

BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
939 ELLIS STREET – SAN FRANCISCO, CA 94109

Approved Minutes: Board of Directors Regular Meeting – April 21, 2004

**Call To Order**

Opening Comments: Chairperson Haggerty called the meeting to order at 9:51 a.m.

Pledge of Allegiance: Director DeSaulnier led the Board in the Pledge of Allegiance.

Roll Call: Present: Scott Haggerty, Chair, Harold Brown, Roberta Cooper, Chris Daly, Mark DeSaulnier, Erin Garner, Jerry Hill, Patrick Kwok, Jake McGoldrick (9:57), Nate Miley, Julia Miller, Mark Ross, John Silva, Pam Torliatt (9:56 a.m.), Marland Townsend, Gayle Uilkema, Brad Wagenknecht, Shelia Young.

Absent: Liz Kniss, Tim Smith.

Commendations/Proclamations: There were none.

**Public Comment Period:** The following individuals came forward and spoke on the adoption of a District flare control rule, the issue of flaring at refineries, and health concerns in the communities located near the flares. Communities for a Better Environment (CBE) presented a report entitled *Refinery Flaring in the Neighborhood*.

A. J. Napolis  
CBE

Ramona Martinez  
CBE

Carla M. Perez  
CBE

Julia May  
CBE

Guillermina Lopez  
CBE

Johnny White  
Community Health Initiative

Dr. Henry Clark  
West County Toxic Coalition

Wanna Wright  
CBE

Dennis Bolt  
Western Stated Petroleum  
Association (WSPA)

Marleen Quint  
CBE

Lucia Flores  
CBE

Jack Broadbent, Executive Officer/APCO, stated that the District staff is in the process of developing rules for four Further Study Measures that were identified in the 2001 Ozone Plan that will affect refineries. The measures are directed toward wastewater operations, marine loading, pressure relief devices, and flaring. There will be five separate rules on these measures. It is expected there will be a flare control rule before the Board by the end of 2004. The other Further Study Measures as rules will be brought before the Board this year and next year.

As part of the fiscal year 2004/2005 budget there is a Community Risk Characterization and Reduction Program that will enable the District to characterize what the risk are in different Bay Area communities. This will be the technical foundation by which the District will build a plan and further legislative and regulatory efforts to address some of the community risk concerns heard today. There is also a Toxics New Source Review (TSNR) rule that will be brought before the Board by the end of 2004.

In response to concerns expressed by Director Torliatt on particulate matter from diesel exhaust, Mr. Broadbent stated that the Risk Characterization and Reduction Program is part of the fiscal year 2004/2005 budget. This is an effort by the District to be able to characterize what is the risk of breathing the air in different communities of the Bay Area. A similar study, the Multiple Air Toxics Exposure Study (MATES II), was done in the South Coast AQMD which cost several million dollars and took a number of years. This District would conduct a study that would take 6 to 9 months to characterize and define the risk in these different communities. It is believed that the diesel traffic is responsible for a very high part of the risk in the communities in the Bay Area. The District wants to be able to quantify that and would then start to develop plans on how to reduce that risk.

**Consent Calendar (Items 1 – 7)**

1. Minutes of April 7, 2004
2. Communications. Correspondence addressed to the Board of Directors
3. Report of the Advisory Council
4. Monthly Activity Report – *Activities for the month of March 2004*
5. Quarterly Report of Air Resources Board Representative Director mark DeSaulnier
6. Quarterly Report of the Clerk of the Boards
7. Referral of Proposed District Budget for Fiscal Year 2004/2005 to the Budget and Finance Committee

*Pursuant to Administrative Code Division II, Section 3.2 Fiscal Policies and Procedures, and in compliance with Section 29064 of the Government Code, the Board referred the proposed budget for Fiscal Year 2004/2005 to the Budget and Finance Committee for review and consideration.*

**Board Action:** Director Brown moved approval of Consent Calendar Items 1 through 7; seconded by Director Kwok; carried unanimously without objection.

## Committee Reports and Recommendations

### 8. Report of the Mobile Source Committee Meeting of April 8, 2004

Director Young presented the report and stated that the Committee met on Thursday, April 8, 2004. Staff requested, and the Committee approved that agenda item 4 be deferred to the next meeting.

Staff presented the Transportation Fund for Clean Air (TFCA) Annual Report for the 2003/2004 funding cycle and highlighted some of the key findings:

- A total of \$28.3 million has been allocated for eligible projects and programs: \$18.1 million in Regional funds for 46 projects, and \$10.2 million in Program Manager funds for 77 projects.
- The aggregate estimated lifetime emissions reduction is 1,558 tons, which includes 525 tons of reactive organic gas (ROG), 898 tons of oxides of nitrogen (NO<sub>x</sub>), and 135 tons of particulate matter (PM).
- The aggregate cost-effectiveness of all TFCA projects funded in 2003/2004 is \$18,155 per ton of emission reductions.
- Since the inception of the TFCA program in 1992, the Air District has allocated \$258 million to 1, 614 projects.

The Committee requested staff provide a chart that lists the amount of funds that have been allocated for each year since 1992. The Committee recommends the Board approve the report entitled *Transportation Fund for Clean Air Report on FY 2003/04 Allocations and Effectiveness*.

Staff presented a report on the distribution of Lower Emission School Bus Program funds. Staff reported on the following:

- The current age of Bay Area school bus fleets.
- The county distribution of all school buses.
- The county distribution of public school buses.
- The history of the program.
- The total number of Lower Emission School Bus projects in each county.
- The county allocation of Air District funds to public school districts for the Lower Emission School Bus Program.
- Future actions include:
  1. \$1.9 million for additional bus replacements is available in the next funding cycle.
  2. The District will continue to work with school districts and private school bus contractors to install diesel PM retrofits on buses that are model-1994 and newer.
  3. The District will support continued funding from State agencies for school bus and engine replacements in pre-1994 buses.

There was considerable discussion on bus companies that are not currently in the program. Staff has been meeting with one of the companies that has expressed an interest in the program. It was also noted that the South Coast AQMD has written a rule, which has been challenged in court, that requires the school buses to be clean diesel when they are

purchased. The consensus of the Committee was that this Air District should pursue legislation that would allow the District to promulgate a similar rule in the Bay Area. The May 13<sup>th</sup> meeting has been rescheduled to 9:30 a.m., Thursday, May 20, 2004.

**Board Action:** Director Young moved the Board approve the recommendations of the Mobile Source Committee; seconded by Director Townsend; carried unanimously without objection.

9. Report of the Public Outreach Committee Meeting of April 12, 2004

Director Ross presented the report and stated that the Public Outreach Committee met on Monday, April 12, 2004. The consultants that are assisting the District with advertising and media relations for the *Spare the Air* program made presentations to the Committee.

Allison & Partners presented their plan for the media campaign, which included the following:

- Objectives and strategies, including emphasizing media relations and enlisting high-profile partnerships.
- This would include:
  - Proactive outreach
  - Reporting air quality facts
  - Bylined articles and op-eds
  - Outreach to non-English speaking residents
- Creating a “Media Kit” with a variety of information on the District.
- Creating a “Partner Pack,” which would be similar to the “Kit.”

Allison & Partners also presented an overview of the activities and milestones for each quarter. There was discussion on making sure that the Board members are included in the process; the possibility of a weekly theme, recruiting volunteers, interacting with schools, working with youth to spread the message, and making sure that there is an element of fun.

O’Rorke, Inc. presented their advertising theme of “Have a Plan...And Use It” and highlighted the following aspects of the campaign:

- Ad campaign goals, which include promoting Spare the Air’s importance, showing how changes in behavior can make a difference, and directing people to the web site.
- The ad campaign strategy, which focuses on families, friends, neighbors and colleagues in real-life situations.

The consultant also reviewed a progressive story that would focus on how a family would work out alternative plans to driving alone. There was considerable discussion on this item and the Committee requested O’Rorke, Inc. to return on Monday, April 26<sup>th</sup> to present more detailed information the Committee members.

Agenda Item 5, Update on Outreach for the 2004 Ozone Strategy, was deferred to the next meeting. Staff presented an update on the Lawn Mower Buyback Programs and reviewed the list of events for 2004. The next meeting of the Committee is scheduled for 9:15 a.m., Monday, April 26, 2004.

**Board Action:** Director Ross moved the Board approve the report of the Public Outreach Committee; seconded by Director Silva; carried unanimously without objection.

10. Report of the Personnel Committee Meeting of April 14, 2004

Director Kwok presented the report and stated that the Committee met on April 14, 2004 to conduct interviews of candidates to fill the regular Medical Profession position and the regular and alternate Registered Professional Engineer positions on the District's Hearing Board. Three candidates were interviewed for the regular Medical Profession position:

1. Thomas M. Dailey, M.D.
2. Alfred Au, M.D.
3. Carl Rose

The Committee voted unanimously to recommend the reappointment of Thomas M. Dailey for a three-year term of office ending April 14, 2007.

The Committee directed staff to forward the application and resume of Carl Rose to the Advisory Council Applicant Selection Working Group to be included in their pool of applicants for positions on the Advisory Council and to provide him information on the Public Member positions on the Hearing Board.

Five candidates were interviewed for the regular and alternate Registered Professional Engineer positions:

1. Christian Colline
2. Everett McDaniel, Jr.
3. Joseph Shilts
4. Jeffery Raines
5. Gary Weinstein

The Committee voted unanimously to recommend the reappointment of Christian Colline as the regular member and appoint Jeffery Raines as the alternate member for three-year terms of office ending March 6, 2007.

The next meeting of the Committee will be at the Call of the Chair.

**Board Action:** Director Kwok moved the Board approve the Committee recommendations for the Medical Profession position and the Registered Professional Engineer positions on the District's Hearing Board; seconded by Director Daly; carried unanimously without objection.

**Public Hearing**

11. First of Two Public Hearings to Adopt Proposed Amendments to District Regulation 3: Fees

*The Board conducted the first of two public hearings to adopt proposed amendments to District Regulation 3: Fees, the second public hearing on the proposed amendments will be continued to the June 2, 2004 regular meeting of the Board of Directors.*

Chairperson Haggerty opened the public hearing at 10:35 a.m.

Brian Bateman, Director of Engineering, presented the report and reviewed the rule development schedule, which included several public workshops, a briefing at the March 22,

2004 Stationary Source Committee meeting, and the two public hearings. Staff recommends the Board adopt the amendments to Regulation 3: Fees at its June 2, 2004 Board meeting and the fees would be effective July 1, 2004. Mr. Bateman noted that the Air District has the authority to collect fees from stationary sources to cover the costs of regulatory programs. The six fee categories are: 1) operating/new and modified permit fees, 2) Title V permit fees, 3) asbestos fees, 4) AB 2588 fees [Air Toxics Hot Spots Program], 5) soil excavation and landfill fees, and 6) Hearing Board fees.

Mr. Bateman reviewed the Air District projected fee revenue for fiscal year 2003/2004 and a brief history of the annual fee adjustments since the 1999 KPMG Cost Recovery Study. The proposed amendments would increase the District's overall fee revenue by approximately 8.5%, or \$1.55 million, as compared to the current fiscal year. Staff is also proposing:

- A 1.9% CPI adjustment for all fee categories, except Title V permit fees, resulting in an additional \$327,500 in fee revenue.
- A new processing fee for renewal of operating permits, resulting in an additional \$673,000 in fee revenue.
- A 50% Title V fee increase, resulting in an additional \$550,000 in fee revenue.
- The District is also proposing several additional miscellaneous amendments to the fee regulation.

Mr. Bateman noted that there are 103 facilities that pay Title V fees (5 refineries and 98 other facilities). The average increase for Title V fees for refineries would be approximately \$50,000 and for other facilities approximately \$1,800. Mr. Bateman reviewed the projected permit fee revenue and program costs. Two organizations, the Western States Petroleum Association (WSPA) and the Golden Gate University Environmental Law & Justice Clinic, submitted comments on the proposed amendments.

In response to a question from Director Hill regarding a "fair share" analysis, Brian Bunker, Counsel, stated that information from employee's time sheets has been collected, but that additional information will be collected to conduct the analysis.

The following members of the public spoke on this agenda item:

Holly Gordon  
Communities for a Better Environment  
Oakland, CA 94612

Dennis Bolt  
WSPA  
Concord, CA 94518

Mr. Broadbent reminded the Board that this was the first of two hearings and staff will provide a recommendation on the comments heard today. Mr. Broadbent noted that Title V affects about 100 facilities; not just refinery operations. There is a lot of staff time and effort being spent on these complex Title V permits and more time will be spent on them in the future.

**Board Action:** The Board continued the public hearing to the June 2, 2004, Regular Meeting of the Board of Directors.

### **Other Business**

12. Report of the Executive Officer/APCO – Jack Broadbent, Executive Officer/APCO reported on the following items:
  1. Last Thursday, EPA announced their attainment and non-attainment designations for the new 8-hour ozone standard. The Bay Area was classified as a marginal non-attainment area. This means that the District will have to submit some planning elements to EPA. A briefing on this issue will be presented to the Executive Committee later this month. The District will need to come into compliance with the new standard by June 15, 2007.
  2. A list of Community Events and Meetings scheduled for April and June 2004 is at each Board member's place.
  3. A flyer for nominations for Clean Air Champions is at each Board member's place..
  4. The American Lung Association Luncheon is on April 29<sup>th</sup>.
  5. Another photograph on the wall that attempts to show all nine counties in the Bay Area.
  
13. Chairperson's Report - Chairperson Haggerty stated that the May 5, 2004 Board meeting is cancelled. The next meeting will be May 19, 2004.

**Closed Session** (The Board adjourned to Closed Session at 11:12 a.m.)

14. Conference with Legal Counsel

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:*

1. **Alvin J. Greenberg, Ph.D. v. Bay Area AQMD, et al.**, United States District Court, N.D. Cal., Case No. C 02 1501 VRW
2. **City of Morgan Hill, Santa Teresa Citizen Action Group, Inc., Demand Clean Air, Inc. and Californians for Renewable Energy, Inc. v. Hearing Board of the Bay Area AQMD, et al.**, California Court of Appeals, First Appellate District, Division 4, Case No. A102518 (on Appeal from Judgment following Demurrer in San Francisco County Superior Court, Case No. CPF-02-501624)
3. **New United Motors Manufacturing, Inc. v. Bay Area AQMD, et al.**, Alameda County Superior Court, Case No. RGO 04-140445
4. **Communities for a Better Environment v. Bay Area AQMD, Dow Chemical Company, Real Party in Interest**, San Francisco County Supervisor Court, Case No. CPF-04-503883

**Open Session** (The Board reconvened to Open Session at 11:21 a.m.)

Mr. Bunger reported that the Board met in Closed Session to discuss the four cases under Item 14 on the agenda. The Board discussed the items with Counsel and provided general direction.

15. Board Members' Comments – Director Daly expressed his concern regarding the District's authority to deny a Title V permit and issues that may arise during the public hearings.

Director Miller requested information on emissions from CalTrain diesel engines.

16. Time and Place of Next Meeting - 9:45 a.m., Wednesday, May 19, 2004, 939 Ellis Street, San Francisco, California.
17. Adjournment: The meeting was adjourned at 11:24 a.m.

*/s/ Mary Romaidis*

Mary Romaidis  
Clerk of the Boards

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