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**SPOKANE REGIONAL CLEAN AIR AGENCY
BOARD MEETING MINUTES**

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

BOARD MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

William Dameworth, Director
Ron Edgar, Chief of Technical Services
Barbara Nelson, Finance & Personnel Admin.
Matt Holmquist, Compliance Administrator
Lisa Woodard, Public Information Officer
Michelle Wolkey, Legal Council
Mary McDermott, Secretary

WORK SESSION: The work session was called to order at 9:04 a.m.

1. **Update on Odor Rule – Matt Holmquist**

Ron Edgar gave an overview of the revisions to be made to the odor and nuisances rule, Section 6.04. The main points on Spokane Clean Air's Policy Statement are to foster the comfort and convenience of its inhabitants and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions. Current regulations under the State states "Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum." Spokane Clean Air's rule 6.04 A. and C. 6. Odors and Nuisances reads "Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum."; "The Authority implements and enforces WAC 173-400-040(4) in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supersedes the lesser." Spokane Clean Air's rule is aimed at industrial sources of odors.

Spokane Clean Air has not typically taken enforcement action unless all of the following have occurred: One or more complaints have been received; an inspector documents off-site odors; and the odor is associated with failure to employ good practice to reduce odors to a reasonable minimum. It is difficult to identify specific operations or requirements that were not



complied with that result in odor. “Reasonable Minimum” does not clearly communicate the odor standard to the regulated community (odor source).

Most rules are similar to Washington State and Spokane Clean Air’s rules. Some use technological devices to measure odors (Scentometer, Nasal Ranger). Sampling and lab testing is very expensive and odors are in very low concentrations; humans can detect concentrations lower than a lot of scientific instruments. Odor panels are a group of people who are exposed to different concentrations of the odor and determine at what point can they smell it, etc. Some agencies base violations on the number of complaints received, others use best work practices and what the nature of the odor is.

We are recommending to the Board that Spokane Clean Air repeal its old rule and incorporate the Puget Sound Clean Air Agency nuisance regulation within its new rule. Puget Sound’s regulation has withstood challenges before the PCHB; it clearly communicates the odor standard; it is a straightforward application by inspectors; it applies to emissions for numerous sources; and it is consistent with RCW 70.94 and 7.48.

Summary of the proposed revisions are to revoke the present rule, add a reference to some definitions, continue to adopt by reference RCW 70.94-640 that refers to agricultural odors and fugitive dust, and incorporate the requirements from Puget Sound Agency. With the proposed rule, Section A goes to definitions. Section B implements the agricultural exemption and also adopts the State rule regarding odor and nuisance by reference. Section C states “It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be: 1. Injurious to the health or safety of human, animal or plant life; 2. Injurious or cause damage to property; or 3. Which unreasonably interferes with enjoyment of life and property”. Section D is in respect to odor and Spokane Clean Air can take enforcement action if it has the following: 1. We can detect the odor at a level 2 or greater (Level 0 – no odor was detected; Level 1 – the odor is barely detected; Level 2 – the odor is distinct and definite, any unpleasant characteristics recognizable; Level 3 – the odor is objectionable enough or strong enough to cause attempts at avoidance; and Level 4 – the odor is so strong that a person does not want to remain present). 2. An affidavit from a person making a complaint. 3. We can trace the source of the odor back to where it’s coming from.

The rule would be enforced as follows: 1. The inspector documents an odor at level 2 or above. 2. We obtain an affidavit from the person making the complaint. 3. We document the odor source. All three of the above items would be needed for a violation to be issued. There were no comments or questions from the Board Members.

BOARD MEETING: The board meeting was called to order at 9:16 a.m. by Vice Chair Councilmember Rose Dempsey.

1. Advisory Council Report – Ray Kelleher

Ray gave a brief overview of the Advisory Council meeting. They were updated on the odor regulation, the no burn area and asbestos fees and regulation.

2. Director's Report for August – Bill Dameworth

We are still working with the City of Spokane on the odor testing and air modeling work done by Baker as a result of their agreement with the City. We received an odor complaint which led to a discussion with the Mayor, and the City is considering asking Baker for the information. Our attorney is still working on some language asking them to provide us the data directly.

The City of Spokane has put language on their demolition permit which references Spokane Clean Air and the need to contact us prior to demolition. There is a space to fill in the Notice of Intent number issued by Spokane Clean Air. There has been no progress on our efforts to get the Spokane County Health District to request the State Health Department to review our draft assessment or rail yard impacts on air quality and health in Spokane County. We are planning to send a letter directly to whoever is in charge of the State Health Department because the Health District has said they just don't want to pursue it themselves. We are going to ask the State Health Department to take a look at the draft. We also plan to send it to the two railroads for their comments in September. When the report is final, we will review it with the board. The data that we have on this suggests that there is an incidence of cancer in the areas impacted by rail yards.

There are some issues here in our building with energy consumption. Our most recent electric and gas bill was over \$1,000 last month. We arranged an on-site visit by Avista to assess the situation and give us some recommendations for energy saving ideas. The first thing would be to tint the windows with a reflective film that reduces the amount of heat transfer by approximately 50%. Second, we would replace a hollow metal door that seems to do little to keep heat and cold from coming into the building. Avista suggested replacing the heating and air conditioning for the north side of the building and Bill has solicited a proposal to do that. There are manufacturer rebates available, as well as rebates from Avista. When we get an estimate on equipment and installation costs, we can calculate the time it will take to pay back an investment in new equipment. Also, somebody vandalized two security system cameras and they are being replaced with cameras that cannot be pulled down from the roof with a pole and rope.

EPA has proposed a new standard for NO₂ that they are trying to mandate to Spokane Clean Air to put in monitoring sites near the freeway for this standard. Spokane Clean Air has no control over freeways or the cars that travel on them and Bill has some comments that he circulated to the other air directors and Ecology and he has received comments back from Puget Sound and the DOE. They are favorable to sending these comments to EPA and a letter will be sent in September. As approved by the Board, we signed a contract with STA for a hybrid bus upgrade which will feature our logo and other décor agreed upon by the two agencies.

The Law Firm for the Center for Justice filed a Notice of Intent to sue the agency a year and a half ago and it seems to be escalating now. They are requesting more information and this is the whole issue of when the previous director left and they had a search committee and too many Board members were on it and some of the meetings were maybe not noticed properly and so there were some violations of the Administrative Procedures Act. They seem to be building

up a huge amount of legal costs of which they will probably want Spokane Clean Air to pay. There were some violations of the Administrative Procedures Act but the Board acted in good faith to try to save the public money and there was nobody that was harmed by what was done. Spokane Clean Air has had some changes to its procedures and its attorney is here at all the meetings now and the By-Laws have been enacted. There have not been any problems since. Commissioner Bonnie Mager asked if they have offered a settlement. Bill replied no they haven't. Spokane Clean Air offered a settlement which they declined. Commissioner Bonnie Mager stated that what the County has found is that the Center for Justice is usually quite open that they have a point to make that they want a change in the way things are done and they have been pretty reasonable in terms of trying to get those changes and they're not there just to make money for the organization. Bill replied that the changes that they want were made before they filed the complaint. The changes were made and put into place and it was done well before the complaint. Michelle Wolkey, attorney, stated that the issues were discovered when the Auditor came through. Spokane Clean Air got an Auditor's report and we instituted all of the changes that were suggested by the Auditor. Then another year or so goes by and the Center for Justice represented by Allied Law Group out of Seattle, filed five lawsuits all in the same day against various entities across the state, based on the information they'd gotten out of the Auditor's files. So they did file a complaint, there's a law suit pending, and it's been sitting now for a year and a half. They haven't done anything to pursue it until recently we received some discovery requests. The initial demand was \$15 or \$20 thousand dollars they wanted from us, most of which was attorney's fees. Commissioner Bonnie Mager asked if the Center for Justice was just a party to this. Michelle replied that they are the plaintiff and they are suing Spokane Clean Air to protect the public for things that Spokane Clean Air has already corrected and so it is all a little bit odd in that sense. Michelle did speak with a lawyer that's representing one of the school districts on the west side of the state, one of the other five that got sued, and there's been one deposition taken in that case and they have cross motions for summary judgment that are now pending to be heard October 23. Their fees that they have now are \$130,000, which is what they are asking for in attorney's fees, for the same type of situation where corrections had already been made. So it's a little bit odd procedurally how it came about. I could see if we were doing something wrong and we refused to fix it. Commissioner Bonnie Mager stated that is what they usually would do. Michelle replied that would make sense to her if we were being uncooperative, but these are for issues that had already been found by the Auditor, corrected by the Agency, and then we get a law suit. Commissioner Bonnie Mager stated she doesn't know what the protocol is, can Michelle call the Center for Justice office. Michelle replied she cannot. Commissioner Bonnie Mager asked if as a board member can she call the director. Michelle replied that she couldn't direct Bonnie to do so. Commissioner Bonnie Mager stated, that, as a private citizen she could. Michelle stated that she can't tell her what she can and can not do. She can't, as an attorney, talk to the other party or direct someone else to. Commissioner Bonnie Mager stated she understands, but it surprises her in terms of a mode of operation because that's not generally been the way they operate. Michelle stated that Spokane Clean Air did make an offer of resolution to them which was rejected and here we are. Commissioner Bonnie Mager stated that she will make a phone call just because she is curious as to what is going on. Board Member Tom Brattebo stated that he was a member of the search committee.

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

Lisa gave a brief overview of the August activities. The air quality display, materials and activities were at Kid's Day and 32 EnviroKids Club Members attended and 92 kids signed up for the club. Air quality materials were also provided at the Clayton/Deer Park Fair. We were out at Orchard Center at their community resources fair. During August our asbestos display was out at the Habitat Builders Surplus Store. Print materials and other publications consisted of finalizing the "2009 Journal of Superior Projects" from the 2009 Youth Environmental Conference, updated various asbestos publications to reflect the regulation changes effective September 8th and filmed a segment with City Channel 5 that will be added to the end of the Air movie to provide local contact information. The business recognition web page has been updated outlining our annual Clean Air Award and describing our every-other-year recognition program for registered sources. Commissioner Bonnie Mager asked if there have been any other contacts from Spokane Alliance about the ease and access regarding violations. Bill replied that Spokane Clean Air had a meeting with them and explained that the program was installed in April but the data would not be filled in for approximately one year. Special projects consisted of the planning for the upcoming wood heating season, summer TV PSAs continued into mid-August, secured location and date for hosting the film "Air-The Search for One Clean Breath", planning is underway for the Agency's open house (schedule for Thursday, September 24, 2009 at 9:00 a.m. to 1:00 p.m.), interviews were conducted with KREM TV (also broadcast on NW Cable News) and KHW TV on wildfire smoke impacts, and we were interviewed by Spokane Journal of Business for an article coming out on businesses going green.

4. Activity Report for July 2009 – Ron Edgar

Ron gave a brief overview of the complaint summary, enforcement actions, inspections and surveillance, NOCs and NOIs (asbestos). April complaints were high because of the wood burning season, dust complaints were up and odor and burning complaints were down a little. Board Member Tom Brattebo asked of the odor complaints, what was complained about. Ron replied a few were on Baker and most were a variety of things. Board Member Tom Brattebo asked if Baker complaints continue. Ron replied yes Baker continues to receive complaints. There are regularly scheduled inspections of Spokane Clean Air's sources and it runs between 30 and 50 inspections a month. Enforcement actions do not always result in Notices of Violations. Other inspections are done by inspectors going out and looking for things that are going on (i.e. illegal burning, surface coating of non-registered sources, etc.) Asbestos notifications continue to run high around 40 or 50 and the numbers of inspections of these locations vary between five and ten every month. New source reviews are permits for new sources or modifications of existing sources. Registrations vary month to month and but by the end of the year there are well over 600 sources registered. Ozone has been the primary pollutant with a few moderate days but mostly continuing into the good range. Wild fires from Canada and Central Washington have caused smoke to be blown in occasionally. This year due to the fire works in Airway Heights, we had one day for unhealthy for sensitive groups, but the rest of the year looks good with very few moderate days and only one or two days that go above the standard.

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

Barbara gave a brief overview of the income and expense statement. She spent a day with the accounting software company and got more ideas on how to present a better treasurer's report type format for the board meetings in the future which will make it clearer. There were no questions from the Board.

6. CONSENT AGENDA – ACTION ITEM – Approval of the August 6, 2009 Board Minutes. Approval of Vouchers for August 2009 – Numbered 4165 through 4231, totaling \$48,076.96 and August Payroll of \$120,546.51 for a Grand Total of \$168,623.47.

There were no questions from the Board. Commissioner Bonnie Mager moved to approve the Consent Agenda and Board Member Tom Brattebo seconded it. Motion passed unanimously.

7. PUBLIC HEARING – Resolution 09-21 – Authorization to Replace Heating/Air Unit and Other Energy Saving Measures – William Dameworth and Barbara Nelson

Barbara stated that Spokane Clean Air is proposing to purchase this using the special project funds or reserve account and these are funds are generated from penalties collected about the \$50,000 that is budgeted. Spokane Clean Air is proposing approval of up to \$20,000 to replace this equipment although we believe that's a rather high amount and Bill is very careful in reviewing the economic need and costs of things like that.

There were no public comments or board concerns. Commissioner Bonnie Mager moved to approve Resolution 09-21 to appropriate up to \$20,000 for these repairs and equipment and Board Member Tom Brattebo seconded it. Motion passed unanimously.

8. Board Concerns – There were no Board concerns

9. Public Forum – There were no Public speakers.

The meeting adjourned at 10:00 a.m.

The next Board Meeting will be October 1, 2009 at 9:00 a.m. – Spokane Regional Clean Air Agency office at 3104 E. Augusta Avenue.

JEFFREY CORKILL, CHAIR

WILLIAM DAMEWORTH, SECRETARY