

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
939 ELLIS STREET  
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**APPROVED MINUTES**

Summary of Board of Directors  
Legislative Committee Meeting  
9:45 a.m., Wednesday, April 28, 2004

1. **Call to Order - Roll Call:** Chairperson Wagenknecht called the meeting to order at 9:50 a.m.  
  
**Present:** Brad Wagenknecht, Chairperson, Chris Daly (9:55 a.m.), Mark Ross, John Silva.  
  
**Absent:** Mark DeSaulnier, Erin Garner, Liz Kniss, Pamela Torliatt.
2. **Public Comment Period:** There were no comments.
6. **Discussion of Potential District Fleet Rule:** *Staff discussed the status of fleet rules in other districts and the potential for a Bay Area rule.*

Jack Broadbent, Executive Officer/APCO, explained that this item was on the Legislative Committee agenda at the request of Chairperson Haggerty, after a recent Mobile Source Committee discussion. Mr. Broadbent provided background information to the Committee on fleet rules. Under California Health and Safety Code (H&SC) Section 40919(a)(4), "serious" or worse ozone nonattainment areas under the California Clean Air Act (which includes the Bay Area) may require the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets. Under other sections of California law, Sacramento, the South Coast, Mojave, and San Joaquin all have additional fleet rule authority, and Sacramento and South Coast have adopted fleet rules.

Mr. Broadbent discussed the South Coast rules, which were adopted in 2001. He noted that the Engine Manufacturers Association (EMA) has challenged SCAQMD's rules, and this case is now before the U.S. Supreme Court. The EMA has argued that the SCAQMD's rules amount to establishment of emission standards and are, therefore, preempted by federal Clean Air Act provisions that grant this authority only to the Environmental Protection Agency (EPA) and to the State of California. The SCAQMD has argued that their fleet rules all include an exemption for any vehicle that is not commercially available and, therefore, do not establish emission standards that would force manufacturers to make vehicles that they do not already make. Oral arguments before the U.S. Supreme Court were held only a few months ago and a ruling is expected shortly.

Mr. Broadbent recommended that District staff monitor the case that is currently before the U.S. Supreme Court. Should the Court uphold the authority of the SCAQMD regarding fleet rules, staff will come back to the Legislative Committee to discuss possible 2005 legislation to modify

the Health and Safety Code such that the District would have the same authority as the SCAQMD.

Kathleen Walsh, Assistant Counsel, responded to Director Ross’s inquiry as to why the Sacramento Air District was not named in the lawsuit. Ms. Walsh explained that the Sacramento rule is less legally vulnerable, since it involves only public fleets. Ms. Walsh pointed out that even if the Supreme Court decides to invalidate the SCAQMD’s rules, that would not be the end of the process for California. Under federal law, the State of California can request a waiver for standards that are different from the federal standards, and if the Supreme Court were to strike down the SCAQMD’s rules, the California Air Resources Board (CARB) could request a waiver on behalf of the SCAQMD which would presumably validate those rules under existing provisions of federal law.

Director Ross inquired if the public fleet provision could be included as a Transportation Control Measure (TCM). Mr. Broadbent stated that staff would take this as part of the direction from the Legislative Committee. He opined that the fleet operators in the Bay Area need to be pushed in this regard. He also stated that there would be a great deal of discussion in the near future about the urban bus rule that is presently before the CARB. CARB has a statewide rule that requires public and private transit operators to meet some specific standards relative to their fleet operations. The fleet operators that are most opposed to this particular proposal are from the Bay Area. AC Transit, Golden Gate Transit, Muni and VTA have all raised concerns about the urban bus rule, urging modifications. Mr. Broadbent stated that the fleet rule option for the Bay Area is something that the District should consider and that it can be included as part of the District’s TCMs in its upcoming plan. The District can then identify any needed additional legislative authority.

**Committee Action:** The consensus of the Committee is that this matter be held in abeyance until after the U.S. Supreme Court ruling, and that staff brings this matter back to the Legislative Committee for further discussion after the ruling.

3. **Approval of Minutes of March 17, 2004:** Due to a lack of a quorum, the approval of the minutes was deferred.
4. **Consideration of New Legislation and Corresponding Agency Positions:** Staff presented three new bills with the recommended positions listed below:

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

Thomas Addison, Advanced Projects Advisor, explained the bills as follows:

**AB 2128** (Jackson) would allocate a portion of the clean air funding to be raised by SB 1614 (Torlakson). SB 1614, supported by the District, would impose a 10-cent per gallon fee on gasoline and diesel fuel, with a penny of these funds going to unspecified air quality programs. 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.

Staff feels 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. However, SB 1614 failed to advance out of the Senate Transportation Committee, and if that bill fails, AB 2128 becomes moot.

**AB 2451** (Frommer) is 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. The bill is modeled on a Placer 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 can be significant. The bill establishes separate bid preferences for different types of clean 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 believes 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 environmental organizations and other air districts. There is no registered opposition currently.

**AB 3104** (Firebaugh) is titled the Environmental Health and Air Quality Funding Act of 2004. This bill is sponsored by the Sierra Club, 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. There will also be an increase in motor vehicle registration fees from \$4 to \$6.

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.

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.

**Committee Action:** The Committee endorsed staff's recommended positions on these three bills.

5. **Further Discussion of AB 2628 (Pavley):** *The Committee recommended a "support if amended" position at its last meeting. Per the direction of the Vice-Chair, staff brought this bill back to the Committee for discussion of the impact of the bill on bridge toll revenues in the Bay Area.*

**AB 2628** (Pavley) would allow advanced technology partial zero-emission vehicles (ATPZEVs) to use HOV lanes, regardless of occupancy. The Committee, at its last meeting, considered this bill. 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 statutory construction (placing the hybrid vehicle HOV access in a code section different than the pre-existing language for electric and CNG vehicle HOV access)

Mr. Addison explained that this item was being revisited, at the request of Director Torliatt, to discuss the impact of the bill on bridge toll revenues in the Bay Area. The Metropolitan Transportation Commission (MTC) recently adopted a "watch and seek amendments" position.

MTC has 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 has 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 noted that bridge toll by passes are a significant part of the Bay Area's HOV lane system. Much of the travel timesavings 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.

**Committee Action:** After discussion, the Committee decided not to seek additional amendments to the bill beyond the two changes initially sought.

7. **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. Staff also answered questions from the Committee about other bills of interest to the District.*

**AB 2683** (Lieber) passed the Assembly Transportation Committee, on April 12<sup>th</sup>. The bill has been put on the suspense file in the Assembly Appropriations Committee on April 21<sup>st</sup>, because

of DMV estimated costs of \$200,000 to notify the roughly 60,000 1976 vehicle owners. However, staff has concerns about the accuracy of DMV's estimated costs.

Mr. Addison distributed an updated list of all air quality bills and their current status. Mr. Addison reported that AB 2366 (Chan) has passed out of two Committees, both the Assembly Transit and Assembly Local Government, and is moving forward.

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

8. **Committee Members' Comments:** There were none.
9. **Time and Place of Next Meeting:** At the Call of the Chair.
10. **Adjournment:** The meeting adjourned at 10:37 a.m.

*/s/ Neel Advani*

Neel Advani  
Deputy Clerk of the Boards