

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

Approved Minutes: Board of Directors Regular Meeting – May 19, 2004

Call To Order

Opening Comments: Chairperson Scott Haggerty called the meeting to order at 9:56 a.m.

Roll Call: Present: Scott Haggerty, Chair, Roberta Cooper, Chris Daly, Jerry Hill, Liz Kniss (10:15 a.m.), Patrick Kwok, Jake McGoldrick (10:10 a.m.), Nate Miley, Julia Miller, Mark Ross, Pam Torliatt, Marland Townsend, Gayle Uilkema, Brad Wagenknecht, Shelia Young.

Absent: Harold Brown, Mark DeSaulnier, Erin Garner, John Silva, Tim Smith.

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

Commendations/Proclamations: There were none.

Public Comment Period: There were none.

Consent Calendar (Items 1 – 9)

Director Miller requested Item 9 be removed from the Consent Calendar for discussion and Chairperson Haggerty so ordered.

1. Minutes of April 21, 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 April 2004*
5. District Personnel on Out-of-State Business Travel
6. Approval of Refund in Excess of \$10,000 to Equillon Enterprises, LLC

In accordance with Section 3.6 (c) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board of Directors authorized a refund payment in the amount of \$84,368 be paid to Equillon Enterprises, LLC (Plant # 51) of Houston, Texas due to overpayment of permit application fees.

7. Approval of Refund in Excess of \$10,000 to Owens Corning

In accordance with Section 3.6 (c) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board of Directors authorized a refund payment in the amount of \$30,382 be paid to Owens Corning due to a miscalculation in emission fees.

8. Approve Resolution to Clarify Role of Existing Non-Board Administrative Committee

The Board considered approving a clarification to the authority of the existing non-board Administrative Committee.

Board Action: Director Townsend moved approval of Consent Calendar Items 1 through 8; seconded by Director Young; carried unanimously without objection with the following Board members voting:

AYES: Cooper, Daly, Hill, Kwok, Miley, Miller, Ross, Torliatt, Townsend, Uilkema, Wagenknecht, Young, Haggerty.

NOES: None.

ABSENT: Brown, DeSaulnier, Garner, Kniss, McGoldrick, Silva, Smith.

Adopted Resolution No. 2004-07: A Resolution of the Bay Area Air Quality Management District Board of Directors Clarifying Authority of the Non-Board of Directors Administrative Committee to Include Modification and/or Expansion of Investment Options Provided Through Employee Benefit Plans

9. Consider Approval of Purchase Order in Excess of \$70,000 for Professional Services

The Board considered authorizing the Executive Officer/APCO to execute a purchase order with J.D. Edwards for 2000 hours of professional services to cover the conversion of the Mitchell Humphrey system into the new J.D. Edwards Enterprise Resource Planning System. The purchase order is not to exceed \$300,000 from the approved 2003/2004 budget.

In response to Director Miller's question regarding the above item, Jack Broadbent, Executive Officer/APCO, stated that past practice has been to bring items like this to the full Board without going to the Budget & Finance Committee. Mr. Broadbent noted this is a budgeted item from last year's budget.

Board Action: Director Townsend moved approval of Consent Calendar Item 9; seconded by Director Young.

Director Miller requested staff bring all non-budgeted items over \$50,000 to the Budget and Finance Committee. The motion then passed unanimously without objection.

Committee Reports and Recommendations

10. Report of the Public Outreach Committee Meeting of April 26, 2004

Director Ross presented the report and stated that the Committee met on Monday, April 26, 2004 and O'Rourke, Inc. presented the updated concepts for the Spare the Air and Smoking

Vehicle campaigns. The Committee listened to a rough version of the radio promotion (60 second spot) and provided O'Rorke with comments.

O'Rorke, Inc. also presented the storyboards for the television spots (30 second spots), which are a continuation of the story from the radio spots. They will also be posted on the Air District's web site. O'Rorke received comments from the Committee and will work to implement them in the final campaign.

Staff presented a report on the public outreach programs for the 2004 Ozone Strategy, which include the Ozone Working Group, community meetings, training meetings, information on the District website, informational materials, *Air Currents*, and coordination with the Metropolitan Transportation Commission (MTC). Staff updated the Committee on the activities of each of the programs. The next steps include:

- Continue with the Ozone Working Group; its next meeting is May 20th.
- On April 20th there is a CEQA scoping meeting.
- During the summer of 2004, there will be public review and comment on the draft 2004 Ozone Strategy.
- Additional community meetings will be held.
- Update information on the website and in *Air Currents*.

The next meeting of the Committee is scheduled for 9:45 a.m., Monday, June 14, 2004.

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

11. Report of the Budget and Finance Committee Meetings of April 28 and May 17, 2004

Action(s): The Committee recommended the Board of Directors approve the following:

- A) Creation of a Self-Insured Workers' Compensation Program, authorizing the Executive Officer/APCO to execute necessary documents to establish a self-insured Workers' Compensation Program and approval of a transfer of funds in the amount of \$1,000,000 from the General Reserve to establish a Reserve for Workers' Compensation; and*
- B) Referred the proposed FY 2004/2005 budget to the Board of Director's at its June 2, 2004 meeting for the first of two public hearings. Final action will be taken at the conclusion of the second public hearing on this matter scheduled for June 16, 2004.*

Director Miller presented the report and stated that the Committee met on Wednesday, April 28 and Monday, May 17, 2004.

April 28, 2004:

The District Financial Audit Report for fiscal year 2002/2003 was presented and Bob Izabal of Izabal, Bernaciak & Company indicated there were no reportable conditions that were out of compliance and the overall conclusion is that the District is in good financial condition.

This was the first year that the Air District implemented Government Accounting Standards (GASB) 34.

Staff presented a report on the creation of a self-insured Workers' Compensation Program and reviewed the costs of the current program and the savings the District would achieve by converting to the self-insurance option. The estimated cost of the self-insured program is \$296,000 per year with an annual savings anticipated to be \$380,000. The Committee recommends the Board approve the creation of a Self-Insured Workers' Compensation Program and approve the transfer of funds in the amount of \$1,000,000 from the General Reserve to establish a Reserve for Workers' Compensation.

Staff presented the fiscal year 2004/2005 proposed budget and noted a deal has been cut between the Governor's office and the California State Association of Counties (CSAC) that would take about \$1.3 billion away from cities, counties, and special districts for two years. Staff reviewed the Consolidated Revenue and Expenses.

Staff also reported on funding for retiree benefits and noted there are 81 retirees, of which 74 are fully paid. Staff reviewed the budget for the Transportation Fund for Clean Air. The Committee provided direction to staff on several items in the budget and further discussion took place at the May 17th meeting.

May 17, 2004:

Staff presented a report on the Governor's May revisions of the State budget for fiscal year 2004/2005 and the budget will most likely change before a final budget is passed.

Staff presented additional information on the fiscal year 2004/2005 proposed budget with respect to proposed increases in FTE positions, Title V fees, travel expenses, and training and education expenses. The Committee recommended referral of the proposed fiscal year 2004/2005 budget to the Board of Director's for the first of two public hearings. The Committee requested staff to look at areas in the proposed budget that could be cut prior to the first public hearing on the proposed budget on June 2, 2004. The final hearing and adoption of the proposed budget is June 16, 2004.

Staff reviewed the Third Quarter Financial Report. The June 23, 2004 meeting is cancelled. The next meeting of the Committee is scheduled for 9:45 a.m., Wednesday, July 28, 2004.

Board Action: Director Miller moved the Board approve the report and recommendations of the Budget and Finance Committee; seconded by Director Daly; carried unanimously without objection with the following Board members voting:

AYES: Cooper, Daly, Hill, Kwok, Miley, Miller, Ross, Torliatt, Townsend, Uilkema, Wagenknecht, Young, Haggerty.

NOES: None.

ABSENT: Brown, DeSaulnier, Garner, Kniss, McGoldrick, Silva, Smith.

Adopted Resolution No. 2004-08: A Resolution of the Bay Area Air Quality Management District Board of Directors Authorizing Application to the Director of Industrial Relations, State of California for a Certificate of Consent to Self Insure Workers' Compensation Liabilities

Adopted Resolution No. 2004-09: A Resolution of the Bay Area Air Quality Management District Board of Directors Establishing a Reserve for Workers' Compensation and Authorizing a Transfer from the General Reserve to Fund the Reserve for Workers' Compensation

12. Report of the Legislative Committee Meeting of April 28, 2004

Action(s): The consensus of the Committee is that the Board approve the following positions on recently introduced bills:

Bill	Brief Description	Committee Recommendation
AB 2128 (Jackson)	<i>USES SB 1614 FUEL FEE FOR LIGHT-DUTY SCRAPPAGE AND RETROFIT PROGRAMS</i>	Support in Concept
AB 2541 (Fromer)	<i>ESTABLISHES LOW EMISSION CONTRACTOR INCENTIVE PROGRAM</i>	Support
AB 3104 (Firebaugh)	<i>ENVIRONMENTAL HEALTH AND AIR QUALITY FUNDING ACT OF 2004</i>	Support

Director Wagenknecht presented the report and stated that the Committee met Wednesday, April 28, 2004. A quorum was not present. The Committee reviewed three new bills and, after discussion, the consensus of the Committee was to recommend that the Board support these bills.

Staff also presented the Committee information on local air districts' ability to adopt fleet rules, and discussed the potential for a Bay Area rule. The Engine Manufacturers Association has challenged the South Coast's fleet rules, and this case is now before the U.S. Supreme Court. After discussion, the consensus of the Committee members was that the District wait for the U.S. Supreme Court ruling, and then revisit the issue. Additionally, staff will consider including fleet rule provisions as a Transportation Control Measure in the District's upcoming plan.

The Committee discussed AB 2628 (Pavley) and the impact of the bill on bridge toll revenues in the Bay Area. Staff provided an update on the bill's recent developments and, after discussion, the consensus of the Committee was to not recommend further amendments to the bill.

Staff distributed an updated list of all air quality bills and their current status, and highlighted the current status of several bills. The next Committee meeting will be at the Call of the Chair.

Board Action: Director Wagenknecht moved the Board approve the report of the Legislative Committee; seconded by Director Kwok; carried unanimously without objection.

Chairperson Haggerty discussed SB 849 (Torlakson) which would authorize a Joint Policy Committee made up of the Association of Bay Area Governments (ABAG), the Metropolitan Transportation Commission (MTC) and the Air District. Both MTC and ABAG would have

seven members on the Committee, but the bill does not specify how many members the Air District would have on the Committee. Pursuant to Government Code §54954.2(b), Chairperson Haggerty requested this item be put on the agenda as an emergency item, and so moved; seconded by Director Hill; carried unanimously without objection.

Board Action: Chairperson Haggerty requested the Board take a “support” position on the bill with an amendment that the Air District have the same number of members on the Committee as MTC and ABAG, and he so moved; seconded by Director Torliatt; carried without objection with one abstention by Director Uilkema.

13. Report of the Executive Committee Meeting of April 30, 2004

Chairperson Haggerty presented the report and stated that the Committee met on Friday, April 30, 2004 and staff presented a report on the Environmental Protection Agency’s (EPAs) recently designation of attainment and non-attainment areas and implementation for the national 8-hour ozone standard rule.

The Committee directed staff to work with the Sacramento and San Joaquin Valley radio stations when a Spare the Air day is called in this District. The Committee also discussed working on a five-day forecast for Spare the Air. The Sacramento and San Joaquin districts do not call a Spare the Air day on the same level as this District; this Air District calls it at a lower standard. There was discussion on the lack of mass transit in these corridors and that this Air District should be encouraging transit agencies to put transit in these corridors.

The Committee requested that this presentation be given to the Metropolitan Transportation Commission (MTC), the Association of Bay Area Governments (ABAG), and the Regional Agency Coordinating Committee (RACC). The Committee also recommended that staff work on an outreach program to go to as many of the Congestion Management Agencies (CMAs) as possible.

The Committee met in Closed Session with Mr. Broadbent to continue discussions regarding salary adjustments for management employees for fiscal year 2004-2005. General direction was given to the Executive Officer on the matter. The next meeting of the Executive Committee is scheduled for 9:30 a.m., Wednesday, June 30, 2004.

Board Action: Director Haggerty moved that the Board accept the report and recommendations of the Executive Committee; seconded by Director Wagenknecht.

Director Torliatt noted that the Air District had made a presentation to MTC on the national 8-hour ozone standard rule and the Commission appreciated the report. The motion then carried unanimously without objection.

Other Business

14. Report of the Executive Officer/APCO – Mr. Broadbent reported on the following:

1. Peter Hess, Deputy APCO has been nominated to serve as President of the Air & Waste Management Association and his term will begin in 2006.

2. The summer Spare the Air campaign begins on June 1, 2004. The Air District has been working with BART to wrap some of the trains on the Pleasanton/Dublin and Pittsburg/Bay Point lines. In addition, the Air District is working with MTC and BART to have free days on BART when a Spare the Air day is called.

Director Uilkema requested staff provide the Board with the message that will be on the wraps for BART.

15. Chairperson's Report - Chairperson Haggerty reminded the Board members about the Air and Waste Management Conference in June 2004.

Closed Session (The Board adjourned to Closed Session at 10:15 a.m.)

16. 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:

1. **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) (on remand from the United States Court of Appeals for the Ninth Circuit, Case No. 03-15402)
2. **Alvin J. Greenberg, Ph.D. v. Bay Area AQMD, et al.**, United States District Court, N.D. Cal., Case No. C 02 1501 VRW
3. **New United Motors Manufacturing, Inc. v. Bay Area AQMD, et al.**, Alameda County Superior Court, Case No. RGO 04-140445

B. Significant Exposure to Litigation

Pursuant to Government Code Section 54956.9(b), a need existed to meet in Closed Session to discuss one potential litigation matter against the District.

Open Session (The Board reconvened to Open Session at 10:37 a.m.)

Mr. Bunger reported that the Board met in Closed Session to discuss items 1, 2 and 3 under Agenda Item 16 and were provided status reports and gave general direction to Counsel.

Mr. Bunger stated that the Board also met in Closed Session on Item 16B and were provided a status report and provided direction back to management staff on the item.

17. Board Members' Comments – Director Ross stated that he met the Executive Officer of the Regional Water Quality Control Board for the Bay Area and recommended the Air District collaborate on a higher level with the Water Board due to some common interests.

Director Hill provided a memo to the Board members on budgetary observations he has made over the last seven years.

18. Time and Place of Next Meeting - 9:45 a.m., Wednesday, June 2, 2004, 939 Ellis Street, San Francisco, California.
19. Adjournment: The meeting was adjourned at 10:39 a.m.

/s/ Mary Romaidis

Mary Romaidis
Clerk of the Boards

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