

**BOARD OF HEALTH MINUTES  
NOVEMBER 2, 2009**

Marie O'Rourke, Chair called the meeting to order at 7:30 p.m. Also in attendance were Robert Reader, Vice Chair, Sandra Giroux, Secretary, Fred Kenyon, Daniel Kane, Richard Berube, Director, and Joanne White, Recording Clerk.

Jena Caruso, Town Counsel representing Louison, Costello & Pfaff, was present.

**ACCEPTANCE OF MINUTES**

Mr. Kenyon made a motion to accept the Meeting Minutes of September 22, 2009. Mr. Reader seconded. So voted unanimously.

Mr. Kenyon made a motion to accept the Meeting Minutes of October 5, 2009. Mrs. Giroux seconded. So voted unanimously.

**CORRESPONDENCE**

**Board of Appeal – Procedural Seminar**

Mrs. O'Rourke stated the first item under Correspondence is the Board of Appeal, Procedural Seminar.

Mr. Berube explained that he received a memo from the Board of Appeal regarding a Procedural Seminar. The seminar is going to be presented by Town Counsel, Patrick Costello on Wednesday, December 2, 2009 from 6:00 p.m. to 8:00 p.m. in the Maurice Buck Auditorium. The purpose of this seminar is to discuss issues relating to each board and commission's responsibility in coordinating the permitting process. This is the Board of Appeal's response to the article (Article 22) that was withdrawn from the Annual Fall Town Meeting. The Board of Appeal members feel that this seminar would be beneficial to all concerned to work together for the benefit of our customers and the community.

Mrs. O'Rourke asked if that was the issue where the Planning Board was taking authority away from the ZBA.

Mr. Berube replied that he did not think the Planning Board was trying to take away the ZBA's authority. The Planning Board wants the ZBA to inform all the boards and commissions about the various projects that are going on in town. The information needs to be communicated.

Mrs. O'Rourke asked if any of the Board Members would be interested in attending the seminar.

All the Board Members and Richard Berube, Director will be attending the seminar.

### **BOARD OF HEALTH BUSINESS**

#### **Water Conservation Committee Update**

Mrs. O'Rourke stated the first item under Board of Health Business is the Water Conservation Committee Update.

Mr. Kenyon explained that he was not able to attend the last meeting however he has the minutes from that meeting. Mr. Kenyon explained that Billerica is awaiting approval of the proposed by-law that will formalize the Water Conservation Policy. Abdul Alkhatib, Director of Public Works and John McGovern, Water Department Superintendent were present at the meeting. They provided a detail sheet describing the method of calculation that allows the determination of mitigation fees for new construction whether it is a home, factory or even the proposed power plant. The thrust of the policy is to keep our total water usage as nearly the same as possible while allowing growth in Billerica. The fees paid by the builders will be used to help pay for water conserving toilets, washing machines and repairs to the system to eliminate leaks. The Water Conservation Committee took a vote on a motion to approve the proposed Water Use Mitigation Policy presented by John and Abdul. John and Abdul will present the policy to the Selectmen. John and Abdul informed the committee that the current water rates are 40% less than the cost of water treatment and the distribution system's actual costs. The Town subsidizes 60% of our water bill. The sewage bills only cover 10% of the actual cost of treatment. The Water Conservation Committee voted in favor to approve the proposed Water Use Mitigation Policy. Mr. Kenyon explained that as soon as the policy is approved by the Selectmen and the State he would provide the Board with a copy.

Mrs. O'Rourke asked if any of the Board Members had any questions.

The Board Members did not have any questions.

#### **EPA – Iron Horse Park – Asbestos Sampling**

Mrs. O'Rourke stated the next item is EPA, Iron Horse Park, Asbestos Sampling.

Mr. Berube explained that at the July 20<sup>th</sup> Board of Health Meeting the EPA was present and explained that they were going to do some asbestos sampling. Mr. Berube explained that he assisted them in collecting samples from several residents in the area. The results showed that there was no migration of asbestos off site. I have copies of the fact sheet if anyone in the audience is interested. The next step is activity-based sampling. EPA has already notified the residents in the area that they will be doing activity-based testing.

Mrs. O'Rourke asked if any of the Board Members had any questions.

The Board Members did not have any questions.

### **Flu Update**

Mrs. O'Rourke stated the next item is the Flu Update.

Mr. Berube explained that Christine West, the Town's Public Health Nurse submitted a report regarding the latest information on the flu vaccine. Two clinics were held one at the Senior Center and one at the Town Hall. Unfortunately we did not have enough vaccine because the Health Department had only received a partial allotment from the State. Hopefully we will receive more seasonal flu vaccine. The Health Department is receiving numerous calls for the seasonal flu and H1N1 shots. We have received 100 doses of the H1N1 vaccine however it is the nasal mist. The criteria for receiving the H1N1 flu mist is ages 2-49 and healthy. We are going to prioritize the H1N1 vaccine for distribution to children, pregnant women and health care workers. When we receive more H1N1 flu vaccine a public clinic will be held.

Mrs. O'Rourke stated that a lot of the employees in the Town Hall have called to ask if the nurse is planning on having an employee clinic.

Mr. Berube replied an employee clinic would be scheduled when there is sufficient vaccine. At this time we will give the vaccine out to high risk people and address each priority group accordingly.

Mrs. O'Rourke asked if the Board Members had any questions.

The Board Members did not have any questions.

### **7:50 p.m. McFarland Cascade – Iron Horse Park – Appeal Hearing for Notice of Violation and Order for Correction and Request for Reconsideration of Board of Health Order**

Mrs. O'Rourke stated the next item on the agenda is McFarland Cascade, Iron Horse Park, Appeal Hearing for Notice of Violation and Order for Correction and Request for Reconsideration of the Board of Health Order.

Christopher Davis, Attorney for Goodwin Proctor, representing McFarland Cascade, identified himself. Mr. Davis introduced Steve Glennon, Facility Operations Supervisor, Gale Hoffnagle, TRC Environmental Air and Odor Consultant and Sara Hanna, Senior Hydrogeologist, Licensed Site Professional from GZA Geo Environmental who was present at the sampling that was done in the field. Dr. Larry Feldman, Licensed Site Professional (LSP) could not be present this evening because of a prior commitment. McFarland is appealing two orders one from the Board and an administrative order from Mr. Berube. One is the soils order and the other one is the air monitoring sampling memo dated October 7 and 8, 2009. McFarland's reason for the appeal was sent to the Board on October 16, 2009.

Mr. Berube suggested that the soil order and the air monitoring order be addressed separately because two separate motions would be made.

Mr. Davis stated that he planned on addressing the orders separately. Mr. Davis explained that the affidavits for Gale Hoffnagle and Lawrence Feldman have been submitted to the Board in support of the appeal addressing the soil samples and the air monitoring sampling. McFarland would like to reach an agreement with the Board on a mutually acceptable approach for both these subjects so that they do not have to pursue any future appeals. McFarland has made significant efforts and has spent a lot of money addressing the concerns of the Board and the neighbors. McFarland will be spending considerably more money to address these two orders. McFarland is willing and agreeable to a reasonable site investigation and remediation process in preventing future releases and also agreeable to a reasonable air-monitoring program. We hope we can come to a mutually acceptable agreement with the Board. Mr. Davis explained that there have been three (3) recent deliveries of poles. Currently there are a total of one thousand fifty-six (1,056) poles on the site. Fifty-seven (57) poles have no treatment at all and seventy-eight (78) poles are treated with the old solution of high sulfur diesel and pentachlorophenol. The 78 poles that are treated with the old solution should be removed from the site relatively soon. McFarland believes that once the poles treated with the old solution are gone it should resolve the odor issue. The new formulation does not emit significant odors. The odor is faint and smells like wood chips. If the Board has any questions regarding the pole deliveries Mr. Glennon can address them. Dr. Feldman's affidavit addresses the soil conditions and spoke about those issues at the last meeting. Mr. Davis stated that he would explain how McFarland proposes to address the soil conditions and where there is common ground with the Board on those issues. Then we can address any technical issues about the soil and the potential risks. Sara Hanna from GZA is present to address any questions the Board may have. McFarland is agreeable to submitting an action plan within thirty (30) days of this meeting or within thirty (30) days of the revised order. The plan will be prepared by GZA and will set forth the steps that it proposes and needs to complete under the Mass Contingency Plan (MCP) that is required under the Department of Environmental Protection (DEP) contaminated site regulations. McFarland has retained GZA and Dr. Feldman as the LSP to oversee the site investigation and the remediation process as required by the MCP. McFarland will implement the MCP site investigation and risk assessment process in an expedited manner. We will not take the five (5) years that MCP allows the parties to take. There are a couple of things that need to be coordinated. First, McFarland needs to coordinate with the other parties, the former operator For/Tek and the site owner Eastern Terminals, that have received Notices of Responsibilities from DEP. There are some points of non-agreement between those parties. Mr. Davis stated that he could not share those disagreements.

McFarland is trying to come to some legal agreements between For/Tek and Eastern Terminals. Second is the Environmental Protection Agency (EPA) superfund process. EPA has been sampling for asbestos. EPA wants access to Eastern Terminals property and some of the area where McFarland operates. Pan Am Railways has been sampling for lead and they have requested access to sample for lead in the vicinity of the poles. The EPA investigation and what goes on in the superfund process needs to be coordinated with what McFarland does particularly in terms of any remediation. I do not know at this point whether there will be any remediation such as capping or paving that will be required in the area of the pole yard. That needs to be consistent and coordinated with whatever McFarland and its LSP determines to be the appropriate remedy for that area. One point on the MCP process, which is addressed in our appeal, this is an area that is comprehensively occupied by the State. There are three hundred (300) pages of documentation explaining the MCP regulations on how this process should be done. The process includes what you have to do, the phases you have to go through, the standards you have to meet and what data you have to collect. The MCP process is subject to the judgment and the oversight of the LSP and DEP. That is what controls and defines what gets done in terms of how many monitoring points there are and how many monitoring wells may be installed and how the risk assessment is done and how the remedy is selected. Mr. Davis stated that McFarland's position is if they should litigate this process they would win. That is an area that is fully occupied and preempted by the State Law and not an area in which Boards of Health have the authority to tell you how to do it. McFarland will try to do this process on a schedule, which is acceptable to the Board. It is not a process that can be done in a few weeks or a couple of months. It does not make any sense to do the sampling if there is a lot of snow on the ground. This is not typical of a contaminated soil Chapter 21E site in Massachusetts. We don't believe that this is an urgent situation, a crisis, an imminent hazard or a risk to anyone. It is an industrial area in the middle of a superfund site. Access is limited. The gates are locked where the trains go in and out. The lumberyard gates are open during normal business hours. This is not a crisis that requires immediate action. As far as a release prevention plan McFarland will prepare and submit a storm water management plan. This will not be the full EPA prevention plan, which has extensive requirements. EPA has confirmed that those requirements under the Federal Clean Water Act are not applicable for this type of operation. McFarland does not have to register for a storm water general permit and submit a storm water pollution plan. This will be a more streamline plan that focuses on what you can do to prevent recontamination none of which is easy or inexpensive. It may involve capping or covering the soil or the poles. We will submit a plan to the Board and it will be implemented. It will be coordinated with the MCP. This is how poles are stored for utility purposes throughout the United States. McFarland will try to figure out the most sensible and cost effective way to do it. McFarland is prepared to comply with the order rather than continue to appeal the order if that is agreeable to the Board. Mr. Davis asked if any of the Board Members has any questions. Ms. Hanna can address any technical questions the Board may have.

Mrs. O'Rourke asked the Board Members if they had any questions.

Mr. Kenyon stated that he has read all the information that was submitted to the Board and it is very thorough. However, the residents have to understand that this is and has been for many many years a superfund site. There is going to be a lot of contamination at the site. The Board has to focus on the pentachlorophenol and not the lead or other chemicals that have been there for many years.

Mr. Davis replied that when McFarland sampled the pole yard they picked up lead and other chemicals that are not related to the facility. McFarland cannot be responsible for the lead that has been there for years.

Mr. Kane stated that he has two questions. I appreciate your approach however I have difficulty believing that this process will take less than five (5) years as outlined in the MCP because you have explained some of the challenges involved with the owners and other operators of the facility. I have a concern with the plan. I would like to hear how you plan to expedite this process when you are coordinating with multiple agencies that share responsibilities as well as coordinating with the EPA superfund, DEP and the MCP process.

Mr. Davis explained there are only two other responsible parties, Eastern Terminals and For/Tek that have been identified by DEP that McFarland needs to deal with and coordinate with in an attempt to reach an agreement. If an agreement cannot be reached there is a process under Chapter 21E, Section 4A that can be followed or as a last resort there is litigation. Discussions and negotiations have yet to be arranged. McFarland does not plan on coming back within a year and tell the Board that we have not done anything because we are still having discussions. We are going to provide the Board with a proposed plan that McFarland will use and will be feasible in terms of the schedule. Most, if not all of the work would be done in 2010. We don't expect that DEP will be actively involved in overseeing this process. Ordinarily DEP is not actively involved. This is a privatized system that is why a Licensed Site Professional is involved. We will not have to wait for DEP to review and approve the site investigation plan and the proposed remedial action plan. Unless DEP determines that the scoring of the site is a Tier 1A, which is the highest risk, most complicated, most contaminated and typically involves ground water. We do not think there is ground water release that is related to the poles. However, there may be a broader ground water contamination issue with the Iron Horse Park superfund site at the other sources. We do not expect that coordinating with DEP will involve anything other than filing the necessary reports on an expedited schedule. The MCP gives you a year to file the Phase I report of the release notification. Two years after the one-year MCP deadline is the longest you can take to submit the comprehensive site investigation report and also submit Phase III of the report. McFarland does not intend to take that much time. We do not think it is a complicated site. It looks like it is shallow soils and is localized. Mr. Davis explained how the EPA would be involved. GZA would talk to the consultant that is working for Pan Am and the EPA consultant that is doing the asbestos sampling. In talking with the EPA it is going to require a remedy for lead and asbestos.

Mr. Kenyon asked will you be notifying the Board regarding what is taking place.

Mr. Davis replied that he would prefer to update the Board by e-mail if that meets the Board's requirements. If that is an issue then I will appear before the Board.

Mrs. O'Rourke stated the initial complaint that we received was for the smell from the poles. This has gone from one direction to another. Although asbestos and lead and everything else that is at Iron Horse Park is a concern of the Board; our initial complaint that we received was for pentachlorophenol. That is what we should be looking at. The odor that is coming from the poles is why

the residents have come before this Board. We have gone from PCP to lead to asbestos to air quality to soil testing. I am not looking to clean up the superfund site. I am looking to take care of what these residents have been complaining about and that is the PCP odor coming from the poles. I have yet to hear anyone say that the smell that is coming from the poles is pentachlorophenol. I will stress again that lead and asbestos are important but that is not what these people have come before this Board for. I think we need to get back on track. If anyone has any suggestions please let me know.

Mrs. Giroux stated to Mr. Davis that at the last meeting you said there were very few poles with the old formula. Tonight you stated that there is just under a hundred poles with the old formula on site, how do we go from very few to under a hundred when we are not treating any poles with that formula.

Mr. Davis replied that he gave the exact number of poles (78) earlier. It has declined substantially. At the last meeting there were more than a hundred poles on the site with the old formula.

Mrs. Giroux asked have any poles with the old formula been shipped out since the last meeting.

Mr. Glennon replied yes, we have shipped out some poles with the old formula since the last meeting.

Mrs. Giroux asked why you wouldn't ship all the poles with the old formula first.

Mr. Glennon replied we can only ship out what the customer orders.

Mrs. Giroux asked why have only thirty (30) poles been shipped out with the old formula.

Mr. Glennon replied because the customers have requested different size poles and they are not treated with the old formula. We can only fill orders with the pole size that is requested.

Mrs. Giroux asked why are fifty-seven (57) poles untreated.

Mr. Glennon replied that is what a customer requested. Those poles are cedar.

Mrs. Giroux asked has McFarland talked about reducing the inventory even more.

Mr. Glennon replied not at this time.

Mr. Kenyon asked should an inventory limit be set. When there are twenty-five hundred (2,500) poles there is a concentration.

Mr. Glennon replied McFarland agreed to reduce the inventory by 30%, which is about fifteen hundred (1,500) poles and we are below that inventory at this time. We used to store approximately thirty three hundred (3,300) poles.

Mrs. O'Rourke asked didn't you tell us that your contract requires you to keep a certain amount of poles at the facility.

Mr. Glennon replied our contract requires us to keep a ninety (90) day supply of poles at the facility.

Mrs. Giroux asked how many poles does the ninety (90) day supply consist of.

Mr. Glennon replied approximately 1,500 to 2,000 but our inventory is less.

Mr. Kenyon asked what is the lead-time from when you receive an order.

Mr. Glennon replied seven (7) days unless there is an emergency.

Mr. Kenyon asked how long does it take for you to receive the poles from your supplier.

Mr. Glennon replied if the poles are on a rail car it takes approximately two weeks to come from the supplier.

Mr. Reader asked if this situation would be taken care of in 2010.

Mr. Davis replied I can't guarantee the cleanup will happen in 2010 but it is possible.

Mr. Reader asked where is the money going to come from to pay for this cleanup.

Mr. Davis replied that has not been determined. McFarland will contribute to it but they do not feel that they are responsible for the entire amount.

Mr. Reader asked won't this just be dragged on if nobody is willing to come up with the money. Then the cleanup will never get done.

Mr. Davis replied McFarland is committed to getting this done but they are looking to have the other parties pay their share. McFarland could fund it and then seek recovery from the other parties.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube suggested that Mrs. O'Rourke open the hearing up to the audience first and then he would comment.

Mrs. O'Rourke stated she would open the meeting up to the audience. Mrs. O'Rourke requested that the audience clearly state your name and address.



Kristin Schepici, 17 Burnham Road, North Billerica identified herself. Ms. Schepici stated that she just moved back to the neighborhood and the odor really stinks. I do not want to spend 2010 coming to Board of Health meetings on Monday nights. I would like to hear tonight that something is going to be resolved because the smell is horrible.

David Johnson, 113 Gray Street, Billerica, identified himself. Mr. Johnson stated that he has watched the previous meetings regarding the pole issue. I have heard testimony from different people talking about the dangers associated with the odor and the complaints. This issue is not beyond the realm of the Board of Health. Obnoxious odors are definitely under the Board of Health's jurisdiction. Given the characteristics and the risks of the obnoxious odors associated with these poles I was wondering if the Board of Health could ask McFarland to wrap the poles individually especially before they are transported off site. The odors and drippings would be contained. As far as that being a superfund hazardous waste site, I know that there is a record of decision that was produced on how the site was to be cleaned and it was cleaned. If there is any construction going on it would be best to contact the EPA. I would like the Board to discuss wrapping the poles.

Mark Sampson, 4 Carmel Drive, North Billerica, identified himself. Mr. Sampson stated that he agreed with Mrs. O'Rourke that we have gone on to soil testing when we came for air monitoring. The first question I have is, in the GZA report they referenced in location 5 and 6 there is water between the surface and the eighteen (18) inch depth. They called it a perched water table and in the other location it was called standing water. Mr. Sampson asked if Ms. Hanna could explain what perched water is.

Ms. Hanna explained and illustrated the difference between perched water and standing water.

Mr. Sampson stated when DEP did their testing they came up with readings of 3.5 on the Minimum Reporting Limit of .5 It is seven times more on location 6A2. In location 5A2 at the eighteen-inch depth the MRL is .5 and the reading was a 12. That is twenty-four times the MRL. I find that to be alarming. I don't know where the chemicals are going. Are they going in the water or flowing downstream? I am surprised to see such a high number above the reporting limit.

Ms. Hanna explained there is a couple of different numbers that get recorded. There is a MRL that the lab can see and that number is different than the standard. For instance if you were going to test for a compound there is some level below which the lab can not find, it depends on the sensitivity of the equipment. That can vary. There is a reporting limit that the lab cannot tell the parts per million. That is a different number from what DEP sets as their recording standard. The reportable concentration is the numbers that DEP deems significant enough and that you need to report to them so that they can input it into their system.

Mr. Davis stated the clean-up levels would be above the reportable concentration.

Mr. Sampson asked Ms Hanna if she could explain the difference between the results that GZA got and the results that DEP got. For example in 5A1 surface test DEP got a reading of 2700 and GZA got a reading of 2000 that is a 35% difference. In 6A1 surface test DEP got a reading of 570 and GZA

got 400 or a 42.5% difference. In 3A2 DEP got a reading of 50 and GZA got a reading of 15 that is a 333% difference. Why is there such a significant statistical difference?

Ms. Hanna explained the readings are different but the soil is hydrogenous so if one of the samples has picked up a little bit of cinder the reading would be different. In places where DEP found the highest readings GZA also found high readings. We have looked at the distribution and it is similar. We have looked at the results from both GZA and DEP and the results are very similar. Ms. Hanna explained the differences between GZA and DEP readings. We agree that our results are consistent with the DEP results.

Mr. Sampson asked Mr. Berube if DEP funded the soil testing that DEP did.

Mr. Berube replied that DEP paid for and did their soil testing.

Mr. Sampson asked why are they hesitant to do air testing and fund it as well. We know that pentachlorophenol is on the site and in the soil. It is probably in the air. I would like to know why they do not want to take the next step and do air testing.

Mr. Berube stated that he posed that question to DEP and as you know they move very slowly. They have not made any decisions at this time. Mr. Berube explained that what is our priority is not necessarily DEP's priority. They could have a number of other cases at this time that demand greater attention than our case. When I receive an answer from DEP I will share it with everyone.

Mr. Sampson asked Mr. Davis if McFarland has the type of liability insurance that would pay for McFarland to do this type of work.

Mr. Davis replied general liability insurance does not have a pollution exclusion unless you buy specific environmental insurance, which is very costly and excludes pre-existing conditions. This type of situation is not insured under general business insurance.

Melissa Smith, 19 Carriage Road, identified herself. Ms. Smith stated that her concern is still the PCP. No one has been able to guarantee us that it is not a health risk in the neighborhood. It is my understanding that the new poles are still treated with PCP. All I want to know is that the PCP is not a problem or causing a health risk. It is very frustrating that no one has given us an answer.

Carole Legro, 4 Ashdale Road, identified herself. Ms. Legro stated that in March of 2008 I was one of the residents that made the first call because of the smell coming from the poles. At the July 20, 2009 Board of Health Meeting I presented some medical statistics. I encouraged everyone to read a recent EPA document. In that document the EPA stated that they have grossly underestimated the health risks and effects of people who live in the proximity to poles. To date no one has been able to tell us what other sites have poles as close to homes as the site in Billerica. I have had medical testing done and my levels are high. They are all in the reportable range. I lead an organic life style inside and outside of my house. I am seeking the help of an environmental physician. Every day there is a strong

chemical smell outside. There is a change in the smell and I assume it is because the chemical formulation has changed. In the 300-page EPA article it talks about different recipes with PCP and the side effects are the same. Why would we think of having 2,500 poles that smell at the facility?

Lynne Santos, 29 Seven Oaks Road, identified herself. Ms. Santos stated that whether the poles are old formula, new formula, have a smell or no smell they all have pentachlorophenol in the formula. What the residents want to know is if they are being exposed to levels that are going to make them ill.

Mr. Berube stated that in regards to the order for the soil contamination, the intent was to show that we are very concerned with the soil contamination and what could possibly be going on at this particular site. We consider it a priority. I am not looking to assume the role of DEP or trying to oversee all the activities under the MCP. We want to be involved to some degree to see what is going on. We also want to make sure the issues that we have raised are being addressed. The proposal that McFarland Cascade has made seems very reasonable. I am requesting that McFarland Cascade provide copies of any filings that are submitted to DEP also be submitted to the Health Department so that we could see what is going on. I would also like McFarland to e-mail the Health Department monthly progress reports. Mr. Berube recommended that the Board modify this particular order and take into account McFarland's proposal along with the items I have mentioned.

Mr. Davis replied that sounds acceptable, but I will have to see the modified order. I agree with Mrs. O'Rourke that the soil has to be addressed now that it has been sampled but the soil has nothing to do with the air issue. I urge the Board not to impose any further limits on the inventory of poles at the facility because at some point it will be impossible to do business. McFarland needs to meet their customer's needs. As for shrink-wrapping each pole, it would be impossible to do business that way and would also be very expensive.

Mr. Berube explained that initially when the Health Department started receiving complaints, McFarland Cascade tried to cover all the poles and despite their efforts that did not seem to work.

Mr. Davis explained the tarps tore when they were taken off especially when it snowed. It sounded like a good fix however it did not work. McFarland believes that the new formulation will eliminate the problem. It is hard to understand that for years and years the same operation has been doing business in Billerica and the poles have been treated with the same chemicals from the same suppliers and there have never been any records of odor complaints. Then McFarland Cascade took over with the same chemical diesel carrier and the only thing that changed was the formula to a high sulfur diesel carrier that could have caused an odor problem.

Mrs. O'Rourke asked what if the poles were put in a building that has a roof where they would be covered like a warehouse structure.

Mr. Davis replied that it would cost a lot of money to construct a building to allow the rail cars to enter, drop off the poles and move them around.

Ms. Legro stated is it possible that the reason why there was never any record of complaints was because no one could tell us where else they have stored twenty-five hundred (2,500) poles that close to residential homes.

Mr. Davis replied my understanding is that poles have been stored in this location for the last twenty (20) years. McFarland Cascade may have been storing more poles but now the inventory has been reduced. It is hard to understand what changed and why there is a problem now.

Ms. Smith, 19 Carriage Road explained the reason why this is a problem now is because when the formula changed we smelled the horrible odor. Then we found out pentachlorophenol (PCP) was in the formula. Prior to that we did not know what was in the formula because nothing flagged us that there was a problem. It is not because McFarland Cascade bought the business in Iron Horse Park. It is the new formula that has raised the fact that PCP is in the area. If anyone could guarantee me that PCP is not creating a health problem then I would not be coming here. But no one can guarantee us that the PCP is not causing a health risk.

Ms. Legro stated what we have been smelling coincides with the EPA reports of symptoms relating to these illnesses.

Mr. Davis replied this is the most common treatment for utility poles used throughout the United States. It is legal as far as the EPA is concerned and the EPA has deemed the risk acceptable. There are poles treated with PCP in neighborhoods and towns throughout the United States. The poles are stored where they can be easily obtained when needed.

Mr. Kenyon stated that everyone on the Board is here to protect the health of the residents of the Town of Billerica. Cost should not be a factor. It is the health of everyone that the Board is concerned with. We do not know what these people are breathing in. The cost of a human life is the bottom line.

Mr. Davis explained that McFarland has spent a great deal of money and will continue to be responsible and address the issues. They have changed the formulation. They have reduced their inventory. They are going to address the soil issue. They are going to address stormwater and the release prevention issue. They are committed to doing air monitoring. They are not refusing to spend money or dragging their feet.

Mr. Kane stated that we need to address the soil issue and then move to the air monitoring issue. Mr. Kane asked Mr. Davis to clarify what he meant by the statement he made that the MCP preempts this Board's authority to act.

Mr. Davis explained that he meant that the MCP regulates the soil investigation and clean-up process.

Mr. Kane stated the investigation and clean-up are different than ongoing contamination. I continue to have concerns with poles that are stored over open soil where the contaminates in the soil

match the substances that are above the soil. Under the Board of Health Regulations as well as the Massachusetts General Law this Board still holds authority over ordering some level of mitigation to prevent release of contaminants into the soil while DEP has authority over the clean-up process. It is still within the privy of the Board of Health to order remediation and the prevention of further releases into the environment. You stated that you are planning to coordinate with the previous owner Eastern Terminal and For/Tek as far as their process for identifying the contaminants that were found. There are a lot of parties that need to be involved in this process before you plan on breaking ground to take any action. You need to address these issues sooner. What does your Licensed Site Professional recommend that can be done prior to and before the evaluation and implementation of the MCP? What timeline can McFarland Cascade provide to prevent further contamination?

Mr. Davis replied this is localized contamination. GZA's analysis states that it is not hurting anyone or causing a risk to anyone from those spots in the soil. It is not a public nuisance or a health risk to the residents. I don't mean that nothing has to be done but it has to be coordinated with the MCP. This is not posing an urgent public health threat. Poles are stored above bare ground all over the United States.

Mr. Kane stated the Board of Health in Billerica gets to set precedence. I have a problem just because it is standard practice does not mean it is the best practice or that it is an acceptable practice. The Board of Health regulations states that knowing there is a release of hazardous materials is illegal in the Town of Billerica. Mr. Kane read Section 5.7.001 of the Board of Health regulations and stated that any obnoxious odor or substances in the environment is not allowed as determined by the Health Department to escape into the environment which in the opinion of the Health department causes harm to other persons. This odor problem does not by-pass our regulations.

Mr. Davis stated that we are not saying that we are not going to do anything.

Mr. Kane asked are you saying that you are contaminating the soil and it is an ongoing problem and our regulations are not reasonable and therefore are not enforceable.

Mr. Davis explained that we are going to address the problem in a logical way that coordinates with the MCP clean-up process. It is not going to be resolved immediately or next month. All the poles have to be moved. It is not an easy problem to solve. We are going to develop and submit a stormwater management plan that addresses the issue because we agreed and that is what the order states.

Mrs. Giroux stated that she disagrees with McFarland Cascade's timeline. I do think that pentachlorophenol is a health risk and a public nuisance. We would prefer you resolve this and then seek reimbursement from the other parties involved. I take great offense that you say this is not a crisis that needs immediate action. It is a crisis. We have been meeting for two (2) years. This is the time for immediate action. The five (5) year timeline is too long. It is a public health nuisance. You have to do something about this problem.

Mr. Sampson stated it is my understanding and I thought I heard it mentioned several times tonight that McFarland Cascade is not on the superfund site.

Mr. Davis stated that McFarland Cascade is within the boundaries of the EPA superfund site.

Mr. Kane stated that if you go to the EPA Iron Horse Park website it is not part of the park that has been remediated but it is within the boundaries of the EPA designated superfund site.

Mr. Sampson stated I think that everyone misunderstood Mr. Johnson's recommendation to wrap one thousand (1,000) poles. He was recommending that the poles with the old formula seventy-eight (78) poles be wrapped. That would be an immediate step to reduce the release of the poles with the old formula. My neighbors told me the smell was bad all weekend.

Mrs. O'Rourke asked if the seventy-eight (78) poles could be removed from the site.

Mr. Glennon stated that he would look into having the poles removed.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube stated that he recommends modifying the order taking into account the proposal McFarland Cascade has made including that any filings that are submitted to DEP will be submitted to the Board of Health and monthly progress reports also be submitted to the Board of Health.

Mr. Kenyon made a motion to modify the Notice of Violation and Order for Correction issued by the Billerica Health Department on October 8, 2009 based upon the following findings of fact:

#### **FINDINGS OF FACT**

1. The Notice of Violation and Order for Correction issued October 8, 2009 by the Billerica Health Department relative to the release of hazardous material to the McFarland Cascade site at 600 Iron Horse Park is a valid order. The Board of Health can conduct an investigation of a nuisance and conduct the appropriate enforcement action to eliminate the nuisance.
2. Representatives for McFarland Cascade argued that Massachusetts General Laws, Chapter 21E and the Massachusetts Contingency Plan (MCP) preempts the authority of the Board of Health to regulate the clean-up of hazardous waste sites.
3. The Director of Public Health clarified that the intent of the order is not to duplicate the role of the Department of Environmental Protection (DEP), but to be involved with the response activity and monitor the clean-up of the contaminated property to ensure that response actions proceed in a timely and appropriate manner in accordance with DEP standards.

4. The Board of Health expressed concerns that the clean-up of the site will not be conducted in an appropriate and timely manner. This matter is a priority for the Board of Health, which may not necessarily be a priority for DEP.
5. The Board recognizes that the MCP governs the clean-up of hazardous waste sites. However, the MCP does not adequately address the issue of release prevention.
6. McFarland Cascade proposed a response action plan that substantially meets the intent of the order.

**MODIFIED ORDER**

Therefore, based upon these findings of fact, the Board of Health voted to modify the Notice of Violation and Order for Correction issued by the Billerica Health Department on October 8, 2009 as follows:

1. McFarland Cascade shall prepare and submit a Response Action Plan to the Board of Health within thirty (30) days of receipt of this modified order. The plan shall be prepared in accordance with the requirements of the Massachusetts Contingency Plan (MCP) including the following:
  - a) A site assessment to characterize the nature and extent of contamination related to the pole storage facility
  - b) A risk characterization assessing potential risks to health, safety and the environment related to site-related contamination
  - c) Selection of appropriate removal, remedial or other response actions to address site conditions and risks
  - d) Implementation of the selected removal, remedial or other response actions for the site
  - e) A proposed schedule for implementing the above MCP activities and for the submission of a Stormwater Management Plan as addressed below.
2. McFarland Cascade shall engage a Licensed Site Professional (LSP) to oversee the response actions described in the Response Action Plan. The Department of Environmental Protection (DEP) is wholly responsible for regulating the hazardous waste site clean-up pursuant to the MCP. The Board of Health or its agents shall have access to the property covered by this order to observe clean-up activities.
3. McFarland Cascade shall implement all necessary and required response actions in an expedited manner as reasonably feasible, taking appropriate consideration of weather conditions, McFarland Cascade's business operations, coordination with the other Responsible Parties and the Environmental Protection Agency (EPA) Superfund site activities.
4. McFarland Cascade shall prepare and submit to the Board of Health in accordance with the schedule set forth in the Response Action Plan a proposed Stormwater Management Plan to

address and prevent, contain or otherwise mitigate continuing releases of wood treatment chemicals from stored poles to soils at the site. The plan will focus on best management practices and will not constitute a full Stormwater Pollution Prevention Plan as prescribed by EPA regulations and guidance. The measures selected in the Stormwater Management Plan will be consistent with and implemented in coordination with the remedial measure(s) selected pursuant to the MCP and any on-site remedial measures selected by EPA pursuant to the Superfund process.

5. McFarland Cascade shall provide copies to the Board of Health of all submittals to DEP that are required by the MCP.
6. McFarland Cascade shall provide a monthly status report on the progress of the clean-up. Reports shall be submitted by the Wednesday prior to each monthly Board of Health meeting (typically the first Monday of each month). Reports can be submitted via e-mail.

Mr. Reader seconded. So voted unanimously.

Mrs. O'Rourke stated we will now continue with the air monitoring plan.

Mr. Davis explained that McFarland is agreeable to the air sampling. McFarland submitted a plan to the Health Department in September 2009 and Mr. Berube recommended that on site sampling be done as well as background sampling and the designated residents. It is now November and McFarland has two concerns. First the weather is cold. When the weather is cold it does not produce useful data. In the cold weather the chemical have very little volatility. The sampling will most likely show zero levels of pentachlorophenol detected. I agree that everyone's health is the most important factor. It makes sense to remove the seventy-eight (78) poles off the site as soon as possible. It makes sense that the testing be done when the warmer weather returns. The first issue that McFarland requests that the fall sampling not be required. The second issue is sampling for the additional chemicals. Volatile organic compounds (VOCS), semi-volatile organic compounds (SVOCs) and petroleum hydrocarbons would be a problem since the chemical compounds are emitted by multiple sources. The concern has been pentachlorophenol and the risk from pentachlorophenol. Mr. Davis explained and gave examples of the sources and chemicals and where they come from. Mr. Davis stated that McFarland agrees to sample from the pole yard first. Mr. Hoffnagle is present to address the timing and the air sampling in the fall.

Mr. Hoffnagle gave the Board copies of his resume and a copy of the vapor pressure curve for pentachlorophenol. Mr. Hoffnagle explained that the time has past when it is reasonable to test for pentachlorophenol. We are not going to find pentachlorophenol in the air now. The vapor pressure is directly related to the evaporation rate from 77 degrees down to 40 degrees. The evaporation rate goes down by a factor of 10. We will not see any pentachlorophenol at 40 degrees. When McFarland has given me approval to do the sampling it will take a couple of weeks to get the sample materials from the laboratory. Then it will take a couple of days to set up the equipment and run the monitor. It will then take a couple of weeks to get the results back from the laboratory. It will be about three weeks before I can get the samples. The weather will be colder. We are beyond the time limit when it makes



sense to do the sampling. I urge you to delay the sampling until the temperatures are back up to 70 degrees and pentachlorophenol can be evaporated from the poles. I think it is important to know the soil stains that were measured under the poles cannot be a source of odor. The concentrations as measured are too small to constitute an odor source that could be measured even at the pole yard much less at the resident's home. It is unlikely that pentachlorophenol from those stains in the ground or in the soil can have any relation to the odors in the air. The concentrations in the poles are about 10%. The other thing is that EPA has conducted a study and once you treat a pole, after 40 days the evaporation comes to a stop. Most of the material that can evaporate from a pole stops after 40 days and that is because what is on the surface of the pole evaporates. Once you go down so far what is inside the pole does not come out. If you cut the pole open it would come out and start to evaporate again. The age of the pole has a lot to do with what evaporates into the air. From my technical point of view it is unlikely that the 78 poles are the source of the odor. However, we will get rid of the 78 poles. I think the air sampling should be delayed until the spring when we can actually measure for pentachlorophenol. Mr. Berube has asked to measure VOCs. There are no volatile organic compounds in the poles. The things that are volatile are not in the poles. What is in the diesel oil that is used to mix the pentachlorophenol is C10 or higher which means 10 carbon atoms. There is no octane in the diesel carrier for the pentachlorophenol. There are 10 hydrocarbons in there but not much more. This means that there are no VOCs chemicals in the materials that are in the poles and it is not a reasonable request to ask McFarland to measure the VOCs. There are a lot of semi volatile organic compounds (SVOCs) in the diesel oil. I recommend that we do two chemical analyses which is not very expensive. One for pentachlorophenol and one for the rest of the SVOCs compounds. Those SVOCs are in the diesel oil. That makes sense. Mr. Berube's recommendation is to sample at the pole yard first and then find out what is in the air and then go out into the community sample for those compounds. That way it would reduce the chance of measuring things that do not come from the pole yard. That is a reasonable request. First we sample at the pole yard and then sample in the community. My opinion is that the odor has never been pentachlorophenol. Pentachlorophenol is not volatile enough. If anything I believe that it could have been the diesel oil carrier. The diesel oil carrier had sulfur in it, which has a distinct smell. I also believe that it could have been when the creosote ties were put down along the railroad, last summer. The smell is similar enough to trigger the result. I have reviewed the complaints and the weather data during the time of the complaints. The vast majority of the odor complaints come at times when the smell could not have been coming from the pole yard based on the wind direction. There is some other culprit that is creating this odor. It may have started with something that came from the pole yard but it is not that. I do not believe that any of the complaints this summer were the result of something coming from the pole yard or the result of pentachlorophenol. I would be willing to stake my reputation that people did not smell pentachlorophenol. That is my guess and I hope that in May 2010 we have a chance to prove it.

Mr. Davis stated that he would like Mr. Hoffnagle to address the other sources of SVOCs and petroleum hydrocarbons and the false positive issue.

Mr. Hoffnagle explained the false positives can come from many different things. I have looked at the toxic release inventory which is data collected by EPA on air toxics that are emitted. There are lots of sources of toxic release chemicals in Middlesex County, Billerica and Lowell. There are VOC

admissions that are used by DEP for the purposes of air quality testing. In the year 2002 and 2005 DEP did a census of the VOCs emission sources. One of them was the at the Globe plant on Salem Road. There are lots of sources around. Something is giving off odors that people are responding to.

Mrs. O'Rourke stated that she has a copy of an air sampling report that was conducted in five Canadian locations. The compound pentachlorophenol (PCP) was introduced in 1936 as a wood preservative and, later as a disinfectant. The PCP used in Canada is regulated by the Pest Control Products Act. Uses have been restricted since 1981, to minimize human exposure through food, contact and inhalation. A high incidence of PCP has been reported in the urine of Saskatchewan residents. Air samples were collected in Saskatchewan at all five sites in July and August of 1995, October, and November of 1995 and January and February of 1996 and March and April of 1996. I am sure that the areas in Canada are a lot colder than in Billerica, Massachusetts. If they can do their air testing in the cold months, why can't we?

Mr. Hoffnagle replied we can do the air sampling in the winter but I do not think you will find anything.

Mr. Berube stated the report is regarding atmospheric pentachlorophenol concentrations. The report demonstrates that the temperature and location has an impact upon PCP concentrations. However, I don't think it rules out doing air sampling this late in the year. I think the results have some validity and the residents have a concern as to whether or not they are being exposed to pentachlorophenol. I do not think we should wait until the spring to do air sampling even if it is on a limited basis.

Mr. Hoffnagle stated that he would like to read the Canadian report and give his assessment of the report.

Mr. Kane stated that he has a couple of questions. Mr. Kane thanked Mr. Hoffnagle for his resume. Mr. Kane asked where else is PCP currently being used? Is there any other applications that are using PCP?

Mr. Hoffnagle replied that the telephone poles outside this building have been treated with pentachlorophenol.

Mr. Kane asked is there any other common use of this chemical in the environment now.

Mr. Hoffnagle stated it was used in treated lumber but it is not being used any longer. It does not mean that there isn't any pentachlorophenol treated lumber around because there is.

Mrs. Giroux asked why they stopped using pentachlorophenol in treated lumber.

Mr. Hoffnagle replied because it has been deemed to be hazardous to have in the environment for children. It is being used for residential lumber use only.

Mr. Kane stated that he is looking for other sources.

Mr. Hoffnagle stated if pentachlorophenol is found in the air it is coming from McFarland Cascade.

Mr. Kane stated that is the foundation the Board is trying to establish. So if pentachlorophenol is found in the environment it is positively coming from McFarland Cascade.

Mr. Hoffnagle explained we are going to put a monitor at the Town Hall as the control and whatever concentrations of pentachlorophenol we find at the Town Hall we are going to subtract from what we find at the other sites. We are using the Town Hall as the control and the background location. That is the way you set up an experiment. For the most part if we find pentachlorophenol in the air it is coming from McFarland Cascade.

Mr. Kane asked would you stake your reputation that there is no exposure as a result of the pentachlorophenol in the poles.

Mr. Hoffnagle replied no, he could not do that. Mr. Hoffnagle explained the odor threshold for PCP is about 12 parts per million which is very high compared to the concentrations in the air. The odor that you smell when you smell the poles is the diesel carrier not the pentachlorophenol. It does not mean if you smell the diesel carrier that you are not getting pentachlorophenol. You are getting a small amount of pentachlorophenol.

Mr. Berube asked Mr. Hoffnagle if he could explain what he meant by high odor threshold.

Mr. Hoffnagle explained the odor threshold for hydrogen sulfide (rotten eggs) is .003 parts per million so the odor threshold for pentachlorophenol is 12. So you would need pounds and pounds of pentachlorophenol compared to one pound of hydrogen sulfide in order to smell it.

Mr. Kenyon asked how you can say that the wind direction could not affect that neighborhood because wind will take its own course.

Mr. Hoffnagle explained if the pole yard is a half-mile away from the residents you need to have a wind that transports the direction from the pole yard.

Mr. Kenyon asked would it be possible when there is a complaint or when the air sampling is done that you could have a wind direction sensor on the site.

Mr. Hoffnagle replied that is part of the plan. Part of the plan is to use the wind nanometer that is on site and put one in one of the residents yard so that they have 2 wind vanes. Mr. Hoffnagle explained how the 2 wind vanes were going to be set up. One vane will be set up at the pole yard facility and one will be set up at the residents so that it would be possible to get the transport.

Mrs. Giroux stated that her only request was to still do the two air sampling tests; one test now and one in the spring.

Mr. Reader stated that he has a question for Lynne Santos. Do you agree with Mr. Hoffnagle that by doing the testing in the cold weather it is not going to show any pentachlorophenol?

Ms. Santos explained that she cannot say that it will or will not show anything. I do not understand why the cost of the test (\$45,000) that McFarland Cascade is planning to do is so expensive. I looked into the cost of the tubes and it would not cost that much. I do agree limited testing should be done.

Mr. Hoffnagle explained the reason that the testing is costing so much is because we are doing the full testing at the number of sites that was agreed upon. We are using the EPA methodology so that DEP accepts the sample results.

Ms. Santos asked what the cost of air sampling per tube is.

Mr. Hoffnagle explained we are not using a tube procedure. It is a puff sampler. Mr. Hoffnagle explained the process that was going to be used with a filter and how it goes through a high volume sampler which uses a vacuum cleaner motor to draw enough air over 24 hours. This is so we can find pentachlorophenol at the .01 micrograms per cubic meter, which is the DEP limit that we need to be sure to get. It requires a lot more samples and a different chemical analyses to get the .01 micrograms per cubic meter.

Mr. Davis explained there is also a cost associated for the labor of the people that will be setting up the equipment, collecting the samples and performing the analysis of the samples.

Ms. Santos asked can you provide us with a breakdown of the cost of the actual sampling. I would recommend testing on site as soon as possible. Ms. Santos asked how often is the weather data collected and how often is the wind data recorded?

Mr. Hoffnagle replied at 30 minute intervals.

Ms. Santos asked is that data something you would be willing to share with the Board.

Mr. Hoffnagle replied that he has already provided the data to Mr. Berube.

Ms. Santos explained that TRC is one of the leading companies in three-dimensional modeling. I attended a modeling conference with Mr. Hoffnagle last week and TRC demonstrated a neat tool that shows the wind direction when using the data. That data can be used when there is a complaint and the source could be determined.

Mr. Hoffnagle explained when the sampling is done we will be sampling at two locations.

Ms. Santos stated that she would be interested in confirming Mr. Hoffnagle's analysis when the complaints are recorded and the wind is not coming from that direction. Can the engineers at TRC estimate the volatile emissions of the pentachlorophenol?

Mr. Hoffnagle stated the emissions are measured by grams per day.

Ms. Santos asked if the analysis could be forwarded to the Board and me.

Mr. Hoffnagle replied that he would forward the analysis to the Board.

Ms. Santos asked Mr. Hoffnagle if he thought that volatilization would evaporate one ton a year.

Mr. Hoffnagle replied not from this pole yard.

Ms. Smith asked Mr. Hoffnagle how come you would not base your reputation on the fact that pentachlorophenol is hurting us. Ms. Smith stated that she feels that Mr. Hoffnagle is very condescending. He is laughing when he is explaining about pentachlorophenol. This is a very serious matter and we are not laughing.

Mr. Hoffnagle apologized and stated that he was not trying to be condescending. Mr. Hoffnagle stated that he is only trying to explain to the audience the technology that is being used. Concentrations of pentachlorophenol at your home are very small and we are hoping that the testing will show that.

Ms. Smith asked how can we trust TRC's testing if they are so confident that there will not be any pentachlorophenol.

Mr. Hoffnagle replied because we are going to do the testing by the methods prescribed by the US Environmental Protection Agency and we are going to give the data to Mr. Berube and he will share the data with DEP and they will check to make sure it has been done correctly.

Ms. Legro commented that last year at this time we were attending a meeting and the question of air testing was put on hold because of the winter months. The air testing was supposed to be done in the spring. We are very upset that the testing was not done in the spring of 2009. All winter long we had the same smell. The smell began to change when the pole recipe was changed. So there is no question that it is the poles. Sometimes we smell the original odor. More often we have another chemical smell. I am hoping that the testing that will be done in the winter months and the spring months reflects whatever is being used in these poles. I do feel that you are minimizing the risks. Ms. Legro asked if anyone has read the July 2009 Federal report. The report expounds on how it is believed that they need to reevaluate what is being used to treat the poles and consider banning it because of the risks to humans and inhalation as well as other measures.

Mr. Hoffnagle stated that is about the telephone poles that are within several feet of residential properties.

Ms. Legro explained the Federal report is a 300 page report that talks about all medical aspects. We need new ways of measuring, storing and stacking the poles. Ms. Legro encouraged everyone to read the report.

Mr. Johnson stated it would be very easy to predict what is being emitted into the air and the chemicals that are being used. An analysis of what is being emitted at different temperatures can be done. There is no reason to wait. The poles shouldn't emit any smell after they have aged for a certain period of time. If they are stored here before they have aged that means they are not cured. Does McFarland Cascade have a permit that allows these chemicals in the Town of Billerica? The poles should be fully cured before they arrive here.

Mr. Hoffnagle replied that is correct. I have done those calculations at a lot of wood treatment facilities and that is why I feel comfortable answering the questions regarding how much pentachlorophenol is coming off the poles. The amount of pentachlorophenol that is coming from these poles is measured in grams per day. If McFarland would like I can do those calculations. They are not very difficult. The calculations do not tell us whether you can smell PCP or not. It tells you how many grams of PCP are coming off the poles and the constituents.

Mrs. O'Rourke thanked Mr. Hoffnagle.

Mr. Berube stated that he has looked at what McFarland Cascade has submitted for consideration and what the residents have spoken about. I think we can come to a satisfactory solution. I think we should go forward with limited air sampling this fall for pentachlorophenol (PCP) only. We can limit the sampling to the site itself, two residences and one background location this will partially address the issue regarding the cost of testing. In May the sampling can be done at the pole facility and also at the property line of the facility. In the spring I want the testing to be done for PCP, VOCs, SVOCs and petroleum hydrocarbons. I think we need to determine what is off gassing from these poles and what the chemical signature is. Then analyze the results. If we see that they have exceeded the allowable ambient levels then we need to continue to do the air sampling at the residences that were originally proposed. I think this will address some of the issues that have been raised and it will still provide us with some of the answers that we are seeking. It is a step by step process. We are going to evaluate the results at each step and determine where we should go from there. So that we will not be doing all kinds of tests that will provide us with information that we do not need.

Mr. Davis stated if the Board is still going to order that the air sampling be done at the pole yard as soon as possible I suggest that the sampling be done at the pole yard first. If there is no pentachlorophenol coming off the poles or it is extremely low I am requesting that we do not proceed to do the sampling at the residents. I think sampling should be contingent on what is detected at the pole yard. We will report the results as soon as possible.

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Mr. Berube asked Mr. Davis if he is recommending that the sampling be done at the pole yard and outside the pole yard.

Mr. Davis replied that he would leave that up to Mr. Hoffnagle to determine the best locations.

Mr. Berube asked could we at least sample two locations within the pole yard facility.

Mr. Hoffnagle stated that he would work with Mr. Berube on picking the locations.

Mr. Davis stated just make sure it is feasible and will generate useful data in the cold weather. Mr. Davis explained that he would wait to see what the Board orders and then McFarland will have to decide if they can live with it or whether they need to appeal it in superior court.

Mr. Berube suggested that limited sampling in a couple of locations on site be done and analyzed before we proceed to do any sampling at the residences in the neighborhood. I think that is reasonable. Everyone knows that this is not a representative of conditions of what the residents are experiencing in the warmer weather. That is why sampling will still need to be done in the spring.

Mr. Davis replied that is why I think the testing does not make sense to do in November or early December.

Mr. Berube stated the residents have a concern about potential exposure to pentachlorophenol. I think doing the limited testing will provide some answers to the residents.

Mr. Sampson stated that if we need to sample at the residents homes could you make sure that we do not sample two homes in the Brunswick Estates area. Could you spread it out and sample at the Billerica Rod and Gun Club?

Kathy Karamanian 4 Ashdale Road, North Billerica identified herself. Ms. Karamanian explained that her husband has been keeping track of the wind speed and direction and temperature. When the humidity is high and there is a lot of moisture in the air that is when we smell the odor the worst.

Mr. Hoffnagle explained that if you put an odorant into a droplet of water and breathe it into your nose then the droplet or water is in your nose. If it is gas it goes in and out of your nose. Ms. Karamanian is right. If there is an odor in the air, the higher humidity in the atmosphere will make the odor seem worse and last longer because it stays in your nose.

Jeanette Palermo identified herself. Ms. Palermo explained that she was one of the houses that have been picked for testing and I have been waiting for someone to come to my house. Why did we have to sign the contracts if McFarland Cascade was going to renege on the agreement to do the air sampling? Why did we have to sign the contracts now?

Mr. Davis explained that the Board asked us to send the access agreements out immediately. So we complied with the Boards request.

Mrs. Palermo stated the Board also asked McFarland to test in the fall and we assumed the testing was going to be done any day.

Mr. Davis explained we do not think the sampling will produce any useful data to test this late in the year. We were not trying to have the residents sign the agreement for no reason.

Mrs. Palermo stated that the residents expected the tests to be done. Mrs. Palermo stated that she stopped calling because nothing is being done. I am tired of calling.

Mrs. O'Rourke stated we are trying.

Mrs. Palermo stated that she doesn't think McFarland Cascade is trying hard enough.

Mrs. O'Rourke replied that we have asked McFarland Cascade to do the air sampling and we have to give them the opportunity to do the testing.

Ms. Legro stated that she wanted this to be recorded. We are heading into the second winter and Everyday I will smell the chemical odor outside my home.

Mrs. O'Rourke asked that a motion be made.

Mrs. Giroux made a motion to modify the ambient air monitoring plan determined by the Board of Health based on the following findings of fact and issued the following order:

#### **FINDINGS OF FACT**

1. Representatives for McFarland Cascade argued that air monitoring in the colder fall and winter temperatures would not generate any useful data. Further, it was stated that sampling for volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) and petroleum hydrocarbons would be problematic since the chemical compounds are emitted by multiple sources. Finally, the air monitoring program set forth in the Board of Health modified order and the review comments made by the Director of Public Health would cost in excess of \$100,000.
2. McFarland Cascade proposed to conduct air monitoring in the spring and that the air monitoring plan be limited to sampling for pentachlorophenol (PCP).
3. The Board acknowledged that air samples collected in the fall/winter may not contain PCP. However the Board of Health recognizes that PCP could potentially be present in the ambient air at nearby residences. A 1998 Canadian study confirmed the presence of PCP in ambient air during the winter near a facility that stores utility poles. The Board of Health felt that air sampling



should be conducted in the fall to address residents concerns about current exposures to PCP. Ambient air sampling shall be conducted again next spring during the month of May.

4. The Director of Public Health proposed a limited air sampling program be conducted this fall to address the immediate concerns of residents with a second round of air sampling in the spring. The proposed revised air sampling plan would address potential PCP exposure and nuisance odor questions and air monitoring program costs.

**ORDER**

Therefore based upon these findings of fact, the Board of Health voted unanimously to modify the order issued to McFarland Cascade at its October 5, 2009 meeting as follows:

1. McFarland Cascade or their representative shall conduct a limited air sampling effort this fall.
  - a) Ambient air samples shall be collected on the site near the utility poles at two (2) locations.
  - b) The samples will be analyzed for pentachlorophenol. If pentachlorophenol is detected above Allowable Ambient Limits (AAL) of 0.01 ug/m<sup>3</sup>, then air samples shall be collected at two (2) residences selected by the Director of Public Health.
  - c) McFarland Cascade shall be required to appear before the Board of Health at the next available meeting to report their findings upon conclusion of the limited air sampling this fall.
2. A second round of air sampling shall be conducted in May 2010.
  - a) First, co-located air samples shall be collected on the site near the utility poles. The samples shall be analyzed for pentachlorophenol, VOCs, SVOCs and petroleum hydrocarbons. McFarland Cascade may collect air samples from additional locations within Iron Horse Park to address their concerns about other potential sources. The results shall be submitted to the Board of Health.
  - b) If pentachlorophenol, VOCs, SVOCs and petroleum hydrocarbons are detected above their respective AAL concentrations, air samples shall be collected at four (4) residences selected by the Board of Health and at one background location.
  - c) McFarland Cascade shall appear before the Board of Health at the next available meeting to report their findings upon conclusion of air sampling in the spring.

Mr. Reader seconded. So voted unanimously.

Mr. Davis asked if the offsite sampling will be contingent on the results of the onsite sampling.

Mrs. O'Rourke replied that was part of Mr. Berube's motion.

Mr. Sampson asked do we have to wait for a Board of Health meeting to find out the results of the sampling.

Mrs. O'Rourke replied as soon as the Board gets the results Mr. Berube will forward the results to the Board and Mr. Sampson. Then Mr. Sampson can let the rest of the residents know the outcome.

Mrs. Giroux made a motion to adjourn. Mr. Kenyon seconded.

The Board adjourned at 10:00 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk