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SPOKANE REGIONAL CLEAN AIR AGENCY
BOARD MEETING MINUTES

December 3, 2009 9:00 a.m.
Spokane Clean Air's Conference Room
at 3104 E. Augusta Avenue

BOARD MEMBERS PRESENT:

Mayor Edward Crockett
Councilmember Rose Dempsey
Board Member Tom Brattebo
Chair Jeff Corkill

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
Mary McDermott, Secretary

WORK SESSION: There was no work session.

BOARD MEETING: The board meeting was called to order at 9:02 a.m. by Chair Jeff Corkill.

1. Director's Report for November – Bill Dameworth

Bill gave a brief overview of the director's report. After asking Baker commodities for the testing and modeling results as specified in their agreement, Baker sent the City of Spokane a letter stating that they wouldn't release the information, but they allowed the City to inspect the documents and the City found that they had done some testing but they didn't have any air quality modeling results. The City also said that they are not willing to pursue this any further. Board Member Brattebo asked what the requirement was. Bill replied that the requirement was part of the settlement agreement from a lawsuit the City filed against the company and they were suppose to do some stack testing and some air quality modeling. There were some stack test results and there were no modeling results. That is probably as far as Spokane Clean Air is going to be able to pursue this issue with the City.

The State Health Department called to inform Bill that they have completed the review of the draft assessment of rail yard impacts on air quality and health in Spokane County. They did a cancer risk assessment as well as a toxicology review and it is now undergoing some internal review before they send it to Spokane Clean Air, probably 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.

We received an invitation to join the Western Regional Air Partnership whose primary focus has been on regional haze, but they are now getting into ozone and other air quality issues affecting the western states. Only state agencies have participated, but they are extending membership to local air agencies. There is no cost to join and Bill believes it would provide some good networking opportunities as well as some tools that could be used in the event Spokane Clean Air needs to develop an implementation plan for ozone. The Board agreed for Bill to go ahead and join the Partnership.

Michelle Wolkey and the Center for Justice developed a settlement agreement incorporating the resolution approved by the Board at the November meeting and discharging the complaint against Spokane Clean Air. The agreement also calls for the Center for Justice to contact Spokane Clean Air regarding any future issues in order to attempt to resolve them before filing another lawsuit. Michelle signed the court case dismissal documents and Barbara will be sending out the checks to Allied Law and Center for Justice as soon as we receive the final court papers.

2. Public Information/Education Update for October/November 2009 – Lisa Woodard

Lisa gave a brief overview of the information and education projects for October and November. Community outreach activities consisted of the Chipping Event at the Valleyford Fire District 8 Station, Sacred Heart Employee Benefits Fair, air quality booth and presentation at the Home Show at the Spokane Fair and Expo Center, Fall Leaf Festival and the Valley Children's Health Safety Fair. For the print and electronic publications, in October the Spokane Youth Environmental Conference journals were printed and mailed, the fall issue of "On The Air" was printed and distributed, businesses were recognized at the November board meeting and other certificates were sent out, there was an ad in the Journal of Business recognizing the gold recipients, the dry cleaning record keeping forms were updated and will be mailed in December, the CAP materials were distributed to permit and building departments and the newsletter was mailed out. Fiber Tech is the 2010 Clean Air Award recipient and will be featured in our winter newsletter and presented with the award in February. The wood heating season is gearing up and staff will be answering phones on December 8th at the KHQ studio. Media releases consisted of the Center of Justice Settlement, winter wood heating season, and an interview conducted with Spokesman Review on wood heating. The Clean Air calendar has been produced and will be mailed out Friday. The "Travel Green, Live Green" January promotion to promote commute alternatives and winter clean air tips at area worksites is underway. Materials were finalized, posters printed, and prizes have been secured for the "Make a Resolution to Reduce Air Pollution" promotion. The program was presented to about 100 ETCs attending the December event.

3. Activity Report for October 2009 – Ron Edgar

Ron stated that 64 complaints came in for the month; complaints for solid fuel burning devices are up, remain the same for open burning and are down for dust. There have been approximately 40 scheduled inspections, approximately 6 or 7 enforcement actions and approximately 20 other inspections. Asbestos NOIs are consistent and the number of asbestos inspections has increased considerably. New source reviews were slow in September and picked up in October. October is slow for annual registrations but will pick up in November. Air quality for October remained in the good range. There will be quite a few moderate days in November and December. There have been 279 good days and one unhealthy for sensitive groups day of air quality. EPA is doing a lot of work with the standards and as the new standards come out, it makes a lot of work for state and local agencies around the country. There was some discussion between the Board and Ron.

4. Treasurer's Report for November 2009 – Barbara Nelson

Barbara gave an overview of the revenue and expenses. The revenue and expenses are pretty much on track; we are still waiting for reimbursement of approximately \$100,000 from the State on the Core Program. There were a few questions from the Board which Barbara answered.

5. CONSENT AGENDA – ACTION ITEM – Approval of the November 5, 2009 Board Minutes. Approval of Vouchers for November 2009 Numbered 4371 through 4440 in the amount of \$30,666.15 and November Payroll of \$118,974.25 for a Grand Total of \$149,640.40.

Councilmember Dempsey moved to approve the November 5, 2009 board minutes and vouchers for November 2009 and Board Member Brattebo seconded it. Motion passed unanimously.

6. PUBLIC HEARING Resolution 09-28 – Amendment to Regulation I, 6.4 Odor and Nuisance Rule – Chuck Studer

Chuck gave an overview of the November board meeting work session on the amendment to Regulation I, 6.4, Odor and Nuisance rule and the comments received. Members of the public were invited to testify.

Doug Krapas: My name is Doug Krapas. I'm from Inland Empire Paper Company (IEPC), I'm the environmental manager for IEPC. IEPC has been in business in the Spokane Valley since 1911 and was instrumental in the development of the surrounding communities which is evident by the hometown's namesake of Millwood. Over the last 100 years IEPC has had a significant influence on the Spokane Region throughout our history and have provided thousands of stable high paying jobs for our region's families, we've become the region's largest recycler of waste paper. We have developed into an environmental products company manufacturing our final product from entirely waste materials. We've become the most modern newsprint facility in the world. We've currently pumped over \$300,000,000 into the local economy annually, most of which are new dollars coming from outside of Spokane and we've become Spokane County's third

largest tax payer and we are responsible for over half of the tax base of the City of Millwood. Consequently, as our influence has grown, so has the community around the mill as well. We now find ourselves surrounded by thriving residential neighborhoods. Most of our neighbors value our presence and appreciate what the company brings to the community. However, as with most any community, there are also those who'd not support and actively challenge the necessity of an industrial neighbor. IEPC's dedication and environmental stewardship is well established and respected by both the environmental and regulated communities. In fact, IEPC was the recipient of Spokane Regional Clean Air Agency's 2008 Clean Air Award in recognition of our efforts. We pride ourselves in being good neighbors and stewards of the natural resources that are the essence of our business. The proposed odor and nuisance rule, however, will expose IEPC to frivolous complaints and subsequent litigation. The rule is an unexpected departure from SRCAA's past practice of clear, objective and reasonable regulations that have been protective of the County's air resources. The proposed rule contains language that is very subjective and open to individual interpretation, but defines an unpleasant and objectionable odor as entirely a matter of personal sensitivity. What may be considered unpleasant or objectionable to one person may not apply to the next. An example of this comes to mind with a friend of mine: we were having discussions over this odor issue, he's an avid bicyclist, he's complained to me of an objectionable odor that he encounters along the Centennial Trail during his daily rides. He can't tolerate the odor during his intense exercise and must hold his breath as he passes through this particular area. It turns out that his self defined sickly sweet and greasy smell emanates from one of our more infamous donut shops in Spokane Valley. This may be an extreme example, but it does fit the definition of the rule. As the odor is distinct and definite and the unpleasant characteristics are recognizable in this person's case and that it unreasonably interferes with his enjoyment of life. This ambiguity is future complicated by the fact that the rule does not require any objective determination that an odor is a nuisance by the Agency, which is the underlying requirement of this rule. All the Agency has to do is detect an odor and its source. A violation can then be established from a completely subjective and unsubstantiated testimony of one complainant. The proposed rule exceeds the authority of the Agency and violates the constitutional rights of those subjected to enforcement. The proposed regulation would impose liability not on the grounds of nuisance but on the mere confirmation of an air control officer that an odor has been detected and an affidavit from the complainant that alleges subjective interference with the use and enjoyment of property. There's some new language that has been proposed. In essence, we're not opposed to an odor rule of course, but if there are legal holes that exist within the way it was written and we'd like to see those holes filled and basically we need to make a link between the odor assessment and it actually being a nuisance. The other addition was that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. That's a very open ended statement, practicable. There are no limitations on the amount of practicable technology that would necessarily need to be applied in this case. We would like to see something along the lines of practicable and economically feasible added to this statement to provide some semblance of closure to this. The proposed rule is written greatly increases the exposure of all affected businesses to frivolous complaints, enforcement, fines and mitigation. Ultimately, the determination nuisance will fall upon this Board in granting or denying appeals that are sure to arise from the enforcement of this rule. Unfortunately, as the rule

is written, the only ones who stand to benefit from this rule will be the attorneys. IEPC requests that the Board not adopt the proposed rule as written for the reasons provided by this testimony and the detailed written comments submitted by IEPC to the Spokane Regional Clean Air Agency on November 23.

We've actually had odor complaints in the past and we've addressed this by enclosing our sludge handling systems. The issue with the mill is that we have multitudes of potential odor sources which include hundreds of thousands of tons of wood chips that are stored. Some people define the smell of pine and cough from the smell of pine, as a nuisance and what do you do with hundreds of thousands of chips in storage? As you can see we can get into some very significant practicable solutions too that would potentially cost the company its business because of expensive economic investment in such a thing.

We do have an incineration system for the sludge and so the sludge is consumed in that incinerator. Odors don't really emanate from the sludge handling system any more and so I think it's been probably well over a year and a half since we've had an odor issue because we have taken a very pro-active effort in trying to mitigate those odor issues and we believe that the most significant contributor to that was indeed the sludge system. So now that that's been resolved, we don't really have any odor issues recently.

As I said, we're not opposed to the odor rule, it's just that there are certain items that need to be cleaned up with the rule language-wise to prevent frivolous complaints and we really need to tie it back to the requirements of the Ecology WAC regulation that says that the air emission is a nuisance; there's nothing in here that ties it to that nuisance and so it's very subjective in that regard and open to litigation in that regard. So we'd like to see that loop close and then also the practicability as well.

The WAC regulation associated with that is and I'll read it here for you: Ecology's regulation "prohibits air emissions that would constitute a nuisance" and that is WAC 173-400-040. So this particular rule doesn't make that tie back to the nuisance. In essence basically, if you look at your language, is that we either need to add an item under D. that an assessment has been performed by the Agency to determine that this is indeed a nuisance or it could be under various levels, level 2 and on up that an assessment needs to be made that determines that this indeed is a nuisance. We provided examples of where this case, we believe has been misapplied and that's the PCHB case Stark Aquatic Systems versus PSAPCA, which is the Puget Sound Air Control Authority and then basically it was one complainant out of 150 unit apartment who complained about Stark Aquatic Systems. No other tenant complained about that and there was no assessment performed that it was indeed a nuisance and they leveled a \$5,000 penalty against this particular facility, so just a case in point. That's the only case that I am aware of, but I'm not saying that there aren't more. That is the one that is actually provided to me by our attorney. It says here, the few cases reported where the odor rule alone has been enforced do not set a good precedent for adopting a similar rule by Spokane Regional Clean Air Agency. So there apparently are more cases out there, this just happened to be the one that we utilized as an example. I can get you further cases if you would like. Thank you for the opportunity to provide this testimony.

Mike Gilmartin: I'm the president of Commercial Creamery. We're a third generation family business here in town; started in 1908. Our business now is manufacturing cheese powders primarily and that's the orange product that gets on your fingers when you're eating cheese puffs. We've moved our manufacturing to southern Idaho but we're still operating research and development here, we have a pilot plant that makes small quantities of cheese powder and I think of us as a repeat offender. Whenever we dry our Romano Cheese or Bleu Cheese, people complain. I submitted comments and thank you for considering those. Just to reiterate, my belief is that you should give some special consideration to food and beverage manufactures because when you are preparing a food, whether it's in a restaurant or a factory, if you can't smell it, you're doing something wrong; there's suppose to be odor there. So the problem with the rules as we see them is there is a great amount of discretion left to the Agency. What is unpleasant? Is the donut shop unpleasant, is the cheese unpleasant; and I think right now with the Agency, we're not having problems, it is reasonably run and the people are doing a good job. Our fear is ten years from now or at some point, someone using these rules could start closing restaurants and say, "we don't like the smell of your garlic, or we don't like the odor of your donut and so you cannot operate". The main piece of equipment that is producing odors in our process is the spray dryer and typically the exhaust goes through a bag house before it goes into the atmosphere. But if you were to park at our facility in southern Idaho and get out of your car, you'll smell cheese immediately. So you can still smell it. Here we do one and two pounds at a time. We have a dryer that will make maybe 100 pound runs, whereas the factory is making truck loads at a time. Thank you.

Sandra Juryard: I'm the public policy coordinator at Greater Spokane Incorporated (GSI) and I'm here to express the concerns of our members, specifically the food company members that we have. They're concerned that with these new odor regulations, that that may inhibit their ability to operate in Spokane. We at GSI believe that "yes" there needs to be regulation but we also hope that these proposed changes are well thought out so that we don't restrict business growth and development in the area. I do have a letter from Richard Hadley. Thank you.

Chair Corkill: Can I ask the Clean Air people if they've gotten any complaints about restaurants and food companies. What about the coffee roasters? Matt Holmquist: Just from my recollection, a lot of the complaints we've received about restaurants has been opacity related; from the char broilers from one of the fast food restaurant versus odor related. Historically speaking, we have had coffee roaster complaints, yes.

Paul Hatfield: Thank you for hearing what I have to say. I am the asphalt manager at Spokane Rock Products (SRP). We have an asphalt plant located at Havana and 8th Avenue, Spokane Valley. People enjoy paved roads but they don't enjoy the smell of asphalt. Our plant is one of the only plants, there are only two in the state of Washington, that have the degree of the Best Available Control Technology (BACT) for the blue smoke and odor control that we do. I'm not really concerned that much about our plant as much as the odor complaints that we do receive usually stem from the trucks leaving the plant; we tarp them but as they go down the road, we get complaints four or five blocks down the road and we know exactly that's our haul route to get out. So I think that in my opinion, the current regulations seem to be working. If we do get an odor or dust

complaint, we do investigate it; the SCAPCA people have been really good about coming out, looking at it and investigating on their own and they determined that in all most all cases, there was more to it than that. We are in a residential area and there are people that don't want it there. I just think that the current regulations are working fine and this will just cause additional grief for especially for the asphalt industry because people don't mind donuts or food products but asphalt is not a good thing for the general public to smell. Those are my concerns. We run April through Thanksgiving. The odors stay in the area depending on if there is a breeze or not; it usually dissipates fairly fast. Like I said, when a truck goes down 8th Avenue or on Havana, that's where, in my opinion, almost all the odors are stemming from; any odor complaints we get. It's not the technology of the plant; at the plant, the blue smoke, the odor control in that plant costs over a million dollars and we are the only one that have that kind of BACT in this whole eastern Washington; but we are also in a residential area. We have exhaust fans, filters and we put a lot of it back through the burner. We have very little odor out of the plant. I feel good about that. The SCAPCA people have been great to work with and so I think the way it has been going is fine.

Beth Hodgson: I'm with Spring Environmental here in Spokane. I'm an environmental consultant who works with a variety of different companies. You should have actually received two sets of comments from my firm. One is specific to Baker, but one is general to most of my client list. I do have two specific concerns, I'm going to compliment Doug's comments in that I'm not going to reiterate them for you; he did well with that. I do have specific concerns about the fact that the rule is titled detrimental and the basis is that if the regulator says it's distinct and definite, that doesn't mean it's detrimental it just means that it is an odor that you can identify. That certainly follows through from the idea that people can make complaints about anything and end up having SRCAA follow up with that; and I think that's a waste of time for SRCAA and I think it's unreasonable from the industrial point of view that they end up following up with this. The main concern I have with this is about changing technologies. One of the ideas in here is that companies have installed control technologies, well what if they've already put their control technologies in and this rule says well as long as you can prove that this is most practicable, then you're fine. Well, we're in the fields that constantly are changing and there's nowhere in the Clean Air Act or in Ecology's rules that require that you have to change technologies every time you turn around. Companies spend a lot of time going through BACT analysis when they first permit the facilities and I work with a lot of small businesses. They spend thousands of dollars putting control technologies in place with the rules that exist today. The rules, if technology comes out five years from now, ten years from now 15 years from now, what's the basis for saying that somebody should now install the new technology? Right now they don't have to. If they change their process, they then have to put new technologies in. If they increase emissions, they have to put new technologies in. I want to give a little bit of a different analogy, this doesn't actually apply but I'm going to try to give you an analogy to say how it would relate from an industrial point of view. If as members of the board, someone were to complain that your education on air quality regulations and understanding the measurements that are done for ambient air monitoring is not complete enough, and somebody says "Well, you really need to have more education to understand more about how the measurements are taken", and go through this whole deal and they say "Well you need to have more

education on that; you need to go through such and such of classes”, and you go through such and such of classes and you get this education and you say “Okay I’ve done it”. Well then something else comes down the road and they’re like “Well, you know that’s not really your problem; we thought that you needed to know more about measurements but really you need to understand public health more. So now this time we want you to spend more time doing public health so you know; we think you should all have a four year degree in public health.” That’s what this impact is for business, is that saying “You know what, we want you to change each time you turn around, what you are doing”, and that’s a real concern for me. That facilities, especially small businesses, do what they’re supposed to when they initially install their plant and sometime down the road there’s something new out for technologies. Paul Hatfield mentioned that they have state-of-the-art as far as several of their control technologies; they do. There are other facilities that don’t; do they have complaints; it doesn’t sound like, based on what I’ve seen for those industries and some of them are my clients, that they’ve specifically had complaints on those. But are they supposed to put control technologies in because somebody calls in tomorrow and says, “I have a problem with such and such an asphalt plant.” You know they spend millions of dollars to put this in. The BACT analysis that these facilities go through is defined based on public health, it’s based on national ambient air quality standards which you do monitoring for and it’s based on making it economically affordable for the facilities, what’s reasonable to install. They don’t have to install a two million dollar incinerator just because the technology’s available. That’s not reasonable, not for facilities that put out five tons a year. So my concern is that the way that the rule is proposed right now, it’s requiring that control technologies be changed on a regular basis for some facilities and that it’s not based on public health.

Chair Corkill: Do you think there are any hazardous compounds in the odors that are released from Baker that effect our health? There are some hazardous compounds in the emissions of rendering plants. Most of the compounds I don’t think they’re particularly hazardous but there is one called quinoline which can be associated with rendering plants which is classified as a hazardous compound. What kind of control technologies does Baker have? Is that considered BACT; are you aware of other techniques that they use at other plants? But it is not used at this Baker plant? So they don’t use bio filters or oxidizing based scrubbers? But there are a lot of technologies available for the rendering plants. There are quite a few other technologies that are used because I looked up some stuff both in Vancouver BC, Georgia Tech and University of Georgia has developed a system using bio filters and there are some in Europe that use other systems based on oxidizing to eliminate odors from stacks and things like that. So there are other technologies available.

Beth: There are hazardous components, whether the levels that they’re being discharged at would affect public health, the little bit of information that I’ve seen on that is no. I have not done a health evaluation on Baker. There is at every industry that exists in Spokane County. They discharge benzene, they have toluene, these are all carcinogens or cause inhalation hazards. Coffee roasters have components in them; even though you like the taste of coffee, the components in it are also hazardous. It’s obviously based on dose. I know that they have three scrubbers at their facility and that they use injection into their boiler when the plants running. Complete incineration would be more effective; whether

or not it would be cost effective, but complete incineration would be more effective at removing it. Injecting into the boiler is essentially incineration for the period of time that that's happening. Yes, they have the packed tower and they have acid scrubbers; so it's a chemical reaction instead of a biological. There are other technologies available; what they have at the rendering plant is consistent. Scrubbers are fairly common at rendering plants and they have that as well as the injection into the boiler. As far as are there other technologies available, yes; are they proven with that industry, not necessarily. I can tell you a case in point, SRP was required to have carbon absorption seven years ago when they plant was installed because carbon absorption works for VOCs; got installed and you know what, carbon absorption doesn't work on asphalt because the asphalt fumes muck up the carbon and it no longer works. VOCs are an aerosol when it is discharged from the sources; rather than it being a gaseous form. So the idea at the time was that is organic material, the carbon system is going to work. The thing that's commonly used in other industries but from a practical consideration, it didn't work in the asphalt industry; and that's part of the reason that they had to do either condensers or reinjection. But that was something that was realized. They spent a lot of money putting those carbon systems in to find out that they weren't working at all, that they lasted for the first hour and then didn't work. So just saying that a technology is being used somewhere else, doesn't necessarily mean it works in a specific application. Is the focus of this rule making Baker? I thought the focus of this rule making was actually going to apply throughout the Spokane County.

Chair Corkill: But most of the complaints that we have are from Baker and so naturally that would attract most attention to whether we could do something about it. Do you speak on behalf of Baker? Beth: I do. Chair Corkill: That's what I was talking to you about. Beth: My comments were relative to the control technologies for both; every time you turn around is somebody supposed to put additional control technologies on? Also, the other comments that I had were relative to the cost or the implication of not being able to run the plant here. Chair Corkill: When there is a complaint, even under the other proposed rule, it wouldn't automatically trigger a shut down or a requirement for more technology to go on. Surely there are some negotiations that go on between Spokane Clean Air personnel and the place that is being accused of releasing odors isn't it so? Beth: Right now that proposal that you have in front of you that Condition D. says that the company has to go through and demonstrate that it has the most efficient control technologies that are practicable. So they're going to go through research of what, the same thing that they had to do when they constructed the plant and evaluate whether it's practicable, not even considering economics, what technology is out there. So you've identified several other technologies that are available for Baker; so are they suppose to spend millions of dollars to install a technology and find out it doesn't work? That would be true for any company. The way that it is written right now, that company is going to go through all this research and say "Well yes, today there is more technology available then there was five years ago or 10 years ago when we built the plant." So are they supposed to install something else? Chair Corkill: As cities progress, most towns that have rendering plants are now finding that the population is growing around these plants and this leads to complaints. So it is like it is a moving target in a way. So just because they are doing one thing right now, doesn't mean that they are stuck at that particular point, so that they can move on as well. We still get odor complaints coming in so what do we do about those people? Beth: How about focusing on the part of whether it's health driven. We've talked about nuisance and I understand that the

existing nuisance rule has a basis for you to pursue action against a company. You have pursued things against Baker in the past, against SRP, against many other companies. The proposed rule actually makes it so that the company has to prove that they're using the best technology or most practicable. What does the term practicable mean to you? It's not defined which means that if Mr. Dameworth decides that he wants Baker or SRP to put xyz, we're going to put an incinerator throughout the county at every location. Board Member Brattebo: That is where there's a lot of subjectivity in that. Beth: There also needs to be recognition of whether it is going to actually control whatever the source of the odor is anyway. Councilmember Dempsey: Could you tell the Board the last technology that Baker installed, how long ago was it that they updated their technology? Beth: I have not been their consultant for the installation of the control technologies, they actually asked me some questions relative to the odor rule and how it's been applied. So the facility representatives, I think they've provided as far as their technologies, I believe their packed tower scrubber was their latest. I was not the person who represented them for that; they would have to answer that question for you. Chair Corkill: In the proposed regulation, I agree it refers to health and safety but it also says that if it reasonably interferes with enjoyment of life and property and that's what the complainants are concerned about. I don't think they've identified it as a health hazard but it affects their property values and it affects their quality of life; can they go outside and sit on their porch in the late evening and enjoy it. So it's not just health. Beth: Except that's what SRCAA's job to do is to protect public health and that condition is actually C3 and then when you get into D and E is where you actually get into the whole process of how the complaint is filed; and if a public member files a complaint, there's nothing on there that says what they have to do. So I'm going to complain because I don't like the composting going on next to my facility. So okay I don't like the odor, I can't work in my back yard one hour a day in the summer. Do I have to tell how often, do I have to tell what the source of the odor is, how is it impacting me. That doesn't say anything in there. So SRCAA's actually gone through this to try to create something that's more defensible, but it's actually added more questions than it had before. What does the person have to do that is filing a complaint? It says they have to provide a written notice; it doesn't say what the written notice has to say; it doesn't have to quantify. Okay, I don't like the composting, so SRCAA's going to go out and inspect it. Chair Corkill: It says "An affidavit from a person making a complaint that demonstrates 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", so it's a little bit more than what you've said. Beth: As an inspector you would identify that it's sufficient how and I realize you're not an inspector. Bill: There are a number of people here that said that the way the process of this rule works is that a complaint is filed and therefore the company has to install new control technologies. It doesn't really work that way. There are a whole lot of things that have to be done ahead of time before that happens and this is a lot more descriptive than the current rule which is very vague and it's vague enough that we could make it anything we want and the people on the other side can make it anything they want. So this provides a more descriptive process of how it works and not only does the person have to file a complaint, we have to document the complaint at a level 2 or greater and document where it comes from. So in the case of somebody like SRP, where the truck has already left, by the time we get there, there is no way we are going to be able to document the odor; so those would all go away. I think that to give the thought that somebody can call up and complain and say I'm willing to sign an affidavit means that the what follows is somebody's going to have to install an incinerator, is taking quite a leap of faith. Beth: How come you didn't choose a level 3, which is the one saying the odor is objectionable enough or strong enough to cause attempts at avoidance.

Bill: We have adopted this from what Puget Sound has. Beth: Okay, but you also made a decision for, I mean did you just copy the rule or did you actually review it and say this is a reasonable or practicable applicability. Bill: We talked with them about it and they've had a number of years of experience with this and it seems to work pretty well for them. Beth: They actually haven't used it all that much. Bill: That's really not true. Beth: I spoke with Steve VanSlyke about this, at the PINWIS meeting. Bill: Matt looked up from 1999 to 2007 there's probably at least a dozen or more and some of them received pretty hefty penalties and some of them resulted in people installing some additional control technologies and that's just the way it works. Beth: When you're talking about something being identifiable or distinct and definite, that's not saying it's causing harm. Bill: No, but if this went to court, the person would have to be willing to testify in court. That is one of the things that often complainants are not willing to do. We have had a number of people say that having us require them to sign an affidavit, restricts their ability to file a complaint; well it doesn't, they can still file a complaint but it means that with this particular regulation, you are going to have to find something else besides this. If they are not willing to sign a complaint, then that's the end of the story. If we find that as a result of the compliance inspection, there is something in their O&M plan they are not doing or controls that they aren't operating properly, then there's probably another avenue we would have with the enforcement action; but this particular rule requires them to certify it, you're going to stand before a judge and say how it is preventing you from enjoying your life and property. Councilmember Dempsey: I am concerned about how this rule is stated and the effect and demands that would be made on businesses if we did this.

Chuck: The present regulation requires exactly the same thing. So a person who's sensitive to bread odors, under the present bill, they could file a complaint. Councilmember Dempsey: Why should we go through the whole business of making a new rule? Chuck: The old rule is extremely vague referring to reasonableness which is very hard to define. Practicality is not hard to define. If it is in practice someplace and it's working, then that's practicable. Councilmember Dempsey: Do we expect the businesses to immediately update every time new technology comes out? Chuck: This would be something we would be talking with the businesses about. Board Member Brattebo: Does practicable also include cost? Chuck: Not necessarily. The term practicable itself is, is it in practice; it does not necessarily include economic issues. Chair Corkill: It really depends on whether there are complaints or not. If there was new technology available for a business but it never receives any complaints, then there would really be no point in doing anything different; it's only if something changes and then all of a sudden you start getting a bunch of complaints which could be tied down to a particular site, that would suggest, and I don't think Spokane Clean Air would immediately say that you've got to do this, they would say have you considered any other possibilities of controlling some of these odorous compounds? I don't think it is going to be an automatic. If something isn't working and we're getting complaints, then that is what we are trying to address and what Spokane Clean Air is trying to do, is that we do have complaints and we've had complaints over a lot of years and the present way of dealing with it hasn't really worked. So we're trying to change that to another system that may work better or it may not work as well, but ultimately we are trying to improve the air quality for local citizens and these fumes do get emitted, whether it is on a chronic basis or a few times and that is what we are trying to deal with. They think we are going after companies; I think we're just trying to address what the mission of the agency is. Chuck: This rule doesn't really have any interaction with a new source going in. If a new source goes in, it has to have a process change with rules and all of this; it's

going to have to have BACT on it, similar to your coffee roasters. We've experienced coffee roasters when it didn't have after burners on and we had numerous complaints on the first coffee roaster that went in because their permit said that they could do light roast only and they ended up doing dark roast which caused a lot of odor issues and in the permit it said that if you are going to use dark roast, you have to put on control technology and pretty much the industry itself recommends that. There's the coffee roasting industry itself when you look at the association, they are recommending that afterburners be put on coffee roasters for the exact reason of odors. The odors coming out of a coffee roaster stack are much different from the odors that are inside the plant. Councilmember Dempsey: If the rule works, why do you need a new one? Chuck: It isn't working, that's the problem. Bill: It is vague enough that we could end up spending our life before the hearing board; with this rule that we have now it's hard to know what's reasonable and what should be done and what shouldn't be done. It's quite vague and this rule here has got a process where the complainant has to certify in writing that they've got the problem, we have to document the odor and the source of the odor and if the company is doing a good job, we can elect not to take enforcement action; we're not requiring the company to provide this control technology now. And in the process of discussing what we have issues on, we can have some dialogue with them and discussion of whether anything should be done. I think on a case here in Seattle where they had some proposed fines that were pretty hefty, I think it was a Campbell Soup plant, the company decided to put some bio filters on it to mitigate the odors. That is new technology and that's something that they do in order to make themselves look better to their neighbors and community and I don't think there's anything inappropriate about that. Board Member Brattebo: Having the complainant sign an affidavit is a deterrent because most people will not sign an affidavit, especially if their complaint was really a false one. Bill: We still investigate all complaints, but this rule says for us to take action against the company they have to sign an affidavit, we have to document the odor at a level 2 or 3 and where the odor is coming from. For all of those things to fall into place, it probably will not happen that often. A couple of the companies here that have testified against this have gone over and above what most people have done in order to reduce odors in their facilities. It is interesting that they are still afraid that someone is going to call up and make them shut down even though they've gone the extra mile to do a good job. Councilmember Dempsey: They have demonstrated that they are also afraid of this rule. That it could cause some serious problems to businesses because the rule is really kind of vague. One of my problems with it is that there's no time frame. If you have an odor that exists for an hour is that something that is worth us stepping in and doing something about? Does the odor have to continue consistently for 24 hours or a week or what, what is the time frame? If somebody finds an odor objectionable, and an inspector smells the odor and they say it is objectionable, is that reason for enforcement under a regulation like this? Bill: I'm not saying that we wouldn't give you a ticket for the odor but the track record that Puget Sound has with this very same rule, there aren't a lot of enforcement cases with it. With the ones that they have had, often they have required people to upgrade their controls and it's because they think that it is appropriate and if you do things that are inappropriate, then this is how it is done. We're not going to be going out there and be giving tickets for no real reason. It is subject to enforcement discretion like everything else we do here and if somebody feels like they've been wronged, that's what the hearing board is for. Board Member Brattebo: Businesses also don't make changes like this out of the goodness of their heart. There is some fear involved, those guys are watching us, we need to make the change and if they don't have that concern, they probably aren't going to make the changes. For a long time people didn't care about what went into the river and rules started being made and changes started to happen. Unfortunately, it takes

agencies to make rules to cause businesses to change. Chair Corkill: There is a responsibility for this Agency to try and mitigate the release of odors in this case we are talking about here. There is one aspect in D.2 that a person could do; they could report on the frequency, intensity, duration, offensiveness and location (FIDOL) to give them some guidance before they are going to sign an affidavit. This would give people more direction of what they have to report. So I think giving some guidelines in D.2 for the people who make a complainant would be good. Bill: Nothing happens unless we document or detect an odor ourselves. Board Member Brattebo: The complaint log or forms can be part of the job rather than have it be in the rule. Bill: Spokane Clean Air could have a policy on this and bring it to the Board at a future meeting. The hearing board would not sustain a frivolous complaint that resulted in a frivolous NOV. It would also be unreasonable of us to take a frivolous complaint that far. This rule would let the public know that this is what we are going to have to go through before we can do anything about this; you're going to have sign an affidavit and we are going to have to document it ourselves, etc. and if the company has done everything that can be expected of them, then we won't do anything. The Board would not want to be a mediator of NOV's that have been issued because it would occupy all the Board's time. The hearing board does not always automatically sustain what the Agency wants to do either; there have been plenty of cases where they have overturned what the Agency wants to do.

There were no other speakers from the public. Chair Corkill: One thing Doug Krapas (IEP) would suggest is a connection back to the WAC. Chuck: In Article II it states that we enforce the WAC. Doug: They should make a tie between subjective interpretation of the odor and determining by assessment that it is indeed a nuisance which is the requirement of the Ecology rule and this one is absent of that connection. My suggestion was to add assessment by SRCAA to determine that that odor is indeed a nuisance. To tie it back to that regulation. Chuck: It's incorporated by referencing Article II. Doug: The language in D that defines this odor complaint does not tie back to that particular regulation, because it doesn't define whether it's a nuisance. There would be an assessment by SRCAA says this odor is relative to hydrogen sulfide which is a known nuisance odor and so there should be some kind of an assessment that determines that it is indeed a nuisance. There is nothing in item D for the determination of that odor that ties it back to it being a nuisance. Bill: If we put in some language that says the authorized representative document all the following, you could probably put in something that says it is determined that the odor meets the definition of nuisance pursuant to the WAC and document all the following. Doug stated that would satisfy him. Board Member Brattebo: Does the nuisance have to be unhealthy or can it just be unpleasant; because there are odors that may not be unhealthy. Doug: SRCAA should determine that it is indeed a certain smell and if it is constant; if it's a fleeting thing where someone smells it one time and they file an affidavit as an issue, then the officer goes out there and detects the odor, then he or she can make an assessment that that indeed is relative to the air quality standard, it is objectionable. Bill: The whole purpose of this rule is for dealing with air contaminants that are detrimental to person or property; so for odor and nuisances there should be no problem with making that assessment. Putting it down in language here that makes you tie that together, I don't see that as an issue. Michelle Wolkey: I don't have an issue with putting it in there but you're right, you would be obligated to do that anyway. I do think it's important for the Board to remember that if you make substantive changes to the rule, you go back to the code reviser. Generally speaking if there's a question as to whether it is substantive or not then I expect there is going to be a challenge to the rule given the comments that I've read, I think you are better off to take it back

to the code reviser than have another basis of change. Chair Corkill: In my view, it would be worth it to do that to make it right, rather than have problems later. Also, I would like to talk about putting these five things in the regulation and it would be under D.2., which would be frequency, intensity, duration, offensiveness and location; which is something from the trade industries. Bill: What we could do is take out “characteristics” and put in these five things instead of that. Doug: I agree with the change. Bill: We would be looking at this sometime in February.

The Board Members present were in consensus to make the changes and take it back to the code revisers office. Doug: I would like to address the practicability issue as well; practicability is a very open ended statement with no indications on economic feasibility. We could continually make upgrades based on whatever, it could get very expensive and that is the major concern as far as viability in the business. Typical language I have seen in the past is what’s reasonably feasible or what is economically feasible prior to the practicability. Can I make that suggestion that we include economical feasibility or some type of economic evaluation or assessment? Bill: One of the problems we would have is arguing over what’s economically feasible. The economic feasibility becomes a difficult situation for us. If we put something in the regulation to do with economics, the public is going to hear the companies say they can’t afford it and so the public can just forget it. That isn’t consistent with our goal either. Beth: I am still concerned as far as defining practicable. There was more discussion between the Board and members of the public on defining practicable. Doug: Would Spokane Clean Air welcome comments to help fill the legal holes that exist in this regulation change? Bill: Any comments provided would be outside the comment period since the comment period has closed. Doug: I understand that, but we would like to give you our thoughts on improving the rule and you could use them or not use them, at least you would see our particular concerns and take those into consideration. Chair Corkill: It would help if Doug could work with Bill on the actual language.

7. Board Concerns – Chair Corkill’s term expires the end of this month for the City of Spokane position and he has reapplied to Mayor Vernor for reappointment. Also, he would like somebody else to be appointed Chair of the Board since he has been Chair for three years. Bill will contact Mayor Vernor to find out what she has decided.

8. Public Forum – There were no Public speakers.

The meeting adjourned at 10:59 a.m.

The next Board Meeting will be January 7, 2010 at 9:00 a.m. – Spokane Regional Clean Air Agency office at 3104 E. Augusta Avenue.

JEFFREY CORKILL, CHAIR

WILLIAM DAMEWORTH, SECRETARY