

Southwest Clean Air Agency

Board of Directors Minutes

August 4, 2022

The regular meeting of the Southwest Clean Air Agency Board of Directors was held in the Southwest Clean Air Agency office, Vancouver, Washington on August 4, 2022.

Those present were: Bob Hamlin, Chair, Skamania County
Ryan Smith, Vice-Chair, Member at Large
Dr. Alan Melnick, Director, Clark County
Ben Shumaker, Director, City of Stevenson
Gene Strong, Director, Wahkiakum County
Sean Swope, Director, Lewis County
Kim Harless, Director, City of Vancouver
Ruth Kendall, Director, City of Longview
Robert Stowe, Director, Town of Cathlamet

Excused: Arne Mortensen, Director, Cowlitz County
Max Vogt, Director, City of Centralia

Also Present: Staff: Uri Papish, Executive Director
Traci Arnold, Office Administrator

Guests: Jeff Meyers, Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S.

Call to Order

Mr. Hamlin called the meeting to order. A quorum was confirmed to exist.

Board of Directors Minutes

Mr. Hamlin asked for consideration of the June 2, 2022 minutes. Dr. Melnick moved and Mr. Stowe seconded that the minutes for the June 2, 2022, Board meeting be approved. Motion passed.

Consent Agenda

Mr. Hamlin asked for approval of the Consent Agenda including voucher numbers 16 through 44 in the amount of \$23,831.50 which have been approved for payment by the Executive Director and June 2022 Salaries and Benefits in the amount of \$158,987.66. Dr. Melnick moved and Mr. Smith seconded approval of the Consent Agenda. Motion passed.

Changes to Agenda

None

Info Items & Public Comment

None.

Public Hearing

None

Unfinished Business/New Business

Mr. Hamlin opened discussion on if SWCAA should 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 and recognized Mr. Papish.

Mr. Papish said 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.

Dr. Melnick asked how SWCAA determines salary for new employees without a step system. Mr. Papish said SWCAA uses the fixed salary range and gives consideration to the experience of the new hire when determining a starting salary. Dr. Melnick expressed concern that the system could create inequities. Mr. Papish said consideration is also given to where current staff are on the salary range when determining a starting salary.

Mr. Swope also expressed concern about not having a step system. Without a step system new hires could be brought in at a higher wage than an employee with tenure. There is also a higher chance for salary compression when there's little difference in pay between employees regardless of differences in their experience.

Mr. Shumaker asked how long it would take staff to reach the top of the pay range with the proposed 3% merit pool. Mr. Papish responded it would take 14 years to reach the top if an employee started at the beginning of the pay range.

Mr. Hamlin asked for a motion. Mr. Smith made a motion to establish a fixed merit pool percentage of 3% for annual employee salary adjustments. Dr. Melnick seconded the motion. Motion passed.

Executive Session

Mr. Hamlin asked for the Board to go into Executive Session for the purpose of discussion related to litigation or potential litigation with legal counsel representing the agency. He said the Executive Session will be utilized for discussion related to the litigation in accordance with RCW 42.30.10(1)(g). Any decision will be made during the open public meeting following the Executive Session. He requested Mr. Papish and Mr. Meyers, the agency's legal counsel to remain in the meeting and the general public to leave during the Executive Session which he estimated would begin at 3:06 and last 15 minutes.

Mr. Hamlin reconvened the general meeting at 3:21.

Mr. Papish and the Board members thanked Mr. Meyers for his time.

Control Officer Report

Mr. Papish summarized the information provided in the Control Officer Report and offered to answer any questions.

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

House Bill Seeks to Broaden EPA’s Statutory Authority to Regulate GHG emissions from 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>

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/>

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>

Mr. Papish announced to the board he will be using paternity leave starting late September for a solid month and then will work an intermittent schedule through the end of the year. He said the front-line managers will ensure operations run smoothly.

Mr. Papish asked if the board was interested in a presentation on the use of lead in aviation fuel for a future meeting. The board expressed interest in this topic and requested a presentation.

Board Policy Discussion Issues

None.

Issues for Next Meeting

- A. Public Hearing.
 - 1. As Necessary.
- B. New Business/Unfinished Business.
 - 1. CPI Fee Increases
 - 2. SWCAA 400 Rule Revisions
 - 3. Executive Director Evaluation Process
- C. Board Policy Discussion Issues.
 - 1. As Necessary.
- D. Meeting Date and Location.
 - 1. September 1, 2022 at 3:00 p.m. Southwest Clean Air Agency, 11815 NE 99th Street, Vancouver, Washington.

The next Board of Directors meeting will be held on September 1, 2022 at 3:00 p.m., Southwest Clean Air Agency, Vancouver, Washington.

Board Meeting Attendance:

JURISDICTION	J 2022	F 2022	M 2022	A 2022	M 2022	J 2022	J 2022	A 2022	S 2021	O 2021	N 2021	D 2021
Clark County	+	+	+	+	+	+	C	+	+	+	+	C
Cowlitz County	+	+	+	+	+	+	C	0	+	0	0	C
Lewis County	0	0	+	0	0	+	C	+	+	0	+	C
Skamania County	+	+	+	+	+	+	C	+	+	A	+	C
Wahkiakum County	+	+	0	0	+	+	C	A	0	+	+	C
Cathlamet	0	+	+	+	+	0	C	+	+	+	+	C
Centralia	0	+	+	+	0	+	C	0	+	+	0	C
Longview	+	+	+	+	+	0	C	+	+	+	+	C
Stevenson	+	+	+	+	+	A	C	+	0	0	+	C
Vancouver	0	+	+	+	+	0	C	+	0	0	+	C
Member-At-Large	+	0	+	+	+	+	C	+	+	+	+	C

+ = regular member present; 0 = unrepresented; A = alternate present; C = cancelled meeting

Mr. Hamlin adjourned the meeting without objection at 3:54 p.m.

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 Chair

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 Executive Director