



Friends of Toppenish Creek

March 4, 2019

Dear Director Bellon,

On January 31, 2019 the Friends of Toppenish Creek sent you a request to investigate the Yakima Regional Clean Air Agency (YRCAA) as authorized by RCW 70.94.405. We now ask you to add these further concerns to that request.

We apologize for the ongoing nature of this complaint. But . . . YRCAA continues to marginalize the citizenry and postpone actions that would improve air quality in Yakima County.

In Brief:

1. It is increasingly difficult for citizens to engage the YRCAA Board of Directors, the group responsible for air quality in Yakima County.
2. The YRCAA has concealed information from the public regarding the eligibility of private citizens to serve on the YRCAA Board.
3. The YRCAA has made statements that are incomplete, misleading and, in some critical situations, untrue.

In Depth

1. It is increasingly difficult for citizens to engage the YRCAA Board of Directors, the agency responsible for air quality in Yakima County. Citizens have to work very hard in order to be heard.

A. For several years people have asked permission to address the YRCAA Board of Directors at the end of Board Meetings, instead of the beginning. Citizens believe this would give us an opportunity to elaborate on and sometimes correct misleading statements made by the YRCAA staff.

Example:

- In March, 2017 the YRCAA Director gave a report on the YRCAA Agricultural Task Force. We could not comment at the meeting even though we knew that the Board did not hear the entire story. The Public Comment Period preceded the Director's Report.
We asked to be put on the agenda regarding the Agricultural Task Force in May, August and October. Our request was not approved and our concerns were not heard in a public meeting. We sent a letter outlining our concerns and none of the Board Members responded.

B. Citizens can only address issues that are on the agenda and only for three minutes. We are not allowed to introduce other concerns that relate to air quality. In order to do that, we must ask to be put on the agenda ahead of time. (FOTC acknowledges that YRCAA has no legal obligation to let citizens address the YRCAA Board of Directors.)

Examples:

- In the spring of 2018 Sandy Braden from FOTC stood up to speak at an YRCAA Board meeting. She was told to stop because her subject was not on the agenda. Subsequently two other citizens approached the podium with 1. A concern about enforcement of burn bans, and 2. Information about Climate Change. Neither had requested time and neither subject was on the agenda. The Board decided to make a one-time exception and subsequently allowed the two gentlemen and Ms. Braden to speak.
- On January 22, 2019 Sandy Braden asked the YRCAA to put a question regarding burn permits on the agenda.
 - On February 13, 2019 Director Hurley informed her:
I am writing to inform you that no Board Member elected to place your request on the February 2019 agenda. As always you are still welcome to come and speak during the public comment period.
 - Ms. Braden went the extra mile and contacted a board member and an alternate to learn why they did not ask to have the discussion placed on the agenda. Neither had received the information. (Attachment 1)
 - The Large City Representative on the Board, Carmen Mendez, subsequently asked the Director to put the discussion on the agenda and this is scheduled to happen in March.
- On January 24, 2019 Jean Mendoza sent the YRCAA Board of Directors an e-mail describing incorrect information from the August, 2018 and September, 2018 Board Meetings. (Attachment 1)

- On February 1, 2019 Director Hurley responded by e-mail but did not offer to make any public corrections.
- On February 8, 2019 Ms. Mendoza asked to be placed on the February 14, 2019 agenda so she could explain the federal law and ask the YRCAA Board to advocate for Yakima County citizens. She also asked that Ms. Braden be placed on the agenda to present concerns about burn permits.
 - Mr. Hurley replied that none of the Board Members asked to have these discussions placed on the agenda.
 - On February 16, 2019 Ms. Mendoza forwarded the February 8, 2019 e-mail to each Board Member at their YRCAA e-mail addresses with this message:

It has come to my attention that some of you may not be receiving e-mails from the Friends of Toppenish Creek. Would you kindly reply to this forward and let me know that you have received it?

- None of the Board Members responded. FOTC can only assume that they are either not receiving their e-mails or have agreed to ignore us.

2. The YRCAA has concealed information from the public regarding the eligibility of private citizens to serve on the YRCAA Board.

Norm Childress, the Mayor of Grandview, served on the YRCAA Board of Directors as the Small City Representative for several years. In November, 2018 Mr. Childress was elected to serve as a Yakima County Commissioner. The Commissioners decided that he would represent the County Commission beginning in 2019. This left the Small Cities Position vacant.

On November 28, 2018 the YRCAA posted a legal notice in the Yakima Herald Republic stating that the City Selection Committee, a legally defined group of small city mayors, would select a replacement.

YRCAA did not inform the City Selection Committee or the public that this position could be filled by a private citizen as stated in the YRCAA Administrative Code Part A:

1.3 Board Composition and Selection

Pursuant to RCW 70.94.100, the Board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city with the largest population in the county, and two representatives to be designated by the board of county commissioners. If then, the Board consists of an even number; the seated members shall elect an additional member who shall be either a member of one of the governing bodies of the towns or cities, or a private citizen residing in the authority.

No one was selected by the City Selection Committee. We do not know why. On February 9, 2019 the legal notice was posted once more. There was no statement about the eligibility of private citizens to serve.

At the February 14, 2019 YRCAA Board Meeting two of the members asked Director Hurley whether a private citizen could fill that position. He replied that he did not know. He anticipates that the position will be filled for the April, 2019 Board Meeting.

In summary, the YRCAA has been aware of a vacancy on the Board of Directors since November 2018. That position will not be filled until April, 2019 at the earliest. That position could be filled by a private citizen but no one has been informed of this option.

3. The YRCAA has made statements that are incomplete, misleading and, in some critical situations, untrue.

A. On April 12, 2018 the YRCAA Board of Directors held a study session for *Review of legal costs and exposure related to the Air Quality Management Policy for Dairy Operations*. The Executive Memorandum for this study session described a 2011 civil action in which the Citizens for Sustainable Development sued the YRCAA for failure to comply with the law regarding public records requests. YRCAA stated that the costs to the agency and ultimately the tax payers was ~ \$180,000 (See Attachment 2, YRCAA April Board Packet)

- The memorandum did not relate why the civil action was initiated in the first place; what the Citizens for Sustainable Development alleged in their law suit
- The YRCAA staff did not show the board the redacted documents at the heart of that law suit. They had been so severely blacked out that there was no information whatsoever.
- There was no acknowledgement of the community's right to study data from the industries that send pollutants into the Yakima County air
- There was no discussion about how to avoid lawsuits by complying with the Public Records Act

B. In 2014 the YRCAA agreed to participate in an EPA program entitled PM Advance with a goal of reducing emissions of particulate matter using a community based approach. This involved creation of a community advisory group. In the 2015 Update to EPA the YRCAA stated, "The group will remain active and will meet no less frequently than semi-annually." (Page 10/35). In fact the advisory group did not meet after 2015 but the YRCAA sent updates in 2016 and 2017 citing the advisory group and listing members who no longer work or live in the area.

- In the 2016 Update, YRCAA stated:

A stakeholder group has been assembled to participate in a “Clean Air Task Force.” Interests represented include: Industrial Sources; General Public; Construction; Citizen Environmental Groups; Municipalities; Academia; Agriculture; Economic Development; Hearth Products; Forestry; Transportation; Adjoining Air Jurisdictions; Public Health; and more. The list of persons participating is shown in Appendix E.

The group has met routinely since August of 2014 and has participated in the control strategy development and selection of additional reduction measures and programs. Additional reduction measures and programs to be implemented immediately are detailed in Appendix F. The group will remain active and will meet no less frequently than semi-annually.

- The 2017 Update states (Page 36/36) “The group affirmed existing funding mechanisms and agreed that all should be maintained.” and “The group was unable to identify any significant additional funding mechanisms.”
- But the advisory group has not met since 2015.

C. As of February 28, 2019 there is inaccurate and misleading information on the YRCAA website:

- The YRCAA Fact Sheet , *Animal Feeding Operations*, states:
 - Concentrated Animal Feeding Operations are facilities that require federal National Pollutant Discharge Elimination System (NPDES) water quality permits, irrespective of size. This is not true
 - Calving operations, dairy operations and poultry operations are regulated within YRCAA’s jurisdiction. This is not true
 - Animal Feeding Operations (AFOs) are required to register initially and annually with YRCAA. This is not true. (Attachment 3)
- The YRCAA Fact Sheet, *New Source Review*, states that:
 - Dairy operations require New Source Review. To the best of our knowledge this is not true. If it were true then dairies would have to estimate emissions of toxic air pollutants as defined in WAC 173-240 (Attachment 4)
- Under *About YRCAA* the website states:
 - “Board Meetings are traditionally held the second Wednesday of each month.” This is not true.
 - “Bill Kramer was the first Executive Director/Air Pollution control Officer (APCO) for the Authority from 1967 to 1972. Bob Crossland served from 1972 to 1989 and Tom Silva served from 1989 to 1995. Les Ornelas served from 1995 to March, 2006. Lawrence Odell served from April to October, 2006, and Gary Pruitt assumed the directorship in October, 2006, and

continues to serve to the present time.” This is not true. Keith Hurley has been YRCAA Director since 2017

- “The YRCAA is delegated to enforce certain Federal Regulations, the Washington Clean Air Act, State Regulations and YRCAA Regulations, within the boundaries of Yakima County. This applies to all areas of Yakima County except for Yakama Indian Reservation lands, which are overseen by the Environmental Protection Agency, and fall under the Federal Air Rules for Reservations (FARR) regulations.” We believe this is untrue. We believe that FARR has not been implemented on the Yakama Reservation.
- “The air pollutant of greatest concern is particulate matter. The county's sunny climate, pollution-trapping mountains and valleys, along with the growing population, all contribute to the problem.” This is misleading. According to the Yakima Air Winter Nitrate Study approximately 33% of the particulate matter in the Sunnyside area is due to animal agriculture, but YRCAA leaves out this important information.
- Under Community Forum YRCAA states:
 - “Meetings shall be audio recorded and a written meeting summary shall be prepared by Agency staff.”
 - Why is this important?
 - YRCAA conducted a Community Forum in December 2018.
 - At the meeting FOTC understood YRCAA to state that Chapter 34.05 RCW prevents the YRCAA from allowing the public to participate in or attend discussion of the upcoming SIP revision; that the public would have an opportunity to comment after the revisions are completed. (Attachment 1)
 - In an e-mail Director Hurley disagreed and stated, “At the December Community Forum I *did not* state that ‘Chapter 34.05 RCW prevents the YRCAA from allowing the public to participate in or attend discussion of the upcoming SIP revisions.’ Nor did I say ‘the public would have an opportunity to comment after the revisions are complete.’ What was said by me is that this agency will follow the procedures outlined in RCW 34.05 and those procedures clearly allow for public participation.” (Attachment 1)
 - The December 2018 Meeting Summary for the YRCAA Community Forum did not cover this discussion, nor did it cover other significant discussions. As far as the summary was concerned those discussions did not take place.
 - When FOTC suggested that Community Forums should be recorded to avoid “he said, she said” neither YRCAA nor the Board responded.

- This means that, by default, the agency is assumed to be telling the truth and citizens are assumed to be insufficiently informed and make accurate statements
- When FOTC came across the posting on the YRCAA website that mandates recording of the meetings we thought we had discovered a way to defend ourselves. We asked for an audio tape. The YRCAA said they would make one
- We made a trip to the agency and paid for a CD.
- The CD we received contained a recording of the December 2018 YRCAA Board meeting.
- We called and asked again for a recording of the Community Forum. We were told that would be forthcoming
- A few days later we received a phone call to let us know that the Community Forum had not been recorded.
- This gives new meaning to the term “bureaucratic runaround”. This is not good government.
- In spite of the assertion that the public can attend SIP discussions the YRCAA has yet to tell FOTC when these will be scheduled.

D. On January 21, 2019 FOTC Executive Director Jean Mendoza sent Director Hurley a letter with questions and concerns related to the December, 2018 Community Forum. (Attachment 1) That letter included this observation which had previously been shared with the former YRCAA Director, Gary Pruitt.

Section 3.08 B Specific Dust Controls in YRCAA Regulation 1 states on page 3-44::

4. Requirements.

- a. Visible Emissions. Sources are required to comply with subsection 3.01C1a.*
- b. Preventing Particulate Matter from Becoming Airborne. Sources are required to comply with subsection 3.01C1b.*
- c. Odor. Sources are required to comply with subsection 3.01C1d.*
- d. Emissions Detrimental to Persons or Property. Sources are required to comply subsection 3.01C1e.*
- e. Fugitive Dust. Sources are required to comply with subsection 3.01C2c.*

But Section 3.01 had been repealed. See page 3-3 of Regulation 1

Mr. Hurley simply replied “Section 3.01 was repealed by Amendment 1 in December of 2003.” He did not acknowledge a need to correct this longstanding deficiency.

This means that YRCAA appears to have specific dust control regulations in place that address visibility, fine particulate matter, odor, harm to person or property and fugitive dust but in fact does not.

E. In July of 2013 the YRCAA Board of Directors approved an *Air Quality Management Policy for Dairies*. That policy stated in section X:

X. When and How Will This Policy Be Evaluated?

- 1. This policy will be evaluated as needed and no less frequently than every two years;*
- 2. The evaluation of the policy will be conducted jointly by YRCAA staff and the Agricultural Task Force and will be based on its effectiveness at reducing air emissions and reasonableness of implementation; and*
- 3. The YRCAA Board of Directors will approve any changes to the policy.*

The policy was only evaluated once, in 2014. At that time there were recommendations but the recommendations were never approved by the Board of Directors.

There were also recommendations regarding frequency of dairy inspections. These were not formalized by the board and were not carried out in practice. Consequently dairies with a score of "D" were not inspected every six months as proposed. But this is the impression given to the public.

Sincerely,

Jean Mendoza

Jean Mendoza

Executive Director, Friends of Toppenish Creek

cc.

Environmental Protection Agency

Attachments:

1. FOTC – YRCAA E-Mails 2019
2. Complete Board Packet April 2018
3. Animal Feeding Operations
4. New Source Review