

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

Approved Minutes: Board of Directors' Regular Meeting – July 25, 2007

Call To Order

Opening Comments: Chair Mark Ross called the meeting to order at 9:52 a.m.

Roll Call: Present: Mark Ross, Chair, Tom Bates, Chris Daly, Dan Dunnigan, John Gioia, Scott Haggerty (10:03 a.m.), Jerry Hill, Carol Klatt, Patrick Kwok, Janet Lockhart (10:11 a.m.), Jake McGoldrick (10:06 a.m.), Nate Miley (10:03 a.m.), Michael Shimansky, John Silva, Pamela Torliatt, Gayle B. Uilkema.

Absent: Harold Brown, Erin Garner, Yoriko Kishimoto, Liz Kniss, Tim Smith, Brad Wagenknecht.

Pledge of Allegiance: The Board of Directors recited the Pledge of Allegiance.

Public Comment Period: There were none.

Commendations/Proclamation:

The Board of Directors recognized Peter F. Hess, PE, DEE, QEP, for his 33 years of dedicated service to the Air District.

Directors Scott Haggerty and Nate Miley arrived at 10:03 a.m. Director Jake McGoldrick arrived at 10:06 a.m.

Consent Calendar (Items 1 – 8)

1. Minutes of June 20, 2007 Regular Meeting
2. Communications. Correspondence addressed to the Board of Directors. For information only.
3. District Personnel on Out of State Business Travel

In accordance with Section 5.4 (b) of the District's Administrative Code, Fiscal Policies and Procedures Section, the Board was notified by memoranda the list of District personnel who traveled on out-of-state business.

4. Quarterly Report of Air Resources Board Representative Honorable Jerry Hill
5. Quarterly Report of the Executive Office - *A summary of Board of Director and Advisory Council*

meeting activities for the second quarter was provided for information only.

6. Consider Establishing a New Classification of Organizational Development and Training Specialist with Salary Set at Pay Range 134

The Board of Directors considered approval of the establishment of a new classification of Organizational Development and Training Specialist with salary set at pay range 134.

7. Approval of Acceptance of Disclosure of Costs for Optional Retirement Benefit as Required by Government Code Section 7507

The Board of Directors considered acceptance of the disclosure of costs resulting from implementation of an optional retirement benefit as required by Government Code Section 7507.

8. Update to the Affirmative Action Plan

Pursuant to Division III, Section 2 of the District's Administrative Code, the Board of Directors affirmed its policy to provide equal employment opportunities and commits itself and the Air District to implementing an Affirmative Action Plan (AAP). An update to the AAP was attached to the Board packet.

Board Actions: Director Kwok moved approval of the Consent Calendar items 1 through 7; seconded by Director Torliatt; carried unanimously without objection. (Due to a typographical error on the agenda, Consent Calendar item 8 was not included in the original motion.)

Director Haggerty moved approval of Consent Calendar item 8; seconded by Director Torliatt; carried unanimously without objection.

Committee Reports and Recommendations

9. Report of the Budget and Finance Committee Meeting of July 18, 2007

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

- A) Addition of 5 positions to staff the Grants Program;*
- B) Authorize the Executive Officer/APCO to solicit bids and execute agreements with consultants to assist staff with audit related activities and transfer \$900,000 from the General Reserve for this purpose. An adjustment to the Air District's budget will be made accordingly; and*
- C) Establish a Designated Reserve for a Cleaner Burning Technology Incentive Program and fund the new Reserve with a transfer of \$500,000 from Undesignated Reserves.*

Director Daly presented the report and stated that the Committee met on Wednesday, July 18, 2007.

The Committee received a review of the reserve targets. The District will maintain a general fund undesignated reserve of not less than 15% of annual revenues.

Director Janet Lockhart arrived at 10:11 a.m.

The Committee received a report on and is recommending Board of Directors' approval of the addition of five new positions to staff the Grant Programs. The positions would consist of one Air Quality Program Manager and four Administrative Analyst positions. Director Daly clarified that the recommendation authorizes hiring three of the positions now, with the ability for staff to hire the remaining two with a report back to the Committee.

Staff presented a status report on the Carl Moyer Program audit reports and a request for funding for consultants to assist staff with audit related activities. The Committee recommends Board of Directors' approval to authorize the Executive Officer/APCO to solicit bids and execute agreements to assist staff to carry out the functions of the Carl Moyer Program and transfer \$900,000 from the General Reserve for this purpose and adjust the Air District's fiscal year 2007/2008 budget accordingly.

A report was presented to the Committee regarding the establishment of a designated reserve for a Cleaner Burning Technology Incentives Program. The Committee recommends that the Board of Directors designate a Reserve for a Cleaner Burning Technology Incentives Program and fund the new Reserve with a transfer of \$500,000 from Undesignated Reserves.

The next meeting of the Committee is scheduled for 9:30 a.m., Wednesday, September 26, 2007.

Board Action: Director Daly moved that the Board of Directors approve the recommendations and report of the Budget and Finance Committee; seconded by Director Shimansky.

After a brief discussion, the three recommendations of the Committee were bifurcated with action items 9B and 9C on the agenda being voted on separately from action item 9A.

Board Action: Director Torliatt moved that the Board of Directors approve the Budget and Finance Committee recommendations regarding agenda items 9B and 9C; seconded by Director Hill; carried unanimously without objection.

Board Action: Director Torliatt moved that the Board of Directors approve the Budget and Finance Committee recommendation regarding agenda item 9A; seconded by Director Kwok.

Director Haggerty recommended that item 9A go back to the Committee for more discussion. Director Daly summarized some of the discussion at the Committee meeting and noted that the original staff recommendation to the Committee was for three positions. Staff noted that compared to other grant programs in other air districts, a more appropriate staffing level would be five additional positions, for a total of ten. The Committee, on a split vote, modified the recommendation to allow the immediate hiring of the three positions with the ability to look for two additional hires, with a report back to the Committee.

Director Haggerty moved that agenda item 9A be referred back to the Committee; seconded by Director Kwok.

Director Gioia offered a substitute motion for Board of Directors approval of the three original positions and refer the issue regarding the additional two positions back to the Committee. After a brief discussion, Director Haggerty withdrew his motion.

Director Gioia moved that the Board of Directors approve three positions and send the issue of any further positions back to the Committee; seconded by Director Daly.

There was further discussion on the importance of hiring individuals for the five positions and it was noted that the CARB audit shows that other air districts have more staff than this air district. After further discussion, Director Gioia withdrew his motion.

Director Bates offered a substitute motion on agenda item 9A for Board of Directors' approval to hire up to five persons for the Grants Program without reporting back to the Committee; seconded by Director Torliatt. The substitute motion was accepted on the following roll call:

AYES: Bates, Dunnigan, Gioia, Hill, Klatt, Kwok, Lockhart, Miley, Silva, Torliatt, Ross.

NOES: Daly, Haggerty, McGoldrick, Shimansky, Uilkema.

ABSENT: Brown, Garner, Kishimoto, Kniss, Smith, Wagenknecht.

Final Board Action on the Substitute Motion: Chair Ross clarified that the substitute motion gives staff direction to hire up to five people for the Grants Program. The motion then carried on the following roll call:

AYES: Bates, Dunnigan, Gioia, Hill, Klatt, Kwok, Lockhart, Miley, Silva, Torliatt, Ross.

NOES: Daly, Haggerty, McGoldrick, Shimansky, Uilkema.

ABSENT: Brown, Garner, Kishimoto, Kniss, Smith, Wagenknecht.

10. Report of the Mobile Source Committee Meeting of July 18, 2007

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

- A) Transportation Fund for Clean Air County Program Manager expenditure plans for FY 2007/2008;*
- B) Exchange of \$853,354 and \$1,070,778 of the FY 2007/2008 TFCA County Program Manager funds of the Alameda and Santa Clara County Program Managers, with Congestion Mitigation and Air Quality (CMAQ) funds; and*
- C) Amend TFCA County Program Manager Expenditure Plans for FY 2005/2006 and FY 2006/2007 for the Contra Costa Transportation Authority.*
- D) Award contract to perform audit of TFCA Regional Fund projects in the amount of \$168,600 to the firm of Caporicci and Larson; and*

- E) Authorize the Executive Officer/APCO to enter into a contract with Caporicci and Larson to conduct audits.*

Chair Mark Ross presented the report and stated that the Committee met on Wednesday, July 18, 2007.

Staff presented a report on the Transportation Fund for Clean Air (TFCA) County Program Manager Expenditure Plan for fiscal year 2007/2008 and certain prior fiscal years. The Committee recommends Board of Directors' approval of the following:

- A) Fiscal year 2007/2008 TFCA County Program Manager projects listed on Table 1 of the staff report, as amended to replace the County of San Francisco as the Project Sponsor of Project No. 07SF15 with the Yellow Cab Cooperative;
- B) Exchange of \$853,354 and \$1,070,778 of the fiscal year 2007/2008 TFCA County Program Manager funds of the Alameda and Santa Clara County Program Managers, respectively, with Congestion Mitigation and Air Quality funds; and
- C) Amend TFCA County Program Manager Expenditure Plans for fiscal year 2005/2006 and fiscal year 2006/2007 for the Contra Costa Transportation Authority to transfer unexpended funds from existing projects to an existing countywide public transit incentive project for fiscal year 2006/2007.

Staff provided an overview of the TFCA Regional Fund projects auditor selection process. The Committee recommends Board of Directors' approval of the following:

- D) Select the firm of Caporicci and Larson to perform audit of TFCA Regional fund projects currently underway or completed since the last audit in 2005; and
- E) Authorize the Executive Officer/APCO to execute with Caporicci and Larson a contract in an amount not to exceed \$168,600 to conduct the fiscal audit.

The Committee received a status report of the Carl Moyer Program audit reports.

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

Board Action: Chair Ross moved that the Board of Directors approve the recommendations and report of the Mobile Source Committee; seconded by Director Kwok; carried unanimously without objection.

11. Report of the Climate Protection Committee Meeting of July 19, 2007

Director Torliatt presented the report and stated that the Committee met on Thursday, July 19, 2007.

Staff presented a status report on the Air District's climate protection activities. The activities include the green house gas emission inventory, climate protection initiatives, assisting local governments, regional activities, and the Air District being carbon neutral as of June 1, 2007. The Committee provided direction to staff on several items that were discussed.

The Committee received a report on recent and future climate protection public outreach activities.

Staff provided a brief overview of the objectives and guidelines for the Climate Protection Grant Program. Discussion of projects for the Incentive Program, funded by the \$3,000,000 approved by the Board of Directors, included \$1,000,000 for a sustainable energy loan fund, \$1,000,000 as seed money for the Foundation, and \$1,000,000 to the Climate Protection Grant Program. The timeline for the Grant Program includes Board approval of guidelines by September, an application deadline in October, with recommendations to the Board in December or January. The Committee requested staff report back to the Committee on several items at a future meeting.

The next meeting of the Committee is scheduled for 9:30 a.m., Thursday, September 20, 2007.

Board Action: Director Torliatt moved that the Board of Directors approve the report of the Climate Protection Committee; seconded by Director Bates; carried unanimously without objection.

12. Report of the Legislative Committee Meeting of July 23, 2007

Action(s): The Committee recommended that the Board of Directors approve positions on several newly-introduced air quality bills.

Director Haggerty presented the report and stated that the Committee, lacking a quorum, met on Monday, July 23, 2007. The planned discussion on solar empowerment and green power requirements was deferred to a future meeting.

Staff provided an overview of bills likely to be introduced in the aftermath of recent leadership changes made by the Governor at the California Air Resources Board (CARB). One bill will likely change the nature of ARB appointments from pleasure appointments to term appointments, and may add appointees by Legislative leadership. Another bill will likely require disclosure of communications between the CARB Board and the Governor and legislature. The consensus of the Committee is for Chair Ross to send a letter to key legislators indicating the need to maintain the five air district positions on the CARB Board.

Staff then discussed the following recently-introduced bills:

- AB 1610 (Nunez) – Establishes a new California Petroleum Refineries Facilities Standards Board.
- AB 118 (Nunez) – Creates the Air Quality Improvement Program and Fund, and the Alternative and Renewable Fuel, Vehicle Technology, Carbon Reduction, and Clean Air Program and Fund.
- AB 1470 (Huffman) – The Solar Water Heating and Efficiency Act of 2007.

The consensus of the Committee is for the Board of Directors to consider taking a “support” position on AB 1470 and to watch AB 1610 and AB 118.

Staff provided a brief update on the bills on which the District has previously adopted positions.

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

Board Action: Director Haggerty moved that the Board of Directors approve the report of the Legislative Committee; seconded by Director Lockhart; carried unanimously without objection.

Public Hearing

13. Public Hearing to Consider Proposed Amendments to Regulation 9, Rule 8: Nitrogen Oxides and Carbon Monoxide from Stationary Internal Combustion Engines, and Adoption of CEQA Negative Declaration

The proposed amendments to Regulation 9, Rule 8 will fulfill the District’s commitment to reduce emissions from stationary IC engines under the Senate Bill 656 Particulate Matter Implementation Schedule and implement potential controls proposed for evaluation in further study measure FS-15 from the Bay Area 2005 Ozone Strategy.

Henry Hilken, Director of Planning, Rules & Research, introduced the item and stated that staff has been investigating proposed amendments to Regulation 9, Rule 8 and that it fulfills a commitment in the SB 656 Particulate Matter Implementation schedule to make further progress towards attainment of the state and federal PM health-based standards.

Victor Douglas, Senior Air Quality Engineer, presented the report and provided information on the following:

- Background on the SB 656 and the 2005 Ozone Strategy Further Study Measure,
- Different size stationary IC engines and types of fuel used,
- An overview of the current rule and regulatory activities since its 1993 adoption,
- The regulatory proposal including NOx limits and compliance options,
- Emission reductions that will be achieved and the cost effectiveness, and
- An overview of the rule development process.

Mr. Douglas stated that staff recommends that the Board of Directors adopt the proposed amendments to Regulation 9, Rule 8: Nitrogen Oxides and Carbon Monoxide from Stationary Internal Combustion Engines, and approve a California Environmental Quality Act (CEQA) Negative Declaration.

Chair Ross opened the Public Hearing at 10: 54 a.m. and the following members of the public spoke:

Bill Martini
Tecogen
Portland, OR 97229

Brian Hubinger
California Council for Environmental
& Economic Balance

Craig Mizutani
Central Contra Costa Sanitary District
Martinez, CA 94553

Dan Hammons
City of Sunnyvale WPCP
Sunnyvale, CA 94088

Director Haggerty moved to close the public hearing at 11:01 a.m.; seconded by Director Hill; carried.

Board Action: Director Hill moved that the Board approve the staff recommendation; seconded by Director Kwok.

There was a brief discussion on items raised by the City of Sunnyvale. The motion then carried with the following Board members voting:

AYES: Bates, Daly, Dunnigan, Gioia, Haggerty, Hill, Klatt, Kwok, Lockhart, McGoldrick, Miley, Shimansky, Silva, Torliatt, Uilkema, Ross.

NOES: None.

ABSENT: Brown, Garner, Kishimoto, Kniss, Smith, Wagenkecht.

Adopted Resolution No. 2007-09: A Resolution of the Board of Directors of the Bay Area Air Quality Management District Amending District Regulation 9, Rule 8: Nitrogen Oxides and Carbon Monoxide from Stationary Internal Combustion Engines and Adopting a CEQA Negative Declaration for the Project

Closed Session

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 case:

Hornblower Cruises and Events v. California Air Resources Board, Bay Area Air Quality Management District, David Burch, et al., Superior Court of the County of San Francisco, Case No. CGC-07-464286

The Board convened to closed session at 11:03 a.m. The Board reconvened to open session at 11:18 a.m.

Brian Bunger, Counsel, reported that the Board of Directors met in closed session on agenda item 14. The Board received a report on the item and provided direction to staff.

Other Business

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

- A) The 2007 ozone exceedances noting there have not been any Spare the Air alerts called to-date.
- B) The current events calendar is at each Board member's place.
- C) All of the Flare Minimization Plans have been approved.

16. Chairperson's Report – Chair Ross reported that he attended the Air & Waste Management Annual Conference and Exhibition in Pittsburgh, PA from June 26 through June 29th.

17. Board Members' Comments – Directors Michael Shimansky and Patrick Kwok reported individually regarding their attendance at the Air & Waste Management Annual Conference and Exhibition in Pittsburgh, PA from June 26 through June 29th.
18. Time and Place of Next Meeting –9:45 a.m., Wednesday, September 5, 2007 – 939 Ellis Street, San Francisco, CA 94109
19. Adjournment – The meeting adjourned at 11:24 a.m.

/s/ Mary Romaidis

Mary Romaidis

Clerk of the Boards