since I've been here we have. Matt did we ever not collect any money?

Matt Holmquist: We've always collected money associated with tickets unless it was a matter of having to rescind a NOV for some reason, which is very seldom or and maybe this is what he's referring to is on occasion when we have like 39 tickets issued in a year and maybe the penalties were \$600,000 or something and we settled for \$100,000, that might be the

reference. Typically we collect unless we have to send it to collections and have them try to collect for us.

Kent Rudeen: I'm interested in Baker Commodities and they and this is back as far as 1997 when we started building the apartments across the river and we worked with Baker and we worked with the Spokane Clean Air people in Spokane and I said why don't you do something about it; and they said well we issue them tickets; and I said well how much; and they said well they never pay us because they don't have to and we can't enforce the collection. I was hoping that that has changed by now. Baker has improved considerably over the years. Jeff is going to tell you about some instances then. That's one thing when we talk about the mill and others where an officer has to go and verify this smell or the violation, that's eight hours out of 24 and I don't know if you ever go out after dark or other than the eight hours but a lot of stuff can go on, in the other 16 hours of the day and weekends and everything else. Anyway, I have no problem with this stuff, I'm happy with the C. and the D. and the E. Thank you.

Wendy Heyes: I would just like to say that the Agency is more effective than they have been in the past and I've noticed I call a lot. I know Mary and for nine years I have logged quite a few calls complaining about the rendering plant. Other issues are the living standards for people that live there, it's not always met with the Baker Commodities smell and the complaints have been addressed, the inspectors have been over, they have improved and we see more of a presence of the Spokane Clean Air and like Mr. Rudeen said, the weekend issues they are aware that you're not working on the weekends and holidays and that is one of their finer moments. Besides complaining all the time I just wanted to say thank you for your efforts.

Jeff Pierce: I work with Green Valley Lawn Care, I'm the owner. I come in every Monday for the last seven years to maintain his properties and I'm having a challenge with my workers. Every year I pay them double time to come in and step on the property on Labor Day weekend. They don't want to do it this year because every year it's: Seven years ago when we showed up on Beau Rivage, you'd see people out barbecuing, playing ball and everything and it has probably been about the last four years that you don't see anybody. The only people you do see have towels around their face running out to the dumpsters. I've had people in masks. My workers, they complain because they shower for three days and they can still smell it in their skin and their pores. I've been on the property working and after eight hours of working on the property, you can taste it on your teeth and it's just the odor is just horrible here on site.

Councilmember Dempsey: Is this on holiday weekends?

Jeff Pierce: Yes. I've smelt it before on other occasions but its not bad; but you can look over at the factory, as soon as we show up, and the steam coming out of the top of it is just huge, it looks like the paper mill.

Commissioner Mager: So is it you're opinion that they are kind of stock piling stuff and then disposing of it over those weekends because there is nobody working?

Jeff Pierce: My honest opinion, why doesn't it smell like that every other Monday? And so my opinion is that they know city officials and everybody else, it's a holiday and so lets take advantage of it. But there's still the point where my workers told me this year they don't want to work.

Bill Dameworth: What weekend is this?

Jeff Pierce: Labor Day weekend.

Councilmember Dempsey: Does this happen any other long weekends?

Jeff Pierce: The worst one was Labor Day, but I've been on the property for seven years, so I see this just slowly happening and previous maintenance guys and stuff and they tell me "have fun mowing Monday because there's going to be so many people out barbequing and stuff", and now its nothing. It's like the day after Holocaust. When you see people running for the dumpster with their arm over their face and stuff and then you go home tasting like it and the feeling is uncomfortable and not right.

Bill Dameworth: Matt, can we schedule somebody for Labor Day weekend and we can look at this and some other stuff?

Matt Holmquist: Yes.

Commissioner Mager: Even if we could have a number for the holiday where somebody had their cell phone with them so that if it's that bad, they could go.

Bill Dameworth: You may as well just have them come in. They can take a day off some other time and work that day.

Jeff Pierce: It's been consecutive the last four years.

Matt Holmquist: We have done this for other things so this won't be unusual for staff to do.

Dale Smith: I'll just talk a little bit about everything. When we're talking about dust, one thing that I don't like is we've got a rule; I've been pushing it for four or five years or more and so on and on the trucks and they have good lobbyists as long as they have a six inch board on the side, which protects the side of the truck really, they can forget about any dust control and wind aspect as far as putting any kind of a cover over the top of the load and this is where I feel that when you're going down the road and there's sand or whatever it is at 60 mph there's things that are sand blasting your car whatever it is, it's not good for your health, you want to roll the window up and so I have pushed a little there and I think that maybe the Clean Air could kind of help a little on some of that and I have some things out in the car I could even show you Bill. Another thing is, talking to friends that are right close to us out on the Elk-Chattaroy Road, they have friends out in the Valley that they can go ahead and burn, when it says it's clean air and there's no burning and they look at equal and they feel that just

because they can buy a permit, they can go ahead and burn their garden waste and so on at times when they feel that, well lets say in number four or nine, where ever it is out north, if they were to go ahead and be in the same program with you folks and someone could go ahead and buy a permit and so on from them, then they'd be able to burn and so they look at equal and they feel if it's not supposed to be burning and it's all clean then they all should be that way, not be able to burn in some where there's a permit. It doesn't look equal to them. So that's just another thought.

Councilmember Dempsey closed the hearing at 10:43 a.m.

Commissioner Mager moved to continue Resolution 10-05 until the April 1, 2010 board meeting for decision only with the inclusion of the provision that in the regulation as it's displayed on our web page would have a link that would refer back to the agricultural language that we are just going to refer to by reference and also to include the change in Section F. to include the language that would be in Subsection D. and E. above and Mayor Crockett seconded it. Motion passed unanimously.

## **8. Board Concerns**

Commissioner Mager made a motion to have Spokane Clean Air's board meeting begin at 9:30 a.m. on April 1, 2010 and to have the change on the April Agenda with the amended By Laws for approval and Mayor Crockett seconded. Motion passed unanimously.

The board retreat is Monday, March 22<sup>nd</sup>. Barbara will be sending out information on the retreat time and place.

## **9. Public Forum – There were no public concerns.**

**The meeting adjourned at 10:51 a.m.**

The next Board Meeting will be April 1, 2010 at 9:30 a.m. – Spokane Regional Clean Air Agency office at 3104 E. Augusta Avenue.

---

COUNCILMEMBER ROSE DEMPSEY, CHAIR

---

WILLIAM DAMEWORTH, SECRETARY