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SPOKANE REGIONAL CLEAN AIR AGENCY BOARD MEETING MINUTES

October 1, 2009 **9:00 a.m.**
Spokane Clean Air's Conference Room
at 3104 E. Augusta Ave.

BOARD MEMBERS PRESENT:

Board Member Tom Brattebo
Councilmember Rose Dempsey (Vice Chair)
Chair Jeff Corkill
Commissioner Bonnie Mager

STAFF MEMBERS PRESENT:

William Dameworth, Director
Ron Edgar, Chief of Technical Services
Barbara Nelson, Finance & Personnel Admin.
Matt Holmquist, Compliance Administrator
Lisa Woodard, Public Information Officer
Chuck Studer, Engineer
Michelle Wolkey, Legal Council (9:18 a.m.)
Mary McDermott, Secretary

WORK SESSION: The work session was called to order at 9:01 a.m.

1. Update on Proposed Odor Rule – Chuck Studer, Matt Holmquist

Chuck gave an update on the proposed odor rule. There have been six comments received on the proposed rule. Five comments were from industry and one from the public. Those comments in favor of the rule are as follows: The first comment voiced no opposition to the rule, but feels that it should have a clause that would impose a penalty for those people that misuse the proposed rule (i.e. file a frivolous complaint against alleged sources). The second comment favors the rule and refers to a specific company where he believes that the rule would be effective in controlling odors from the facility. The third comment centers around a specific facility. She has made numerous complaints to Spokane Clean Air, the facility and one in-person visit to the Spokane City Attorney between 2002 and 2009. She believes that “everyone that buys or rents a home in the area affected by odor” from (the facility) “should be notified about the odor before they sign a lease or purchase agreement.” She also states that “The Centennial Trail on Upriver Drive becomes useless when” (the facility’s) “odors are in the air. I have closed windows, went inside, cut walks short, etc. time and time again because of the smells from” (the facility). “Sometimes it permeates my house and makes it very uncomfortable to be in the house.” She believes that inspectors should be available to investigate immediately

at anytime of the day, since (the facility) “often lets out the worst odors in the later afternoon and on weekends.” She also stated, “I support increased odor standards and I support enforcement of those regulations. I’m skeptical about the enforcement and investigation due to the last six years experience here in Spokane.” The fourth comment is from a lawn care company (4 signees), which services an apartment complex. They did not directly address the nuisance rule, but instead wrote a letter complaining about odors that emanate from a specific facility and the effects of the odors while working at the complex. The odors from (the facility) “...has caused us to be nauseous and have the smell in our pores from sweating for days after working at the location...” “Even days after we bathe, we can still smell the odor on our skins...the odor burns our eyes and is just an unbearable place to work...” The two comments in opposition to the rule are from industries that could be subject to the requirements of the rule and are as follows: The fifth comment addresses two subsections. He believes that Subsection C.3 which states “Which reasonably interferes with enjoyment of life and property” is “extremely subjective”. His concern is that an odor experienced by each individual is different and that those subject to the rule would have “to comply with a moving target”. He also believes that the odor scale is also subjective since it is based on the sensitivity of the individual’s sense of smell. The sixth comment is that this person believes that the current rule is protective of the health and safety of humans, animals, plant life and property. The portion of the current rule that does not address agricultural operations states: “Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitting into the atmosphere to a reasonable minimum. The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gas and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere...” The issue we have always had is the term reasonable and what is reasonable. What Spokane Clean Air believes is reasonable, the industry does not. He “disagrees that the rule establishes odor standards that are clear to the regulated community and the public”. He believes that the proposed rule is subjective as well. “The rule does not require any objective determination that odor is a nuisance by the Agency.” He is concerned that “the rule would subject” his company “to frivolous complaints, enforcement actions, fines and potentially the loss of its business.” He believes that the proposed rule exceeds the Agency’s authority. This specific company has never, to Chuck’s knowledge, been complained about.

Spokane Clean Air’s authority comes from the Clean Air Act, RCW 70.94.01, Declaration of Public Policies and Purpose. It states, “It is declared to be the public policy to preserve, protect and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the Federal Clean Air Act, to prevent injury to plant, animal life and property, to foster the comfort and convenience of Washington’s inhabitants, to promote the economic and social development of the state and to facilitate the enjoyment of the natural attractions of the state.” “It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic and cultural values and to prevent air pollution problems that interfere with the enjoyment of life, property or natural attractions.” Spokane Clean Air’s Regulation I, Section 2.01 states: “The

Board may take such action as may be necessary to prevent air pollution, including control and measurement of the emission of any air contaminant from a source.” In Section 1.04, it defines air contaminate as: Air contaminant means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance or any combination thereof.

To address one company’s concern about their being subject to frivolous law suits, etc., we further drafted some proposed addition of language to the nuisance rule. “When determining whether to take formal enforcement authorized in Section D above, the Agency may consider evidence provided by the source of the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable have been utilized. If the Agency determines that all such efforts have been employed by the source and that no additional control measures are appropriate, the Agency may decline to pursue formal enforcement action.” Chuck then asked the Board if they would like for Spokane Clean Air to add this to the proposed rule.

Discussion points and questions between the Board Members and staff pertained to the following: Is the sentence about “the greatest degree practicable” stronger or weaker than the BACT? What does practicable mean? There is a need for the company to demonstrate to the public and Spokane Clean Air what measures it has taken to reduce the odors and that they have done all that they can do and it is just the nature of their business to have an odor. There needs to be more proof to the public that Spokane Clean Air is doing its job and these are the things that we’ve done. Does Spokane Clean Air have the ability to put something in the deed, rent or lease to notify people that there are these kinds of odors in the area? How does the present rule read? What is the difference with the new rule? What new things have they done at the rendering plant in Spokane? Would getting the information on the settlement agreement between Baker and the City of Spokane help Spokane Clean Air? What would Spokane Clean Air do, if we put this language in? There should be some mention in the rule that the Agency will disclose that the business is compliant. Would it work to change the word practicable to technically? How do we know what Baker has done inside their facility? Can Spokane Clean Air go into the plant at any time and check the equipment? Industries have to upgrade all the time, why can’t they?

Chuck stated that “the greatest degree practicable” would make it stronger. The terms reasonable minimum are very subjective and in this manner, this puts the onus on the company to prove to Spokane Clean Air that they have minimized their odors as much as possible and if they have control technology that directly addresses odorous compounds and they are still getting odors coming out of it but they are doing their best to try to keep that to a minimum, then we would probably consider that to be a practicable degree. Bill added that the current rule reads that the burden of proof is on Spokane Clean Air to prove that the company isn’t operating their equipment properly. The way the proposed rule would work is that if all the conditions of the rule are met, in other words the complainant signs the Affidavit, we have documented the odors and documented the source of the odors, and the source of the odors can say to Spokane Clean Air “This is what we have been doing, this is how we’ve been operating, we don’t think that there is anything more that we can do” and basically if Spokane Clean Air agrees with that, then Spokane Clean Air will not pursue formal enforcement action. This is not to be technology forcing; we’re not saying that a company would have to install something that has just been

tested in the laboratory and nobody has ever put it on. Many of the sources here that we deal with have already done the best that they can do and if they get an odor complaint because the planning and zoning folks put the neighbors too close to the facility that is not anything we can do anything about and the company really can't do anything about it either. The idea here is to formally say that we are going to exercise enforcement discretion rather than just leave it silent. Puget Sound also does this but they don't have written rule. Our rule should say what we're going to do not just leave it open ended so that we can do anything we please and then decide on a whim not to do it. This gives a company some protection for doing a good job. Practicable means that if a bunch of people are doing it, why can't you do it? Bill stated that instead of having a checklist, we are basically offering the company the opportunity to demonstrate to us what they have done, for most of these companies we already know what they have installed, and we know what has been done elsewhere in the country and some have already done everything that we think would be appropriate. The idea is to use something that is practical; reasonable is more subjective. Bill's thought is that this would be more protective for the businesses; as far as notifying the public, this would tell the public that even if you have a valid odor complaint, if the company is doing everything they can, then we are not going to take enforcement action; so this lets the public know that they can't expect Spokane Clean Air to go out and give these people a ticket because they experienced odors. It is beyond the authority of Spokane Clean Air to put something in a deed or something that would notify or make people aware who are going to rent, lease or buy in that area. Michelle stated that there is a Form 17 which has generic language that should require sellers to indicate any condition affecting the property that may negatively impact the seller. Any changes to the Form 17, disclosure statements have always come from the state legislature. Spokane County does have its own addendum and perhaps Spokane Clean Air could work through the real estate people here in Spokane County on this disclosure. Bill added that with the way the current rule is written, if Spokane Clean Air decides to exercise enforcement discretion, some citizen could file a complaint against us and maybe file a suit against us for not enforcing our own rule. It is good government to write it all down and tell people what you are going to do. In the new rule, if the public has a complaint and there is nothing that Spokane Clean Air can expect the company to do and they have demonstrated that to Spokane Clean Air, we don't have to go out and prove it to the company, the company has to prove it to us because the burden of proof will be on the company.

Chuck added that the rendering facility in Seattle burned down and it had to be rebuilt and when it was rebuilt, they had to have the BACT (Best Available Control Technology) on it. It is owned by the same company as Spokane's facility. Councilmember Dempsey stated that this new rule tells people that we're not asking them to achieve impossible standards, that they can do their best and if there is still an odor it doesn't mean we will be issuing tickets to them, they have done all that they can. Chuck stated the question is, is that for an existing facility or have you really done all you can do. The plant in Seattle that was rebuilt sets a high standard, do we apply that standard to our rendering plant. Bill added that Spokane Clean Air has a good idea of what equipment has been installed, operation logs, and things of that nature. Baker hasn't done much of anything new in the last number of years. Spokane Clean Air has had a history of enforcement actions and lawsuits in the past and there has been a period of not doing anything with them and the public asks us why we aren't doing our job. It is our job to take a look at this but the existing odor rule is not a very good tool. Puget Sound has what looks like a good tool; they have the enforcement discretion that they do it by policy. Bill is opposed to doing things by

policy. If you can't have a public hearing on it and have it pass in a public forum, he doesn't think you should be doing it. The settlement agreement with the City required them to do some testing and modeling. The City has never, as far as Bill knows, requested that information from the company. Commissioner Mager stated that she spoke to the Mayor about it and she said she didn't know anything about it, she wrote it down and said she would check into it and have them request that report. Bill can follow up on that and if he doesn't get anywhere or nobody knows anything about it, she will mention it to the Mayor again. Bill stated that Lloyd Brewer is their environmental person so Bill will give him a call and tell him that Bonnie talked with Mayor Vernor. Bill added that the test results would give Spokane Clean Air some sense of what the impact of the company is on the public. Bill stated that this new rule would assure some of the businesses that if they are doing a good job on odor control, an angry neighbor will not cause Spokane Clean Air to shut their business down. Also, it will protect people who are doing a good job and it lets the public know that if the facility is doing a good job we're not going to take action. We represent the public and some people will never be happy unless you shut the business down. We wouldn't be changing this rule at all if it wasn't to benefit both the public and businesses and give Spokane Clean Air a tool to use for compliance. By adopting this new regulation, it shows that Spokane Clean Air's intent is to take these things seriously and businesses need to understand that we aren't going to shut them down because of something that they couldn't do. Also, if we require the company to provide proof that they can't do any more, the public has access to that information which shows what Spokane Clean Air does. We will mention in the rule that the Agency will disclose the proof that the business is compliant.

Michelle offered a few suggestions. First, we issue the ticket, which is Spokane Clean Air doing its job based on a complaint; the business can then provide information that they have and we can do away with the ticket if it's appropriate. Keeping consistent with how we operate under different NOV's would be helpful. Second, perhaps what's troublesome is it seems so subjective. My question, and I don't know the answer, is there more objective language that can be put in there, best available control technology (BACT) or whatever the appropriate language is. Bill added that technically possible is a strong word. Basically if you've done it in a lab that means that the company has to do it. That's equivalent to what they call lowest achievable emission rate which can be technology forcing and it is not Spokane Clean Air's intent to do that. Chuck added that a lot of the old businesses have changed equipment, etc. due to the MACT Standards from the federal government. The federal government does not have a MACT Standard on odor. Bill stated that if the Agency is doing its job properly, everybody is just a little bit unhappy. If you make somebody totally happy, you're going to make somebody else totally unhappy and that is unfortunately how it works. That's why we wanted to put this language in here, because this is how we intended to enforce the rule. Also, if the public wanted to know what Spokane Clean Air has done, we could produce the files for them. Chuck added that Spokane Clean Air does know what the facilities have done because Spokane Clean Air inspects them. This facility has installed a scrubber at one point and they started putting some of their odorous materials through their boiler to burn it. The problem with that boiler is that it isn't always operating at capacity so it's not really a true control device. They have made some revisions to try to control some of their odors. I wouldn't call their facility BACT by any means. Matt Holmquist stated that there are occasions when they haven't closed doors or pressurized properly and there can be odors associated with that. In the past we have issued NOV's under the current odor regulation when we have received a complaint, verified off site odors and

determined that some sort of specific O&M hasn't been met. If we find that a company has not complied in terms of their operation, not talking about new technology just about the way they utilize what they have, do we issue them a NOV at that point? It depends, if they have a new permit and they're suppose to be meeting certain requirements like a refrigerated condenser that condenses out some of the odors, and it's in the early stages and it's the first time it's occurred, we may issue a warning. If it is a long standing requirement and it's happened before, we would probably issue a NOV and we have. We try to look at the circumstances and what's going on. If it was associated with odors, we would probably issue an NOV. If there were no odors detected and their PH range is suppose to be between 7 and 9 and they're at 9.2, we probably wouldn't issue an NOV. If the PH was way out of range and we had another parameter that was out of range, we might say yes let's issue a violation, we've told them to keep this within range before. Most sources that we inspect, about 650 each year, a lot of them have compliance issues of some kind. We don't always issue a NOV for every little thing that happens. In regards to the rendering plant and odors, if we detect odors, we got that complaint and we do verify that there was some sort of operating parameter not being met or the boiler temperature PHs, we would likely issue a NOV under the existing regulation. The last few years we have averaged 1 to 200 complaints regarding the rendering facility. He went back and looked over some data over a three year period to see of the complaints that were investigated, how many of those would have had odors that are approximately level two or greater. He looked at data from 2006 through 2008, there were about 405 complaints during that three year period; about 55 of those had odors associated with or at a two or greater. We might have had potentially 55 violations based on this proposed odor scale of two or greater for all complaints. The thing you have to consider is that it is unknown how many of the folks that complained would have signed written affidavits, which is a requirement under the proposed rule. In addition, it doesn't account for enforcement discretion that might have come into play on those. There was only one NOV written during that period. Chuck added that this was issued under the old regulation and we didn't have much control under that set of regulations. Bill stated that this type of regulation is subjective and you're trying to do what's right for the public and for business and you go down that middle road where you do the right thing. Under the old regulation it is harder to prove because of the limitations of the existing rule where the burden of proof is on Spokane Clean Air to demonstrate that the company isn't doing a very good job. What the new rule is suggesting is to put the burden of proof on the company to prove to Spokane Clean Air that they shouldn't get the ticket. Matt added that some of the restricting factors for any odor response, whether it is current rule, proposed rule or even Puget Sound's experience with the rule that we are looking at, is when you get a complaint, one of the things we look for is detecting odors. Under the existing standard it's any odor because we don't have a threshold. In the proposed rule it's two or greater on a scale of zero to four. A comparison of the proposed rule shows there were 55 that were at a two or greater. The issue is, from an enforcement standpoint, an inspector goes out and there are no odors at the time of the response, so that would kick that complaint out. Secondly, verifying the source of the odors; most of the time the inspectors are able to do that but not always. Finally, the complainant does not want to sign an affidavit to testify at a hearing if necessary. There could be limitations just based on those factors alone. The issue with those 55 complaints was that the inspector got a complaint, verified the odors but wasn't able to find some sort of specific operation and maintenance requirement that wasn't being met. Sometimes they go into the plant but often times just based on time and resources, we'll request a review of the record keeping,

like circular charts where temperatures are recorded on it with a data temperature device or some of them are hand written where they have to record Phs and that type of thing.

Chair Corkill stated that Spokane Clean Air should go ahead and add this to the rule and see if there are any comments and if it makes any difference to the enforcement process. Commissioner Mager stated that she would like some language, if it's agreed by the Board, that says we would make available the information that was used to determine that it was practicable, which says to the business community we're not going to be unreasonable; but we need something to assure the public that they can look at what has been deemed practicable. Bill replied that he thinks this odor rule would still give Spokane Clean Air a greater tool. We talked a lot about Baker Commodities, but they're not the only people subject to this rule. They have gotten a lot of complaints but there are other businesses that get complaints and sometimes they come and go or it was just a one time thing; but this rule would apply throughout the whole county and everybody in it. Chuck added that this includes the public. Bill added that it is not our intent to make the burden of proof on the company unreasonable, if we were facing nonattainment and some company was keeping us out of attainment, we might be looking at what is called the lowest achievable emission rate.

Commissioner Mager suggested that Spokane Clean Air write a letter to the County Planning Department or whatever department is appropriate that would ask them to add a notification about odor to their regulation where they notify whoever the builder is or the buyer. Michelle stated that it is probably the Spokane Association of Realtors that develops that form and has it on Spokane County forms. Michelle stated that if someone did not check the box on the form, when selling a house, for other disclosures, that it is somewhat complex but potentially you could get damages for that or get out of the contract, depending on what you sued for. The Spokane Association of Realtors has developed their Spokane County Addendum to those forms and that is who the letter would go to if there was still an interest in sending it, which there wasn't. Matt added that we could put together a map showing the last three years of odor complaints. To get the locations on a map we would go through GIS and have them send it in pdf electronic file for the next meeting. The Board Members present requested that the Agency go forward with this.

BOARD MEETING: The board meeting was called to order at 10:17 a.m. by Chair Corkill.

1. Advisory Council Report – Adriane Borgias

Adriane gave a brief overview of the Advisory Council meeting. The three main topics during the meeting were the odor review, advisory council open position and future outdoor wood fire controls. There was discussion about the odor regulation and its authorization, authority and compliance issues. The discussion revolved around the criteria to determine odors and what that meant; also, how this might apply to a regulated industry, for example, an industry that has a permit that has undergone all of the control measures and the things it needs to do under the permit and how would this apply under an enforcement situation. One of the comments was regarding economic feasibility and the point of discussion was about equity and an example would be if industry A is in an area that's receiving odor complaints and needs to

make substantial changes to its process to address that and industry B is the same industry but has not received an odor complaint. Industry A would need to undergo some economic adjustment to deal with that where as industry B wouldn't. In that situation the rule would be applied inequitably between the two different industries. It is probably more applicable to a smaller type industry that is in an area that has more population around it. Industry B may be in a remote area where there is not as many people or as many complaints, but in that situation industry A would be required to expend more money to address the rule. Commissioner Mager asked why it was inequitable. Adriane replied it is inequitable because industry A and B are basically doing the same thing, they are producing the same product; industry A now has to incorporate that cost of doing business into its product, so it has to pay more to produce the same product that industry B does. An example of an equitable situation would be if industry A and B had the same controls and it cost them extra money to put in those controls, but they both have to do it. Then that cost of doing business is distributed equitable between the two businesses. Bill added that in a case like that there becomes enough initiating of the regulation that it causes the development of industry specific regulations which level the playing field. The next item of discussion was the open advisory council position. There are two people who have been mentioned for that position, one is Brenda Smits who works for DOE and the other is Doug Pottraz who works for Avista. The third item we discussed is a proposed restriction on outdoor burning. In particular, the recreational fire and it is defined as something that is no larger than three feet in diameter, two feet high, used for cooking, camping and pleasure. So the presentation was about a proposed restriction on that activity within the smoke control zone which consists of the City of Spokane, Millwood, Spokane Valley and Liberty Lake. There was a lot of discussion about this proposal and some of the specifics about what it means. The Advisory Council discussed what are the air quality benefits of it and what are the metrics and what's the projected air quality benefit to support the need for the rule. The response was that more information needs to be developed on this and that it would be presented at a future meeting.

2. Director's Report for August – Bill Dameworth

Bill stated that our attorney is still working on a letter to send to Baker asking them to provide directly to us the data we have been requesting from the City of Spokane. The attorney is concerned that Baker will refuse to do this and we will have to go to court to obtain it. Commissioner Mager stated that she mentioned it to the Mayor and she seems more than happy to obtain it because they must give it to them, although they haven't yet and it was part of a settlement. She seems willing to get that information and pass it on to Spokane Clean Air. Bill signed the letter to the State Department of Health formally requesting that they review the rail yard impact study. Bill reviewed the energy consumption in the building and went over the bids and rebates through Avista for the heating and air conditioning unit. Window tinting has been done and should reduce the heat transfer by approximately 50%. There was discussion between the Board Members, Bill and Barbara on these building issues. Bill sent comments to EPA on their proposed NO₂ standard as discussed at the September board meeting. This is where EPA is asking Spokane Clean Air to install air monitors near roadways and then decide whether or not we have to develop an implementation plan to comply with the NO₂ standard. First of all there is no money in the budget to put the monitoring units up and secondly we have no control over the roadways or cars. There was a little discussion between some of the Board Members and Bill on

the NO₂ standard and its requirements. We received two applicants for the advisory council position, Doug Pottratz who is the environmental manager at Avista and at one time worked for this agency and Brenda Smits who also worked here at one time and has a compliance type job with DOE. Bill knows both of these people and his thought is that Doug would offer a broader experience on a wealth of environmental issues and would be a good addition to the Council. Commissioner Mager would like to see both applications. Bill stated that previously when we had an open Advisory Council position, he interviewed them and made a recommendation to the Board and the Board was fine with that; but we can do it differently if the Board would like. Chair Corkill stated that he thinks we ought to see both applications and Councilmember Dempsey agreed. Chair Corkill postponed this item until next month and have both applications included in the board packet for November.

3. Public Information/Education Update for August 2009 – Lisa Woodard

Lisa gave a brief overview of the September activities. As part of the sustainable September event, the “Air Movie” was shown at the City Hall Council Chambers and with a Q&A session afterwards. We had an air quality booth and literature in the “Go Green” exhibit which enables ten local environmental agencies to be at the fair for ten days and have it staffed with two people each shift. The Kalispel Tribe under wrote the whole “Go Green” section. “No Idle Zone” materials were provided to Sunset Family Night and the program is at St. John Vianney Catholic School. We had the Agency open house on September 24th; ValleyFest at Mirabeau Park on the 26th; and we presented at the County ETC training on the 29th. Publications were finalized for the “Alternatives to Burning Yard and Garden Debris” flyer; we created new display items for the open house; we updated website pages, feature and news articles for the fall; and we began work with the consultant to add new website features. Special projects consist of the final coordination plans for the south county chipping event on October 3rd. Planning is underway for the upcoming wood heating season; we finalized edits on the revised “Burn Outdoors?” brochure with DNR and solicited input on the “Recreational Fires” section from City and Valley Fire Departments; and we continue work with the committee on securing bids from artists to develop the youth activity and coloring booklets. There was a little discussion between Lisa and the Board.

4. Activity Report for August 2009 – Ron Edgar

Ron gave a brief overview of the complaint summary, enforcement actions, inspections and surveillance, NOCs and NOIs (asbestos). The total number of complaints is down for August and there were a little over 50 inspections and 5 enforcement actions by inspectors. Commissioner Mager stated that she received a call from a woman who lived across the gulch from the Latah Valley area and Canyon Hill Bluff which is a partially developed site and was blowing dust over to the other side. Do we have anything that requires developments that have bare earth that is blowing dust around to put in some seeding of grass or anything. Ron replied, we usually only get that kind of movement if we have very strong winds. We do enforce issues when there’s actual activity on the site (construction equipment, etc.). If it is happening more often than just during a wind storm, we would need to look at why that area is blowing dust. Bill stated that Deirdre handled this complaint and said there is a lot of natural vegetation on it already because it has been two years since they did anything. Matt added that Deirdre thought it

was more like agricultural dust blowing through the area versus that specific area. It is partially vegetative and open but Deirdre has been out there and has not seen anything come off of that site. Matt stated, we do tell them they need to do something because if we document a problem, they could get a NOV. When this is occurring, she can call in complaints and our inspectors will address it. On this specific case he doesn't recall how Deirdre followed up; he will look at that and report back to the Board next month. There was more discussion between the Board and staff on dust issues. Ron stated that asbestos notifications were down and inspections remain the same. There were four new source reviews in August. Chair Corkill asked about Fred Meyer's Stage II Vapor Recovery and if it is voluntary. Ron replied it depends on the volume and if it is high, it becomes a requirement and most high volume stations do that so that a cap is not placed on their throughput. The air quality index for the month had a few high days in the first and middle of the month for PM_{2.5} and the rest of the month was ozone. We did get impact from the fires in Canada and south central Washington State. The Carbon Monoxide issue has improved considerably because the fleet is so much better than it was in the 70s and 80s. There was more discussion between the Board and Ron on the different graphs in the activity report.

5. Income/Expense Statement for August 2009 – Barbara Nelson

Barbara gave a brief overview of the income and expense statement. This is a year-to-date position for each of the different funds listed. The main item is the percentage of revenue received compared to the percent of the budget expended. Our state and federal grants are reimbursable grants so Barbara will do a request for funds at the beginning of each quarter. The reason the revenue shows only 13.8 percent received is because we have not received any of that state and federal funding from our core grant. The revenues for the fee based programs are in good standing with the actual expenditures which do not include indirect costs. At the end of the year the indirect costs are calculated and added to the expense side. Commissioner Mager asked if most of the revenue comes in the last quarter. Barbara replied that most of the money that will be coming in over the period would be the state and federal grant which is received quarterly. Barbara will be requesting funds for the first quarter just finished, that's the reimbursable part; the local assessments come in quarterly so she will be billing those quarters; and the AOP Title V revenue is all billed in November and comes in December or January.

6. CONSENT AGENDA – ACTION ITEM – Approval of the September 3, 2009 Board Minutes. Approval of Vouchers for September 2009 – Numbered 44232 through 4295, totaling \$18,748.15 and September Payroll of \$119,341.27 for a Grand Total of \$138,089.42.

There were no questions from the Board. Councilmember Dempsey moved to approve the Consent Agenda and Board Member Brattebo seconded it. Motion passed unanimously.

7. Resolution 09-22 – Authorizing Disposal of Surplus 1996 Lumina – Barbara Nelson

Barbara stated that Spokane Clean Air does not intend to replace this vehicle; it is considered a surplus vehicle in excess of the agency's needs and the intent is to sell it by sealed bid and place an advertisement in the local Wheel Deals paper. There were no questions from the Board Members.

Commissioner Mager moved to approve Resolution 09-22 and Board Member Brattebo seconded it. Motion passed unanimously.

8. Resolution 09-23 – Appoint Member at Large to Advisory Council – William Dameworth

Commissioner Mager made a motion to continue this matter of the Advisory Council member-at-large position until the November 5th board meeting to review both applications and Councilmember Dempsey seconded it. Motion passed unanimously.

9. Resolution 09-24 – Resolve Legal Complaint Filed by Center for Justice – Michelle Wolkey & Bill Dameworth

Michelle gave a follow-up of the discussion at last months board meeting on the Center for Justice suit filed. There has been contact made with Center for Justice and their Council and based on those conversations, it seems that it is worth at least exploring whether or not there is any way to resolve the issues between us. A tentative meeting is to be scheduled for October 13th or 14th, where all of the parties will sit down informally and discuss their respective positions. Specifically, as Michelle understands it, as Center for Justice's interest is making sure that the Board is committed to compliance with the Open Public Meetings Act and potentially some acknowledgement of actions that have taken place in the past that were not in compliance with the Act. We will have a working copy of a resolution that is very preliminary. This would only be done if it can resolve all of the issues because that is our ultimate goal. Hopefully we can come to some resolution both on the issue of the Open Public Meetings Act, what we plan to do going forward, and then the monetary issue. As of last March, the attorney's fees that have been incurred were about ten or eleven thousand dollars, we're doing some analysis of that. We've also asked that updated information be provided so we can see what additional expenses have been incurred since then and then be able to take a look at those prior to the October meeting as well. Michelle stated, if there are violations of the Open Public Meetings Act, the Court is required to assess a reasonable amount of attorney's fees and costs, so it's a mandatory provision. The only question then is what is a reasonable amount is determined by a reasonable hourly rate in the community for the type of work that's being done, taking into account how difficult are the issues, how complex, how much time, and were the number of hours spent reasonable. That is how that analysis takes place. It's interesting because the hourly rate that is regular and customary in Seattle is higher than what is regular and customary here, from her experience. So we need to try and make some of those adjustments. Bill asked do they get the hourly rate for Seattle even though the complainant and defendant are both in Spokane. Michelle replied that one of the factors is the reasonable hourly rate in the community that you're in, which means Spokane. They're asking \$350 an hour and Spokane Clean Air has Seattle counsel doing environmental work for the Agency at \$195, Michelle is at \$165 and in Spokane, the upper end is \$200 to \$250. There was some discussion between the Board and Michelle on what instigated this law suit in the first place. Chair Corkill asked if mediation would be a possibility. Michelle stated that it would, we're hoping to do essentially that informally. Chair Corkill asked if this was without an outside mediator. Michelle replied that this is part of our proposal when we meet with them, to be worked through on both sides. If it is warranted, we could move to a meeting with a mediator that is dependent on how things go in that meeting. Commissioner

Mager stated that what she knows is it sounds to her like this got crosswise because of the west side lawyers and there wasn't good communication on both sides, or something happened, because the Center for Justice basically said their main issue was just the acknowledgment and correction that the SCAPCA Board would acknowledge that this happened and that we would put it in place in a policy or something. Michelle stated that is why we are going to try to present to the Board a resolution like this. Commissioner Mager added so that we would acknowledge it and we've corrected it, lets move on. Somehow it went on a lot longer than it probably should have. Michelle asked the Board to continue this until the November board meeting, after which we'll have met with them; then we'll know whether it's resolved and what exactly it looks like at that point.

Councilmember Dempsey moved to continue Resolution 09-24 and Board Member Brattebo seconded it. Motion passed unanimously.

10. Board Concerns – Councilmember Dempsey asked if we have anything to do with the discovered asbestos near the old vermiculite plant. Are we involved in that at all? Chair Corkill stated that it is EPA. There was a little discussion on this subject.

11. Public Forum – There were no Public speakers.

The meeting adjourned at 11:21 a.m.

The next Board Meeting will be November 5, 2009 at 9:00 a.m. – Spokane Regional Clean Air Agency office at 3104 E. Augusta Avenue.

JEFFREY CORKILL, CHAIR

WILLIAM DAMEWORTH, SECRETARY