



SPOKANE REGIONAL CLEAN AIR AGENCY BOARD MEETING MINUTES

March 7, 2019 9:30 a.m.
Spokane Clean Air's Conference Room
at 3104 E. Augusta Ave.

BOARD MEMBERS:

Al French, Commissioner (Chair) (Absent)
Kate Burke, City of Spokane (Absent)
Tom Brattebo, Member at Large (VC)
Kevin Freeman, Mayor of Millwood,
Small Cities & Towns
Rod Higgins, Mayor, City of Spokane Valley
Karen Corkins, Commissioner's Alternate

STAFF MEMBERS PRESENT:

Julie Oliver, Executive Director
Lisa Woodard, Comm./Outreach Section Manager
Lori Rodriguez, Compliance Section Manager
Joe Southwell, PE, Air Quality Engineer
Mark Rowe, Monitoring Section Manager
Michelle Zernick, Finance & HR Sect. Mgr.
Margee Chambers, Rule Writer/SIP Planner
Mary Kataoka, Administrative Assistant

OTHERS PRESENT:

Michelle Fossum & Kristina Montanez, Legal Counsel
Ron Edgar, Advisory Council Member

WORK SESSION: There was no work session.

BOARD MEETING: 9:30 a.m.

1. **Advisory Council Report** – Ron Edgar – There was no February Advisory Council meeting.
2. **Executive Director's Report** – Julie Oliver – Debbie Riley retired March 1, 2019; recruitment to fill her position has begun. Another car was left in the parking lot and was towed. The office was closed February 12, 2019 due to the weather and unsafe road conditions. A copy of SRCAA's response to EPA Region 10's final report on the Title V (Air Operating Permit) Program for large industrial sources is in the board packet.

ACTION ITEMS/POTENTIAL ACTION ITEMS:

3. **Consent Agenda**
 - a. Approval of the February, 2019 Board Minutes

- b. Approval of Vouchers for February, 2019, numbered 11133 thru 11162 and 11164 thru 11174 with claims totaling \$49,885.47 and payroll numbered 11131, 11132, 11163 and EFTs totaling \$166,945.88 – for a Grand Total of \$216,831.35

Kevin Freeman moved to approve the consent agenda as presented and Rod Higgins seconded it. Motion passed unanimously.

4. **PUBLIC HEARING ITEMS:**

- a. **Resolution No. 19-04** – This resolution will appropriate funds from the retirement reserve account for the payment of the retired employee’s unused leave balances and the payroll tax liability of the Agency.

Tom Brattebo opened the public hearing at 9:35 a.m. for Resolution No. 19-04; appropriating retirement funds for the payout of the administrative assistant. This hearing was communicated in the Spokesman Review on March 3, 2019. There were no public comments. The hearing was closed at 9:37 a.m. Rod Higgins moved to approve Resolution 19-04 as presented and Kevin Freeman seconded it. Motion passed unanimously.

- b. **Resolution No. 19-05** – A presentation and review of the proposal amending the Consolidated Fee Schedule 10.15(B) Annual Registration Fee for Marijuana Producers and Processors was given, along with an overview of the comments received during the comment period.

Transcribed by Mary Kataoka. Ums/ahs were not included in the transcription.

Tom Brattebo: I will open the public hearing at 9:45 a.m. The purpose of this hearing is to review Resolution 19-05; Amending the Consolidated Fee Schedule, Section 10.15(B) regarding annual registration fees for marijuana production/processing. As Margee went through, the Clean Air Agency communicated these proposed amendments to the public 34 days of comment period February 1, 2019 till this morning. It was in the Spokesman Review, the Clean Air website, postcards mailed to the producers and processors and complainants, distributed by e-mail to Clean Air regulatory and compliance assistance lists, distributed an e-mail to the regulatory community partners and marijuana advisory committee members, published a hearing notice in the Spokesman Review on March 3, 2019. It is now time for public testimony, and I have a stack of people who signed up to testify. If somebody else is interested, Margee has the forms. Public testimony, I’m going to call your name, go to the podium, state your name and address please. The public hearing ground rules are: silence your cell phones; speak in the order you are called; use respectful language; no distracting or disruptive or intimidating behavior; no clapping, cheering or booing; respect the right of others to have an opinion even if you don’t agree; and each person will have three minutes to speak and when your time is up, finish and step away.

PUBLIC COMMENTS:

Mark Ambler: Thank you sir, do I address the Chair, okay. Yeah, I’m Mark Ambler, my address is 4845 Guide Meridian, Bellingham, Washington and I’m here representing the Tier I Producer Association. I stand by written comments, the fee reduction proposed is not adequate for Tier I Producers and I have new data from 2018. The value of a Tier I Producer license has dropped 75 percent since 2017. So if you bought a license for a 140 grand, a business for 140 grand back in 2017 like I did, you can’t sell that for more than 40 grand right now. So my daughter has lost \$100,000

worth of inheritance is how I think of it. Like I'm only working for my kids right now and so that, that's tough. Producers are only allowed to grow 2.5 percent of the cannabis in Spokane County, Tier I producers, but the SRCAA requires us to pay about 14 percent of your fees. There's a disproportionate impact on Tier I producers and we can't afford it. If the Spokane Regional Clean Air Agency conducted a small business economic impact statement prior to rule adoption, it would have identified this issue prior to the impact happening. RCW 70.94.141 says the duties of an air pollution control authority include notice and adoption procedures set forth in the RCW 34.05.320. The Spokane Regional Clean Air Agency claim they're exempt because they are an air pollution control authority and not a state agency. But RCW 70.94.141 says that an air pollution control authority shall follow 24.05.320, just because SRCAA isn't a state agency, doesn't mean they can cherry pick adoption procedures from 34.05.320. So I recommend, the LCB had a meeting two day ago at their board caucus and they said we're looking for a survey, we want to do a survey of the industry and part of RCW 19.85.040 says you can conduct a survey and that, that will be part of the obligation for your small business economic impact statement. So you can work with that state agency to conduct your survey and help you do this impact statement and in the mean time I recommend you bring the fees to zero because this impact is happening and the farmers that you see here today might not be here the next meeting. Thank you very much.

Kevin Oliver: Thank you Board. My names Kevin Oliver, my address is 27315 N. Monroe Road, Deer Park, Washington. As you know the, the Drug Enforcement Agency no longer has purview over cannabis sativa in, at the federal level, in regards to any cannabis sativa that is less than .3 percent. Anything above 0.3 percent we call marijuana anything below 0.3 percent we call hemp. The difference between cannabis sativas is inconsequential. We have in our process in Washington State Department of Agricultural now a, a license application to comport with the farm bill. So, we will have agricultural marijuana, for all intensive purposes, it will be just below 0.3 percent. On my ten-acre agricultural, small tract agricultural parcel, I'm exempt from everything except one-tenth of it which is marijuana above 0.3 percent THC. If I were to plant the other nine acres, it will look and smell exactly like marijuana. The CBD that you hear about on the news, that comes from the flower, it's gonna look and smell exactly like my marijuana. It's going to be agriculturally exempt. So I look at this kinda like the Catholic Church looked at Galileo, he was put on a rack and persecuted because he said the earth was not the center of the Galaxy, but he was right. So you guys will be changing these rules eventually (in audible) all.

Crystal Oliver: Hello, my name is Crystal Oliver and I'm the executive director of the Washington Sungrowers Industry Association. I'm speaking on behalf of the farmer members that I, that we represent. We sent a public comment in, a letter as well as a report that I compiled. I'm hopeful that you had the opportunity to review those materials. We suggest that you amend your proposal to provide an exemption from initial and annual registration for outdoor cannabis farms who are located on rural, agricultural, and resource lands on parcels that are 10 acres or greater in size. We also strongly encourage you to take another look at the regulations that you have adopted. We have concerns including inequitable fee distribution. The proposal fails to comport with the Clean Air Act and we also have a lot of concerns about the definitions included in the Clean Air or in your regulations, because they are very, some of them are conflicting, some of them are unclear and they're seems to be some confusion between those who are enforcing these regulations, those who wrote the regulations, those who are subject to these regulations. It's unfortunate that during the Marijuana Advisory Committee process, that we didn't have more time discussing the definitions. I served on that committee and there was a lot of very rich conversation about fact gathering is what I would describe it as and it's just very unfortunate that we didn't spend a lot of time digging into the definitions and the regulations and really engage the stakeholders at that level with these regulations

since they were being built from scratch and it's no easy task to build regulations from scratch and I've been engaged in several different efforts around the state with different agencies and so from my perspective, I see where you're coming from, I know you've got complaints but you need to respond too, but I think we're, this is to, to, to broad and to sweeping. I think we really should take a step back, do a more collaborative rule making approach where we're having that conversation about these definitions and about the content before instituting these regulations. The fees we're looking at right now have, you know they, they center around these definitions and I'm telling you that there's problems with the definitions; there is a lack of clarity in the definitions. So that's why while definitions might not be exactly within the scope of this hearing, they are connected because these varying fees that you're proposing are tied to those definitions that are unclear and so that's why I have, that's why I draw that connection here now. I don't really have much more to say. I, you know hemp, I was just down in Olympia talking to hemp lobbyists and talking with the WSDA, we're going to have an organic cannabis standard pretty soon and we're also, I'm also, a lot of my farmers are going to be diversifying into hemp cultivation primarily for CBD production and I know you guys are going to tell me that hemp is exempt, is exempt, you're not going to come after me for fees for my hemp because I'll say go talk to the Farm Bureau and you guys won't. Thank you.

Alex Kwan: Hi, my name is Alex Kwan, my address is PO Box 1764, Mead Washington. I'm the owner of a (in audible) cannabis farm. We're up near Mount Spokane and we're Tier 3 outdoor producer and that is causing me to be, what I feel to be having to be burdened by the fees which I, that make it very difficult for, for me to stay in business. Because of, I'm a Tier 3 that's a problem because you've made the assumption that larger Tier size, well means more canopy, means oh must be more smell, must need more regulatory requirements, so they basically charge more and what's even worse is we, we've started our business on a shoestring budget; we became a Tier 3 just because we own the property, the decision about what size farm to, what license you want was how big do you want to make your fence. So we decided it makes sense, let's go for a Tier 3 and then the other thing is (in audible) shoestring budget, we didn't have any facilities, couldn't really afford much, but we could afford a hoop house and then that unfortunately falls under your other producer requirements, which now mean I have, according to the correct fee schedule, it's a \$3,700 per year every year according to your fee schedule and that exceeds all the licensing requirements we have to pay to the state for cannabis licensing and what is really puts more insult on, on top of that injury is the fact that I don't see where I would cause any problems at all for any of our neighbors because I live on a, a rural piece of property. I'm surrounded by a coniferous forest. My nearest neighbor is a quarter mile away, yet I have to pay the highest fee of, on, on your schedule of and I understand you have to make certain assumptions on, on collecting money to, to do enforcement, but I think you should, I request that you relook at how you would allocate the fees because I feel like I'm, I'm being unduly burdened and these fees are just one more rock in our boat that it's really difficult to make a, make a profit under these market conditions and all these license fees are just making it even worse. At, at minimum, if you don't change any fees after a year or so, you'll see where you're enforcement efforts have been directed, where those costs are and, and at least I would ask you to do an audit over the next year where are the compliance issues, where you spend all your attention and then adjust your fee schedule to address where the complaints are. I think it, it's, it seems logical that where you have conflicts, that's where you're gonna get the complaints where you're gonna need enforcement actions and that's primarily locations that are near high population densities where there are people that can, would, would be potential conflicts. In rural areas, I don't, I don't see it and I ask that you consider my, my comments.

John Wood: Hi I'm John Wood, 318 E. Pacific. Thanks for having us, thanks for letting us speak. I just really want to reiterate what everyone else has said about complaint driven fees, instead of just

broad sweeping fees. I think that what's happening in the industry that I see is that everyone's being fee'd to death and I think what's, what that's gonna create is consolidation and I think that at the end if things keep going the way that they are, I think you're gonna see that the majority of the people in the business are the Phillip Morris' and Coca Cola's and that's not what we're here to do, that's not what you guys are here to do. I think that you have an opportunity to help us and nurture this industry and, and I realize that it comes with a stigma but I would just encourage you to look at the, the, the beer industry and the wine industry and what kind of prosperity that has created in this state. I think that the primary goal for you guys should be enforcement for people that complain. If people aren't causing problems, I don't think they should be even addressed. The last gentleman that spoke is a really good example. I mean, I'm, I'm, I'd be surprised, have you ever received any complaints? (Alex Kwan: Never.) No and he's paying the highest fee that there is and I just think that's really unfair. I appreciate the fact that you guys have reduced the fees, that's, that's great and I would just encourage you to completely reevaluate the system and the other gentleman had mentioned looking at the budget for the last year and see how, how you spent your money and, and reevaluate the fee system according to that as opposed to just a sweeping, painful expense for all of these industries that are just trying to get going. What I've seen the last year is that all the farmers are for sale and because they're not making any money and again, what's gonna happen is they're all gonna go out of business and the big farmers that represent the majority of the business in Washington already are just gonna get bigger. I'm a processor only and so my fee would be \$418 and I just want you to appreciate that if I do have to pay that fee, I'm gonna send in a check for \$420. Thank you.

Frank Schade: Good morning or afternoon, I guess morning. I would like to start real quick, I, I, I'm mainly here just to support all the other farmers. I would really, the first speaker was just dead on the bullseye with his comments. Everybody has terrific points today. To take it back a step further, how we actually got here today, she backed us up pretty far but, you know, I have one of the first licenses in the state, the seventh in the state, one of the first in this county. I've been to most all of the council meetings and this really started with the same two people complaining over and over about their neighbors. Just occasionally at the meetings there would be a couple other neighbors that had general complaints and, and often times they would lump on odor as one of their problems they had with the marijuana farm up the street; but in general there is a large number of farms, a large number of farms that are never two alike, they're in town, they're on Mount Spokane, the Palouse, all over and to put the same burden of fees that seem to just be snapped out of the air from the beginning; I, I not, not that it would be an easy task at all to start this oversight and to figure out how to start imposing the fees and where to start them at but clearly you guys, I wish you would consider our comments and before you make those policies, do further studies on our end. I've already had a great impact with this. I had another farmer who was renting space off of me who went out of business over this particular fee; it was just the final straw. He didn't have \$750 and he was looking at, I believe it, the fine takes it up to \$1,500 if you don't pay it. It was, it was more than he was willing to bare, so you know, it's impacted me in a horrible way. It impacts me in a horrible way, I've had no complaints. I'm in a zoned rural area and I just don't feel I should be burned to pay this; it, it, you started out with a lot. Hopefully you'll listen and, and possibly amend this down to what, what's actually fair. No other industries are treated this way. It's, it's just way too much money when you actually haven't been or visited to the farms or had complaints about the farms. I understand legally you're allowed to do this and legally maybe it made the most sense to put a sweeping yearly fee down but, you know, a minimum \$400 plus most people if you average it are probably paying \$2,000 plus a year, again which is in many cases is more than our state legal requirements to keep this license up. It reminds me a lot of the insurance, my insurance started out very reasonable. Insurance figured out they've had nobody, no over sight, they could, insurance went up 800 percent for me and.

Toni Nersesian: Toni Nersesian, Palouse Farms, I'm a Tier 1, I live at 1316 E. Smythe Road in Spangle. My, I have three concerns. The first is precedents that you're not paying attention to and I understand that staff doesn't live with precedents but the Mayors of councils and you. This morning it shows Rod Higgins of Spokane Valley you're working with the (in audible) people who setup some guidelines. You established precedents to follow them and I think your precedent for finding people, fining us or making us pay fees for processing when they were only trimming flower, goes against the Washington State building industry's review when they said we were exempt. It goes against the Spokane County's Building Commission, everyone has said if you only package your flower, you don't have to pay a processing fee. If you want to do more than package your flower, you go into an industrial zone in Spokane. Here you charge all of us for packaging flower and I really wish, because I know as Mayors, as representatives of the City and the County, you go by precedents. I was involved with non-profits for 30 years, mainly as an executive director in several of them. Are you breaking a precedent? If you're breaking a precedent, you have to look into it because what are the consequences? You choose to ignore or not pay attention to the precedents set by the building council and by the county, I don't feel that I or anybody who is packaging flower, just flower, should have to pay fees for this, it's wrong. I think you need to look at precedents. I think your fee payments as far as property, making them, okay I pay my property taxes, there's always a choice, do you want to make a second payment, here's a paper. With this one, we choose to pay in two payments, and I read enough of the paper work that Julie put out, that I filled out the paperwork that said I want to make a second payment in August. Those people who didn't, when I brought my second payment, I was told I might have to pay a fine. They looked it up, oh, okay Toni filed the paperwork (in audible) your cool, that's great but, it shouldn't be that you have to try to make your second payment, it should be part of the process, not an extra step and do enough, the County doesn't make me do it for taxes; I don't think you should. Complainers, we are here because some people went wacked over Bang's Cannabis. When I've worked for businesses where the Fire Department got called a lot or the Police Department got called a lot cause the alarms went off in the middle of the night while you're working late in the office or whatever, they charge you for this. When you have someone, who has maybe two to three times, set a standard for that, and Julie you know who they are, set a standard. If you call over three times and we have no readings on you, you get the fine, because they are sucking up your staff time and I hate having people who have no business doing that. So, thank you.

Tom Barlow: My names Tom Barlow, I'm a 502 grower Tier 1 down at Spangle. I just want to say she's a good cop. When I heard about you guys, I was shocked. It's like what do they do, do they just grow up out of the ground and as I learned more about you, I decided that is what happened. People who can shift papers and know how to manipulate the system can create there own little thing and then I found out the impact on us. We're a Tier 1, we've got filters, you don't smell nothin. I don't need to be charged, along with the big outdoor growers, for what I do. I'm a professional builder, I built the building, I'm an architect, I got none of these problems. I don't need a bunch a good-o-boys because they don't like the products, sittin round wonderin what they can do to stop it and that's what I consider you guys, a bunch of good-o-boys, we know who you are, sittin around "oh gee how can we stop lettuce, this devils lettuce" anyway, I'm done.

Carl Caughran: My name's Carl Caughran as stated, I live at west Washington Road in Cheney Washington and I was on a, a member of the MACT Advisor Committee, representing the affected public and my goal wasn't to speak today, but I thought it important to offer the Board a counter point to what everybody else has said here. You know, we discussed fees, we discussed a lot of things in MACT Advisory Committee and the one thing that's been steady through this process is a lack of resources or a lack of funding to regulate what's going on out there. So, the question I would

ask of everyone in the room, if anybody's ever appealed their property taxes, has anyone ever had their property taxes lowered by 21 percent. I think this is very generous of what the, the Board is considering to lower these fees. I hear these people say well 750's going to ruin ya. Well you know I'd love to open a hunting and fishing store, but I looked at the feasibility of it, the fees, the employee taxes and that, not reasonable. So, I work for another corporation because I know I can make a living and pay my property taxes. So what the affected public is asking for is a representation here in the new industry, those people have paid their property taxes and live out in these typically residential or what would be considered residential, it's zoned different, rural ag or whatever it is; we expect to have that representation from the, from the County, from the State to protect the enjoyment of our property and, and I appreciate that you're doing that. I don't think this is a, a absorbent amount of fees to provide for a inspector to come out and inspect these, these businesses and it, it protects the large percentage of the people in the county that are relying on you to do that first. So, I thank you for your time and consideration.

Public Hearing Closed at 10:12 a.m.

Discussion ensued among the Board Members. There were discussions on definitions, RCWs, and complaint driven costs raised by the public comments. The Board would like to see the Agency prepare a response to comments received with respect to definitions and state regulations and if the Agency could prepare some sort of, if there is pending legislation, an analysis of what might be out there coming up this year and if there is anything out there that might affect the standing of cannabis as an agricultural crop within the state, etc. With respect to the Fee Schedule, the Board agreed that the calculation of the fees has been gone over many times and that the fees could be looked at again at a later date should things change for the industry.

Rod Higgins moved to approve Resolution 19-05 as presented and Kevin Freeman seconded it. Motion passed unanimously.

NON-ACTION ITEMS:

5. **Executive Session** (Purpose will be announced if session is needed.) There was no executive session.

6. **Activity Reports:**

a. **Public Information/Education Update – Lisa Woodard** – Overviews of the February communications and education activity were given on the following: Community events/school programs/presentations; print/online materials/media; compliance assistance/business recognition program; asbestos; social media; ongoing/special projects; and upcoming events.

b. **Compliance Activity – Lori Rodriguez** – In January there were there were a lot of trainings and administrative work on the new database. There were four marijuana odor complaints and two were for non-licensed facilities and two were drive bys. There is a lot of asbestos work going on in the county and a lot of the projects are being done by outside contractors and they haven't been doing things the way they need to. Spokane Clean Air works with the municipalities and are trying to find ways that we can do that better and be more proactive. Some discussion ensued.

c. **Permitting Activity – Joe Southwell** – In November and December we received eight NOC applications for each month and in January and February we received two NOC applications for

each month which allowed staff to get caught up. The Kattera permit was approved about six months ago for the main facility and they applied for another permit for a lumber drying kiln. Lumber drying kilns are unique and there is a lot of interest across the country on emissions from those and we are in the process of getting that permit finalized hopefully by the end of March.

d. Air Monitoring Activity – Mark Rowe – Air quality for January was mostly good, there were six days where PM_{2.5} was in the moderate range.

e. Financial Status Report – Michelle Zernick – No real substantial changes other than in January the annual source registration invoices were mailed out. Second notices will be mailed out to less than 100 sources. Payment has been received for over 500 sources. We are working to fill the administrative position and working on grants.

7. Public Forum –

Mark Ambler: I would just like to say that when you guys are responding to comments and posting that to the public, don't let your biases show. And what I mean by that is in the last response to comments, you guys posted Susan Cofferin's comments. She had a very long comment that you selected the following: So where you are whining during public comments about how am I gonna feed my kids, you should be saying to your children, I am sorry to subject you to growing up on and around these pot growers. You should be ashamed at what you're doing to your children. They don't have a choice as you, as a parent do, you should be ashamed, you have sold your soul to your and your children out for the money. Oh and by the way, you're reading the headlines. In the news, it appears the black market you thought we're going to wipeout by legalizing marijuana is still thriving. So, by selecting that portion of her comment, you're showing and putting that in the category profitability black market and adding the derogatory stuff, you're showing a bias towards that and I would just request not to do that anymore. And also, I would like to note that here in Washington State we have 1,100 farmers, 1,100 plus farmers, cannabis farmers, in Oregon there's 16,000 licensed farmers and when legalization happens, there all coming across the border to our retail shops to compete with us 1,100. So, I would say, you know, watch out for those biases. If you do have connections to Oregon, watch out for that. When you're responding to comments, don't let your biases show and that's my (in audible). Thanks.

8. Board Concerns – There will be a quorum for the April meeting. Tom Brattebo will be absent.

9. Next Board Meeting – 9:30 a.m., Thursday April 4, 2019.

10. Adjournment – The board meeting was adjourned at 10:47 a.m.

COMMISSIONER AL FRENCH, CHAIR

JULIE OLIVER, EXECUTIVE DIRECTOR