



WEST 1101 COLLEGE, SUITE 403 ♦ SPOKANE, WA 99201 ♦ (509) 477-4727 Fax (509) 477-6828

## BOARD MEETING MINUTES

September 1, 2005 9:00 a.m.  
SPOKANE COUNTY PUBLIC WORKS BUILDING  
LOWER LEVEL HEARING ROOM

### PRESENT WERE:

Michele Pope  
Commissioner Harris  
Matthew Pederson  
Mike Brewer  
Commissioner Mielke

### STAFF:

Eric Skelton, Director  
Matt Holmquist  
Michelle Wolkey, General Counsel

**WORK SESSION:** There was no work session of the board meeting.

**BOARD MEETING:** The board meeting was called to order at 9:03 a.m.

### **Public Concerns**

The public was invited to come to the podium and speak.

Peter Williams stated that he served as the Vice-Chair on the SCAPCA Advisory Council and wanted to address the recent discussions about the possible removal of Eric Skelton as SCAPCA Director and the dismantling of SCAPCA. He pointed out that the greatest asset to the community of Spokane is the quality of life and the quality of the air in Spokane. He credited Eric Skelton as the one primarily responsible for the success that SCAPCA has had in initiating a number of programs to insure that Spokane has quality air. He further stated he had found Eric to be a man of integrity, an excellent manager, and a valuable leader. In his opinion, to remove Eric from his position or to dismantle SCAPCA would be a travesty to the community of Spokane. He stated it was important that Eric Skelton maintains his position and that SCAPCA remains in its position to insure air quality.

Commissioner Harris interrupted the public concerns segment, refuting the assertion that the board was contemplating removing Eric Skelton from his position, and attributing the misrepresentation to an article in the newspaper. He also stated that the board was not contemplating whether SCAPCA should be done away with, stating that SCAPCA's a very necessary organization. Rather, he stated the board is examining two things: One, the way that SCAPCA does business in treating its customers (i.e., a regulatory agency can be a gentle agency and still achieve the same objective). The second thing the board looked at is whether there was truly the falsification of a document

Commissioner Harris qualified his previous statement, saying it could happen (i.e., Mr. Skelton could be removed as Director), depending on the outcome of the investigation on the document That's why Commissioner Harris wanted to turn it over to the County Prosecutor. He went on to state that in every

department, the way that people conduct themselves is a direct reflection of management. Restating his assertion that the newspaper article was misleading, he chastised Karen Dorn-Steele publicly, stating she ought to be ashamed of herself in misleading the people in this community

Commissioner Mielke continued the board's comments; there were a couple of things that needed to be clarified. He wanted to be very clear that this Board typically meets once a month, but in August the board sometimes decides to skip the meeting and move on to September. In this case, the board had received a couple of complaints and in one case, one of the people who had complained to us was being threatened with a fine that would take place before the September meeting. So the Chair simply suggested the board not bypass the August meeting. The second issue was that the board received some complaints over the course of time that always come back to behavior; i.e., whether behavior was appropriate from a staff person. So at the last meeting the board decided to take a look at a couple of these instances, especially the one that seemed to be pending with fines being threatened to be imposed almost immediately. The reason it caught the Commissioners' attention is because it involved a property that the County owned and sold at auction and suddenly the person we sold it to was being threatened with fines for something that occurred not only before they bought the property but before the County bought the property. We ran out of time at the last meeting and all we had time to hear was one side of it.

There was another case that we reviewed where it appeared that some of the SCAPCA work had involved a great deal of research and review of land use issues, something that the County's respective Building and Planning Departments are responsible for. So the question was if SCAPCA is regulating air, then the Building Department should be the one that determines whether it's properly zoned. In the first case, there is a very clear record of actions taken by the property owners to try to resolve the problem. So suddenly we have this time line where they are trying to resolve the problem, seeking the advice of outside experts who are trained in asbestos removal, and where apparently that outside expertise was turned down and refused by SCAPCA. Then, you have two identical documents and if you hold them up in the light, the signatures overlap each other but there is one very stark difference, they are dated one day apart from the fax machine. The one that came from an outside lab to find out if there was asbestos, time and time again it said there was no asbestos, except for one item that everybody agreed to that said there was small traces of asbestos. A day later, the same document was faxed, and I don't know if this is true or not, but it came from the SCAPCA office to a SCAPCA fax number and instead of all the "nones" still being there, they're all whited out, they're all gone. The second thing is the roofing layers rather than being separated out item by item, have all been combined. What SCAPCA said is since there are trace amounts of asbestos found in one item, we're going to say that it was found in all items and this was dated one day later. I don't know where this document came from, but it certainly shows that the scientific data we should be using to figure out strategies to protect public health were altered. If you find out there's an agency that regulates you that is changing the scientific data for whatever outcome, we should all be concerned. If somebody is manipulating the data, we should all be concerned because none of us as individuals has the resources, if an agency wants to go after us to impose fines (and in this case the fine was \$10,000 a day). I ask everyone of you in this room, if an agency came to you because of a piece of property you bought and started saying you've got to clean it up or else and there are other factors in this discussion, we would all be challenged to be able to comply. So that's what brings us here, is trying to find out what happened and was this truly a service to the public. That's what brings us here. It's not my goal to simply single-handedly, whole handily just say the organization needs to be shut down. The issue that I am hoping for is that this is an isolated event that we can figure out how it occurred, and make sure that it doesn't occur again. Hopefully we can

make sure that we have an agency that not only works well but works better than how it's worked in the past.

The public comments segment resumed:

Richard Rivers stated he is a physician and internist and a resident of the Spokane area for the past 30 years. He stated he was puzzled as to why a discrepancy in documents, before any questions are even answered, is being made public as opposed to making it public after an investigation. He went on to state that during the time he took care of patients, he treated hundreds if not thousands with chronic lung disease. While it's difficult to prove, it's very reasonable to expect that the lives of many of these patients have been improved and prolonged as a result of the activities of SCAPCA. On behalf of his patients and all who breathe air, he thanked the Board of SCAPCA and it's staff and in particular its direction under Mr. Skelton for the work that they have done, getting Spokane into compliance with Federal Clean Air Standards. He further stated it was unreasonable to expect that businesses regulated by a government agency are going to always be in agreement with the regulations or certainly with the enforcement methods of the agency. We will continue to need a strong air pollution control authority under effective leadership.

Linda Green stated as a 29-year resident of Spokane, she was overjoyed that Spokane had finally been removed from the list of the dirtiest cities in the nation and without SCAPCA that would not have happened. She further stated that businesses who complain about clean air regulations are shooting themselves in the foot by demanding less stringent air pollution controls. We want Spokane to be a more attractive place not a less attractive place for new people, for people arriving in Spokane. She was angered that anyone would want to eliminate or weaken an agency that has done such excellent work in creating clean air.

Hank Greer introduced himself as just another citizen of Spokane County. He stated that because SCAPCA has done such a great job, he and many other people in Spokane County have taken SCAPCA for granted. He characterized those complaining about stringent enforcement as a small percentage of the population, making the analogy that the residents of the Spokane County Jail would likewise object to stringent enforcement. He also alluded to the statement of Commissioner Harris from the June board meeting, in which the Commissioner publicly expressed his doubt as to whether Mr. Skelton was doing his job. Mr. Greer stated that the Commissioner's prior statement caused him to doubt today's statements to the contrary (i.e., that the Commissioners do not intend to get rid of Mr. Skelton).

Aurora Crooks introduced herself as the Transportation Demand Management Manager for the Spokane County Commute Trip Reduction Office and talked about the County's working relationship with SCAPCA. Alluding to the over 100 CTR-affected work sites located in Spokane, she stated the relationship with SCAPCA has been wonderful. She further stated she couldn't wait to go to Seattle to the next statewide CTR meeting and applaud what Spokane County has accomplished in improving its air quality.

Gwen Innes pointed out that three generations of her family have been born or grown up in Spokane. She appreciated the clean air efforts of SCAPCA but was very frustrated that a few developers through their complaining can change everything for the public. She thanked Eric Skelton for his work.

Karen Lindholdt introduced herself as a resident in Spokane, a mother of two, and a public interest environmental lawyer. She spoke on behalf of individuals in the Inland Northwest who have been

impacted by air pollution problems and stated that people are here today because we are very proud and we would like to see the good work that SCAPCA has done in the past continue in the future. She recounted when the Department of Ecology phased out and ultimately banned bluegrass burning in Spokane County, approximately 300 physicians in the community were behind that effort and they are currently behind the efforts that Mr. Skelton and the SCAPCA staff are taking. She encouraged the board to think long and hard about dissolving the agency as it serves a critical purpose.

Commissioner Mielke stated it was hard for the board not to become defensive when some of Ms. Lindholdt's testimony can be perceived as threatening. He then asked, in reference to the previous meeting and the perception of an attack on Mr. Skelton, whether she was implying that if she had a staff that was committing wrong-doing whether she would support them.

Karen Lindholdt stated she agreed with the approach suggested by Dr. Rivers, that the circumstance should have been handled internally before taking it public and making statements, asking for a Grand Jury Investigation. Instead, the message conveyed is that if I don't like the way an agency is regulating me, then I can come to this Board and I can really scare these people and get them to back off. She further stated she was trying to understand why so much attention was being given to one entity that has complaints when all of the people present today support SCAPCA now and this is the support SCAPCA will have in the future.

Commissioner Mielke responded by stating that according to the Public Meetings Act, these documents alleged to be altered are public documents and action cannot be taken outside of the public view. He also stated that sooner or later as complaints come in from businesses, those complaints can't just sit in a folder on the shelf, sooner or later we've got to talk about them. He reiterated his concern that when there are efforts made to employ expertise and then that expertise is rejected by staff, that concerns him. He further stated that if he and Mr. Skelton were to have a discussion, if he felt that there were actions that did not lead to a sound resolution to an issue that he would be just as concerned. While he was not prepared to point fingers and say this person did this, neither was he at a point where he could confidently say that somebody didn't do this. Therefore, Commissioner Mielke found it interesting, that by Ms. Lindholdt's testimony she was here to wholeheartedly support the staff at SCAPCA and wholeheartedly support Mr. Skelton.

Karen Lindholdt replied by stating she was confused. Commissioner Mielke has the ability to discuss employment issues with SCAPCA's employment attorney and it doesn't need to be done in a public meeting. She asked why those employees' actions were not discussed in private and why were any comments made to the press about employee status when it's really not appropriate at this stage.

Commissioner Mielke reiterated that these were documents that were part of SCAPCA's record, obtained through a public information request and acquired by the property owner who correctly, assumed that the Board was not aware of the documents and presented them in a public meeting. We are still at a point where we're trying to figure out what happened and want to see a resolution based on good sound science. Commissioner Mielke added that he didn't like to see science manipulated.

Commissioner Harris stated he did not say he was going to call for a Federal Grand Jury investigation. Rather, he said that if falsification of government documents were found to be true, it could lead to a Grand Jury investigation. He further stated he is one of the strongest supporters of clean air in this County and clean water. However, there is not one person in this room that would support falsification of records and he hadn't heard Eric say he doesn't want it investigated. The fact is there was an

accusation made that the records were falsified and SCAPCA should welcome that investigation if there was no wrongdoing. He admonished Ms. Lindholdt to be a little bit more gentle in her approach, because he could be your greatest supporter, but he couldn't do that if she was going to misquote him, attack him and infer that he didn't care about clean air.

Bonnie Mager introduced herself as being on the Board of Citizens for Clean Air. In regards to Commissioner Harris's assertion that he was a proponent of clean air, she recalled his campaign promise to her organization that he would shut down the incinerator. She pointed out that it had been almost 20 years and she hadn't seen Commissioner Harris try to do anything even to regulate the incinerator.

Commissioner Harris replied that after he got inside the bureaucratic process, he discovered there was no way that one person could ever shut down that incinerator. He acknowledged that while he may have broken the promise, it turned out to be a promise he couldn't do anything about.

Bonnie Mager stated she was surprised at what she saw at the August special board meeting because it looked incredibly orchestrated to her, noting that two prominent lawyers in our community, got up and first identified themselves and their lengthy credentials, saying they were speaking for themselves but identified their prominent development interests who felt that SCAPCA had held up their process for too long. And then the two gentlemen got up from Northwest Renovators with all of their documentation and a very compelling argument. She noted that Eric had to sit there mute while people hurled all of these accusations including the one about falsification of documentation and the remedy for all of this was that we were supposed to believe that we should just abolish the agency. She stated she had found Eric to always be professional, to always answer any of her questions honestly and to work within the confines and constraints of his duties. So why would we ask to throw the baby out with the bath water by closing SCAPCA. She reiterated it seemed this was really orchestrated and the board was moving towards an already determined outcome. She concluded by stating she totally supported Eric. He's done a really good job and if his only transgression is having too much faith in an employee maybe who abused his authority, then the board should look to that and take care of it internally and move on.

Stanley Schwartz introduced himself as an attorney with the law firm of Witherspoon, Kelley, Davenport and Toole. He alleged there were some misstatements in the newspaper article that described the August special board meeting. He denied he had said the only solution, with respect to abusive practices, is to disband SCAPCA, but said it was the duty of the Board to take a look at the administration and figure out if they are doing the job they should be doing to the best interest of the community. He further stated while he was pleased that Spokane is no longer a non-attainment area, the credit should not go to SCAPCA, rather this has been a community effort. He pointed out the main problem is that SCAPCA has, in his view, unlimited discretion when imposing penalties and forcing remediation and if you don't do it the way SCAPCA wants you to do it, you face large fines. What's your remedy if you get a fine? You're shipped to Olympia; you lose contact with this Board. He reiterated that this Board should look at the enforcement division of SCAPCA and bring it back locally. This Board has the power to review penalties and to act as a mitigator or arbiter of some of the disputes, instead of being shipped to Olympia. We are talking about, abuse of power and abuse of practices. He then reiterated his suggestion for a performance review. Ask yourself, is the agency overstaffed? If we're now in compliance with the Clean Air Act, maybe we don't need to have as intensive efforts. For example, the board should ask itself whether zoning determinations is what we want this agency to do and whether there is the power and the authority to do that. His final suggestion was to take a look at reassigning some of the responsibilities to other agencies. Maybe the County can perform some of these responsibilities; maybe cities can perform some of these responsibilities. It's done in other parts of this

state and it is a way to achieve greater efficiencies in government instead of multiplying bureaucracies. A performance audit is overdue with respect to SCAPCA.

Kim Thorburn introduced herself as the Spokane County Health Officer. She characterized the August 18<sup>th</sup> meeting as an unusual meeting. Starting with the issue of the documents and the question about alleged alteration of documents, she pointed out that in a similar circumstance within the Health District, she undertook an in-depth employee investigation and once it was determined that in fact the documents were altered, she undertook an employee action and referred it to the appropriate enforcement agency. In SCAPCA's circumstance, referring this matter to the County Prosecutor as a first step effectively slams down any employee investigation. The SCAPCA board has already advanced the matter to a criminal matter before taking the steps to do an employee investigation. She cautioned the board about expecting any open testimony today from the agency to defend it once it has been referred as a criminal matter. Referring to the August testimony of the gentleman from Northwest Renovators, she recalled frequently hearing statements to the effect that this agency is intimidating. Rather it appeared to her that it was SCAPCA staff who were being intimidated over their ability to do their job of investigations and enforcement. She pointed out that when regulatory agencies are working with rules; there really isn't a lot of discretion. If you're doing a good job, if you're investigators and inspectors are doing a good job, they're applying the rules in a pretty black and white way. Referring to the allegation that SCAPCA's moved into zoning enforcement, she pointed out that the State Environmental Policy Act requires when either the Health Department or SCAPCA are issuing a permit (i.e., as the lead agency) we have to insure that all land use issues are in order before we can issue environmental permits. Therefore, SCAPCA and the Health District always get involved in questions of land use, especially when parties come forward to raise questions about the permits that are related to land use. The lead agency is obligated to raise questions about land use under SEPA.

Judy Belous introduced herself as a resident in the area for about nine years. She stated that one thing that struck her in reading the recent articles was when you buy a property it's "buyer beware". These two gentlemen who purchased this property at auction should have done some kind of a study beforehand to find out if there was an asbestos problem. There should be more care taken ahead of time from the County in selling or auctioning off property and when somebody is going to buy auction property, there should be disclosure. She referred to asbestos as deadly stuff. It is something that we want to be extra careful about and be sure that we have an organization like SCAPCA and like Mr. Skelton to oversee these kinds of things. From reading the article about the August 18<sup>th</sup> meeting, she had an impression of automatic bias in favor of business over SCAPCA. She had a specific question for Mr. Harris. The article mentioned that Dr. Thorburn had come before the board to make a statement in her role as Director of a health agency and Mr. Harris allegedly said he was disappointed that she was appearing before the board.

Commissioner Harris answered by saying "yes", he did say he was disappointed and he said it because of the fact he was surprised she was there, because he did not connect her role with SCAPCA. Commissioner Harris stated he sensed that some people think that that August meeting was set up. The Chair called him and said he had scheduled a special meeting because of a complaint from somebody against SCAPCA. When all the testimony was presented there, it was the first time he had heard any of it. He was taken back by the preponderance of the information that came forward from the attorneys and the two people that owned the building on Sprague. He was disappointed for a lot of reasons, particularly because Dr. Thorburn has an agency to run and it is a big agency and an awesome responsibility. In retrospect, he agreed with Ms. Belous that it is a health issue and Dr. Thorburn should be there.

Commissioner Mielke added that the fire in 2001 burned three adjacent buildings. The other two were allowed to hire outside consultants to come in and do a survey of the asbestos that was there, to remove the asbestos and then demolish the buildings. There was a presumption that since that was an allowed process by SCAPCA for the other two adjacent structures that burned in the same fire, that that would be the same process that would be allowed for this third structure. When the property owners attempted to hire outside consultants, is when all of that reversed. The concern that was raised is when you hire an outside consultant and they come and say this is what we found or didn't find and then you have a staff person say I don't believe that and we're not going to accept that, that is part of our concern that raises our eyebrows. Why would we refuse to accept evidence or information from people specifically trained to provide that? Those are the things that just didn't add up in the testimony.

Judy Belous asked Commissioner Mielke if he had queried the staff about that.

Commissioner Mielke replied he was hoping to get to that today because we ran out of time at the last time.

Clare Sosso introduced herself as a citizen that has allergies and asthma. To Eric Skelton and SCAPCA she wanted to say, "You are a hero to me and other people that suffer from this problem." This year for the first time that she can remember ever living in Spokane, she can breathe freely without getting expensive medications. She also wanted to express her disappointment at what she perceived to be money driven, political actions in the region that have attempted to swab down the individuals who head organizations hired to protect public health and the environment.

Tim Connor introduced himself as a long time Spokane area journalist and environmentalist. He pointed out that our air is a lot cleaner than it was 20 years ago and there are a lot of reasons for that and while it would be simplistic to give SCAPCA and Eric Skelton all the credit for that, they certainly led the way and deserve much of the credit. While he would not suggest that SCAPCA and Mr. Skelton and staff are somehow above scrutiny and accountability, at the same time it is important for the SCAPCA Board to appreciate that SCAPCA and Mr. Skelton enjoy broad support and respect in our community for their competence and integrity. He recounted a past episode when Mr. Skelton put his job on the line in defiance of the City of Spokane and members of this board to stop the importation of so called special waste from Canadian oil fields that were being brought down by the staff of the City of Spokane and the Incinerator to burn as a profit stream in our Municipal Waste Incinerator. That is one of the reasons the public understands the courage and integrity that is invested in this agency. There aren't many institutions in Spokane that have a lot of public confidence and esteem, but SCAPCA is one of them and Mr. Skelton is one of the most appreciated public officials in this area for the work he has done. The challenge for the SCAPCA Board in this controversy is to gather the facts and act wisely. Whatever you decide, there should be no hint that the Board is exploiting this controversy to fashion an excuse to do away with the agency and a valued public servant.

Anne Bailey introduced herself as the Risk Manager for Eastern Washington University. She stated that she came and spoke at the last board meeting because there was a memo that was sent out to AHERA Building Inspectors and Training Providers. She stated she attended the August 18<sup>th</sup> meeting because she was concerned about a questions and answers sheet that may be changing regulations without going through the proper administrative procedures. She stated she was surprised to find a letter to her from Mr. Skelton saying that he was surprised that she came to the meeting. She claimed she was pretty much told by Mr. Skelton that she didn't have any right to come to the meeting and discuss these issues

and it didn't apply to Eastern Washington University. She stated that whenever there is a change in the regulations, it directly applies to EWU and therefore she wanted to make a comment to that effect. She passed out copies of Mr. Skelton's letter and said she wanted to make sure that the SCAPCA Board was able to see this because she was taken back by it.

Bart Haggin identified himself as a citizen activist. He pointed out that regulations in some circles are always unpopular. Mr. Skelton is here to deal with public health and politicians and usually their first and foremost is they want to get re-elected. He told the board that if they felt the heat, he was confident they would see the light. He pointed out that the Clean Air Act basically says that all of us should be able to breathe air without endangering our health and SCAPCA has been doing an excellent job of making sure that takes place. He asked the board to give Eric Skelton an opportunity to have his say in defense of his agency and in defense of whatever accusations are being made.

Jan Tenold identified herself as the mother of an asthmatic daughter and stated she appreciated all of the efforts of Eric Skelton and SCAPCA of cleaning our air. She further stated she was shocked when she heard Mr. Mielke give his opening remarks. While stating he was unclear in his mind whether something wrong had been done, he held up two papers and said this was obviously falsified. Ms. Tenold found it incredible that this is the way a problem would be investigated, accusing people of wrong doing without doing any kind of research into what happened, who did, when they did it, why they did it. An investigation doesn't happen in five minutes in front of 50 people. An investigation happens when you take some time and you go through whatever process you have to go through.

Commissioner Mielke replied he had shopped these two documents around to probably two dozen people and most of them said this doesn't look right. He asked Ms. Tenold if she was concerned that he was asking questions.

Ms. Tenold reiterated she just would have assumed there would be a process for solving this problem other than saying he had asked this question and then insinuating to all of these people that this happened and he doesn't even know why it happened.

Commissioner Mielke reiterated his comments earlier were to say this looks very suspicious, it looks bad and it should certainly be cause for a concern that we should want to know what happened here, what is this all about. He said he has stated several times that he doesn't intend to make any final decision on this until he's had a chance to talk to Eric and hear from the agency and hear input from as many people and sides as possible.

Jan Tenold agreed this should be reviewed, but in a different context than at a board meeting. If there's some problem, then it should be fixed, but not by throwing out the organization or the Director.

Heidi Gann stated a concern that in this climate where we have a boom going on with building and a need for more tax revenue that environmental protection is going to go by the wayside. She added that every day she reads in the paper about another project that's going through without looking at public health and quality of life. If anybody needs a watchdog, it's you guys.

Steve Mumm stated that as a business owner in Spokane for the past 20 years, he was here to offer his support for SCAPCA and its Director, Eric Skelton. He went on to state that SCAPCA is not the problem, rather pollution, dirty air, unhealthy air and polluters are the problem, and to the public any kind of impression that clean, healthy air isn't important to this community is not only bad for people

but it is bad for business. As a broadcast meteorologist with KXLY from 85' to 95' he used to go on the air every night and report the poor air quality index in the community. Every night we were saying the worst possible PR about this community for people who were thinking about living here or working here or relocating their business. Today, people can live anywhere and work anywhere if they have a telephone line and internet connection. They can choose any community they want and the communities that people choose are those that are well planned, well conceived, have efficient delivery of services and healthy air. He encouraged the board to have the vision and the foresight to continue to increase the efforts to plan for the health, safety and welfare, the efficient delivery of services, creating a community that is attractive to business because in the long run, that's what's going to be the best for the economic vitality of this entire community. He reiterated his support for SCAPCA and asked the board to put the needs of the public ahead of the few.

Dale Smith voiced his concern about trucks that aren't covered carrying gravel and dirt. He stated that the RCW 46.61.655 calls for all trucks to be covered, with the exception of those that have a six inch freeboard on the side. He said that although it's a state problem we can start here in the city to where some of these trucks would be covered.

John Osborn introduced himself as a Spokane resident and a physician at the Veteran's Hospital for 19 years. He takes care of people with respiratory disease, emphysema, lung cancer, and asbestosis. It's from that perspective that he became concerned about the perception that SCAPCA was under attack. He stated that clean air requires at least three things; a legal framework, an agency committed to carrying out that framework, and you need funding. The failure of one or more of those components either cripples or dooms to failure the ability to achieve the objective, which is to achieve and maintain clean air. The Board should advocate for the agency so that it can do its job.

Paul Lindholdt introduced himself as a professor at Eastern Washington University, a parent of two young boys, a homeowner, and a participant in the Commute Trip Reduction Program. He noted that for the first 20 minutes of this meeting, he was pretty astounded by the abrogation of process. According to the board agenda, the first item is public concerns, yet in the first 20 minutes of this meeting the public had two minutes to voice their concerns and the Board Members had 18 to scold the public for voicing their concerns. Referring to the document that Mr. Mielke's held up several times and made public before an investigation, he questioned that abrogation of the process. Referring to a previous statement of Mr. Harris (i.e., he'd like to know how SCAPCA is treating its customers) it seemed that Mr. Harris's customers were the corporations and the business people. Professor Lindholdt submitted to the board that all who breathe the air are customers and it's not just the people who pay the big taxes who are perceived as having the power to wield in this community.

Mike Petersen introduced himself as Director of the Lands Council, an organization that works on water and land and forest issues. He noted they had not had to work much on air issues and one big reason is that SCAPCA's around. He indicated he could empathize with Mr. Skelton because he's also a director of an organization and has a Board to answer to and one of the things that he expects from the Board is that they support the mission and goals of his organization. He said he hoped this Board supports SCAPCA's mission and goals, but he had heard some things this morning that indicated possibly they don't all the way or they would like to change that mission. He also noted that if one of his board members started bashing the press in a public meeting, he'd be really nervous about that. He thought it was inappropriate to be flashing evidence while an investigation is going on and without seeing if there is a simple explanation. He hoped the Board would look at their Director and be supportive of him

when he gets attacked and be there to defend him and not give this perception that they don't defend their director.

Cindy Thompson introduced herself as a resident of Spokane County and Director of the American Lung Association of Eastern Washington. She pointed out that Eric has a very long history in this community a lot of successes. She recounted the success of achieving attainment status from the EPA for carbon monoxide and particulate matter and mentioned the Vehicle Emissions Repair Program (VERP) to assist low income people financially with repairs of their vehicles when they failed the emissions test and the school bus retrofits. She also mentioned Eric's national and statewide leadership. In 1999, he was elected as the national president of the Association of Local Air Pollution Control Officials and in 2000 he was selected as Chairman of the statewide Washington Air Quality Managers Group and most recently in 2005 Eric was appointed by the U.S. EPA to its Mobile Source Technical Review Subcommittee. She stated the community needs SCAPCA to be able to carry out the work that must be done in order for Spokane to remain a place where businesses can grow and at the same time protect the health of our citizens. She recommended that before the board takes any action on Eric or SCAPCA, that they conduct evaluations and surveys, utilizing resources within our community such as WSU or EWU, and do an assessment with the businesses in this community.

Mike Noder introduced himself as owner of MoMike Demolition and mentioned his experience dealing with asbestos related issues. He stated he was surprised about the tenor of the meeting this morning. He stated he would like the Board to look at the functionality and efficiency of this agency in terms of performance metrics; i.e., how we rate the ability of this agency to increase clean air and reduce the expense to the communities and not just the businesses but the homeowners. He noted that when he started his company in 91' there was no enforcement of asbestos. At that time we needed an agency that would block and tackle for the citizens, but what's evolved now is it is very difficult for people who want to comply with the agency. The economic and environmental environment has changed now. The companies that are trying to comply can't and no matter what they do it is creating huge expenses and large delays in construction projects that can be tens of thousands of dollars a day in carrying costs because it can't get the stuff out and they're not sure what to do and there has been evidence of SCAPCA giving inconsistent direction. Throughout the nation, OSHA and Labor and Industries base their performance metrics on the level of citations. 30 years ago it was very easy to get serious citations and show gross flaunting of the law, but now that's rarer and rarer, but the performance of the agencies is often times how many citations did they get. There needs to be more interaction between the agencies to make it easier for the people to comply. He said what he would like the Board to look at is these metrics about how to rate performance and how we have the companies and homeowners more efficiently address these hazards and still give the community the clean air they're looking for.

Doug Gore introduced himself as owner of Northwest Renovators. He thanked the board and, referring to all of the support voiced this morning for SCAPCA he stated he thought most of the board members understood the issues but that the people of the audience have not understood that the issue really had nothing to do with clean air. It's really been about the implementation of policy and how outside organizations are treated. He stated he had only asked for evidence of the presence of asbestos ever since day one; to let the science dictate what happens to our site. He provided the findings of MCS Environmental. He noted that SCAPCA's plan allows for the building to be abated and then in turn removed as standard construction debris. The debris piles will be removed under the alternate work plan for non-friable asbestos. He expresses his hope that the Board would make a motion today and vote to allow no further delay in this process, in the abatement and removal of this site, no further discussions or

rebuttals by SCAPCA, no further surveys, no further back-and-forth tug of wars. This whole thing has had nothing to do about clean air.

Sam Lee introduced himself as the father of Mike Lee, one of the owners of Northwest Renovators. He commended the Board for the diligence that they've shown in trying to determine what the problem is. Referring to the documents which have been the subject of the investigation, he stated that some of the people who came up here just didn't want to understand it and there seemed to be some thought that there was a conspiracy here. In particular he commended Mr. Mielke and Mr. Harris for being very objective about this. These young fellows just want to be treated fairly.

### **Discussion of "Big Picture" Policy Level Issues from August 18, 2005 Special Board Meeting**

Commissioner Mielke noted there were two suggestions made from testimony, at the August meeting that we review further. In light of the length of today's agenda, he recommended the board incorporate those into future agendas to be reviewed in more depth. One was the notion of doing a performance audit to make sure that we are being as efficient and effective as possible. The second suggestion was a review with regard to the enforcement processes of SCAPCA.

Stanley Schwartz was invited once again to speak. He stated that in 2002, the SCAPCA Board took a look at their enforcement program as it relates to the Notice of Violation and Notice of Penalty, and the staff put together a matrix in order to try to show how their discretion was being exercised. He acknowledged that in many ways that is a very discretionary activity, but my primary point is what's happening in Spokane. When a Notice of Penalty is issued, you're shipped over to Olympia. Instead, the problem should be addressed locally. He suggested SCAPCA's attorney look into and advise the board accordingly in the sense of how this Board can act as a Board of Dispute.

Commissioner Mielke agreed it would be a healthy exercise to occasionally review our internal processes within the organization and if the last discussion on this topic was in 2002, maybe it is worthy of simply reviewing at some point in the future. He reiterated he'd like to take some time at a future meeting and review what that process looks like; i.e., how we coordinate penalties between Department of Ecology and SCAPCA when there may be some dual jurisdictional issues.

Matthew Pederson stated that we will add that to our next regular scheduled meeting in October and hopefully Eric can put together a packet covering that issue and we'll get it in a couple of weeks and have some time to review it rather than the single week that we had for our board packet. The other item was the performance audit.

Commissioner Mielke suggested putting that off until somewhere in the next two meetings.

### **Minutes of the June 2, 2005 Board Meeting**

Michele Pope moved to approve the June 2, 2005, board meeting minutes and Mike Brewer seconded it. Motion passed unanimously.

### **Follow-up on Document Fraud Allegation – Michelle Wolkey**

Michelle Wolkey provided an update on the allegations that have been leveled. She stated it was her understanding there has been a referral to the Prosecuting Attorney and then to the Police Department to

the City of Spokane, but there's not been any contact as of yet. Right after the August meeting, an internal review was conducted. The customary practice when samples are taken is the left-hand side of the Chain of Custody Record is completed on site. It is then usually hand delivered to the lab along with the samples and that's where you see the "released by" signature. The lab makes a copy of the partially completed form when it's handed over and that copy is retained by SCAPCA awaiting the results of the lab tests. Sometimes when the lab tests are completed, there will be a telephone call from SCAPCA to the lab for a verbal response as to what the results are and on the right hand side of one of the forms, "verbals" (dated 2/2 in this case at the top) is an indication that the SCAPCA employee contacted the lab and got verbal results from the lab on that date. What were written down are those samples that had any asbestos. Where there was no asbestos reported, there was just nothing written down. Subsequent to that, the lab will ordinarily fax to SCAPCA their completed form (note the "McCarthy" signature on the bottom where the lab person has completed the right hand portion of the form). The two forms partially match because they're photo copies, at least at the time the samples change hands. Subsequently the lab sends a formal written lab result analysis to SCAPCA and in this case that wasn't received until the 7<sup>th</sup> of February. It's also important to note that while certain agencies regulate different types of asbestos or depending on what there called, tar or mastic, for SCAPCA's purposes if it has more than one percent asbestos, whatever you call it, it is regulated by SCAPCA. So it would make no difference to SCAPCA, it would have no benefit to SCAPCA to call it tar or anything else. Any fax that is sent by SCAPCA has a header on it and date and time and you'll see that on the one that has the verbals on it. That indicates that at 11:43 on February 2, SCAPCA faxed to Northwest Renovators the form that had the verbals on it. The other document has the "received" notation. The footers are different, it says received 2/1/05 – 10:04 from the lab to SCAPCA, that's printed on any document that's received by SCAPCA's fax machine. It does not appear that there was any intentional or unintentional falsification of documents by anybody at SCAPCA. It is unfortunate that this type of allegation had to be brought up in a public forum.

Commissioner Mielke asked, in response to the issue of under SCAPCA's regulations anything that contains one percent or more asbestos would fall under the regulation, are we consistent with the state law?

Michelle Wolkey replied that actually Federal Law sets the asbestos standards.

Commissioner Mielke stated he asked the question because the board received testimony at the previous meeting that black tar was exempt from the asbestos regulations but that roofing layers are not exempt.

Eric Skelton replied that what was alluded to was under Department of Labor and Industry regulations, which are designed to protect workers on site. There are distinctions made between different types of asbestos containing materials in order to dictate work practices to protect workers. SCAPCA not being in the worker protection regulatory arena but in the environmental protection regulatory arena regulates all asbestos material the same as long as it contains one percent asbestos or more.

Commissioner Mielke also inquired as to why both of the documents that were handed out at the August meeting appear to be on Mountain Laboratory letterhead stationery.

Michelle Wolkey responded that if we are going to use Mountain Labs as the testing facility, then we fill out the form with their name on it.

Matt Holmquist added that Mountain Labs customizes each form for their different clients, that's why you see SCAPCA at the top, it's been customized for us.

Commissioner Mielke inquired further regarding the timeline, noting there's a fax to SCAPCA on February 1<sup>st</sup> and perhaps unbeknownst to staff it remained on the fax machine and that's why it's not stamped as received until February 2<sup>nd</sup>.

Matt Holmquist replied that the fax machine confirms we received it 2/1/05 at 10:00 a.m. even though the verbals were received on 2/2. Either the form sat on the fax machine or it got put in one of two other additional "In" boxes and that's either the inspector's in box or the asbestos in box.

Commissioner Mielke was still concerned that on the form there were verbals listed, yet all the signatures are in place. The copy of the form that hadn't been retained by the lab (i.e. the one retained by SCAPCA) shouldn't have any signatures on the bottom except for the inspector.

Michelle Wolkey pointed out that the form should in fact have both signatures because it is filled out at the time that the samples are handed from the SCAPCA employee to the lab.

Commissioner Mielke asked, "So Mountain Labs never has to sign off?"

Matt Holmquist pointed out that is exactly what the laboratory representative did; they've signed off on receipt of the bulk samples.

Commissioner Mielke asked, "But not on the results?"

Matt Holmquist pointed out that the lab filled out the other form (i.e., the one they retained upon sample custody transfer) where they have written in the right hand column. Ms. McCarthy has signed off to the effect that those are her results from the laboratory. The formal results are then mailed to SCAPCA with a cover page, along with a table for each material that was analyzed and a description of all of the contents. You can see on the original there's nothing whited-out.

Commissioner Mielke stated that what really caught his attention was, rather than allowing Northwest Renovators to do the same thing that the other two businesses did (i.e., go out and get a survey and get it done), for some reason something changed along the way and suddenly the owners are saying this is a non-surveyable site and then it looks suspicious when these documents were made public and one document has the word "none" written after a number of the items and the other one it is left blank.

Eric Skelton reiterated that the letter from Mountain Labs is the official result and it gives a full accounting of each sample, whether it's asbestos containing or not and that carries infinitely more weight than what's on a Chain of Custody form.

Commissioner Mielke replied, "Unfortunately we weren't provided that at the last meeting."

Commissioner Harris inquired as to who Karen is.

Michelle Wolkey replied that Karen Drader works for Mountain Laboratories.

Commissioner Harris stated here's the problem that caused it. We keep talking about faxes, both of these copies on the bottom says delivery method was hand, it doesn't say fax, it says by hand. You can't change that word, it's in the box.

Eric Skelton replied that those are the samples; the samples were delivered to the lab by hand.

Commissioner Harris replied then it should have said delivery method of samples. The board can't interpret everything that is on the form by what it says; we have to have something that tells us what it says and what it means. Regarding the fax copies, with one dated one day and the other one with another date, that gives cause for concern and that's why the owners of this building challenged that this thing had been changed illegally. When somebody in a public meeting presents a document, especially to elected officials, that says, "We believe that this has been altered", if you will, a government document has been changed, then those officials have an obligation to look into that. The bottom line is we've got to get the final finding before we can move forward on the document.

### **Presentation of a Remediation Plan, Developed for Northwest Renovators – Matt Holmquist**

Matt Holmquist presented the proposed work plan. On or about August 24<sup>th</sup>, MCS Environmental, a consulting firm, hired by Northwest Renovators performed additional sampling following an approved grid sampling plan. The results of the sampling show that additional asbestos containing materials were identified at the site. The decision has been made to proceed with a combination of work practices; one being some standard abatement work practices for largely the north portion of the property where materials are still in tact where abatement can be done using normal practices, combined with the alternative means of compliance work plan approach that would be for dealing with the debris pile in the back of the property. That will all be treated as non-friable asbestos and hauled off that way. Sam Bailey from MCS put together an alternate asbestos sampling plan to do some additional sampling to SCAPCA's satisfaction to make sure that all asbestos was addressed. Going through this entire process, one thing that we could do to improve is to come up with a standardized Alternate Means of Compliance Work Plan.

Commissioner Mielke asked if SCAPCA staff had input when the survey plan was being developed.

Matt Holmquist replied that Sam Bailey proposed an alternate asbestos sampling plan and SCAPCA reviewed it and approved it. MCS proceeded with the sampling and they got the results and now everybody's ready to move forward.

Commissioner Mielke stated whenever someone ends up being owner of a building that burns, that's suspected of having asbestos in it, they need to know "how do I move forward". If they call on outside experts and the regulatory agency and the experts are in conflict, the owner is stuck in no mans land. We want to avoid future instances where all of a sudden the owner gets a letter that says if you don't take care of the problem right away you're going to be fined.

Matt Holmquist replied that even though the initial abatement contractor had good intentions of surveying the site and putting together an Alternative Means of Compliance Plan, he had never done that before and mistakes were made.

Commissioner Mielke asked if we are doing anything to insure that if someone obtains a demolition permit in Spokane County, on the permit it's got language that says you need to contact SCAPCA for further information.

Matt Holmquist explained that the City of Spokane was actually the first to put something on the form itself where it says to contact SCAPCA prior to renovation or demolition. The people that typically get into trouble are the ones who have not taken out a building permit. There are a lot of referrals between the City and SCAPCA and the County and SCAPCA. About a year ago the County added language to their forms. However, sometimes when people call up the City or the County to do a certain type of project, it may be a project where that verbiage doesn't get put on a specific type of form or the City or County tells them they don't need a permit from SCAPCA to do that kind of work.

Michele Pope stated she wanted to thank Mr. Gore and Mr. Lee for going through the trouble and the effort and the expense to bring this information forward. Because although SCAPCA may have competent and educated staff that has a history of working well with the community, it is so essential that when any business thinks they can see a better way or have a complaint, we want to know about it. We need to be able to respond to that because businesses are the life blood of our community and we need to be able to work together with that. She reiterated her thanks for all the strength that it has taken for Mr. Gore and Mr. Lee to do this for us.

Eric Skelton asked whether the Board intends to take action on a remediation plan or based on what the Board has heard does the Board just want to let things proceed as they are.

Commissioner Mielke stated he was hearing that the property owners and SCAPCA staff have gotten together, developed a plan to move forward, and it sounds like both parties are in agreement.

Doug Gore with Northwest Renovators stated that the only issue remaining is he felt we were at this point once before, where we had evidence, we had science, we had a meeting with SCAPCA and felt that everything was in line, we hired our asbestos contractor and then we hit a road block again. He asked for concurrence that the evidence is here, the science is here, it's done and it's over with and they can move forward with no more delay. If MCS provides a plan, they are the professionals, they know how to do their job, unless there is something blatantly out of the ordinary, that SCAPCA is not going to go back and then three months down the road we're still in the exact same boat that we're in right now.

Commissioner Mielke reiterated his understanding that we've surveyed the site, we believe that we have a pretty good handle on the extent of work that needs to be done and now what's left to do is simply develop and refine the plan to remediate, but that the scope of the remediation has been determined. The bigger concern is that we have internal processes at SCAPCA as far as timelines. Commissioner Mielke suggested we allow the process to go forward and take a very short time period out of the next meeting just to get an update.

### **Voucher Approval for June \$104,133.82 and July \$141,389.29**

Commissioner Harris asked regarding number 889, Washington Mutual Bank, travel air tickets, \$1,019.03, whether that was for one person or several people. Eric Skelton replied that it was for several tickets.

Commissioner Harris Also asked regarding number 910, software training, \$170.00 and the vendor being Harris, that the next time the notation should include more elaboration so that it's clear that the "Harris" is not him.

Mike Brewer moved to approve the June and July 2005 vouchers and Michele Pope seconded it. Motion passed unanimously.

**Proposal for Air Monitoring in Areas Impacted by Smoke from Outdoor Burning – Ron Edgar**

Ron Edgar suggested that this item be put off until the next meeting. Commissioner Mielke moved to defer Item Number 11 to the next meeting and Commissioner Harris seconded it. Motion passed unanimously.

**Resolution 05-16 – Approval of Memorandums of Agreement for Implementing the Diesel Particle Filter Project;**

**Resolution 05-17 – Budget Amendment for the Diesel Particle Filter Project; and**

**Resolution 05-18 – Award Contract for Diesel Particle Filter Project**

Eric Skelton gave a brief description of Resolutions 05-16, 17 and 18. The diesel particle filter project is funded by the state appropriation for the Clean School Bus Program in Washington State. Under this project SCAPCA will oversee a contract putting high efficiency diesel particle filters on busses in the Central Valley, Sedro Woolley and Freeman School Districts. Resolution 05-16 approves a mechanism to bring ultra low sulfur diesel fuel into Spokane for the project. Resolution 05-17 is a budget amendment adjusting the expenditures for the project. Resolution 05-18 awards the installation contract to Instrument Sales and Service.

Mike Brewer asked about the \$1,500 for tank cleaning. Eric replied that Freeman School District has their own tank and right now they are using conventional on-road diesel fuel which has a sulfur content of 500 parts per million. The new fuel that would be put into the tank is ultra low sulfur diesel fuel which has 15 parts per million sulfur. The diesel particle filters are extremely sulfur sensitive and so it is critical that once this tank gets drawn down that the residual fuel be pumped out of the tank and that the tank be cleaned before the ultra low is put in.

Matthew Pederson asked what role SCAPCA plays in the project as it affects the Sedro Woolley School District. Eric replied that SCAPCA is simply the contract manager. The Northwest Clean Air Agency, which is the air authority for Whatcom, Skagit and Island Counties will actually oversee the work.

Michele Pope asked if diesel particle filters were approved for general use, would it be necessary to have all school busses using the ultra low sulfur diesel. Eric replied that there is a federal mandate that by this time next year ultra low sulfur diesel fuel will be the exclusive fuel nationwide for on-road equipment.

Commissioner Harris moved to adopt Resolution 05-16, 05-17 and 05-18 and Commissioner Mielke seconded it. Motion passed unanimously.

**Resolution 05-19 – Repeal of Oxygenated Gasoline Provisions (Public Hearing)**

a. Staff Report – Ron Edgar

Ron Edgar explained now that the Carbon Monoxide Maintenance Plan is in place, which includes a demonstration that this area can continue to meet the federal CO standards without the use of oxygenated fuels, the proposal is to repeal the sections of Spokane County Air Pollution Control Authority regulations that apply to requirements for oxygenated gasoline and the associated fees that go with it. On July 14<sup>th</sup> the proposal was received by the Washington State Code Reviser's Office, and it was published in the State Register on August 3<sup>rd</sup> which made the proposal available for hearing after August 23<sup>rd</sup>. Commissioner Harris asked if oxygenated fuel makes the air cleaner, why get rid of it? Ron replied oxygenated fuel was helpful when much of the automobile fleet was equipped with carburetors, but now that we have fuel injection, oxygen sensors, and computerized combustion sensors on the vast majority of cars, the benefit as far as air quality is concerned has been minimized.

Matthew Pederson stated that this is a public hearing, and asked if there was any member of the public that would like to speak on this matter. Nobody came forward to make a public comment.

Mike Brewer moved to adopt Resolution 05-19 and Michele Pope seconded it. Motion passed unanimously.

**Resolution 05-20 – Approval of Amendments to Interagency Agreement for the Diesel Particle Filter Project**

Eric Skelton stated that several months ago the Board approved an interagency agreement between SCAPCA, the Northwest Clean Air Agency and the Washington Department of Ecology to implement this project. Because of the changes in the diesel particle filter project, previously discussed today, some minor adjustments have been made to the interagency agreement. The two most significant changes involve the purchase of a couple of cleaning stations for the diesel particle filters and including particle filter devices for the Freeman School District.

Mike Brewer moved to adopt Resolution 05-20 and Commissioner Mielke seconded it. Motion passed unanimously.

**Resolution 05-21 – Approval of Memorandum of Agreement for Outdoor Burning Awareness Campaign**

Eric Skelton pointed out that the Board has already approved funding in the Education Budget for fiscal year 06' for this program as part of the June Budget Hearing. This resolution implements this agreement for a statewide public awareness and outreach campaign on outdoor burning. Under this agreement, SCAPCA will transfer \$12,000 that was appropriated as part of the June Budget to the statewide effort.

Commissioner Mielke moved to adopt Resolution 05-21 and Commissioner Harris seconded it. Motion passed unanimously.

**Resolution 05-22 – Approval of 401 Plan Fee Allocation**

Eric Skelton stated that this resolution was prepared by Michelle Wolkey, SCAPCA's General Counsel, and this sets up the process for the employees to share the cost of the administrative fee under the 401

Plan. It is apportioned on the basis of each employee's salary annually. Employees with higher salaries will pay a higher portion and employees with lower salaries will pay a lower portion and SCAPCA will no longer be paying that fee out of SCAPCA's funds.

Commissioner Harris moved to adopt Resolution 05-22 and Mike Brewer seconded it. Motion passed unanimously.

### **Clarification of Prior Action on Cost-of Living Adjustment**

Eric Skelton recounted that at the June Budget Hearing, the Board approved a cost-of-living adjustment for the staff, but rather than making it on a strict percentage basis, it was given on a flat basis. Our understanding is that the increase will be perpetual (i.e., it doesn't go away July 1<sup>st</sup> 2006). We've also assumed that the intention is that new employees would not receive this flat pay increase. Eric asked for board concurrence that the memo is an accurate reflection in terms of the board direction from June. Michele Pope stated that this was definitely what everybody agreed on, but maybe for next year or another time the board reserves the discretion to decide that either a flat fee for every employee or some other means of granting a cost-of-living adjustment is appropriate.

Mike Brewer moved for approval of the Clarification and Commissioner Harris seconded it. Motion passed with Commissioner Mielke abstaining due to the fact that he was not present at the June meeting.

### **Board Concerns**

There were no other Board Concerns.

Meeting adjourned at 12:19 p.m.

The next Board Meeting will be October 6, 2005 at 9:00 a.m. in the lower level of the Public Works Building.

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MATTHEW PEDERSON, CHAIR

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RON EDGAR, SECRETARY