



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

**BOARD OF DIRECTORS
LEGISLATIVE COMMITTEE MEETING**

COMMITTEE MEMBERS

**BRAD WAGENKNECHT –
CHAIRPERSON
CHRIS DALY
ERIN GARNER
MARK ROSS**

**PAMELA TORLIATT–VICE CHAIRPERSON
MARK DeSAULNIER
LIZ KNISS
JOHN SILVA**

**WEDNESDAY
APRIL 28, 2004
9:45 A.M.**

**BOARD ROOM
DISTRICT OFFICES**

AGENDA

- 1. CALL TO ORDER - ROLL CALL**
- 2. PUBLIC COMMENT PERIOD**

(Public Comment on Non-Agenda Items Pursuant to Government Code § 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 Committee's subject matter jurisdiction. Speakers will be limited to five (5) minutes each.

- 3. APPROVAL OF MINUTES OF MARCH 17, 2004**
- 4. CONSIDERATION OF NEW LEGISLATION AND CORRESPONDING AGENCY POSITIONS**

J. Broadbent/5052

jbroadbent@baaqmd.gov

(a) AB 2128 (Jackson)—Uses SB 1614 fuel fee for light-duty scrappage and retrofit programs

(b) AB 2541 (Fromer)—Establishes Low Emission Contractor Incentive Program

(c) AB 3104 (Firebaugh)—Environmental Health and Air Quality Funding Act of 2004

Staff will present recommended positions on these bills, as well as any additional pertinent bills introduced after the agenda is finalized but before the Committee meeting.

- 5. FURTHER DISCUSSION OF AB 2628 (Pavley)**

J. Broadbent/5052

jbroadbent@baaqmd.gov

The Committee recommended a "support if amended" position at its last meeting. Per the direction of the Vice-Chair, staff are bringing this bill back to the Committee for discussion of the impact of the bill on bridge toll revenues in the Bay Area.

6. DISCUSSION OF POTENTIAL DISTRICT FLEET RULE

J. Broadbent/5052

jbroadbent@baaqmd.gov

Staff will discuss the status of fleet rules in other districts and the potential for a Bay Area rule.

7. UPDATE ON DISTRICT-SPONSORED SMOG CHECK BILL AND OTHER BILLS

J. Broadbent/5052

jbroadbent@baaqmd.gov

Staff will inform the Committee of the status of AB 2683 (Lieber), which would clean the air by keeping vehicles that are in the Smog Check program today in the program in the future. Staff will also answer questions from the Committee about other bills of interest to the District.

8. COMMITTEE MEMBERS' COMMENTS

Any member of the Committee, 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)

9. TIME AND PLACE OF NEXT MEETING AT THE CALL OF THE CHAIR

10. ADJOURNMENT

**CONTACT CLERK OF THE BOARDS - 939 ELLIS STREET
SAN FRANCISCO, 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 at least three working days prior to the date of the meeting so that arrangements can be made accordingly).

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET
SAN FRANCISCO, CALIFORNIA 94109
(415) 771-6000**

DRAFT MINUTES

Summary of Board of Directors
Legislative Committee Meeting
9:45 a.m., Wednesday, March 17, 2004

1. Call to Order - Roll Call: Chairperson Wagenknecht called the meeting to order at 9:59 a.m.

Present: Brad Wagenknecht, Chairperson, Chris Daly, Mark DeSaulnier, Mark Ross, Pamela Torliatt (10:01 a.m.).

Absent: Liz Kniss, John Silva.

Also Present: Jake McGoldrick (10:07 a.m.), Scott Haggerty (10:11 a.m.)

2. Public Comment Period: There were none.

3. Approval of Minutes of January 14, 2004: Director DeSaulnier moved approval of the minutes; seconded by Director Daly; carried unanimously.

4. Consideration of New Legislation and Corresponding Agency Positions: Staff presented eleven new bills with the recommended positions listed below:

Bill	Brief Description	Staff Recommendation
<i>AB 1991 (Lowenthal)</i>	<i>Intent language to establish a one-stop permitting process for petroleum infrastructure projects</i>	<i>Watch</i>
<i>AB 2366 (Chan)</i>	<i>Authorizes a 'fifth dollar' for clean air on vehicle registrations within the BAAQMD</i>	<i>Support</i>
<i>AB 2424 (LaMalfa)</i>	<i>Spot bill from Specialty Equipment Manufacturers Association to halt vehicle scrappage programs</i>	<i>Oppose in Concept</i>
<i>AB 2526 (Oropeza)</i>	<i>Funds the Moyer program with a quarter of a cent of existing diesel fuel tax</i>	<i>Support</i>
<i>AB 2628 (Pavley)</i>	<i>Allows hybrids into HOV lanes</i>	<i>Support if amended</i>

<i>AB 2847 (Oropeza)</i>	<i>Five cents per gallon fee on gas and diesel to mitigate air impacts</i>	<i>Support</i>
<i>AB 2880 (Pavley)</i>	<i>Authorizes increase from \$4 to \$6 in motor vehicle registration fees for clean air</i>	<i>Support and seek amendments</i>
<i>AB 2939 (Diaz)</i>	<i>Spot bill that will become a funding measure for a new Moyer-type program</i>	<i>Support</i>
<i>SB 1247 (Soto)</i>	<i>Spot bill that will become a funding measure for a new Moyer-type program</i>	<i>Support</i>
<i>SB 1614 (Torlakson)</i>	<i>Ten cents per gallon fee on gasoline and diesel with a penny going to clean air projects</i>	<i>Support</i>
<i>SB 1615 (Denham)</i>	<i>Ends California requirement that out-of-state vehicles older than 30 years be subject to smog check</i>	<i>Oppose unless amended</i>

During discussion it was noted that one of several measures that would streamline the permitting process for refineries is AB 1991 (Lowenthal). Thomas Addison, Advanced Projects Advisor, stated that this is a Western States Petroleum Association (WSPA) spot bill. Refineries have significant emissions and the Air District is in charge of the permitting process. Some of the proposals consider having the permitting process moved to some other agency, such as the California Energy Commission (CEC), which is an agency that, historically, has not been focused on air quality concerns. The staff recommended a position of “Watch” for this bill.

Brian Bunger, Counsel, added that the Air District is not sure how this would be structured, but in the power plant context, the Air District still has its permitting authority and then that gets rolled into the CEC process, which is not an expedited process.

Jack Broadbent, Executive Officer/APCO, stated that the Air District has written a letter expressing strong concern on behalf of having CEC play a role in permitting and the perception of taking some authority away from the Air District. Director DeSaulnier noted that the California Air Resources Board (CARB) would like to see the Air District oppose this bill.

Committee Action: Director DeSaulnier moved to change the recommendation on AB 1991 (Lowenthal) from “Watch” to “Oppose in concept;” seconded by Director Daly; carried unanimously.

There was discussion on AB 2628 (Pavley), which would allow hybrids into HOV lanes. Mr. Addison discussed the following amendments staff would suggest: 1) Because today’s hybrids are selling very well without this incentive, and excess capacity in the HOV lanes is limited, the bill should provide the benefit to plug-in hybrids. It should either not apply to today’s hybrids, or be very limited duration for the non-plug-in hybrids. The plug-in hybrid technology could use the extra boost and, in addition, there is a bigger air quality benefit. Electric vehicles have access to the HOV lanes now. 2) Do not include allowing hybrids into the HOV lanes in the same code section as the existing language applying to pure battery electric vehicles. If, in the future, the HOV lanes are too full, then the hybrids HOV access would need to be removed. This change

would be more difficult if the battery electric vehicles are in the same code section with the other vehicles.

There was further discussion on how full the HOV lanes are now. Director Haggerty suggested two amendments: 1) having an early sunset for hybrid access to HOV lands, and 2) restructuring the bill so the hybrid vehicles' access language is separate from the existing access language for battery electric and natural gas vehicles.

Committee Action: Director Haggerty moved to support AB 2628 (Pavley) if amended per his above recommendations; seconded by Director Ross; carried unanimously by acclamation.

There was discussion on the variety of bills to provide funding for air quality, and their different approaches. This included discussion of the bills to increase motor vehicle registration fee surcharges, including the statewide measure AB 2880-Pavley and AB 2366-Chan, which is for the Bay Area only. Director Haggerty requested staff speak with Ms. Chan and urge her to go forward with her bill even if AB 2880 passes. Other bills discussed were SB 1257 (McClintock), AB 2953 (Canciamilla), and AB 2983 (McCarthy). Mr. Addison stated that AB 2983 will be a Moyer-funding bill, but there is no language in it yet. Staff may bring this bill back to the Committee in April with a "support" position.

The Committee had no changes on the staff recommendations for the other nine bills on the list.

5. **Update on District-Sponsored Smog Check Bill:** *Staff informed the Committee of the status of AB 2683 (Lieber), which would clean the air by keeping vehicles that are in the Smog Check program today in the program in the future.*

Mr. Addison stated that this is a controversial bill and that as of last Wednesday there were approximately 800 letters and e-mails in opposition of this bill. The considerable opposition to this bill has been generated by the Specialty Equipment Manufacturers Association (SEMA). Mr. Addison noted that most people who oppose this bill, including television personality Jay Leno, own vehicles that would not be affected by the bill because they own pre-1976 cars.

Committee Action: None. This report provided for information only.

6. **Committee Members' Comments:** There were none.
7. **Time and Place of Next Meeting:** At the Call of the Chair.
8. **Adjournment:** The meeting adjourned at 10:57 a.m.

Mary Romaidis
Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 Inter-Office Memorandum

To: Chairperson Brad Wagenknecht and
 Members of the Legislative Committee

From: Thomas Addison
 Advanced Projects Advisor

Date: April 20, 2004

Re: CONSIDERATION OF NEW BILLS AND CORRESPONDING
 AGENCY POSITIONS

RECOMMENDED ACTION

Adopt positions on recently-introduced bills.

DISCUSSION

The 2004 legislative year is in full swing, with policy committees currently holding lengthy hearings on the multitude of 2004 bills. Important looming deadlines include April 23rd, which is the last day for policy committees to hear fiscal bills, and May 7th, the last day to hear non-fiscal bills.

Staff is recommending the Committee today adopt positions on the three bills listed in the table below. A copy of each of these bills is attached.

Staff have heard rumors that there may be one or more significant new air quality bills still to be introduced, perhaps after the date this memorandum is being prepared but prior to the Committee meeting. If this does happen, staff would like to present any such additional bills verbally to the Committee.

Bill	Brief Description	Staff Recommendation
AB 2128 (Jackson)	Uses SB 1614 fuel fee for light-duty scrappage and retrofit programs	Support in concept
AB 2541(Fromer)	Establishes Low Emission Contractor Incentive Program	Support
AB 3104 (Firebaugh)	Environmental Health and Air Quality Funding Act of 2004	Support

ANALYSIS

AB 2128 is authored by Hannah-Beth Jackson (D-Santa Barbara). It is entirely dependent on SB 1614 (Torlakson), which would impose a 10-cent per gallon fee on gasoline and diesel fuel. The District is supporting SB 1614. A penny of the dime fee would go towards air quality programs, which are not specified in the Torlakson bill. If SB 1614 is passed, AB 2128 would direct \$50 million annually (or 50% of the air quality funds raised by SB 1614) into voluntary light-duty vehicle scrappage and retrofit programs operated by the Air Resources Board. The bill contains provisions that would cap any fees paid for scrappage to \$1,000 per vehicle, or \$1,500 per vehicle if the scrapped vehicle is replaced with an advanced technology partial zero emission vehicle (ATPZEV).

Staff feel that light-duty vehicle scrappage and retrofit programs are cost-effective options for reducing motor vehicle emissions, and that a fee on gasoline is an appropriate way to fund such programs. While SB 1614 is currently silent on what air quality programs it will fund, staff have had preliminary discussions with Senator Torlakson's staff about what types of programs would be appropriate, and have recommended scrappage, retrofit, and repair.

Currently, there is no opposition to the bill. However, staff expect the Specialty Equipment Manufacturers Association will oppose the bill. (This organization is also opposing AB 2683 (Lieber), sponsored by the District, and sponsoring AB 2424 (LaMalfa), which would impose severe restrictions on scrappage programs.) While District staff think there should be some flexibility over issues such as the amount paid per scrapped vehicle, and the level of funds into scrappage versus retrofit programs over time, staff are recommending a "support in concept" position to the Committee.

AB 2451 is authored by Dario Frommer (D-Los Angeles), and sponsored by the Coalition for Clean Air. It establishes the Low-Emission Contractor Incentive Program. The primary intent of the bill is to create an incentive for state contractors to use low-emission vehicles. It does this through a series of bid incentives for the use of low-emission equipment (both on and off-road) and ride-sharing programs by those bidding to get state contracts. In part, the bill is modeled on a proposed Sacramento County ordinance.

Large state contracts for such activities as freeway construction can use large numbers of heavy-duty diesel on and off-road vehicles. Emissions from such a project, which can last for lengthy time periods, can be significant. The bill establishes separate bid preferences for different types of vehicles, and for a successful ride-sharing program. The maximum preference for all low-emission actions is capped at 10%. The bill establishes that the Department of General Services shall consult closely with the ARB in establishing the rules of the program.

Staff believe that this bill is an innovative, well-drafted approach to cutting emissions. It should accelerate sales of clean heavy-duty equipment, and help build a market for potential manufacturers of such equipment. Supporters include a host of environmental organizations, and some other air districts. There is no registered opposition currently. Staff are recommending a support position to the Committee.

AB 3104 is authored by Marco Firebaugh (D-South Gate), and is titled the Environmental Health and Air Quality Funding Act of 2004. This bill is sponsored by the Sierra Club,

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and is designed to be part of a package of measures to provide long-term, stable, substantial funding for incentive-based, motor vehicle emission reduction programs such as Moyer, Low Emission School buses, and light-duty scrappage and retrofit. The bill would place a fee on petroleum at the rack (essentially the wholesale level), although the size of the fee has not yet been fixed.

The sponsors have engaged industry and environmental groups in a lengthy dialogue about how best to provide long-term funding for mobile source cleanup, and much of the bill language has been developed with input from stakeholders including the Western States Petroleum Association, local air districts, and environmental groups. In this respect, the bill has followed a parallel process to SB 1247 (Soto), which is sponsored by the South Coast Air Quality Management District. (The District already has a support position on the Soto bill.)

There has been a good-faith effort by the sponsors of AB 3104 to develop a bill that petroleum and other industrial and business groups will support. However, it is not yet clear what position industry and others will ultimately take on this bill, since it is continuing to evolve. Since a critical piece of the District's legislative agenda for 2004 is finding long-term funding for Moyer and other incentive-based mobile source cleanup programs, staff are recommending a support position on AB 3104. Staff have had, and expect to continue to have, significant ability to shape the bill to date and as it takes its final form.

BUDGET CONSIDERATION/FINANCIAL IMPACT

No direct impact.

Respectfully submitted,

Thomas Addison
Advanced Projects Advisor

FORWARDED: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Inter Office Memorandum

To: Chairperson Brad Wagenknecht and
Members of the Legislative Committee

From: Thomas Addison
Advanced Projects Advisor

Date: March 10, 2004

Re: FURTHER DISCUSSION OF AB 2628 (PAVLEY)

RECOMMENDED ACTION

Discuss any potential additional amendments to AB 2628.

DISCUSSION

AB 2628 (Pavley) would allow advanced technology partial zero-emission vehicles (ATPZEVs) to use HOV lanes, regardless of occupancy. This bill was considered by the Committee at its last meeting. The Committee recommended, and the Board subsequently adopted, a "Support if Amended" position on the bill. After significant discussion, the Committee recommended two amendments: a shorter sunset provision, and different construction (placing the hybrid vehicle HOV access in a code section different than the pre-existing language for electric and CNG vehicle HOV access).

The Metropolitan Transportation Commission (MTC) Legislative Committee also discussed the bill recently. MTC staff noted that the bill would have some financial cost to the region, since HOV access for hybrids means those vehicles would not pay tolls when crossing state toll bridges in the peak commute hours. MTC staff have attempted to quantify the annual cost of this bill in lost toll revenue to the region. Their initial estimate was roughly \$5 million, although after further analysis they currently think a figure of \$3 million annually might be more accurate. Regional bridge tolls support a variety of transportation programs, including transit.

Staff note that bridge toll bypasses are a significant part of the Bay Area's HOV lane system. Much of the travel time savings attributable to using the HOV network are from bypassing the toll plazas. Physically, the toll bypasses are an integral part of the region's HOV network. Thus, allowing certain vehicles into the HOV lanes but not allowing them into toll-free bridge crossings could be logistically difficult.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Thomas Addison
Advanced Projects Advisor

FORWARDED: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Brad Wagenknecht and
Members of the Legislative Committee

From: Jack Broadbent
Executive Officer/APCO

Date: April 22, 2004

Re: DISCUSSION OF POTENTIAL DISTRICT FLEET RULE

RECOMMENDED ACTION

Discuss potential for District implementation of a fleet rule similar to those adopted by several other air districts; delay action by the BAAQMD until resolution of a legal challenge to South Coast fleet rules.

BACKGROUND

Under California Health and Safety Code (H&SC) section 40919(a)(4), "serious" or worse ozone nonattainment areas under the California Clean Air Act may require "the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets." The term "low-emission motor vehicles" is defined in H&SC section 39037.05 to include (1) vehicles fueled with methanol, (2) vehicles fueled with fuels other than gasoline or diesel, and (3) vehicles certified to meet a hydrocarbon emission standard at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class. Under the California ozone standard, the Bay Area is classified as a "serious" non-attainment area.

The California Health and Safety Code also grants specific authority to adopt fleet rules to three California air districts: the South Coast district (H&S Code section 40447.5, added 1987), the Sacramento district (H&S Code section 41011, added 1988), and the Mojave district (H&S Code section 41231, added 1992). The authority granted to each of these districts is similar: the district may require public and private fleets to acquire vehicles fueled with "methanol or other equivalently clean burning alternative fuel" (South Coast) or "low-emission motor vehicles" (Sacramento and Mojave) and may also require that the vehicles be operated substantially on alternative fuels. The Bay Area district does not have such a specific grant of authority.

Only the South Coast and Sacramento districts have adopted fleet rules. The Sacramento rule was adopted in 1994. The South Coast rules, adopted in 2000, are the subject of current litigation.

In Engine Manufacturers Association and Western States Petroleum Association v. South Coast Air Quality Management District, Et AL, EMA and WSPA have mounted a facial challenge to the South Coast rules claiming that the rules amount to establishment of emission standards and are therefore preempted by federal Clean Air Act provisions that grant authority to establish vehicle emission standards only to EPA and to the State of California (but not local air districts). The South Coast argument has been that their fleet rules all include an exemption for any vehicle that is not commercially available and therefore cannot be said to establish emission

standards that would force manufacturers to make vehicles that they do not already make. The U.S. District court denied relief to EMA and WSPA, and on appeal, the Ninth Circuit Court of Appeals upheld the District Court decision.

The case is now before the U.S. Supreme Court, and oral arguments were heard on January 14, 2004. A decision could come at any time between now and October.

DISCUSSION

If the Supreme Court upholds the lower court decisions, the way would be clear for the District to adopt fleet rules. On the other hand, a South Coast loss in the Supreme Court would probably threaten all fleet rules, given the broad nature of the challenge. Until the decision in the case, local air district authority to adopt fleet rules remains uncertain.

If the District is able to proceed with fleet rules, use of the general authority granted by section 40919(a)(4) without specific authority like that given to South Coast, Sacramento, and Mojave is likely to be highly controversial. The District should probably seek specific authority to adopt fleet rules. It would be extremely difficult to accomplish this during the current legislative session. The bill introduction deadline was February 20, 2004, and introduction of any bill, let alone a controversial bill, would be difficult at this time.

RECOMMENDATION

District staff will report to the committee after the Supreme Court decision.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Inter-Office Memorandum

To: Chairperson Brad Wagenknecht and
Members of the Legislative Committee

From: Thomas Addison
Advanced Projects Advisor

Date: March 10, 2004

Re: UPDATE ON SMOG CHECK LEGISLATIVE PROPOSAL AND OTHER
BILLS

RECOMMENDED ACTION

Receive and file.

DISCUSSION

AB 2683, authored by Assemblymember Sally Lieber, is co-sponsored by the District, the Planning and Conservation League, and the California Council for Economic and Environmental Balance. It would ensure that all vehicles subject to the Smog Check program today would remain in the program in the future. The bill is opposed by the Specialty Equipment Manufacturers Association (SEMA), which is an organization of businesses that build after-market parts for hot rods and vehicle customizers. The bill passed its first hurdle, the Assembly Transportation Committee, on April 12th, with only the minimum eight votes needed for passage. While the coalition of support for the bill is exceptionally broad, and bipartisan, debate on the bill has been and will continue to be fierce. The bill is expected to initially be put on the suspense file in the Assembly Appropriations Committee on April 21st, because of DMV estimated costs of \$200,000 to notify the roughly 60,000 1976 vehicle owners.

At the Committee meeting, staff will distribute an updated list of all air quality bills and their current status. If the Committee has questions about these or other bills, staff will attempt to answer them.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Thomas Addison
Advanced Projects Advisor

FORWARDED: _____