

**PUGET SOUND CLEAN AIR AGENCY
BOARD OF DIRECTORS**

REGULAR MEETING MINUTES

December 15, 2011

Puget Sound Clean Air Agency
1904 3rd Avenue, Suite 104
Seattle, WA 98101

Board Members Present:

Marina Cofer-Wildsmith, representing the Public-at-Large
Ryan Dicks, representing Pat McCarthy, Pierce County Executive
Jake Fey, City Council Member, City of Tacoma
Brian Goodnight, representing Stephanie Wright, Snohomish County Council
Terry Murphy, representing Mayor Patty Lent, City of Bremerton
Dave Peters, representing Charlotte Garrido, Kitsap County Commissioner
Paul Roberts, representing Mayor Ray Stephanson, City of Everett
Christie True, representing King County Executive Dow Constantine

Board Members Absent:

Jill Simmons, representing Mayor Mike McGinn, City of Seattle

Paul Roberts called the meeting to order at 8:46 a.m. The roll was called, and a quorum was present.

I. APPROVAL OF MINUTES

Mr. Roberts asked if there was any discussion regarding the minutes from the November 17, 2011 Board meeting.

Dave Peters asked that the section of the November minutes with respect to approval of the October minutes be clarified to show that Charlotte Garrido was not at the November meeting and therefore did not abstain from voting to approve the October minutes.

Mr. Peters made a motion that the minutes of the November 17, 2011 Board meeting be approved with the change as requested. The motion was seconded and passed unanimously.

II. PETITIONS FROM THE PUBLIC

Mr. Roberts asked for petitions from the public. There were none.

III. PERSONNEL AND FINANCE MATTERS

Approval of Vouchers

Mr. Roberts asked if there was any discussion regarding the vouchers.

Mr. Peters asked why the agency was paying to convert Chevy Impalas to use compressed natural gas (CNG).

Craig Kenworthy said this payment was part of the grant to convert the SeaTac airport taxi fleet to CNG.

Christie True made a motion that the vouchers be approved as presented in the materials sent to the Board. The motion was seconded and passed unanimously.

IV. EXECUTIVE SESSION

Mr. Roberts moved the Board into Executive Session at 8:49 a.m. to discuss collective bargaining agreement negotiations and litigation. He estimated that the Executive Session would take approximately 20 minutes.

(Ms. Cofer-Wildsmith arrived to join the Board.)

Mr. Roberts called the Board back into regular session at 9:09 a.m.

V. PUBLIC HEARINGS

V.A. Resolution No. 1231 – Amending Regulation I, Section 3.03 (General Regulatory Orders)

Steve Van Slyke briefed the Board on Resolution No. 1231. He said the proposed rule changes involve changes to Regulation I, Section 3.03 that pertain to the general regulatory order process, specifically related to streamlining the process for establishment of voluntary emission limits requested by sources to allow the Pollution Control Officer (or their designee) to sign the regulatory orders after the regular public comment period was concluded.

Mr. Van Slyke said after the Board packet was mailed, the agency received a comment from Boeing suggesting the language in the proposed regulation be changed from “may” to “shall” with respect to approval of the request in accordance with Ecology regulations. He said agency staff did not agree with the comment, and recommend the language contained in the original proposal.

Mr. Peters asked if there were any other comments.

Mr. Van Slyke said there were no other comments.

Mr. Roberts opened the public hearing for comments. There was no public testimony and he closed the public hearing.

Ms. True made a motion that Resolution No. 1231 be approved as presented in the materials sent to the Board. The motion was seconded and passed unanimously.

V.B. Resolution No. 1232 – Amending Regulation I, Sections 5.03 and 6.03, Adopting Regulation I, Sections 5.12 and 9.18 (All Related to Rock Crusher Operations)

(Jake Fey arrived to join the Board.)

Mr. Van Slyke briefed the Board on Resolution No. 1232. He said the proposed rule changes involve changes to Regulation I, Sections 5.03, 5.12, 6.03 and 9.18, for rock crushing operations.

Mr. Van Slyke said the agency received several written comments on the proposed rules changes, and copies of the comments received before the Board packet was mailed were provided with the Board memo. He said that the Board memo describes the agency's response to each comment and any recommended changes to the proposed rule changes.

Mr. Van Slyke said additional comments were received after the Board packet was distributed, and copies of those comments have been provided to Board members at the meeting. He said Boeing submitted a comment and suggested clarifying that the owner/operator is the party required to register. He said staff agreed with this comment and has incorporated that change into revised rule changes. He said other comments requested that fees should be prorated; however, inspection costs are the same regardless of when we have to conduct an inspection so staff disagrees with that comment. He said we received a comment that fees are disproportionate for small business owners. He said the agency disagrees with this comment and believes the results of the proposed rule changes would be reduced costs because Notice of Construction (NOC) requirements would be eliminated for rock crushers and registration fees will be cheaper because payment is not required unless they are crushing. He said another comment asked how the agency could propose a rule change when the state government had stopped all new rulemaking. He said we are not a state agency and not subject to the executive order related to a moratorium on rule-making.

Mr. Van Slyke said after reviewing all the comments, staff recommends not delaying action on this resolution.

Ms. Cofer-Wildsmith asked whether the size of the rock crushing business creates a disproportionate economic burden with the proposed regulation changes.

Mr. Van Slyke said anyone who installs a crusher now under the current regulations must get a notice of construction (NOC) approval and pay the appropriate fees. He said under the proposed rule that would not be required. He said registration fees will stay the same; however, under the new rule a rock crushing business wouldn't have to pay registration fees if it isn't operating during that year. He said a rock crushing business could miss a year of registration if it doesn't have work or it could wait to pay the registration fee until it knows it has work. He said a rock crushing business could even bid on work and not pay a registration fee until it knows it has won the contract.

Ms. True asked whether the regulation change will raise the bar on performance.

Mr. Van Slyke said he didn't believe so. He said a really old crusher may already have permit conditions in place and new equipment wouldn't require any conditions. He said staff believes that all rock crushers are capable of reducing visible emissions with existing equipment.

Mr. Roberts said it appears that the emissions requirements are not changing rather we are just changing options for how rock crushing businesses comply.

Mr. Van Slyke said that is accurate. He said based on comments received, staff recommends changing the proposed rule so it does not specify that equipment needs to be installed to reduce visible emissions and that emissions must be reduced in accordance with best management practices. He said commenters were concerned about the additional cost of installing and using dust suppression equipment when the material they are crushing is already wet and there is no dust.

Mr. Peters said as he understands it, the rock crushers were asking the agency to just tell them what the performance standard is and let them figure out how to achieve it.

Mr. Van Slyke said that is correct and with the recommended changes to the proposed rule, owners/operators of rock crushers are given a menu of possible methods to suppress emissions. He said if an inspector sees visible emissions, they will ask what steps the business took to reduce visible emissions.

Ryan Dicks asked how often inspectors check visible emissions.

Mr. Van Slyke said currently, we try to conduct annual inspections. He said under the proposed rule, the agency would probably revise its practices to inspect when rock crushers are actually operating. He said we also conduct inspections in response to complaints or observations by inspectors.

Mr. Roberts opened the public hearing.

Mathew Hink, Environmental Manager for the Washington operations of Cal Portland Co. (and Glacier NW) addressed the Board. He said he represents the largest sand and gravel producer in the region; 86% of the aggregate used in the City of Seattle comes from his organization. He said his company operates four sand/gravel mines in the agency's jurisdiction. He said the old NOC system cost his business time and money and the proposed rule is an improvement in that respect. He said his concern is why the rush to pass the regulation change. He said rock crushing businesses have not had enough time to consider the possible ramifications of the proposed regulation change and would like more meetings with agency staff before the change is passed. He said he was advised that if the rule doesn't pass today, it will be another six months before it can be brought back before the Board.

Mr. Fey asked why it would be six months before this can be considered again.

Mr. Hink said he asked for a slight delay and Mr. Van Slyke said if there was any delay the next opportunity for consideration would be in 6 months.

Mr. Kenworthy asked Mr. Hink to identify specific areas of concern with the proposed regulation change.

Mr. Hink said there are questions about portable operations. He said if water spray suppression equipment is turned off, a crusher may occasionally turn up a dry rock and there will be a puff of dust. He said as he reads it, that would be enough for the visible emissions standard to apply.

Dave Lewis, representing Miles Sand, Gravel and Concrete NW, addressed the Board. He said they have clean air permits and 13 sand and gravel operations within the agency's jurisdiction. He said they agreed with removing the NOC requirement. He said the proposed regulation changes are a step in the right direction. He said he has been in business since 1957 and should not be told where to put dust control equipment, and should not be penalized because they don't have a spray nozzle in a specific place. He said the proposed regulation changes could be read differently by different people over time. He said they want more time to ask questions and get clarification. He said he is proud of how they've cleaned up the industry over the years.

Mr. Dicks asked if Mr. Lewis felt that he didn't have an opportunity to speak with the agency about the proposed rule change.

Mr. Lewis said he saw this for the first time towards the end of October.

There were no further comments and Mr. Roberts closed the public hearing.

Mr. Fey said he would like to hear from staff about why if there is a delay it would be six months before the issue can be presented to the Board.

Mr. Van Slyke said it would take about six months because of the staff time required to do the work and the Board's schedule.

Mr. Kenworthy said the time constraints are partially due to the capacity of engineering staff, and we are also trying to keep the Board's schedule open for nonattainment and budget discussions during the first half of the year.

Mr. Fey said he understands how people can be busy and not pay attention to everything going on, and perhaps providing some additional time for further discussions would not be a significant problem. He said if industry believes it has had enough time to review and understand the proposed changes, this should improve implementation and compliance.

Mr. Kenworthy said the consequence of delay is that the current NOC system remains in effect.

Mr. Peters said from the comments, he heard willing partners that want more discussion and to make sure they understand all the ramifications of the proposed changes. He said when he saw the additional comments received after the Board packet went out and revised resolution at the

Board meeting today, he was reluctant to take action at this Board meeting without additional time to study the new materials.

Mr. Dicks said it seems strange for industry to request to keep a permitting burden in effect, but if that is the request, he supports a time extension for additional discussion.

Ms. True said she has heard that the visible emissions requirements are not changing; however, the people who testified seem to believe the visible emissions requirements are becoming more stringent. She said this appears to be a source of confusion.

Terry Murphy said he understands staff's recommendation to take action, however, he believes the Board has not had enough time to consider the new materials that were distributed at today's meeting. He said maybe with additional time to study the proposed regulation change, both industry and the Board will be more comfortable with taking action on the proposed changes.

Mr. Roberts said it appears that industry agrees with the change from the current NOC process to the proposed process, and that the comments want more time to consider the issues that may arise under the new regulation. He asked if it would be possible to adopt the rule on an interim basis.

Laurie Halvorson said she is not sure what an "interim basis" means here.

Mr. Roberts said it appears the Board is not ready to adopt this rule at this time. He asked whether there is some other way to change the NOC process.

Mr. Van Slyke said the Board could continue the hearing for one month, and leave the hearing open while staff has further discussion about implementation issues with the industry. He said if at the end of those discussions, industry wants additional rule changes and staff agreed, staff would report this recommendation to the Board at the January meeting and recommend starting over with a new rule making process.

Mr. Goodnight asked if it is possible to delay collection of registration fees for rock crushers until next month.

Mr. Van Slyke said yes, as long as they aren't operating. He said however, if someone wants to operate a new rock crusher, an NOC permit is required.

Mr. Fey said Mr. Van Slyke's suggestion of one month continuation is reasonable.

Mr. Roberts said the agency will hold the public comment period open and staff will report back at the January Board meeting in Tacoma.

V.C. Resolution No. 1233 – Adopting Regulation I, Article 15 (Non-Road Engines)

Mr. Van Slyke briefed the Board on Resolution No. 1233. He said the purpose of the proposal is to implement Ecology's rules regarding non-road engines. He said the agency did not receive

any comments before the Board packet was mailed. He said after the Board materials were sent, we received a letter from Gary Prince, at the Department of Defense (DOD), with comments about the Ecology rule and requesting the agency to work with Ecology to address concerns about the Ecology rule.

Mr. Van Slyke said he spoke with Mr. Prince, and Mr. Prince was concerned about the implementation challenges in emergency situations. He said DOD has two skid-mounted emergency generators that are sent to support needs and projects. Mr. Van Slyke said Mr. Prince's concern is that under the Ecology rule, DOD would have to notify the agency and get approval every time the generators were dispatched. Mr. Van Slyke said the agency will work with DOD to discuss the issues of concern with Ecology. He said there were no comments requesting any changes to Resolution No. 1233 as proposed.

Mr. Roberts opened the public hearing. There was no public testimony. The public hearing was closed.

Mr. Fey made a motion that Resolution No. 1233 be approved as presented in the materials sent to the Board. The motion was seconded and passed unanimously.

VI. UNFINISHED BUSINESS

VI.A. Discussion – Tacoma-Pierce County Particulate Matter (PM) Nonattainment Task Force Strategies and Potential Legislation

Mr. Kenworthy said the final Task Force report will be provided to the Board before the January meeting. He said 15 of the 18 Task Force members have signed the final report and the remaining signatures are expected soon.

Mr. Kenworthy said the Task Force report recommendations focus on one third of the needed PM reduction coming from industry, ports, etc; and in addition, more effective burn ban enforcement and removal of uncertified devices by a date certain. He said the only recommendation that didn't get full support was the registration of wood burning devices; three members opposed that recommendation. He said staff has been reviewing the state law and talking to Legislators about additional authority needed by the agency to implement the Task Force recommendations should the board accept them. He said the agency already has authority to enforce burn bans, but needs to further consider possible nighttime enforcement options.

Mr. Kenworthy then outlined the potential legislation actions.

He said the Task Force did not reach consensus on a current strategy on fireplace emissions but did support regulating fireplace emissions in terms of a last ditch future contingency measure, and additional legislative authority is needed on this issue.

Mr. Peters asked how inspectors can check for opacity at night.

Mr. Kenworthy said the Task Force recommended consideration of using infrared cameras. He said there are questions about privacy, legality, etc. with respect to night enforcement; however, enforcement during only the day time doesn't reach the full range of violators and causes equity issues in that it may affect more people who are retired, stay-at-home parents, etc.

Kathy Strange said currently a Stage 1 burn ban can be called when the forecast predicts that levels of 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) within 48 hours. She said that is too close to EPA's health standard and there is no buffer. She said the Task Force recommended reducing the Stage 1 trigger to $30 \mu\text{g}/\text{m}^3$ as predicted to occur within 72 (rather than 48) hours.

Ms. Cofer-Wildsmith said since it appears that EPA may tighten the standard to $30 \mu\text{g}/\text{m}^3$, whether a trigger of $25 \mu\text{g}/\text{m}^3$ should be sought now

Mr. Kenworthy said the Hearth, Patio and Barbeque Association (HPBA) would not support that effort right now.

Ms. Strange said when the Task Force considered a proposal to lower the Stage 1 trigger to $25 \mu\text{g}/\text{m}^3$, it had concerns about how many Stage 1 burn bans would result.

Mr. Peters said since it appears HPBA has accepted a proposed trigger of $30 \mu\text{g}/\text{m}^3$, he wondered whether anyone would oppose that level.

Mr. Kenworthy said not that he is aware of. He said there may be a desire by some to limit lower Stage 1 burn ban triggers to only designated nonattainment areas.

Mr. Kenworthy asked if Board members had concerns about lowering the Stage 1 burn ban trigger.

Terry Murphy said if the new level was implemented statewide, many people in Kitsap County would oppose the change since they aren't in the nonattainment area and more burn bans would result.

Mr. Dicks said he supports the proposed lowered level for Stage 1. He said he is more concerned about how people will hear that a Stage 1 burn ban has been called and that the general public is often unaware of when burn bans are called.

Mr. Kenworthy agreed and said there was a recent incident with the Tacoma News Tribune (TNT) stating that there was no burn ban in effect when in fact the agency had notified the TNT that a Stage 1 burn ban had been called.

Mr. Peters said there may be a concern from other parts of the state about a new statewide trigger level when the problem is in Tacoma.

Mr. Kenworthy said we have also been asked to better define what constitutes seasoned wood and that this will be defined as no more than 20% moisture content.

Ms. True asked how moisture level can be determined.

Mr. Kenworthy said moisture meters are available for purchase starting at around \$30.

Mr. Dicks said maybe the agency could offer a rebate on moisture meters. He said 20% moisture content is one way to define seasoned wood; another definition is wood that has been out of the rain one or two years.

Mr. Kenworthy stated the Task Force is also recommending including regulation of fireplaces as a contingency measure.

Mr. Dicks said fireplaces are 25% of the problem and don't heat houses. He said he is concerned that if this is only a contingency measure, it is not fair to people who need to heat their homes.

Mr. Fey asked whether we can enforce fireplaces during burn bans.

Mr. Kenworthy said yes; that is the agency's only current authority with respect to fireplaces.

Mr. Fey asked about the source of data for the figure that fireplaces are 25% of the problem.

Ms. Strange said the survey data compiled by the agency for the nonattainment area concluded that of the total tons/year of PM produced, 21% was from fireplaces, 28% was from uncertified devices, and 51% was from certified devices.

Mr. Fey said he is not convinced that fireplaces are that big a part of the problem.

Ms. Cofer-Wildsmith said if burn bans are called sooner and at a lower standard, how much additional PM can be reduced through adding regulation of fireplaces.

Mr. Kenworthy said there are limited options for contingency measures, and regulation of fireplaces is one of the few that could affect a significant amount of emissions.

Mr. Fey said one of the recommendations is for enhanced enforcement and increased penalties. He asked about the level of fine being proposed.

Mr. Kenworthy said no specific fine level is proposed by the Task Force; the current penalty amount is up to \$1,000.

Mr. Fey asked about tripling the fine as part of a contingency measure, and there should be provisions for low income people who have to use wood to heat their homes.

Ms. Cofer-Wildsmith said enforcement is key and we need to move from opacity to visible emissions as the proof of violation.

Mr. Kenworthy said the Task Force also discussed the possibility of registering devices and how a registration program could work. He said this option would be included in the agency's draft legislation.

Mr. Fey asked whether we have feedback from legislators about this type of proposal.

Mr. Kenworthy said not at this point. He said in discussion with the Advisory Council, some Advisory Council members are concerned that the whole bill could be at risk if registration is included.

Mr. Roberts said legislators and supporters from Pierce County are a key part of this legislative effort.

Mr. Dicks asked whether the legislation is needed this year.

Mr. Kenworthy said it is necessary to gain the additional needed authority this year because we have to show that the authority exists in order to get the attainment plan approved.

Mr. Kenworthy said with respect to public response, the agency has received approximately 600 comments throughout the process and there was a news article in the TNT. He said another article is expected tomorrow in Cross Cut and he said he will be interviewed on public television tomorrow. He said he recommends running an ad in the TNT advertising the January Board meeting which will be held in Tacoma, and inviting the public to attend and provide comments to the Board.

Ms. Cofer-Wildsmith asked about social media sources.

Amy Warren said the agency is on Facebook and Twitter and also publishes an online newsletter. She said information about the January Board meeting will be posted on all of these sources.

Mr. Dicks asked what the Board will be doing at the January meeting.

Mr. Kenworthy said the Board will be discussing the Task Force report and recommendations, and take public comments on these issues. He said after the Board consider public comments at the January meeting, it will decide which Task Force recommendations the Board will support or whether it needs additional time to consider public input. He said the Board does not need to take action on the recommendations at the January Board meeting. He said at the January meeting, staff will also continue to report on the status of legislative efforts regarding the agency's bill related to nonattainment.

Ms. Cofer-Wildsmith said the 600 people who provided comments and others who have filed complaints about wood smoke over the last year should be invited to the meeting. She asked staff to provide copies of all comments received by the agency before the January meeting.

Mr. Kenworthy agreed and he said this information will be provided.

Mr. Peters said he will not be able to attend the January meeting.

Mr. Roberts said we need to make sure the public understands the process and that this is not a public hearing.

VI.B. FY13 Budget Preparation Timeline

Mr. Kenworthy said the initial cost of implementation of the Task Force recommendations in the Tacoma-Pierce County nonattainment area will probably fall largely on the agency and we will need to plan for this expense. He said this will affect other priorities and will be the focus of discussions with the Board during the FY13 budget process during the next several months.

VII. NEW BUSINESS

VII.A. Resolution No. 1234 – Budget Amendment for Ecology Core Grant

Mr. Kenworthy said EPA had held back money for state air programs in case there would be larger cuts in the federal budget. He said EPA has now given that money to the states and we received a one-time only increase in funds from Ecology. He said Resolution No. 1234 is to amend the budget to accept that additional funding.

There was no Board discussion.

Mr. Peters made a motion that Resolution No. 1234 be approved as presented in the materials sent to the Board. The motion was seconded and passed unanimously.

VII.B. Discussion – 2012 Legislative Issues and Legislative Update

Mr. Kenworthy said proponents of outdoor wood-fired boilers are continuing their efforts in support of their products, and that the agency is opposed to this effort if the products do not meet existing standards for regular wood stoves.

Mr. Dicks asked if the boilers are for homes or business use.

Mr. Kenworthy said the boilers could be used for either use and can be used year-round for heating water. He said only the pellet fuel models meet the current standards. He said the cordwood burning types are inappropriate, particularly in light of the nonattainment situation in Tacoma-Pierce County.

VIII. STAFF REPORTS

Mr. Peters asked whether there is any data yet from the electric vehicle charging stations.

Amy Fowler said no but we will provide it as it becomes available.

Mr. Fey said the Senate Environment Committee met last Tuesday and Mr. Kenworthy did a great job of testifying about the nonattainment area.

With no further business, the Board adjourned at 11:55 a.m.

I hereby certify this to be a true and correct record of the Minutes of the December 15, 2011, meeting of the Board of Directors of the Puget Sound Clean Air Agency.

Attest:

Craig T. Kenworthy
Executive Director

Paul Roberts
Chair, Board of Directors

jwc