



SPOKANE REGIONAL CLEAN AIR AGENCY
BOARD MEETING MINUTES

December 4, 2008 9:00 a.m.
SPOKANE COUNTY PUBLIC WORKS BUILDING
LOWER LEVEL HEARING ROOM

BOARD MEMBERS PRESENT:

Councilmember Rose Dempsey
Chair Jeff Corkill
Commissioner Bonnie Mager

STAFF MEMBERS PRESENT:

William Dameworth, Director
Barbara Nelson, Finance & Personnel Admin.
Matt Holmquist, Compliance Administrator
Lisa Woodard, Public Information Officer
Mark Rowe, Air Quality Technician
Carl Gross, Air Quality Data Specialist
Michelle Wolkey, Legal Council
Mary McDermott, Secretary

WORK SESSION: There was no work session.

BOARD MEETING – PUBLIC HEARING ITEM #6: The board meeting was called to order at 9:03 a.m. by Chair Jeff Corkill.

1. Director’s Report for November – Bill Dameworth

Bill stated that we had some revisions to Spokane Clean Air’s proposed rule for rendering plants and so the request for comments was delayed to the local air agencies and DOE. The draft rule will be presented to the Board at the February meeting.

Last month at the board meeting, Spokane Clean Air served 20 businesses with subpoenas for sales records for outdoor wood fired boilers which were signed by the Board. The Subpoenas were not served until the week of November 24th and while we concentrated on businesses in Washington, it turns out that most of them are in Western Washington and do not sell anything in this area. We need to take a look at how we want to approach this; we have a list from DOE of 129 people that they notified that sell outdoor wood fired boilers. It should still be a goal for Spokane Clean Air to determine who it is that is selling these devices in this area and what we can do about getting sales records and getting some sort of an agreement with them to cease and desist similar to what we did with Turbo Burn, a business located here in Spokane. After this was discussed with the Hearth Products Association representative, it seemed appropriate to extend the deadline to the next scheduled board meeting (February 5th) and to

allow them to respond in writing if they had or had not sold any wood fired boilers in Spokane County. The letter was prepared by Michelle and sent out on November 26th.

We have selected the low bidder on Spokane Clean Air's building remodel project (Western States Construction) and signed a contract on November 19th. Work is to be completed by January 15th. We received our building permit from the City of Spokane and will need a permit to occupy the building from them before we can move in. We have notified the Health District that we intend to be moved out by the end of January.

We received 112 applications for our open Air Quality Specialist position. Interviews with the top candidates are scheduled for December and we expect to have the new person on board in January.

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

Lisa gave an overview of the information and education update. For the community and school outreach activities and events we were up at Mount Spokane High School. Lisa presented wood heating information during a Webinar to the Asthma Collaborative section of the Washington Collaborative to improve health. Presentations were also made by staff from the Department of Ecology. We presented the No-Idle Zone program at the "Smart Routes" conference held in Spokane and Margee attended the Environmental Education Association of Washington's Annual Conference in Wenatchee.

Materials developed during this recording period were the 2009 Clean Air Calendar and a toolkit of items were developed for the January Commute Trip Reduction/Spokane Clean Air "Travel Green, Live Green" worksite promotion.

Some compliance assistance activities were soliciting Clean Air Award nominations internally. The annual award is presented at the CTR/Spokane County awards ceremony in January. Margee worked on finalizing the self-inspection photo guide for gas stations and dry cleaners. There was a mailing of approximately 900 pieces regarding the proposed web posting of penalty information.

Special projects consisted of the wood heating stove change-out/rebate program. Since January 1st, 134 wood stoves were changed-out and that is nearly 54 tons of emissions avoided annually. There are another 30 vouchers that have been issued and have grant funding for approximately 20 to 30 more. Education and outreach consisted of TV spots promoting clean wood heating and benefits of upgrading old devices started in November and will continue into January. Ecology's Eastern Regional Office maybe interested in partnering and details are being worked out now. "How to burn more efficiently" DVDs are being packaged for a bulk mailing. A wood heating article appeared in the West Central newspaper and the Spokesman Review's Down to Earth website. We will be doing a KHQ Call Center on wood burning on December 12. We are coordinating with Solid Waste and Water Quality for the 2009 Environmental Youth Conference. The EnviroKids Club is working on drafting a winter seasonal mailer and updating the website with photos. An event is being planned in the spring with Mobius Children's Museum.

3. Activity Report for October 2008 – Mark Rowe

Mark gave a brief overview of the activity report. October had a high pressure ridge toward the end of the month. There were some elevated PM_{2.5} and PM₁₀ concentrations into the moderate category.

4. Income/Expense Statement for November 2008 – Barbara Nelson

Barbara stated that she is still working through the new accounting program and will work on doing a quarterly line item report so that the Board can see line item expenses. Right now Spokane Clean Air is on track for its budget this year.

5. CONSENT AGENDA – ACTION ITEM – Approval of the November 6, 2008 Board Minutes. Approval of Vouchers for November 2008 Numbered 3353 through 3420 in the amount of \$49,418.39 and November Payroll of \$117,396.71, for a Grand Total of \$166,815.10.

Commissioner Bonnie Mager moved to approve the Consent Agenda and Councilmember Rose Dempsey seconded it. Motion passed unanimously.

6. PUBLIC HEARING

Resolution 08-32 – Approval of Civil Penalty Information to be posted onto SRCAA's Website – Matt Holmquist & Carl Gross

Carl gave an overview of the technical aspect of the online NOV Notifications. Spokane Web gave Spokane Clean Air an estimate of \$650 to produce this and it included putting it into a data base format. The data base will have the NOV number, date, name of company, source location of the violation, different citations and the settlement amount. There may also be a summary of what was entailed in each NOV. Councilmember Rose Dempsey asked if there would be any way to provide for that to show compliance and a date of compliance so that if somebody went to the website they could see that there was a violation but that compliance was achieved right away. Matt stated that the date that someone came into compliance would depend on how that was defined. Typically the way that NOVs are issued is that the dates that the inspector documented a violation occurring is sited on the violation and it may be one day or multiple dates. Presumably, any dates not sited on the NOV are dates that they are in compliance. However, if you define them coming into compliance as being the date that they actually resolve the NOV and the penalty is paid. Councilmember Rose Dempsey stated the date that it is closed out and resolved. Matt replied that this is doable in most cases; the only thing to think about on something like that is how you define it. We were only planning to post civil penalty information on the web site once it was resolved/closed out for the most part. If somebody has a \$2,000 penalty and they want to establish a payment plan with us, they sign an agreement for a one year payment plan; we're planning to post their information on the web site once they enter into the agreement versus the date we actually receive the last payment. Councilmember Rose Dempsey asked if that would be at the same place that the NOV was so that if someone was checking this out, they could see that the people had made an effort to correct the problem. Matt replied that if a violation has occurred and the inspector issues an NOV for the dates of the violation, they would issue a Corrective Action associated with that violation that says they have to come into compliance right away. This will be tracked in the

actual inspection report and follow-up but the coming into compliance isn't tracked anywhere in our violation data base. We do make sure that people take the necessary corrective action and the project is back on track before we close the work issues out. That is something separate that is not tracked with the violation in terms of when payments are made, etc. Matt added we could post the date that the last payment was received. Councilmember Rose Dempsey stated this would make things clearer for someone coming to the site to check-up on a company. Matt added that from the issued date of the NOV to the resolution date would be approximately three months for most NOVs. If they request mitigation of the penalty and appeal it, that could draw the resolution out to a year before it is resolved. Councilmember Rose Dempsey asked if there was a way to put that there was an appeal underway. Matt replied we don't currently track that in the violation data base. Legally he doesn't know if there is any issue with trying to maintain a status of a case on the web site, it would require some additional work. Michelle Wolkey added that one of the things that we were intending on doing is not putting anybody on the web site until an appeal is completed, for the reason that we may be found that there wasn't a violation. So we don't want people taking the negative impact of being on the web site only to find out that they hadn't done anything. Councilmember Rose Dempsey stated this was her concern. Michelle added that we're not going to put anybody on until the process is done. Bill stated there is that issue and there is another issue on the date that they pay the penalty is one thing but the date, for instance if it's a case where somebody didn't have the proper air pollution control equipment on and they had a compliance schedule with Spokane Clean Air, the penalty may have been resolved and they may sign an agreement with Spokane Clean Air to install some air pollution control equipment at a later date. He doesn't think that you can say that they are in final compliance until they have done all of that work and that may be separate from tracking the date when the penalty is paid.

Chair Jeff Corkill stated he thinks you could put somewhere at the top the date that the settlement was made so it completes the issue. So somebody could read in the last column that the penalty has been assessed and then they could read somewhere that they are now in compliance and it is solved. Matt replied that it could probably be doable. Matt then briefly went over the comments received on this proposal with regard to posting information on the web site. Also, an individual's name will not be posted on the web site where a business name is involved. However, there would be situations where individual names would be listed from outdoor burning, yard and garden burning, wood stove burning, etc. where it is an individual residential situation. Most other types of violations from dust, asbestos, permitting, etc. issues are usually a business involved.

Chair Jeff Corkill asked how far along on this project is Spokane Clean Air. You've prepared this resolution now what about the development of the web site? Do you have someone ready to go on that? Matt replied as far as he knows Spokane Clean Air hasn't moved forward into development, we've done all of the background information and know what we need to do. If the Board says yes they want to do this, we would look internally to addressing all of the details associated with doing this to make sure there is a consistency with who, what and when it gets posted and also checking with Michelle on the legal aspects and certain issues. Commissioner Bonnie Mager stated it seems like some of the benefits of having the query/form access in the web site would be the links so that people could more clearly understand what it is that the violation was. So if you clicked on that link you could go and see if it was an honest mistake and that's not such a big deal it's really easy to get to. Mostly this is a benefit to the

public so they can make a better selection and it is important for the public to be able to access readily. Matt agreed that the query feature is going to be very useful to the public. Carl added that there is no timeline on how long it would take to complete the work. Chair Jeff Corkill stated in the case of what Bill was talking about and this business of whether things are still pending or whether they are completed, maybe you could just have another column where there's a check mark or a letter where it's still got a year to clear it up it's hard to change it than that could be another symbol and they could click on what that means. This way people could see if it is completed or whether it is in progress or what kind of work is being done. Matt stated that if Spokane Clean Air plans on only posting information when there is a settlement agreement or a penalty paid, by the time that occurs (2 to 3 months) he would guess that 98+% of the time that all of the corrective actions that need to be taken are done. What our concern was and he thinks legally there is an issue, if we post everyone the minute a NOV is issued in some cases we might accidentally cite the incorrect party, we might find there's an additional party that wasn't cited that needs to be cited, we might find that what we first thought was a violation (based on additional information they provide) may not be a violation.

Public testimony on this proposal was taken next.

Mike Keegan is a volunteer with Sustainable Works and Spokane Alliance. Sustainable Works is working to do energy retrofits for improved efficiency on buildings of non-profit institutions and other buildings. One issue we came up with in doing this is asbestos abatement. We were working on a furnace room and we had to get some bids and we found some interesting information. We got looking into the companies involved, as to try to explain their discrepancies and your agency is very cooperative on getting this information that's on public record for the details of the NOV, however it is a very cumbersome process and it could discourage people from looking into the details. So we're concerned about people being exposed both during and after the work. We want to be able to have a good process for a selection of contractors and we had been working with the Agency on a proposal and during the November board meeting a month ago, it was agreed to have this public hearing. We have several testimonies to back up our justification and we'll start with those. Thank you.

Justin Bell represents the people of the Westminster Congregational United Church of Christ. My half brother Rodney Bell died 10 years ago from mesothelioma. He was 62 years old. Rod told me that when he was a young man just before he got out of the Navy, one of his last jobs was to cut up old Navy ships. Asbestos was used in many parts of those old ships. Unaware of the risk, he ran the saws and breathed the dust that would eventually end his life. After he got out of the Navy he worked primarily in the construction industry. Asbestos was found on many of those jobs and so he was exposed again and again. While mesothelioma was listed as the cause of death, Rod died as much from ignorance as from the tiny asbestos particles. My half brother's death, like many others, was tragic because he endured much pain and he died approximately 10 years before the median. His early death was entirely unnecessary and completely preventable. It was a painful loss for his family, my family and when his pain was over the pain for many others was just beginning. You see Rodney's wife Kathy initiated a lawsuit. Much of the lung damage was done while he was in the Navy, but no one knew how much toxic dust came from the other jobs, so the attorney simply sued everyone involved. Some of the contractors sued were guilty of negligence, many were not. Some contractors were just hard working guys trying to get the job done; some were doing jobs where no trace of asbestos

was used whatsoever. But whether good or bad, careful or negligent, they were all sued anyway. This lawsuit, in turn, brought grief and expense to many others and there were medical bills, big ones. Since my brother was broke and had no insurance, much of the medical bill was passed onto the County health system, the State and the tax payers. I believe that the death, the pain, the lawsuits, the huge health care costs are all unnecessary. Mesothelioma is preventable if simple procedures are followed. How can we make sure they are followed? We need a web site that identifies the few contractors who repeatedly violate these procedures and stop allowing them to endanger the employees and the health of the community. Thank you.

Judith Perala is a member at Holy Trinity Lutheran Church in the Valley and the Spokane Alliance. I am an active member of the Alliance health team, a registered nurse, retired after practicing for 41 years. My nursing practices span many areas from hospital bedside care, diabetes education, jail nurse, asthma research and long-term care. When asked to give testimony at this hearing, I didn't hesitate. I have a story. I had instant recall, a vivid picture. The medical unit at the hospital, the middle of the night and usually quite, but I was finding it difficult to comfort one elderly gentleman. He was sitting on the side of his bed, arms slung over a pillow on his over-bed table, his chest he had it on the pillow and he was using every ounce of energy to breathe. He was afraid to sleep, but was totally exhausted. He was slowly suffocating. He was dying from asbestosis. He was from Libby, Montana. Respiratory cases are always difficult for me; it's hard to deal with the panic and the anxiety when someone can't breathe. It's strange how some cases stick with you. The names are lost but the impact of the disease leaves a lasting impression. We need accountability from everyone dealing with asbestos removal, renovations and restorations. Are all safety precautions used to protect the employees and the population? I urge you to adopt the web reporting of company's asbestos violations. Thank you for your time.

Cathy Gunderson from Highland Park United Methodist Church. We are members of the Spokane Alliance. We had some floor work done at Highland Park United Methodist this year and little did we know how haphazard and careless the contractor had become on following proper procedures as illustrated in his record of violations with Labor and Industries. In my experience as a state certified asbestos abater from 1986 to 1988 at Kaiser Aluminum, we learned proper procedure and the dangers from the fibers that measure two millimeters by five millimeters with a tensile strength of steel. Asbestos fibers do not breakdown in you body but travel to your lungs or in your blood stream. In your lungs, asbestos fibers pierce your air sacs which then try to expel it. Unable to do so, the lung seals off the sac instead, this suffocates you, as Judith mentioned, and after so many are sealed, when asbestos travels around in your blood stream, it can pierce into your muscle where it acts as a tiny knife shredding your pleura and this is as you move. Your pleura is the slimy stuff that covers your body and lets your skin slid as you move. This is very painful as your pleura is sliced to ribbons. Can you imagine hurting when you're touched? Fortunately, this all can take years and years in adults. Unfortunately, youth are affected by asbestos faster than adults as their bodies have not yet matured. I urge you to adopt the plan we are thinking of. Thank you.

Dr. Kim Thorburn is an unaffiliated public health physician. I want to talk a little bit about the story of asbestosis because it is an absolutely classic public occupational health story. As has been mentioned, asbestos fragments into very small fibers which when inhaled it can not be expelled from the lungs by the normal mechanisms that foreign bodies are expelled and

consequently it leads to scaring diseases such as asbestosis, this chronic, suffocating lung disease that has been so graphically described, Mesothelioma and lung cancer. Mesothelioma is the marker of asbestosis because really it is asbestos is the only thing that causes Mesothelioma. We have a lag between the time of exposure and the time of development of disease so part of this classic story is that industry, while it knew the health effects was able to deny the health effects for many, many years and it took us a long time to develop the environmental and health protections for workers who developed these serious diseases. We finally go those in place and we've seen Mesothelioma almost drop out of sight in the middle of this decade. The problem is in public health when we see the disease go away, we tend to drop the protections and that's what I fear is going on now with asbestosis. We cannot drop these important environmental and worker protections, we'll see a resurgence in Mesothelioma. This is what this web site is all about, is ensuring that we have that accountability on the part of industry so that our workers are protected and we don't ever again see the epidemic of Mesothelioma that we did previously. Thanks.

Rick Evans is a member of Labors Union Local 238 and a volunteer for the Spokane Alliance. I would just like to make a few points on why we feel it is necessary to list violations on your web site. Number one, all workers have the right to a safe work environment. Many job sites especially remodels, renovations, demolition type things workers have a high chance of encountering asbestos fibers unknowingly. I remember one particular job that I was on, a large concrete structure/building, 50/60 feet long, 25/30 feet wide, this room had many pipes hanging from the ceiling and these pipes had asbestos insulation on them. So the general contractor hired an asbestos abatement company to remove the asbestos insulation. So when they got finished a few days later, we were back in the room working. So to this day I wonder, did they do the removal properly, were we exposed to asbestos fibers in there. The reason I say this is I've done a little research myself. I've been done to Spokane Regional Clean Air Agency's office, filled out the proper paper work, went through the proper procedures to look at contractor violations on asbestos removal. I was, quite frankly, appalled at what I'd discovered; the sheer number of violations, with many being of the serious type, such as public exposure and just blatantly not following proper and safe procedures. This is the Reader's Digest version of what's going on, I made some copies. When we go down there, as I'm sure you all know, we go into the room with the table, files of all these violations are all stacked up; and that's just four of the major asbestos abatement contractors in our community. So this is why I say violations must be posted on Spokane Clean Air's web site, not unlike what OSHA and other government agencies do, this way a general contractor and an awarding agency can weed out the unsafe, unscrupulous contractors. I appreciate you considering this. Thank you.

Billy Joe Cryppen Jr. is a U.S. Navy Veteran and a member of Spokane Alliance. When I was in the service, we had the asbestos removed off of the submarine that I was on. They wouldn't allow us to go in the submarine itself, they sealed it off for the three days they were in there and they didn't let us go back for two days afterwards just to be on the safe side. I'm also a parent in the Spokane School District and I'm here on my brother's behalf also; he has two boys in the Spokane School District 81. I know there've been some asbestos related things in some of the schools and I'm very concerned for my children's safety. That's one of the reasons I'm here. I think if they're repeat violators they should be put up on a web site because they are taking our children's safety in their hands and to me I don't want them exposed. Thank you very much for your time.

Jody Mask is a representative of a local contractor. I've been doing environmental work for over 25 years and I'm also a volunteer firefighter first responder. My belief in by doing this, pushing the violations, it would level the playing field and hope the owners of the facility would look at this and use this as a tool in selecting good and qualified contractors; also lower the amount and possibly eliminate any and all exposure to employees, tenants and the environment. This and hope would weed out some of the substantial contractors and would allow good and qualified contractors to do the work. In conclusion, I believe it would be a good thing to post the citations. Thank you.

Tom Robinson is an attorney in Spokane practicing here for 28 years and also a member of Covenant United Methodist Church, which is a member of the Spokane Alliance. The serious toll taken on the health of families and individuals that have been exposed to asbestos must be added the cost to society in general, if there is a failure to maximize the value of these regulations as a deterrent to inappropriate behavior by those who do not comply with the rules. The Rand Institute for civil justice published a study in 2002, which made some important findings. The growth in the most recent claims filed is by individuals who are making claims for non-malignant injuries and the frequency of claims from those who are less seriously ill is growing, in their words "very rapidly". This growth in the number of claims is attributable to people exposed to asbestos while working at a job site where asbestos was present in the atmosphere but not to the degree typical of traditional industries. The study found that the typical asbestos claimant brings a claim against several dozen co-defendants at a time; \$54,000,000,000 has been spent as of 2000 on abatement of asbestos and litigation and all current estimates for the future agree that at best only about one-half of potential claimants have thus far come forward. Well what does this mean for us in Spokane? This study suggests that we can expect additional claimants in the future who have been exposed in less severe ways to asbestos. The cost of both settlements and legal expenses is borne by companies and their insurance carriers and ultimately that cost is passed along to the rest of us in the form of higher premiums and higher prices. The legal purpose of regulation is to provide both a protection to the public against exposure to dangerous or hazardous elements and to create a deterrent to those who engage in behavior which might subject the rest of us to those hazards or dangers. We believe that the improving of the public's ability to monitor compliance with these rules will enhance the ability and desire of contractors to more carefully comply with the rules and in the long run will benefit the public health and minimize the costs associated with expensive litigation and medical treatment. We don't need more layers involved. We're asking you to make important information more accessible to those who employ contractors whose behavior could subject them to either the health dangers of asbestos exposure or to the entanglements as co-defendants in expensive future asbestos litigation. To those who argue against such transparency the answer is very simple: comply with the rules. Thank you.

Jerry White is with Unitarian Universalist Church of Spokane and a volunteer with the Spokane Alliance. These testimonies speak to the Spokane Alliance's concern about the asbestos violation of Spokane Clean Air's regulations. Four final thoughts we would like to leave you with are violations of asbestos regulations cost everybody both money and impaired health. The Spokane Alliance believes that a higher profile of violations will make enforcement both easier and less costly. When contractors violate the regulations, as Jody points out, even good contractors and innocent people suffer. Second, other types of violations are even more

transparent than the web reporting that we're requesting here. For example, in the newspaper you can read about a person who sped, exceeded the speed limit, ran red lights, you can read about somebody in domestic abuse, you read about burglaries and thefts. Third, the transparency of all kinds is just fundamentally necessary to a properly functioning democracy. Finally, as you consider the pros and cons of this issue, we believe the fundamental question before you is which do you value more, public health or contractor privacy. We hope you will pick public health. Thank you.

Beth Hodgson is with Spring Environmental. I don't work in the asbestos industry at all. I recognize that the purpose for this or the initiation point for this was the asbestos and I agree that there is a value to the public in being able to identify and access this information. I'm a little concerned about the resources that are going to go into addressing all of the industries. This is going to address open burning, it's going to address industrial sources and it's going to spend a lot of resources updating that information to address one sector which is asbestos. Some of the disadvantages - you're going to spend the time and it's also going to really address what public perception of business is. I'm not talking about contractors, I'm talking about businesses that are out there, all the written comments that were made were by industrial sources and I'm not representing any of those particular sources. I'm just raising a question of if this focus was relative to asbestos, why isn't it just addressing asbestos; make it easy for them to find the asbestos information, why all the time on the rest? Thank you.

Chair Jeff Corkill stated that Michelle pointed out that we had to cover all of what Spokane Clean Air does not just asbestos. Michelle stated that as a government agency, we can not post NOV results for one particular sector than for other sectors and that's why it was determined that in order to have equal protection to all of the businesses, all of the regulatory activities of the agency would be included.

Councilmember Rose Dempsey was wondering if on the web site we could list the categories that these were involved in so that asbestos would be a separate category and somebody going to the web site and they were looking for asbestos, they could just click on that and go directly to that and it would list the violations. Also could the number of violations be added so that somebody looking at the site would know whether it was a single violation or 300 violations? That would make a huge difference in someone's perception of a company if there was a single violation versus a whole slew of them. Bill stated his understanding is that the data base will be searchable so that you can click on a category and scroll down to asbestos and find the person you are interested in and click on their name and all of the violations for the previous five years will be listed (this may take some time to get them all into the data base).

There was more discussion between the Board Members and Spokane Clean Air staff. The Board Members present were in favor of posting NOVs on Spokane Clean Air's web site for easier access to the public. Commissioner Bonnie Mager thanked Spokane Alliance for bringing this to the Board's attention, taking their time to research this subject and working with the Board and Spokane Clean Air's staff to implement this improvement.

Commissioner Bonnie Mager moved to approve Resolution 08-32 and Councilmember Rose Dempsey seconded it. Motion passed unanimously.

7. Board Concerns – a) Discussion of the date for January’s board meeting. The Board was in favor of cancelling the Board meeting for January. Chair Jeff Corkill asked to have, on the February agenda, voting for a new Chair of the Board. Also, after the March board meeting, there could be an open house for the new office. Commissioner Bonnie Mager asked Barbara to check with Daniela to see if the letter is on file for her to hold the position on Spokane Clean Air’s board until 2010. Commissioner Bonnie Mager will then have Daniela copy it for the other two Board Members for when they go into their meeting to make selections.

Chair Jeff Corkill asked where they were as far as the Hearth Product Industry subpoenas, and them having to bring the items to Spokane Clean Air rather than faxing the materials. Michelle stated that letters were faxed to everyone to make sure that they received something before the December 4th meeting. We have heard from most of them and she, Matt and Bill have discussed talking about their approach on this subject and what they want to do and how they want to do it. This should happen within the next week or so to make sure they are all on the same page and they’re proceeding in a way that is most effective both from a time and money standpoint. There will be an update on this at the February board meeting.

8. Public Forum

Gary Smith with the Independent Business Association has been asked by the Northwest Hearth, Patio and Barbecue Association to come and address the Board on the issue of the subpoenas that were issued by the Agency on November 6th. I am here today to respectfully request that the Board withdraw and rescind those Subpoenas. I’d like to provide your clerk a copy of the letter to distribute to you. The Northwest Hearth, Patio and Barbecue Association has been a long time partner with this Agency in working on numerous issues to improve air quality. The bullet points you see on that letter is just some examples of the activities that this organization has undertaken in cooperation and in partnership with you. I want to thank Bill Dameworth for working out an acceptable schedule to the subpoenas that were issued. Those subpoenas were issued Tuesday and Wednesday before Thanksgiving to a bunch of very awe struck small business owners on the west side of the State trying to understand why in the world they had to appear today, in Spokane. It also indicated they had to appear here on January 8th, the meeting you’ve just cancelled. Thanks to Bill, we were able to work out a schedule that’s much more reasonable, otherwise we probably would have all been standing in court on Monday of this week trying to quash subpoenas. The organization has a long history of working with you in a cooperative manner. What they’re asking for is that we continue to work in a cooperative manner. We don’t think that subpoenas are the way to go. If you’d like information, a courteous business like letter is appropriate. If in fact you have somebody that’s recalcitrant in the magnitude of the information being requested, that necessitates the subpoena, we think that’s appropriate. But for people that are working together on a common goal, issuing subpoenas is not an appropriate measure in our mind. So with that Mr. Chairman, Members of the Board we’d really appreciate today you taking and making a motion to withdraw the subpoenas. The people are complying; I think you’ve already heard that from staff. We will assist you in trying to make sure that they all comply and again subpoenas are appropriate if somebody is recalcitrant. I would be more than happy to respond to any questions you might have. Commissioner Bonnie Mager asked for clarification from staff because the Board did not take this lightly and she believes there was a process that they felt legally they needed to go through so she will defer it to Michelle in terms of the process. Michelle stated the list that we had been

provided, as far as she understands it, were businesses that Ecology had on their list as people that were selling these devices. We didn't construct the list and that was how it was provided to us. There didn't seem to be any real basis on which to identify who to ask for first. From the last meeting we had 40 and decided to pare it down to what we thought to be a manageable number. One thing I didn't foresee was how long it was going to take to actually get them served on the west side of the state, so that was something that we learned through the process. It was certainly never our intent to hit somebody with a subpoena with a short amount of time to respond. One of the challenges that we face is we are asking people to provide information about something that is in fact a violation, if they've been selling them and/or potentially a criminal offense if they've been selling them. I have some hesitation for those people who are in fact violating the law that if we ask them to tell us that they're violating the law that they're actually going to do that. With that said, I'm absolutely willing to work with the organizations to try and better pare down who our issues may be with and who they aren't. That is one of the benefits that we've come through, through this process is now we can work forward that way in perhaps a way that is more efficient and more pointed than we did before. We certainly want to do that and work with people." Gary added "I looked at the list of people that received the subpoenas. Some of them were manufacturer's representatives; they don't sell any products to the consumers. Some of them were manufacturers on the west side that don't build these products. I think that there is a good likelihood that none of the people on the list that received the 20 subpoenas served on the west side do any business on the east side at all. This was characterized by many as a fishing expedition and we respectfully request a courteous, business like approach, for recalcitrants a subpoena is appropriate. To start with a subpoena, we think is totally inappropriate. The people that received them don't understand the legal process, but these are under the Superior Court Rules and they're not exactly sure where they stand. In an err of cooperation with this organization and this industry that's been working with this Agency for well over a dozen years, it would be an effort and good faith to rescind the existing subpoenas that have been modified anyway because quite honestly they didn't give enough time to respond under Superior Court Rules. It would be appropriate and a gesture in good faith to rescind these and if you have recalcitrants go after them." Chair Jeff Corkill stated "It seems like since what we are after is whether people have been selling illegal burning devices, then how do you get information without a subpoena." Gary replied you simply ask them for it and you can ask them to sign an Affidavit that it is true. There was a lot of discussion between Gary, the Spokane Clean Air Board Members and staff and its legal council.

Councilmember Rose Dempsey moved to withdraw/rescind the Subpoenas from Item 11 of the November 6, 2008 board meeting and Commissioner Bonnie Mager seconded it. Motion passed unanimously.

Commissioner Bonnie Mager asked for a motion for the Board, legal staff and Spokane Clean Air staff to get together and clarify how they are going to do the letters, who will be served and who we might get to partner with on this project, in terms of Ecology, and back up and start over. Chair Jeff Corkill restated "This would be so that the Board would encourage Bill, Michelle and Gary to work out some way we can go about this and get together with Ecology and take a different approach. Bill stated that we can work on that in the interim and have a report for the Board at the February board meeting. Commissioner Bonnie Mager asked if Bill has it before the February board meeting, she would like to have the Board members e-mailed so if they have any comments or thoughts, they can e-mail them back to Bill and Gary. Michelle

stated “I would also recommend that we send a letter to each of those people that received subpoenas, indicating the Board has rescinded them so that everybody knows exactly where we’re at.” Chair Jeff Corkill would still like to go back to the business agreement where they could indicate whether they had sold anything in Spokane County and it would be on a volunteer basis rather than on a legal basis. Commissioner Bonnie Mager asked Michelle to let the people who receive these letters know that we are going forward still with this, we are just taking a better tack. Chair Jeff Corkill then closed the public forum.

The meeting adjourned at 10:40 a.m.

The next Board Meeting will be February 5, 2009 at 9:00 a.m. in the lower level of the Public Works Building.

JEFFREY CORKILL, CHAIR

WILLIAM DAMEWORTH, SECRETARY