



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS' REGULAR MEETING

April 2, 2003

A meeting of the Bay Area Air Quality Management District Board of Directors will be held at 9:45 a.m. in the 7th floor Board room at the Air District headquarters, 939 Ellis Street, San Francisco, California.

Questions About an Agenda Item

The name, telephone number and e-mail of the appropriate staff person to contact for additional information or to resolve concerns is listed for each agenda item.

Meeting Procedures

The public meeting of the Air District Board of Directors begins at 9:45 a.m. The Board of Directors generally will consider items in the order listed on the agenda. However, any item may be considered in any order.

After action on any agenda item not requiring a public hearing, the Board may reconsider or amend the item at any time during the meeting.

BOARD OF DIRECTORS' REGULAR MEETING A G E N D A

WEDNESDAY
APRIL 2, 2003
9:45 A.M.

BOARD ROOM
7TH FLOOR

CALL TO ORDER

Opening Comments
Roll Call
Pledge of Allegiance
Commendations/Proclamations

Scott Haggerty, Chairperson
Clerk of the Boards

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3
Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board's subject matter jurisdiction. Speakers will be limited to five (5) minutes each.

CONSENT CALENDAR (ITEMS 1 – 4)

Staff/Phone (415) 749-

1. Minutes of March 19, 2003

M. Romaidis/4965

mromaidis@baaqmd.gov

2. Communications

W. Norton/5052

exec@baaqmd.gov

Information only

3. Report of the Advisory Council

B. Hanna/4962

bchanna@napanet.net

4. Notification of Execution of Contracts in excess of \$20,000

T. Lee/4905

watanaka@baaqmd.gov

Pursuant to Administrative Code Division II Section 4.3 notification is hereby given of the execution of contracts totaling \$34,850 to Viacom Outdoor Advertising for 114 billboards and 20 bus shelter billboards for the spring outdoor Smoking Vehicle advertising campaign.

COMMITTEE REPORTS AND RECOMMENDATIONS

5. Report of the **Stationary Source** Committee Meeting of March 19, 2003

CHAIR: M. DeSAULNIER

W. Norton/5052

Action: The Committee recommends Board approval of a Draft Supplemental Environmental Projects (SEP) Policy for use in settlement of enforcement cases. This document will be a living document subject to revision.

PUBLIC HEARING

6. Final Public Hearing on Proposed Amendments to Regulation 2, Rule 6: Major Facility Review, Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements, and Approval of a Notice of Exemption pursuant to the California Environmental Quality Act
W. deBoisblanc/4704
wdeboisblanc@baaqmd.gov

The primary purpose of these amendments to BAAQMD rules and regulations is to address minor deficiencies in the Major Facility Review program that have been identified by the Environmental Protection Agency.

OTHER BUSINESS

7. Report of the Executive Officer/APCO
8. Chairperson's Report

CLOSED SESSION

9. Conference with District's Labor Negotiator
(Government Code § 54957.6(a))
Agency Negotiators: IEDA
Un-Represented Employees: Retirees- Benefits
10. Conference with Legal Counsel

A) Existing Litigation:

Pursuant to Government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following cases:

Communities for a Better Environment and Transportation Defense and Education Fund v. Bay Area AQMD, Metropolitan Transportation Commission, Association of Bay Area Governments, and California Air Resources Board, San Francisco Superior Court, Case No. 323849

Communities for a Better Environment, and Our Children's Earth Foundation v. Bay Area Air Quality Management District, Valero Refining Company – California, et al., San Francisco Superior Court, Case No. CPF03502678

OPEN SESSION

11. Board Members' Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

12. Place of Next Meeting - 9:45 a.m., Wednesday, April 16, 2003 -939 Ellis Street, San Francisco, CA 94109

13. Adjournment

CONTACT CLERK OF THE BOARD - 939 ELLIS STREET SF, CA 94109

(415) 749-4965
FAX: (415) 928-8560
BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities (notification to the Clerk's Office should be given in a timely manner, so that arrangements can be made accordingly).

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: March 25, 2003

Re: Board of Directors' Meeting Minutes

RECOMMENDED ACTION:

Approve attached minutes of the Board of Directors meeting of March 19, 2003.

DISCUSSION

Attached for your review and approval are the minutes of the March 19, 2003 Board of Directors' meeting.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET - SAN FRANCISCO, CALIFORNIA 94109

Draft Minutes: Board of Directors Regular Meeting – March 19, 2003

Call To Order

Opening Comments: Chairperson Haggerty called the meeting to order at 9:49 a.m.

Roll Call: Present: Scott Haggerty, Chair, Harold Brown, Maria Ayerdi, Mark DeSaulnier, Jerry Hill, Jake McGoldrick (9:56 a.m.), Nate Miley, Julia Miller, Dena Mossar, Mark Ross (9:55 a.m.), Pam Torliatt (10:02 a.m.), Marland Townsend, Gayle Uilkema, Brad Wagenknecht, Shelia Young.

Absent: Roberta Cooper, Chris Daly, Liz Kniss, John Silva, Tim Smith.

Pledge of Allegiance: Director Harold Brown led the Board in the Pledge of Allegiance.

Commendation/Proclamations:

The Board of Directors recognized employees who have completed the milestone levels of twenty-five (25), thirty (30) and thirty-five (35) years of service to the District and recognized Director Harold Brown who has served on the Board of Directors for 10 years.

The Board of Directors recognized the following employees who have completed 25 years of service with the District: Cynthia Forfang and Troung Van La. The Board of Directors recognized the following employees who have completed 30 years of service with the District: Bill deBoisblanc, Janet Glasgow, Jim Tomich, Nancy Yee, and John Joseph. The Board of Directors recognized the following employee who has completed 35 years of service: Christine Schaufelberger.

Chairperson Haggerty recognized Director Harold Brown for his ten years of service on the Bay Area Air Quality Management District Board of Directors.

Public Comment Period: There were none.

Consent Calendar (Items 1 - 5)

1. Minutes of March 5, 2003
2. Communications. *Correspondence addressed to the Board of Directors.*
3. Report of the Advisory Council. *There was no report.*
4. Report of Monthly Activities. *Division Activities for the month of February 2003.*

5. Authorization for Execution of Purchase Order in excess of \$35,000.

Pursuant to the District's Administrative Code Division II, Section 4.3 Fiscal Policies and Procedures, staff requested the Board authorize the Executive Officer/APCO to execute a purchase order for \$432,355 with San Francisco Toyota for the purchase of 20 Toyota Prius Hybrid vehicles as budgeted for in the FY 2002/2003 approved operating budget

Board Action: Director Townsend moved approval of the above Consent Calendar items, seconded by Director Wagenknecht; carried without objection.

Public Hearing

6. First of Two Public Hearings on Proposed Amendments to Regulation 2, Rule 6: Major Facility Review, Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements, and Approval of a Notice of Exemption pursuant to the California Environmental Quality Act.

The primary purpose of these amendments to BAAQMD rules and regulations is to address minor deficiencies in the Major Facility Review program that have been identified by the Environmental Protection Agency. The final public hearing on these proposed amendments is scheduled for April 2, 2003.

William C. Norton, Executive Officer/APCO, stated that this is the first of two public hearings on the proposed amendments and that no action is required by the Board at today's meeting. The second public hearing will be held on April 2, 2003 and, at that time, the Board will be asked to take action on the matter.

Steve Hill, Manager of the Permit Evaluation Section, presented the staff's proposal for modifications for the Title V permit rule. Mr. Hill reviewed the background information given at the last Board meeting and addressed the following:

1. Portable Engine Exemption and the clarifying language requested by the Environmental Protection Agency (EPA).
2. Administrative Amendments and the changes requested by EPA so the language is not open-ended.
3. Potential to Emit and the alternative language proposed by Golden Gate University, which clarifies the current practices of the District and staff recommends that this alternative language be adopted. Mr. Hill also discussed the language preferred by Golden Gate University.
4. Statement of Basis and the proposed language for Regulation 2-6-427. Mr. Hill reviewed the stronger language preferred by Golden Gate University.
5. Schedule of Compliance in Section 224 of the rule would refer to the federal regulation that is applicable.

In summary, Mr. Hill stated that the proposals: 1) do not change the District's practice; 2) commit the District to continue current practices; 3) clarify current practices; and 4) conform to EPA requirements.

Director Townsend moved to open the Public Hearing at 10:09 a.m. and that it be continued to April 2, 2003; seconded by Director Mossar.

There was discussion on "Potential to Emit" and Mr. Hill stated that there is nothing in the regulation that would allow a facility to exceed its threshold. The limitations on potential to emit are enforceable by the District through regulations or permit limits that are imposed on the facility. Brian Bunger, Counsel, stated that the threshold is set by federal statute and the Air District does not change that. Mr. Bunger explained that if the facility can emit more than the threshold, there is a potential to emit that exceeds that threshold. If the facility is willing to accept an enforceable limit, a major facility permit may not be required. The District does not change the threshold, but imposes conditions to keep the facility from exceeding it.

Speakers: The following people spoke on Agenda Item # 6:

Amy Cohen
Environmental Law & Justice Clinic
San Francisco, CA 94105

Adrenne Bloch
Communities for a Better Environment
Oakland, CA 94612

Dennis Bolt
WSPA
Concord, CA 94518

In response to a question by Director Torliatt, Mr. Bunger stated that the reporting requirement that the speaker referred to applies to all Title V facilities. Mr. Bunger also pointed out that this particular amendment that required this signature was part of a June 2001 rule-making on Regulation 2, Rule 6 and was part of some amendments that the District needed to make to obtain EPA approval of the rule. Mr. Norton stated that this is a new issue and it is not part of what the staff is proposing, but staff will look into this issue and it will be brought up at a future Board meeting.

Board Action: None. The Public Hearing is continued to Wednesday, April 2, 2003.

Other Business

7. Report of the Executive Officer/APCO – Mr. Norton reported on the following: 1) The District is starting the 2004 Plan and that there will be an Ozone Working Group workshop on March 27, 2003 at the MetroCenter from 10 am to 12 noon. There will be six more public meetings in the communities. 2) The March 26, 2003 Outreach Tour has been cancelled. The Board is invited to sign up for the April 26, 2003 tour. The locations and times of the tours will be provided to the Board members. 3) The Flare Monitoring Rule will be brought to the Board in early May. The District is conducting meetings in the community in Contra Costa County in March and April and Board members are invited to attend. 4) The Stationary Source Committee meeting will be held immediately following today's Board meeting. 5) The Canadian Senators are here today and will be meeting with Board members and staff in the fourth floor conference room for a briefing on the District's regulations and policies.
8. Chairperson's Report - Chairperson Haggerty had no report.

Closed Session (The Board adjourned to Closed Session at 10:28 a.m.)

9. Conference with Legal Counsel

A) Existing Litigation

Pursuant to Government Code Section 54956.9(a), a need existed to meet in closed session with legal counsel to consider the following cases:

Stonelight Tile, Inc. and David Anson v. Bay Area AQMD, United States District Court, N.D. Cal., San Jose Division, Case No. CV 98-21060 (JW) (PVT)

Communities for a Better Environment and Transportation Defense and Education v. Bay Area AQMD, Metropolitan Transportation Commission, Association of Bay Area Governments, and California Air Resources Board, San Francisco Superior Court, Case No. 323849

B) Initiating of Litigation

Pursuant to Government Code Section 54956.9(b), a need existed to meet in closed session to discuss initiation of litigation.

Open Session (The Board reconvened to Open Session at 10:45 a.m.)

Mr. Bunger reported on Item 9A, with respect to the Stonelight Tile case, and stated that the Board, by a unanimous decision, directed Counsel to file a Notice of Appeal in response to the Notice of Appeal filed by Plaintiffs in that case. Mr. Bunger stated that with respect to 9A, Communities for a Better Environment, a report was provided to the Board by Counsel and general direction was provided to Counsel. On Item 9B, Mr. Bunger stated that no decision was made regarding initiating litigation.

12. Board Members' Comments: Director McGoldrick moved that the Board return to Item 5 on the Consent Calendar; seconded by Director Wagenknecht; carried unanimously without objection.

Director McGoldrick noted that his staff had looked at this item and reported that the manufacturer suggested retail price is \$20,480, but the vehicles the District is purchasing cost \$21,618. In addition, Director McGoldrick inquired about the District receiving the \$2,000 federal tax break on these vehicles.

Mr. Norton stated that the price the District is paying for the 20 vehicles includes tax and licenses. Mr. Norton indicated that the District did piggyback on the City and County of San Francisco's bid process and got the lowest bid. Regarding the \$2,000 federal credit, since the District does not pay income tax, it would not receive the \$2,000 credit.

Director Uilkema discussed the Safe Harbor lease provision that allows public agencies to purchase and sell back depreciation and a bond plan and requested that staff check into this option. Mr. Norton stated he would report back to the Board on this at a future meeting.

11. Time and Place of Next Meeting - 9:45 a.m., Wednesday, April 2, 2003, 939 Ellis Street, San Francisco, California.
12. Adjournment: The meeting was adjourned at 10:49 a.m.

Respectfully submitted by:

**Mary Romaidis
Clerk of the Boards**

mr

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Inter Office Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: Teresa Lee, Director
Public Information and Outreach

Date: March 24, 2003

Re: Execution of Contracts in excess of \$20,000

RECOMMENDED ACTION:

Receive and file.

BACKGROUND

In accordance with the District's Administrative Code, Division II, Fiscal Policies and Procedures, Section 4.3, the Board is hereby notified of the execution of contracts for 114 billboards and 20 bus shelters to Viacom Outdoor Advertising for the first phase of the smoking vehicle program's advertising campaign.

The contractor selection process conformed to the District's Administrative Code, Fiscal Policies and Procedures, Section 4.6 (a) (6) which specifies that the contract resulting from a competitive process be awarded to the bidder "offering the best value for quality goods and services." The total of these contracts is \$34,850.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The cost is less than the \$35,000. Because negotiation for these contracts was done by staff, the District saved the usual 15% advertising agency commission.

Respectfully submitted,

Teresa Lee, Director
Public Information & Outreach

Prepared by: Lucia Libretti

FORWARDED: _____

BAY AREA AIR QUALITY MANGEMENT DISTRICT

Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: March 25, 2003

Re: Approval of Draft Supplemental Environmental Project Policy

RECOMMENDED ACTION:

Approve the attached draft Supplemental Environmental Project Policy. Staff will solicit feedback from interested parties on the policy and report the findings to the Stationary Source Committee at a future meeting.

BACKGROUND

On March 19, 2003 the Stationary Source Committee approved the following Supplemental Environmental Project (SEP) Policy to be used in enforcement settlements. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise occur without the settlement incentives to be provided by this policy.

DISCUSSION

The Stationary Source Committee recommended approval of the Supplemental Environmental Project Policy as a living document and directed staff to solicit feedback from interested parties on its contents. Staff will be obtaining feedback on the Supplemental Environmental Project Policy and will report those findings to the Stationary Source Committee.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The Policy will provide funding for projects that will improve air quality and public health within the Bay Area.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Peter Hess

BAY AREA AIR QUALITY MANGEMENT DISTRICT
Memorandum

To: Chairperson DeSaulnier and Members
of the Stationary Source Committee

From: William C. Norton
Executive Officer/APCO

Date: March 6, 2003

Re: Consider Recommending Approval of Draft Supplemental Environmental
Project Policy

RECOMMENDED ACTION:

The Committee will consider recommending that the Board of Directors approve the attached Draft Supplemental Environmental Projects (SEP) Policy in settlement of enforcement cases. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise occur without the settlement incentives to be provided by this policy.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Peter Hess/Brian Bunger

Draft
Supplemental Environmental Projects Policy

INTRODUCTION

In order to protect and improve air quality and serve Bay Area citizens, the mission of the Bay Area Air Quality Management District is to address air quality violations with timely, quality enforcement actions that achieve compliance, result in improved air quality, and deter future violations. One way to improve air quality through enforcement actions is to obtain additional relief in the form of projects that prevent or remediate the adverse public health or environmental consequences of air pollution. Such projects may be included in settlement of an enforcement case in order to use opportunities afforded by the case to improve the environment beyond existing legal requirements. As part of the settlement, the size of the final cash penalty may be reduced by an amount paid to the Air District to fund, or a commitment of the violator to undertake, expenditures that are beneficial to air quality that are not otherwise required by law ("Supplemental Environmental Projects").

Even where conditions exist which justify the approval of a Supplemental Environmental Project ("SEP"), the Air District must still negotiate an adequate monetary penalty at a level consistent with California law and Air District Policy. It is solely within the Air District's enforcement discretion to approve or deny any SEP and to approve or deny any condition of a SEP.

A. USING THIS POLICY

Where a SEP is to be described in a settlement or funds collected for a SEP are to be committed, a proposed project must be examined to determine if it qualifies as a supplemental environmental project (SEP). In performing this evaluation, Air District Counsel in consultation with other Air District staff should use the following five-step process:

1. Ensure that the project meets the basic definition of SEP (Section B);
2. Ensure that all guidelines, including nexus, are satisfied (Section C);
3. Ensure that the project fits within one (or more) of the designated categories of SEPs (Section D);
4. Ensure that the cost of the project does not exceed more than 25 percent of the total settlement, exclusive of administrative costs (Section E);
5. Ensure that the project satisfies all of the implementation and other criteria (Sections F, G, and H).

B. DEFINITION AND KEY CHARACTERISTICS OF A SEP

Supplemental environmental projects (SEPs) are defined as projects beneficial to air quality which either (a) a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform; or (b) are funded by the Air District with funds collected and designated in settlements of enforcement cases for funding of SEPs.

The three key parts of this definition are elaborated as follows:

1. “Beneficial to air quality” means a SEP must improve, protect, or reduce risks to public health, or the environment at large through improvement of air quality. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.
2. “In settlement of an enforcement action” means (a) Air District has the opportunity to help shape the scope of the project before it is implemented; and (b) the project is not commenced until after the Air District has identified a violation (e.g., issued a notice of violation, or filed a complaint).
3. “Not otherwise legally required to perform” means the SEP is not required by a federal, state, or local law or regulation. Further, SEPs cannot include actions that the defendant/respondent may be required to perform: (a) as injunctive relief in the instant case; (b) as part of a settlement or order in another legal action; or (c) by state or local requirements. SEPs may include activities that the defendant/respondent will become legally obligated to undertake two or more years in the future. Such accelerated compliance projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

In addition, performance of a SEP reduces neither the stringency nor timeliness requirements of applicable environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent’s obligation to remedy a violation expeditiously and return to compliance.

C. LEGAL GUIDELINES

The Air District has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within the Air District’s authority and consistent with all statutory and constitutional requirements may be a complex task. Accordingly, this Policy uses certain legal guidelines to ensure that SEPs are within the Air District’s authority, and do not run afoul of any constitutional or statutory requirements.

1. All projects must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
2. A project must advance at least one of the declared objectives of the environmental statutes or regulations that are the basis of the enforcement action.

D. CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

The seven (7) categories of projects that may qualify as SEPs include: Public Health, Pollution Prevention, Pollution Reduction, Environmental Restoration and Protection, Environmental Compliance Audits, Comprehensive Environmental Training, and Emergency Planning and Preparedness. There may be other types of projects that meet the general criteria for SEPs and thus may be acceptable, but do not fall in these categories.

1. PUBLIC HEALTH

A public health project provides diagnostic, preventative and/or remedial components of human health care that is related to the actual or potential damage to human health caused by the

violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy.

Public health SEPs are acceptable only where the primary benefit of the project is to the population that was harmed or put at risk by the violations.

2. POLLUTION PREVENTION

A pollution prevention project is one that reduces the generation of air pollution through source reduction, (i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant being emitted into the air prior to recycling, treatment or disposal.) After the pollutant has been generated, pollution prevention is no longer possible, the pollutant must be handled by appropriate recycling, treatment, containment, or disposal methods.

Source reduction may include equipment or technology modifications, process or procedure modification, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. In-process recycling, wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released into the air, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. POLLUTION REDUCTION

If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant being emitted into the air by an operating business or facility by a means that does not qualify as pollution prevention. This may include the installation of more effective end-of-process control or treatment technology.

4. ENVIRONMENTAL RESTORATION AND PROTECTION

An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the airshed adversely affected. Examples of such projects include: reductions in discharges of air pollutants that are not the subject of the violation in an affected air basin where the violation occurred, (e.g., in a case involving a reporting violation which did not directly, but potentially could, lead to damage due to unreported discharges).

With regard to man-made environments, such projects may involve the remediation of facilities and buildings provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos, or other materials, which are a continuing source of airborne releases and/or threat to individuals.

5. ENVIRONMENTAL COMPLIANCE AUDITS

Assessments and audits, if they are not otherwise available as injunctive relief, are potential SEPs under this category. There are four types of projects in this category.

A) Pollution Prevention Assessments

Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of contaminants, or toxic and hazardous materials, which may lead to air emissions. To be eligible as SEPs, such assessments must be conducted using a recognized or enhanced pollution prevention detection/assessment or waste minimization procedure to reduce the likelihood of future violations.

B) Site Assessments

Site assessments are investigations of the condition of the environment at a site or of the environment impacted by a site, and/or investigations of threats to human health or the environment relating to a site. These include, but are not limited to: investigations of levels and/or sources of air emissions at a site; investigations of discharges or emissions of air pollutants at a site whether from active operations or through passive transport mechanisms; ecological surveys relating to air emissions from a site; natural resource damage assessments relating to air emissions from a site; and risk assessments relating to air emissions from a site. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

C) Environmental Management System Audits

An environmental management system audit is an independent evaluation of a defendant/respondent's environmental policies, practices and controls related to air emissions. Such evaluation may encompass the need for (1) a formal corporate environmental compliance policy and procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification and risk assessment.

D) Environmental Compliance Audits

An environmental compliance audit is an independent evaluation of a defendant/respondent's compliance status with environmental requirements related to air emissions. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation since persons are required to achieve and maintain compliance with environmental requirements.

These two types of assessments and environmental management system audits are allowable as SEPs without an implementation commitment by the defendant/respondent. Implementation is not required because drafting implementation requirements before the results of the study are known is difficult. Further, for pollution prevention assessments and environmental management

systems audits, many of the implementation recommendations from these studies may constitute activities that are in the defendant/respondent's own economic interest.

6. COMPREHENSIVE ENVIRONMENTAL TRAINING

A Comprehensive Environmental Training project provides training or technical support to other members of the regulated community regarding air quality issues to: (a) identify, achieve and maintain compliance with applicable statutory and regulatory requirements; (b) avoid committing a violation with respect to such statutory and regulatory requirements; or (c) go beyond compliance by reducing the generation, release or disposal of air pollutants beyond legal requirements. For these types of projects, the defendant/respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent air emission violations within the defendant/respondent's economic sector.

Comprehensive Environmental Training SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements that were violated, and where the Air District has reason to believe that compliance in the sector would be significantly advanced by the proposed project.

7. EMERGENCY PLANNING AND PREPAREDNESS

An emergency planning and preparedness project provides assistance, such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training, to a responsible or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills and air emissions.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district affected by the violations. Further, this type of SEP is allowable only when the SEP involves non-cash assistance and there are violations involved in the enforcement case that resulted in an off-site release of hazardous air pollutants.

E. PROJECTS THAT ARE NOT ACCEPTABLE AS SEPS DESCRIBED IN SETTLEMENTS

Although the Air District may fund some such projects with funds collected and designated for expenditure on SEPs, the following are examples of the types of projects that are not allowable as SEPs when the SEP is in the form of a project described and committed to by the defendant/respondent in the settlement:

1. General education or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, or promoting recycling in a community;

2. Contribution to environmental research at a college or university;
3. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to charity, or donating playground equipment;
4. Studies or assessments without a commitment to implement the results (except as provided for in Section D.5, above).

F. EXTENT TO WHICH THE FINAL ASSESSED PENALTY CAN REFLECT A SUPPLEMENTAL ENVIRONMENTAL PROJECT

Although supplemental environmental projects may directly fulfill the Air District's goal of protecting and restoring air quality, there is an important countervailing enforcement goal that penalties should have the strongest possible deterrent effect upon the regulated community. In general, supplemental projects should be no more than 25 percent of the total settlement, exclusive of administrative costs.

G. OVERSIGHT AND DRAFTING ENFORCEABLE SEPS

If the SEP is in the form of a project to which the defendant/respondent has committed, the settlement agreement should completely and accurately describe the SEP. It should describe the specific actions to be performed by the defendant/respondent, and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to the Air District. If an outside auditor is necessary to conduct this oversight, the defendant/respondent should be made responsible for the cost of any such activities. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, acceptable to the Air Pollution Control Officer, and evidencing completion of the SEP, should be required.

To the extent feasible, defendants/respondents should be required to quantify the benefits associated with the project and provide the Air Pollution Control Officer with a report setting forth how the benefits were measured or estimated. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action with the Bay Area Air Quality Management District.

If the SEP consists of a portion of the settlement payment to be used by the Air District to fund a project, the settlement agreement should include a complete and accurate description of any appropriate restrictions on the use of the funds (e.g., geographical restrictions related to the area affected by the violation at issue).

H. FAILURE OF A SEP AND STIPULATED PENALTIES

If the SEP is in the form of a project to which the defendant/respondent has committed, the defendant/respondent should be required pursuant to the terms of the settlement document, to pay stipulated penalties for any failure of the SEP to be completed satisfactorily. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is at the sole discretion of the Air District.

I. DOCUMENTATION AND CONFIDENTIALITY

In each case in which a SEP in the form of a project to which the defendant/respondent has committed is included as part of a settlement, an explanation of the SEP with supporting materials must be included as part of the case file. The explanation of the SEP should demonstrate that the five criteria set forth in Section A, above, are met by the project and include a description of the expected benefits associated with the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the California Public Records Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: March 11, 2003

Re: Final Public Hearing to Consider Proposed Amendments to Regulation 2,
Rule 6 ("Major Facility Review"), Manual of Procedures (MOP), Volume II,
Part 3, Major Facility Review Permit Requirements, and Approval of Notice
of Exemption pursuant to the California Environmental Quality Act

RECOMMENDED ACTION:

Staff recommends that the Board of Directors take the following actions:

- A) Continue public hearing on the proposed amendments
- B) Adopt proposed amendments to Regulation 2, Rule 6, Major Facility Review;
- C) Adopt proposed amendments to Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements; and
- D) Approve a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for this rule-making activity.

BACKGROUND

The proposed amendments would correct possible deficiencies in the District's Title V permit program (Major Facility Review). The Environmental Protection Agency (EPA), as a result of a lawsuit filed by citizen groups over EPA's approval of the program, identified these deficiencies. In addition to addressing these EPA deficiencies, the proposed amendments address two other issues raised by citizen groups. Although EPA does not consider the issues raised by the citizen groups to affect approvability, District staff proposes amendments to address Potential to Emit and Statement of Basis.

Finally, the proposed amendments would revise the requirements for inclusion of a schedule of compliance in a Title V Permit. Currently, a schedule of compliance may be included in a Title V permit only if the Hearing Board has issued an order. The proposed amendment would allow the APCO to impose a schedule of compliance during Title V permit review. This amendment would increase public participation in the process of establishing a schedule of compliance.

CHANGES TO PROPOSED RULE AFTER PUBLICATION

Minor changes were made to the proposed rule in response to public comments after the public notice for the March 19th hearing was published and the rule was sent to the Air Resources Board (ARB). In addition, the staff proposal to change the requirements for a schedule of compliance was added after the original notice was published. A revised rule has been sent to ARB and these changes have been incorporated into the staff report. As a result of these changes, staff requests that the Board continue the hearing until April 2, 2003.

Copies of the comment letters received by the District are attached to this package. Individual comments are numbered. Following each letter is a staff response keyed to those numbers.

CONCLUSIONS

District staff has determined with certainty that the proposed amendments will have no significant environmental impacts and thus are exempt under CEQA Guidelines Section 15061, subd (b)(3). The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

Respectfully submitted,

William C. Norton
Chief Executive Officer

Prepared by: Steve Hill
Reviewed by: Peter Hess