

SOUTHWEST CLEAN AIR AGENCY

Board of Directors Meeting  
August 4<sup>th</sup>, 2022, at 3:00 PM  
Southwest Clean Air Agency  
11815 NE 99th St. Suite 1294  
Vancouver, Washington

This meeting will be held by video conference using Zoom:

<https://us02web.zoom.us/j/82154159897>

Meeting ID: 821 5415 9897

Or call in by phone (669) 900-9128

AGENDA

- I. Call to Order  
SWCAA Chair Bob Hamlin
- II. Roll Call/Determination of Quorum  
SWCAA Chair Bob Hamlin
- III. Board of Directors Minutes  
Board of Directors Minutes – June Meeting
- IV. Changes to the Agenda  
SWCAA Chair Bob Hamlin
- V. Consent Agenda
  - A. Approval of Vouchers
  - B. Financial Report
  - C. Monthly Activity Report
- V. Info Items & Public Comment  
None
- VII. Public Hearing  
None
- VIII. Unfinished Business/New Business

**A. Executive Session**

The Board may go into Executive Session for discussion related to litigation or potential litigation with legal counsel representing the agency in accordance with RCW 42.30.100(1)(i).

## **B. SWCAA's Merit Pool Approval System**

**Issue** - Should SWCAA have a fixed annual merit pay increase system for staff who are not at the top of their pay scale or continue the practice of having an annual Board of Directors decision regarding authorization of merit pay increases?

**Summary** - SWCAA does not utilize an automatic step pay increase system as is used by most government agencies. Instead, each position has a fixed salary range (pay scale) and staff salaries are annually adjusted up the pay scale through merit increases if approved by the Board. The entire salary range is also annually adjusted based on any cost-of-living (COLA) adjustments approved by the Board.

SWCAA's Employee Handbook currently reads as follows "Approval by the Board of Directors of a merit pool of funds in April or May determines whether or not there will be a merit system in the next fiscal year. This means the amount of funds available, if any, for the merit pool will be established by the Board of Directors prior to the beginning of the applicable fiscal year..."

In May of 2022, the Board approved a 3% merit pool for staff salary adjustments for the 2022/2023 fiscal year and set a tentative 3% merit pool for the 2023/2024 fiscal year. During the meeting the Board asked to revisit the conversation of requiring merit increases be brought to the Board annually versus having it be a fixed amount as is the case under a step system. If the merit pool were to be fixed, the Board would only need to decide on a COLA adjustment each year rather than both a COLA and merit pool and a tentative merit pool for the preceding year.

Under a fixed 3% merit increase system, the average time to progress from the bottom of a position's pay scale to the top would be 14 years.

Attachment A provides information for comparison on salary step increase systems of jurisdictions represented by the Board of Directors.

Attachment B provides a straw proposal for discussion showing possible revisions to SWCAA's Employee Handbook to revise the merit increase approval process.

**Recommendation** - Establish a fixed merit pool percentage for annual employee salary adjustments.

## **IX. Control Officer Report**

### **A. Supreme Court Limits EPA's Clean Air Act Climate Authority (June 30, 2022) -**

In a decision in *West Virginia v. EPA* (U.S. Supreme Court Case No. 20-1530) the U.S. Supreme Court has limited the EPA's power to regulate greenhouse gas emissions from power plants under Section 111 of the Clean Air Act. A 6-3 decision written by Chief Justice John Roberts, (joined by Justices Alito, Thomas, Barrett and Kavanaugh, with a concurring decision by Justice Gorsuch,) found that EPA had exceeded the authority given to it by Congress when it promulgated its proposed Clean Power Plan rule in 2015. Justice Roberts' decision states: "This is a major questions case. EPA claimed to discover an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler. That discovery allowed it to adopt a regulatory program that Congress had conspicuously declined to enact itself. Given these circumstances, there is every reason to 'hesitate before

concluding that Congress' meant to confer on EPA the authority it claims under Section 111(d)." At issue was the October 2015 Clean Power Plan, which used Section 111 of the Clean Air Act to establish a program by which power companies would use market-based and other regulatory instruments to transition away from fossil fuels to generate power, thereby reducing emissions of greenhouse gases from the sector. The Clean Power Plan was replaced with the Affordable Clean Energy (ACE) Rule in 2019 (84 Fed. Reg. 32,520), but on January 19, 2021, the U.S. Court of Appeals for the District of Columbia Circuit vacated the ACE Rule (U.S. Court of Appeals Case No. 19-1140, American Lung Association v. EPA) and remanded the case to the EPA. The court opinion says that "The EPA's view of its authority was not only unprecedented; it also effected a fundamental revision of the statute, changing it from one sort of scheme of . . . regulation into an entirely different kind." It concludes that "Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible 'solution to the crisis of the day.' . . . But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme in Section 111(d). A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." In a separate concurrence joined by Justice Alito, Justice Gorsuch writes to "provide some observations about the underlying doctrine" – the major questions doctrine – and its relationship to the delegation of authority by congress to administrative agencies. "When Congress seems slow to solve problems, it may be only natural that those in the Executive Branch might seek to take matters into their own hands," Gorsuch wrote. "But the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people's representatives." A dissent written by Justice Elena Kagan (joined by Justices Beyer and Sotomayor) argues that Section 111 gives EPA the authority set emission reduction programs of the kind at issue in the case: "Congress knows that systems of emission reduction lie not in its own but in EPA's 'unique expertise.'" Kagan's dissent predicts that the result of the decision will be that "The Court will not allow the Clean Air Act to work as Congress instructed. The Court, rather than Congress, will decide how much regulation is too much. The subject matter of the regulation here makes the Court's intervention all the more troubling. Whatever else this Court may know about, it does not have a clue about how to address climate change. And let's say the obvious: The stakes here are high. Yet the Court today prevents congressionally authorized agency action to curb power plants' carbon dioxide emissions. The Court appoints itself - instead of Congress or the expert agency—the decisionmaker on climate policy. I cannot think of many things more frightening." With this decision, the Supreme Court reverses the U.S. Court of Appeals for the DC Circuit's decision and remands it to that court for further proceedings. For further information: [https://www.supremecourt.gov/opinions/21pdf/20-1530\\_n758.pdf](https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf)

**B. House Bill Seeks to Broaden EPA's Statutory Authority to Regulate GHG emissions form Power Plants (July 15, 2022)** - Rep. Alexandria Ocasio-Cortez (D-NY) introduced the "EPA Regulatory Authority Act" to amend the Clean Air Act (CAA) to give the EPA Administrator authority to regulate greenhouse gas (GHG) emissions beyond individual power plants. In particular, HR 8395 would amend CAA Section 111(a)(1) to allow the Administrator, when identifying the best system of emission reduction (BSER) for the purpose of a standard of performance, to include measures that apply beyond an individual stationary source or category of stationary sources: "Section 111(a)(1) of the

Clean Air Act (42 U.S.C. 7411(a)(1)) is amended by adding at the end the following: For purposes of identifying the best system of emission reduction, a system of emission reduction may include measures that apply beyond an individual stationary source or category of stationary sources, including measures that would reduce emissions by altering the relative market share of such sources or categories.” The bill would also expressly authorize EPA’s approach under the agency’s 2015 Clean Power Plan.

For further information: <https://www.congress.gov/117/bills/hr8395/BILLS-117hr8395ih.pdf> and <https://www.congress.gov/bill/117th-congress/house-bill/8395?q=%7B%22search%22%3A%5B%22HR+8395%22%2C%22HR%22%2C%228395%22%5D%7D&s=1&r=1>

**C. Indoor Air Study Finds Benzene and Other Hazardous Air Pollutants from Natural Gas in Homes (June 28, 2022)**

A study of indoor air quality in homes in the Boston area using natural gas found trace amounts of 21 hazardous air pollutants (HAPs), including benzene, hexane, toluene, heptane and others. The study, entitled Home is Where the Pipeline Ends: Characterization of Volatile Organic Compounds Present in Natural Gas at the Point of the Residential End User, included 234 natural gas samples in 69 separate homes during two seasons. The researchers discovered 296 nonmethane volatile organic compounds, of which 21 were HAPs. They also determined that wintertime benzene concentrations from natural gas in the home were eight times higher than in the summer. Using data on natural gas leakage, the study estimates that 120-356 kg/year of annual natural gas benzene emissions in the greater Boston area are not currently accounted for in emissions inventories, along with an additional indoor portion that also is not accounted for. For further information:

<https://pubs.acs.org/doi/10.1021/acs.est.1c08298> and <https://www.hsph.harvard.edu/change/news/home-is-where-the-pipeline-ends/>

**D. EPA releases List of Programs Covered by Justice40 Initiative (June 24, 2022)**

In a press release, EPA identified that it has released an initial list of programs covered under the Administration’s “Justice40 Initiative”, which aims to deliver 40 percent of the overall benefits of climate, clean energy, affordable and sustainable housing, clean water, and other investments to disadvantaged communities. EPA stated that it used guidance from the White House Office of Management and Budget to identify existing programs and new programs that would be covered. “In collaboration with the White House, EPA is in the process of developing benefit methodologies to track and report the benefits going toward disadvantaged communities,” according to the release. Programs include new spending on the Clean School Bus Program funded by the Bipartisan Infrastructure Law of 2020 and the Community Monitoring Program funded by the 202 American Rescue Plan, as well as existing programs like on-site inspections for compliance monitoring, Targeted Airshed Grants, and the Diesel Emissions Reductions Act (DERA). For further information:

<https://www.epa.gov/system/files/documents/202206/Justice40%20Initiative%20Covered%20Programs%20List%20for%20the%20Environmental%20Protection%20Agency.pdf> and <https://www.epa.gov/newsreleases/epa-releases-initial-list-programs-covered-under-biden-harris-administrations>

X. Board Policy Discussion Issues  
As Necessary

- XI. Issues for Upcoming Meetings  
CPI Fee Increase  
SWCAA 400 Rule Revisions  
Evaluation Processes for Executive Director

XII. Adjourn

Notes:

- (1) Served by C-TRAN Routes: 7, 72 and 76.
- (2) Accommodation of the needs for disabled persons can be made upon request. For more information, please call (360) 574-3058 extension 110.

## Attachment A

### Employee Step Systems of Jurisdictions Represented by SWCAA's Board of Directors\*

Jurisdiction	Number of Steps	% Increase/Step**	Annualized % Increase
Clark	11 steps, 10 years	2.5	2.5
Lewis	13 steps, 12 years	2.5	2.5
Skamania	5 steps, 3.5 years	1.4	2.1
Wahkiakum	6 steps, 12 years	5.4	2.7
Cowlitz	3 steps, 3 years	5.3	5.3
Stevenson	8 steps, 7 years	4	4
Vancouver	8 steps, 7 years	3.3	3.3
Cathlamet	6 steps, 12 years	2.5	1.25
Longview	6 steps, 5 years	5.3	5.3
Centralia	7 steps, 6 years	3.4	3.4
Average			<b>3.2</b>

Notes:

\*Employees at top of pay scale do not get step increases.

\*\*Percent increase per step approximated based on review of pay scales. Some jurisdiction steps vary by employee class and union contract.

## Attachment B

### Redline Revisions to SWCAA's Employee Handbook - Merit Increases For Discussion Purposes at SWCAA's 8/04/2022 Board Meeting

~~2.9~~ Merit Increases. ~~Approval by the~~ The Board of Directors has approved an annual ~~of a~~ merit pool of funds equal to three percent of eligible salaries ~~in April or May determines whether or not there will be a merit system in the next fiscal year.~~ This means the amount of funds available, if any, for the merit pool will be established by the Board of Directors prior to the beginning of the applicable fiscal year. At the beginning of the fiscal year, employees will also be notified of the criteria to be used in awarding the merit funds. Unless otherwise notified by the Executive Director at the beginning of the fiscal year, the funds ~~to~~ will be awarded to eligible staff on the basis of weighted performance evaluation scores. ~~Actual awarding of the merit funds will not occur until the end of the fiscal year upon the completion of performance evaluations.~~

The process for awarding the ~~Board of Director approved~~ merit funds begins in June of each year when employees will be evaluated on their performance over the fiscal year coming to an end. Each employee will be rated on a number of performance criteria for his/her position. The employee's performance against each criteria will be rated as a numerical equivalent to level of performance ranging from unsatisfactory to outstanding, and a weighted average rating across all criteria will be calculated. This weighted average will represent the overall performance rating for that individual for the fiscal year ending on June 30th. The pool of merit funds ~~approved by the Board of Directors~~ will then be apportioned among staff based upon the relative distribution of the employee's overall ratings and the following principals: (1) Only employees achieving an overall performance rating equivalent of satisfactory or better will be eligible for a portion of the merit pool of funds; (2) Employees receiving an unsatisfactory rating equivalent on three or more individual performance criteria, regardless of achieving an overall rating equivalent to satisfactory or better, are ineligible for merit pool funds unless the Executive Director determines an exception is appropriate; (3) Each employee's apportionment of merit funds will be distributed as an addition to his/her base salary for the next fiscal year beginning July 1 and extending through June 30; (4) No employee's wages can be caused to exceed the maximum of the salary range for his/her position as a result of his/her merit fund apportionment; (5) The total amount of merit pool funds distributed may not exceed ~~three percent of eligible staff salaries~~ the dollar amount approved by the Board of Directors; and (6) Distribution of the merit funds ~~approved by the Board of Directors~~ is contingent upon adequate funds being available in the agency's accounts at the end of the fiscal year when the funds are to be awarded. (7) The Board of Directors may elect to suspend merit increases in a year where there is a budgetary concern.