

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 94 - 06 - 01 - 2

FILED

JUN 02 1994

) In the Matter of Entering into an Agreement
) with the Lane Regional Air Pollution
) Authority Regarding Proceeds of Civil
) Penalties

COUNTY CLERK
BY G. Elaine Cole

Whereas Lane County is a participating member of the Lane Regional Air Pollution Authority;
and

Whereas the Board of Commissioners believes it is in the best interests of the citizens of Lane
County to support compliance of federal, state and local regulations regarding clean air; and

Whereas the Board of Commissioners recognizes that the cost to enforce these regulations may
include significant legal fees; now, therefore, it is

ORDERED that Lane County enter into an agreement with the Lane Regional Air Pollution
Authority to allow the cost of outside attorney fees in LRAPA contested cases and judicial
review be deducted on a case-by-case basis from collected civil penalties now disbursed to Lane
County's general treasury; and

FURTHER ORDERED that the County Administrator be delegated authority to negotiate and
execute an agreement consistent with the proposal in Attachment A, for implementation not later
than July 1, 1994.

Dated this 1st day of June 1994.

APPROVED AS TO FORM

Date 6/1/94 by Jessie Wilson county

OFFICE OF LEGAL COUNSEL

Jerry Rust
Chair, Lane County Board of Commissioners

In the Matter of Entering into an Agreement with the Lane Regional Air Pollution Authority
Regarding Proceeds of Civil Penalties

RECOVERY OF CONTESTED CASE COSTS

BACKGROUND

The Lane Regional Air Pollution Authority (LRAPA) is an intergovernmental agency charged with protection of the air resource in Lane County. LRAPA is authorized by state law, EQC and LRAPA regulations and local ordinances to conduct a comprehensive air resource management program within Lane County. The program includes strategic planning, monitoring and regulation of air contaminant emissions from industrial and commercial facilities, open burning, asbestos abatement, dust and fallout, woodstoves and nuisances. LRAPA implements federal Clean Air Act requirements in Lane County, while maintaining close ties with other local agencies to address air pollution concerns as population increases.

LRAPA is supported by contributions from the local participating entities, as well as state and federal grants and various fees. Lane County and the cities of Eugene, Springfield, Cottage Grove and Oakridge are the participating local partners. For FY 94-95, about 21% of the revenue to LRAPA's \$1.1 million operating budget is from local contributions. Other revenues include: Federal and state grants, 26%; permit fees, 19%; emission fees, 34%.

The makeup of the LRAPA board of directors is based on a population formula in ORS 468A.120 as follows: Eugene-3, Lane Co.-1, Springfield-1, Cottage Grove/Oakridge-1, At Large, appointed by the board,-1.

Emphasis on enforcement of environmental regulations has increased throughout the nation and the State of Oregon in recent years. This has resulted in new federal and state statutory requirements, which in turn affect LRAPA's compliance assurance and enforcement programs.

LRAPA's procedures are similar to those of other regulatory agencies, where discovery of a violation is documented with a notice of violation sent to the respondent, often accompanied by a fine, abatement order or warning, or a combination. Opportunity for hearing an appeal is provided to the respondent if a fine is assessed. Upon request for a hearing from the respondent, a hearing is conducted as a contested case, usually before a hearings official. The proposed order of the hearings official may then be appealed to the LRAPA board. Judicial review may follow this administrative appeal process.

As required in ORS 468.135(2), LRAPA has routinely forwarded civil penalties collected for violations of LRAPA rules to the general fund of Lane County. LRAPA now absorbs the full administrative and attorney costs of investigating and prosecuting violations, hearing contested cases, issuing abatement orders and collecting and processing civil penalties. Most of the attorney costs are incurred

enforcement program.

We have always considered prospective costs of proceedings in making decisions on mitigation or settlement of penalties. As each budget year wears on, and the available resources are expended, the cost consideration weighs disproportionately against the other factors of environmental harm, economic equity and consistency with similar cases. While not yet the norm, we have begun to experience frivolous appeals of lesser offenses, such as illegal open burning. These appeals have wound up costing considerably more than the penalties involved. This erosion of resources seriously weakens our negotiating position during settlement proceedings regarding major violations, where substantially larger penalties are at issue.

PROJECTED IMPACTS

Numerous factors influence the amount of penalties in any given year. The projections here are extrapolated from activity levels of the last two years to present. Wide variation is expected year-to-year, especially where there are relatively few major permitted industrial sources, from which the larger penalty amounts would most likely come. Historically, individual penalties assessed on major sources have been comparatively small, in the two to ten thousand dollar range. The new enforcement rules have the greatest effect on cases involving major sources. For example, under similar new state rules, a recent settlement between Weyerhaeuser (North Bend pulp mill) and DEQ, was just short of \$250,000.

Under the new rules, assuming 2 or 3 significant enforcement actions against major facilities, in any year aggregated penalties could break into the hundred-thousand dollar range quite easily. Whether major sources would be as willing to settle as quickly for substantially higher penalties as before is conjecture, but in all likelihood they would not be more willing. Attorney fees for a contested case involving a moderate penalty (\$30-\$50g) for a significant violation at a major industrial source could amount to ten to thirty thousand dollars. It will continue to be LRAPA's policy to agree to settlements which are consistent with federal requirements to obtain substantial penalties, including economic benefit, and provided they are otherwise on terms favorable to the public.

Other violations including illegal open burning and asbestos, will also be subject to higher penalties. Historically, individual penalties for such violations have been in the fifty to four thousand dollar range. More of these end up as contested hearings, with each associated attorney costs in the few hundred to fifteen hundred dollar range. We expect the higher penalties in the new rules to provide greater deterrence and fewer total violations of this type, but where penalties are assessed, appeals and contested hearings are more likely. Assuming 20 enforcement actions of this type, aggregate penalties collected could be in the

available now where we might not be able to resolve a major case, with proceeds from penalties recovered are split with the federal government according to relative level of effort.

Split civil penalty assessments into several components, one of which would be for cost recovery, separate from the penalty remitted to the county, or add a cost recovery element to stipulated final orders for major violators. This is being researched now, but may require a legislative change.

Lane Regional Air Pollution Authority

Penalties & Legal Costs 91-94

