



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

November 5, 2009 9:00 a.m.
Spokane Clean Air's Conference Room
at 3104 E. Augusta Ave.

BOARD MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

William Dameworth, Director
Barbara Nelson, Finance & Personnel Admin.
Matt Holmquist, Compliance Administrator
Lisa Woodard, Public Information Officer
April Westby, Engineer
Chuck Studer, Engineer
Deanna Clarkson, Air Quality Specialist
Michelle Wolkey, Legal Council
Mary McDermott, Secretary

WORK SESSION: The work session was called to order at 9:00 a.m.

1. Update on Proposed Odor/Nuisance Rule – Chuck Studer, Deanna Clarkson (for Matt Holmquist)

Deanna gave a brief overview of the maps requested by the Board regarding odor complaints for a three year period. Over that three year period, there were over 400 odor complaints. There were a total of 94 alleged or approximate odor source locations. There were 78 alleged sources of odors that received single complaints and 16 that received two or more complaints. There were 11 alleged odor sources that may have had odors at a level of 2 or greater on a scale of 0 to 4. The odor scale starts at 0 which is no odor, 1 is an odor barely detected, 2 is recognizable, 3 is objectionable enough or strong enough to cause attempts of avoidance and 4 is so strong that a person does not want to remain present. There were a lot of complaints that were anonymous or unknown or unidentified that didn't have enough information to be mapped. Spokane Clean Air acts on all complaints and the level of investigation would depend on how much information is in the complaint. There was some discussion between the Board and Deanna.

Chuck gave an update on the proposed odor/nuisance rule. There are 23 commenters so far on the proposed rule, 20 in favor and three against. Five commenters are from regulated industry of which there were three against and two in favor. There are 17 businesses that are all in favor and one from the public which is also in favor.

The proposed addition of language to the nuisance rule consists of the following: E. When determining whether to take formal enforcement action authorized in Section D. above, the Agency may consider written evidence provided by the person causing 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 are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action; F. The Agency will document all the criteria used in making its determination in E. above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW 70.94.205, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties; and the proposed deletion to the language in the nuisance rule is to remove from B. "The more stringent requirement in WAC 173-400-040 or Section 6.04 supersedes the lesser."

The CR-102 Form was sent to the Code Reviser's Office with the complete rule revisions. It was accepted by the Code Reviser's Office on October 19th, 2009. Comments on the complete rule revisions have been extended to November 24, 2009 with a public hearing scheduled for December 3, 2009. A public notice was sent to the Spokesman Review for publication on October 19, 2009 and published under the legal notice section on October 20, 2009. What this rule change is trying to do is make the rule less subjective. There was some discussion between the Board and Spokane Clean Air Staff on the subjective matter of the rule. Answering a question from Board Member Brattebo, Bill stated that with the language that was in the original rule proposal, people could file a lawsuit against Spokane Clean Air for not enforcing it; the new language clears that up by stating what we can and will be able to do. There was some discussion between the Board, Bill and Chuck.

BOARD MEETING: The board meeting was called to order at 9:33 a.m. by Chair Corkill.

1. Presentation of Gold Level Business Recognition Awards – April Westby

April stated that Spokane Clean Air has just completed its 2009/2010 recognition cycle and there were a total of 109 registered facilities that received either the silver or gold recognition. To receive the silver level recognition the facility needs to have paid their fees on time, submitted their annual registration form on time and not received a NOV in the past three years. To receive the gold level recognition the facility needs to go above and beyond compliance and implement some additional measures in three different areas: energy efficiency, pollution prevention and transportation. Our application period spans 12 months so we schedule the recognition presentations at two board meetings. In February, we recognized the first batch of gold recipients who were Inland Asphalt, Itron, Columbia Paint and Cylinder Head Service. Today, nine more businesses have received the gold level of recognition and they are Central Pre Mix, Contemporary Fiberglass, Custom Painting, Dishman Dodge, Ed's Premier Auto Body, Interstate Concrete,

Pathology Associates Medical Lab (PAML), Sonderen Packaging and Western Concrete Products. Two of the facilities have joined us here to receive their certificate and the other facility's certificates will be mailed.

The first recipient is Sonderen Packaging and they implemented several energy efficiency measures, added a new warehouse to their facility and installed the most energy efficient lighting, heating and insulation and they have begun the process of changing out their existing fixtures. They switched from a seven day per week production schedule to five days per week which results in less energy consumption and fewer employee commute trips. They have also increased the number of skylights to increase the daylight in their facility. In 2007, they added a solvent recycler and it recycles and recovers between 80 and 90 percent of the solvent that they use. In 2008, they also had a pollution prevention consultation and they have adopted new practices to help them dramatically reduce their hazardous waste. All of the paper board providers they have worked with are part of the Sustainable Forestry Initiative or the Forest Stewardship Council and they use inks that are vegetable oil based and they recycle 99 percent of their waste paper. Sonderen Packaging is also part of the Spokane County Commute Trip Reduction Program and encourages employees to use commute alternatives to get to work. Accepting the award for Sonderen Packaging is Saul Deluna, maintenance administrator.

The second recipient is PAML and they have implemented a variety of pollution prevention practices to save money and reduce their waste and impact on the environment. They recently had an annual energy audit and have actively taken steps to reduce their energy consumption. One example is they have their lab workers close the doors on the fume hoods when they are not in use and this helps reduce the volume of air escaping; they've got a lot of fume hoods at the facility. They are also an active participant in the Commute Trip Reduction Program and have a large recycling program including recycling their florescent light fixtures which reduces the amount of mercury released into the air. They also host an annual shredder award that goes to the department with the greatest reduction in paper usage over the course of the year and this highly sought after award is presented at the company's annual retreat and was the highlight of the event. Accepting the award for PAML is Chip Roe facilities manager.

2. Advisory Council Report – Bud Leber

Bud gave the Board Members some background on his experience and schooling. He is the environmental manager for Kaiser Aluminum Trentwood and is a chemical engineer with a bachelors and masters degree from the University of Idaho. He's worked in industry consulting on environmental issues for about 35 years, 22 of those in Spokane.

Four topics were discussed at the Advisory Council meeting in October. One was the odor regulation; second was recreational fires; third was the "No-Idle Zone Program"; and fourth there was input on the at-large position candidates. The consensus of the Council on the odor regulation was in favor of the additional language because it would let everybody understand how decisions were going to be made. Some members of the Council wondered about the connection between improvements in air quality that would come about from not having recreational fires. In the interim, the Council thought it made sense to use the regulations and laws that are in place rather than create another one. There was an update on the "No-Idle Zone Program" and where it sits. Members of the Council expressed their opinion that Doug Pottratz probably had a wider

experience in air pollution and other matters and would be best suited for the at-large position on the Council.

3. Director's Report for October – Bill Dameworth

Bill met with an environmental analyst with the City of Spokane to discuss the agreement they have with Baker Commodities and the data we would like to obtain from them. She is going to ask Baker for the testing and modeling results and is hoping to provide us with that information by the end of November. In the meantime, we are holding up on the letter to Baker asking them to provide the data directly to us. There was some discussion between the Board, Bill and Matt Holmquist on the agreement between the City of Spokane and Baker.

In response to our letter on the rail yard impacts on air quality, Bill received a telephone call from the State Department of Health and they have agreed to review Spokane Clean Air's draft assessment of rail yard impacts on air quality and health in Spokane County. They will be looking at lung cancer rates and conducting a toxicology assessment. We are hoping to receive their review by the end of the year. At that time, we are planning to send the draft to the two railroads for their comments. When the report is final, we will review it with the board.

With regard to the energy consumption in our building, we received three bids. We replaced the hollow core door with an insulated door and work is nearly complete on replacing the old furnace and air conditioner with a modern, efficient heat pump with a gas furnace for when the temperature drops below 20 degrees F, at which point the heat pump does not function well. The furnace was in need of repairs and the total cost, including tax, is about \$12,500. The installation of an economizer, which uses ambient air for cooling when the temperature is in the correct range, will further contribute to our cost savings. It will take Avista six to eight weeks to process our rebate and the price we paid includes manufacturer rebates which will expire soon. Given that the existing equipment was old and in need of repair and was using a considerable amount of electricity, it seemed prudent to replace it while the weather is favorable.

We received two applications for our at-large position on the Advisory Council. Both applicants were discussed at the October Advisory Council meeting. After review of the applications, I am recommending that the Board appoint Doug Pottratz to the council.

Bonnie Mager, Michelle Wolkey and Bill met with the Center for Justice (and their attorney by phone) to see if we could resolve the pending lawsuit filed by the Center. Michelle has prepared a resolution that, if approved by the Board, should result in the suit being dropped. Bill stated that he believes this could have all been resolved if the Center would have contacted Spokane Clean Air about these issues and found out that they were all addressed shortly after the Auditor's Report.

4. Activity Report for September 2009 – Mark Rowe

Mark gave a brief overview of the complaint summary, enforcement actions, inspections, surveillance, NOCs and NOIs (asbestos). We are starting to see some wood stove complaints and there were a couple of dust storms. There were 36 inspections, 39 Asbestos Notifications and 8 enforcement actions. Other enforcement actions are from staff initiated complaints when the inspectors are out in the field and see something like a wood stove issue, etc. they stop and leave

public education materials. There was one NOC received and one approved. September AQI had two days that were in the moderate range. All types of pollutants were up but none of them went into the moderate AQI range. There was some discussion between the Board Members and Mark.

5. Treasurer's Report for October 2009 – Barbara Nelson

Barbara gave an overview of the year-end report for FY-09 and the Treasurer's Report for October 2009. The fund balance for FY-09 is \$1,499,389.50. The adjusted balances have some that are in the negative; those are from reimbursable grants and the funds have been requested for those from the state for the first quarter; some of the local assessment will be used to balance those funds. The AOP program is billed out in the end of November, early December and most of that revenue comes in six weeks after that. The asbestos and registration programs are holding their own and are staying in good position for direct costs. The NOC program is again running a little behind as is expected in our budgeting process. Under expenditures, there has been a transfer from the retro-fit program to the VERP program and that money was transferred by a resolution in July; and the transfer was made in October. There were a few questions from the Board which Barbara answered.

6. CONSENT AGENDA – ACTION ITEM – Approval of the October 1, 2009 Board Minutes. Approval of Vouchers for October 2009 – Numbered 4296 through 4370, totaling \$37,344.35 and October Payroll of \$120,000.60 for a Grand Total of \$157,344.95.

Chair Corkill stated a few changes that need to be made in the minutes. On page 6, line 10, 11 and 16 the PH should be changed to pH and on line 17 the number 1 to 200 should be changed to 100 to 200.

There were no questions from the Board. Commissioner Mager moved to approve the Consent Agenda with the changes listed above on the minutes and Board Member Brattebo seconded it. Motion passed unanimously.

7. Resolution 09-23 – Appointment of an Advisory Council Member – Bill Dameworth

There was some discussion between the Board Members on the two candidates. Board Member Brattebo moved to approve Resolution 09-23 with Doug Pottratz's name written in and Councilmember Dempsey seconded it. Motion passed unanimously. Chair Corkill added that when a letter is sent to Brenda Smits, let her know that there are other positions that will come up and she should keep an eye on those.

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

Michelle stated that what Bonnie mentioned earlier is what she will state; one of the most important things that happened out of the meeting between Center for Justice and Spokane Regional Clean Air Agency was the conversation about if there is an issue, please call the Agency, talk to us, it's the Agency's goal to be compliant with the Open Public Meetings Act (Act). The other thing that Michelle would add to that is there are lots of different characters of agencies out there, some of which are more willing to be compliant with the Act than others and to let the Center for Justice

know that it is the goal of this particular board to be compliant and not to be trying to skirt any of those rules. The proposed terms are a renewed commitment of the Board to comply with the Act, which of course Spokane Clean Air always was and is. A recognition that the hiring of the executive director in an executive session shouldn't have happened and Spokane Clean Air recognized that before the Auditor's Report came out and had a second meeting and did it in public. From the Agency's perspective, that one was already recognized on its own. That having three of our board members be part of the seven member selection committee triggered the Act and had the agency had a request from any member of the media for notice of the meeting, that notice would have had to have been given. That every public meeting whether it involves an executive session or not has to start and end in public session was also required. There were two meetings that occurred through the course of the hiring where it was unclear whether that had happened or not; the minutes weren't clear enough to know whether it started in open session and then went to executive session. The other item that was agreed to do is to include a refresher session at each retreat on open public meetings; not only for new members who may not have had that training to begin with but any updates in the laws that have happened over the last year. The financial part of this is \$2,500 to the Center for Justice for the alleged violations and the violations that did occur and \$22,500 in attorney's fees. If the Board approves this then there will be a dismissal of the law suit.

Chair Corkill voiced his thoughts on this law suit. We've agreed to pay \$25,000 and have workshops on the Act on a complaint that had been dealt with by the State Auditor's Office and SCAPCA acknowledged that there was a mistake made and has made adequate corrections. We've discussed it over two retreats and Michelle keeps us very informed of what we need to do as far as open meeting rules go. This may not be one of those famous, frivolous law suits but it is certainly a counter productive law suit. One thing that is upsetting is the \$22,500 to Allied of which the Center for Justice used as legal council. He visited their web site to see what they are about. As far as he can tell they are a group of 20 and 30 something entrepreneur lawyers who, and these are all quotes from their web site, claim to keep their costs down by a quick turn around and then to focus on the client and the laws we love. Further, Mr. Breean Beggs, who is the head of Center for Justice, has a testimonial on the website, who says that Allied "leveraged our position to help us achieve great results". The great result he's obtained is basically taking money from the Agency whose mission is to maintain and improve air quality and to provide money for, I don't know what, a new Volvo for one of their yuppie lawyers and at the expense of a full-time equivalent person at Spokane Clean Air. What upsets him too is that the mission of our organization or agency is to preserve clean air and they're deliberately going after us to prevent us from doing that. If you go to the Center for Justice website, among other things it says, our work encourages relationships between the environment and economic health of the community citizens. He doesn't think this action really does that by taking money from Spokane Clean Air and giving it to Allied. They also claim their mission is to make the best use of their limited resources, which seems to be taking Spokane Clean Air's limited resources to pay attention to causes likely to achieve a more accountable and environmental sustainable society in Spokane. Why did the Center for Justice have to keep on pursuing that, because you know at any one time they could have asked themselves what problem they were trying to solve by dealing with old material, why a law suit; one of the big deals of the Center for Justice is that they supply and aid in mediation. Why couldn't they have gone with mediation and what does this settlement achieve? What it achieves is a decrease in the ability of our agency to achieve its mission. The last thing he would like to stress is that if they wanted Spokane Clean Air to have workshops on open meetings, he would be willing to go over and give them workshops on how to speed read for understanding, because they've claimed all these hours to

read, presumably, 10 or 15 pages from the State Auditor's Office on this matter. I'll go over and give them a speed reading for understanding workshop if they would like. What he would say is shame on you Allied and shame on you Center for Justice; I agree with most of their cases/suits but this suit is counter productive. He feels that Spokane Clean Air got raked over the coals for nothing.

Commissioner Mager asked if when the Center for Justice filed suit had the corrections already been made. Michelle replied that the corrections had been made. The sequences of events were the alleged wrong doing occurred in the end of '05 or '06. The Auditor's Report came out at the end of '06, corrections were made even before the Auditor's Report came out, because you get this indication ahead of time that there's an issue. Then it was March of '08 that five lawsuits were filed on the same day across the State including Spokane Clean Air's. Bill stated that Spokane Clean Air created By-Laws that state no more than two members of the board would be on any committee and Spokane Clean Air will comply with the Act, this was done back in '07 well before the suit was filed. Commissioner Mager asked if when we were accused of these things and we knew we'd already corrected them; did we immediately send them that information that those things had been corrected? Michelle replied yes, we let them know that corrections had already been made and the kinds of things that had been done. We even offered to pay them some money at that point in time, which was not enough money and not enough public statement of wrong doing that they were looking for. Commissioner Mager stated that she thinks that is what she heard from Breen, was that we were not willing to admit that we had made any of these errors. Michelle stated enough was said of the errors.

Councilmember Dempsey moved to approve Resolution 09-24 and Board Member Brattebo seconded it. Chair Corkill voted no. Motion passed four in favor and one against.

9. PUBLIC HEARING – Resolution 09-25 – Appropriating Funds to Pay Legal Settlement in Center for Justice Case – Barbara Nelson

This is a resolution appropriating funds to pay the settlement that was outlined and approved in Resolution 09-24. There are two options of where to get the money to pay for this case, the general fund or the project reserve fund which has been established for non-recurring expenses like this suit (i.e., special projects, educational, special events/projects, monitoring special projects). Michelle stated that the Agency has the option of developing they're own press release with respect to the resolution on this. Lisa can work to put something together for this. Chair Corkill thinks that Spokane Clean Air should point out that we took this out of the project reserve normally used for education and ordering purposes. Chair Corkill thanked Michelle, Bonnie and Bill for all of the work on this case. There were no public concerns.

Councilmember Dempsey moved to appropriate funds from the Project Reserve Fund and Board Member Brattebo seconded it. Motion passed unanimously.

Commissioner Mager moved to approve Resolution 09-25 filled in as stated above and Councilmember Dempsey seconded it. Motion passed unanimously.

10. PUBLIC HEARING – Resolution 09-26 – Approval of a Budget for an Interagency Agreement for SRCAA Management of State Wood Smoke Reduction Campaign – Barbara Nelson

This resolution will approve a budget for an Interagency Agreement with Ecology. Ecology received a \$200,000 grant to do some wood stove reduction statewide campaigning and they have asked the local air agencies to manage the grant. The agency will receive \$4,000 for its part in the management of this campaign; it is a two year grant. There was some discussion between the Board, Barbara and Bill. There were no public concerns.

Councilmember Dempsey moved to approve Resolution 09-26 and Commissioner Mager seconded it. Motion passed unanimously.

11. PUBLIC HEARING – Resolution 09-27 – Budget for Youth Conference Fund FY-2010 – Barbara Nelson

This will establish a budget for the Youth Conference which is a collaborative effort by multiple organizations and is funded by donations from businesses. Spokane Clean Air has always been the manager of the funds and disburses the funds to pay the bills. There was some discussion between the Board and Barbara. There were no public concerns.

Commissioner Mager moved to approve Resolution 09-27 and Councilmember Dempsey seconded it. Motion passed unanimously.

12. Board Concerns – Councilmember Dempsey asked if there was a date set for the retreat. Bill stated that it will be in late March or April. There will be a letter sent to the City of Spokane regarding Jeff's reappointment or putting somebody else in his seat on the Board.

13. Public Forum – There were no Public speakers.

The meeting adjourned at 10:55 a.m.

The next Board Meeting will be December 3, 2009 at 9:00 a.m. – Spokane Regional Clean Air Agency office at 3104 E. Augusta Avenue.

JEFFREY CORKILL, CHAIR

WILLIAM DAMEWORTH, SECRETARY