

# BAY AREA AIR QUALITY MANAGEMENT DISTRICT

## APPROVED MINUTES

Board of Directors' Regular Meeting– October 1, 2008

### Call To Order

Opening Comments: Chairperson Jerry Hill called the meeting to order at 9:49 a.m.

Roll Call: Present: Jerry Hill, Chair, Directors Tom Bates, Chris Daly, John Gioia, Scott Haggerty, Yoriko Kishimoto, Carol Klatt, Liz Kniss, Janet Lockhart, Nate Miley, Mark Ross, Michael Shimansky, John Silva, Tim Smith, Pam Torliatt, Gayle Uilkema, Brad Wagenknecht

Absent: Harold Brown, Dan Dunnigan, Erin Garner, Jake McGoldrick and Ken Yeager

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

### Public Comment Period:

Francisco DaCosta, Director of Environmental Justice Advocacy, expressed concerns regarding Lennar development at the Bayview-Hunters Point site and requested the Air District take immediate action to put an end to it.

Archbishop King, A.O.C. of the West, expressed health concerns for Bayview residents, cited excessive and polluting grading activities of Lennar, and asked the Air District to be aggressive in their enforcement.

Christopher Muhammad, Nation Islam, expressed concerns over Lennar development at the Bayview Hunters Point site.

Daniel Muhammad, SLAM (Stop Lenar Action Movement), believed the trust between the Air District and residents has been broken and asked for immediate action against Lennar.

Marie Harrison, Greenaction, expressed concerns over environmental injustice, sickness of family members caused by Lennar.

Dan Soltery spoke of institutions and corporations that afflict harm on people every day which he deemed as environmental racism, and he asked for immediate action to resolve the issues of pollution caused by Lennar.

Hank Ryan, Small Business California, discussed his organization's efforts and interest to support AB 32 and requested ongoing, financial incentives to assist small businesses.

Rob Simpson spoke of the noticing requirements with regard to the permitting process for the Russell City Energy Plant in Hayward, an appeal was filed with the Environmental Protection Agency and the appeal was remanded.

Chair Hill requested responses from Mr. Broadbent regarding speakers' comments and questions.

Mr. Broadbent responded to Mr. Simpson's comments regarding the Russell City Energy Plant, stating that the issue is complex; it has to do with noticing under the federal permitting requirements, and said much of the permitting authority is a function of the California Energy Commission. He reported that the plant notification will be re-noticed, a public hearing will be held in Hayward and an outcome determined. He also reported that the matter will be brought to a future Stationary Source Committee meeting.

Mr. Broadbent acknowledged Mr. Ryan's frustrations regarding AB 32 implementation and small businesses, stating the Draft Scoping Plan is being considered by ARB, it is not yet known how small businesses will be affected, and this is why an action plan has not been formulated. He asked Mr. Ryan not to be discouraged and said he would follow-up with Mr. Ryan.

Mr. Broadbent referred to issues raised relative to Lennar, stating that the Air District has heard public testimony, the issue came before the Board during the enforcement phase, negotiations were pursued by legal staff, and a settlement enacted.

He further reported that inspectors are at the site every day and they rely on visual dust effects as well as data from monitoring equipment. After spending months negotiating with Lennar, the Notice of Violation was settled last month for \$515,000. He noted this is the highest penalty imposed for dust mitigation ever in the state and staff was planning on reporting the outcome to the Board as with previous settlement actions; on a quarterly basis.

Directors discussed with Mr. Broadbent the standard process in place for notification of settlements imposed on similar facilities and similar reporting processes, as well as communications with the community. The Board acknowledged that Notice of Violations are a legal matter taken up with the District Counsel and not ordinarily addressed by the Board of Directors.

### **Consent Calendar (Items 1 – 7)**

1. Minutes of July 30, 2008 Regular Meeting
2. Communications  
*Information only*
3. Air 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 is hereby notified that the attached memoranda lists District personnel who traveled on out-of-state business.*

4. Report of Division Activities  
*Report of Division Activities for the months of April – June 2008*
5. Consideration of Recommendation to Establish Job Classifications and Descriptions for Fiscal Services Coordinator, Facilities Services Supervisor, Senior Air Quality Permit Technician and Librarian  
*The Board of Directors considered approval of recommendations to establish job Classifications and descriptions for Fiscal Services Coordinator set at pay range 135; Facilities Services Supervisor set at pay range 130; Senior Air Quality Permit Technician set at pay range 130; and Librarian set at pay range 128.*
6. Consideration of Amendment to the Air District’s Memorandum of Understanding, (MOU) Section 7.02: Salary Placement for Promoted Employees  
*The Board of Directors considered approval of recommendation to amend the Air District’s MOU to modify language concerning the salary placement for promoted employees.*
7. Set Public Hearing for November 5, 2008 to Consider Adoption of proposed amendments to Air District Regulation 8, Rule 20: Graphic Arts Printing and Coating Operations, amendments to Regulation 2, Rule 1: Permits, and amendments to Regulation 3: Fees, Schedule R: Equipment Registration Fees, and Adoption of a CEQA Negative Declaration  
*Proposed amendments to Regulation 8, Rule 20 would reduce emissions from printing presses by reducing the allowable volatile organic compound (VOC) content in flexographic ink on porous substrates and in press cleaning products for all presses, and by subjecting lower-emitting printing facilities to the requirements of the rule. The lower-emitting facilities would be required to register with the District but would not need a permit. Proposed amendments to Regulation 2, Rule 1 would align the permitting requirements with the applicability limits in Regulation 8, Rule 20 and amendments to Regulation 3 would set registration fees for these facilities.*

**Board Action:** Director Haggerty moved approval of Consent Calendar; seconded by Director Uilkema; carried unanimously without opposition.

## **COMMITTEE REPORTS AND RECOMMENDATIONS**

### **8. Report of the Personnel Committee Meeting of July 31, 2008**

Director Ross gave the report of the Personnel Committee on behalf of Director Brown, stating that the Committee had met on Thursday, July 31, 2008 to conduct an interview of a candidate to fill an unexpired term of office in the Alternate Engineering category on the Air District’s Hearing Board. The Committee approved the minutes of April 4, 2008 and May 30, 2008. The Committee recommended Board of Directors’ approval of Mr. Gilbert Bendix to fill the alternate Engineering position on the Hearing Board, effective immediately and expiring on March 6, 2010. The next meeting of the Committee will be at the call of the Chair.

**Board Action:** Director Ross moved to approve the report and recommendations of the Personnel Committee to appoint Mr. Gilbert Bendix to the alternate Engineering position on the Air District's Hearing Board for the stated term of office; seconded by Director Wagenknecht; carried unanimously without opposition.

9. **Report of the Stationary Source Committee Meeting of September 15, 2008**

Director Haggerty gave the report of the Stationary Source Committee, stating that the Committee met on Monday, September 15, 2008 and approved the Stationary Source Committee minutes of May 19, 2008.

The Committee received a report on proposed amendments to Regulation 8, Rule 20: Graphic Arts Printing and Coating Operations, which included the Rule development process, cost effectiveness, emission reductions and next steps.

The Committee also received a report on proposed amendments to Regulation 8, Rule 45: Motor Vehicle and Mobile Equipment Coating Operations, which included the Rule's development process, cost effectiveness, emission reductions, comments received and next steps.

The Committee received an update on amendments to the Air District's Dry Cleaning Rules, which included dry cleaning technologies, regulatory overview, a summary of Perchloroethylene dry cleaning Airborne Toxic Control Measure (ATCM) amendments, the Rule development schedule, and proposed amendments to Regulation 11, Rule 16: Perchloroethylene & Synthetic Solvent Dry Cleaning Operations, Regulation 8, Rule 17: Petroleum Dry Cleaning Operations, and Regulation 8, Rule 27: Synthetic Solvent Dry Cleaning Operations.

Finally, the Committee received an update on the Petroleum Refinery Flare Minimization Plan Annual Update requirements under Regulation 12, Rule 12: Flares at Petroleum Refineries, which included emission trends, and FMP annual update requirements. The next meeting of the Stationary Source Committee is scheduled for Monday, December 15, 2008.

**Board Action:** Director Haggerty moved that the Board of Directors approve the report of the Stationary Source Committee; seconded by Director Kniss; carried unanimously without opposition.

10. **Report of the Climate Protection Committee Meeting of September 18, 2008**

Director Torliatt gave the report of the Climate Protection Committee, stating that the Committee met on Thursday, September 18, 2008 and approved the Climate Protection Committee minutes of June 12, 2008.

The Committee received an update on the development of the Air District's Climate Protection Strategic Work Plan, discussed the Air District's role, new and ongoing climate program activities, local government assistance and stationary source initiatives, regional GHG inventory, education and outreach, land use and planning, and timeframes for climate protection activity from 2009 through 2011.

The Committee then received an update on the Climate Change Draft Scoping Plan and proposed development schedule. The Air District's comments on the plan focused primarily on the lack of specificity with the cap and trade component, expected emissions reductions, the plan's exclusion of new and modified stationary sources, the need for stronger regional land use and transportation targets, the need for support to uniformly meet targets, and the need for state support for local government activities.

Finally, the Committee received an overview of initial concepts for a regional Climate Summit, which is slated to be held in the spring 2009. The format will include keynote speakers and interactive hands-on work sessions. The event will focus on new planning and compliance process requirements, implementing new policies and projects, and sharing and learning best practices. A special session will also be held on green jobs and community development. District staff recommended consultant services be secured to perform event planning and logistical support activities in an amount not to exceed \$200,000.

The Committee recommended that the Board of Directors authorize the Executive Officer to execute a contract with O'Rourke, Inc., in an amount not to exceed \$200,000, to perform event planning and logistical support activities. The next meeting of the Climate Protection Committee is scheduled for November 20, 2008.

Directors confirmed contract costs and associated work tasks, suggested special emphasis be placed on public outreach to communities of color, and confirmed that the Summit is hosted by the Air District and designed to support local government.

**Board Action:** Director Torliatt moved that the Board of Directors approve the report and recommendations of the Climate Protection Committee; seconded by Director Haggerty; carried unanimously without opposition.

#### **11. Report of the Legislative Committee Meeting of September 22, 2008**

Director Wagenknecht gave the Legislative Committee report, stating that the Committee met on Monday, September 22, 2008 and approved the Legislative Committee minutes of April 21, 2008.

The Committee received a summary of the recently-concluded year in Sacramento and highlights of the outcome of measures on which the District adopted positions. The Governor had until September 30<sup>th</sup> to sign or veto the measures sent by the Legislature. Thus, the final outcome on a number of measures of significance to the District was not yet known. The Committee received an overview and status of eleven (11) bills the District adopted positions on bills that are included in the staff report of the packet.

The Committee also received an overview of the 2008-2009 Budget and its implications both for the Air District and air quality programs, generally. There was little directly affecting air quality in this year's budget. The next meeting of the Legislative Committee is scheduled for Monday, October 27, 2008.

Directors discussed the outcomes known for some of the proposed bills and clarified pocket veto power of the President.

**Board Action:** Director Wagenknecht moved that the Board of Directors approve the report of the Legislative Committee; seconded by Director Smith; carried unanimously without opposition.

#### 12. **Report of the Budget and Finance Committee Meeting of September 24, 2008**

Director Ross gave the report of the Budget and Finance Committee, stating that the Committee met on Wednesday, September 23, 2008 and approved the Budget and Finance Committee minutes of April 23, 2008.

The Committee considered recommending Board of Directors' approval for an additional Air Quality Program Manager position in the Administration and Incentives Division.

The Committee then received a presentation on the new State Audit Standards (SAS #99) from Air District auditors Maze and Associates. The new State Audit Standards covered in the presentation included: the scope of the audit, audit timing, management representations, and fraud considerations. The next meeting of the Budget and Finance Committee is scheduled for Wednesday, October 22, 2008.

**Board Action:** Director Ross moved that the Board of Directors approve the report and recommendations of the Budget and Finance Committee; seconded by Director Wagenknecht; carried unanimously without opposition.

#### 13. **Report of the Mobile Source Committee Meeting of September 25, 2008**

Director Smith gave the report of the Mobile Source Committee Meeting, stating that the Committee met on Thursday, September 25, 2008 and approved the Mobile Source Committee minutes of July 9, 2008.

The Committee received a status report on the California Goods Movement Bond (I-Bond) Funding including: review of ARB's actions which allocates \$140 million for the Bay Area trade corridor over 4 years, year one I-Bond funding for retrofits/repowers of Port drayage trucks, goods movement trucks, locomotives, short power and marine harbor craft, totaling \$35 million. The Committee also discussed outreach efforts by the Air District, results of the application process and next steps. The Committee requested a summary of outreach to the trucking industry, which was presented to the entire Board.

The Committee received a presentation and recommendations on allocation of Transportation Fund for Clean Air and Mobile Source Incentive Funds for FY 2008/09. The Committee discussed funding criteria, including funding of public versus private projects and shuttle buses which connect to BART, ACE, and other major transit hubs. The Committee considered and recommended Board of Directors' approval of: 1) allocation of \$11,790,697 in funding from a combination of Fiscal Year 2008/2009 TFCA Regional funds and Mobile Source Incentive Fund funds for the forty-six projects listed in Attachment 1; 2) allocation of \$1,744,627, pending available funding, for seven projects listed in Attachment 2, using FY

2008/2009 TFCA Regional Funds; and 3) authorization for the Executive Officer to expend funding on eligible projects and to enter into funding agreements with recipients of grant awards for the projects listed in Attachments 1 and 2. The Committee also provided direction to staff with regard to determining a strategy to fund projects in Attachment 2: Projects included for Funding Pending Available Funds, and to report back to the Committee at its next meeting.

Finally, the Committee received a status report on the California Air Resources Board Audit of the Carl Moyer Program conducted in June 2007. The District has made great strides to correct the operation of its program since the 2007 CMP audit and will be working with the ARB to complete the financial portion of the audit and complete remediation, which will occur by November 2008. The next meeting of the Mobile Source Committee is scheduled for Thursday, October 23, 2008.

**Board Action:** Director Smith moved that the Board of Directors approve the report and recommendations of the Mobile Source Committee; seconded by Director Kniss; carried unanimously without opposition.

#### 14. **Report of the Public Outreach Committee Meeting of September 26, 2008**

Director Ross gave the report of the Public Outreach Committee, stating the Committee met on Friday, September 26, 2008 and approved the Public Outreach Committee minutes of May 5, 2008.

The Committee received an overview of the 2008 Summer Spare the Air Every Day Campaign and discussed free transit implementation, summer media activities, ridership trends, television and radio spots, online and social networking, marketing and public outreach efforts.

The Committee received a summary of the planning efforts for the Wood Smoke Rule Outreach Campaign. The Committee was presented with the Air District's winter strategy, education and outreach plan through media, grassroots outreach, and various campaign elements.

The Committee then discussed the Wood Smoke Reduction Rebate program. The first phase began in mid-January 2008. The second phase of the program ran from April 7 through July 6, 2008, and the next phase of the program will commence in mid-November 2008. The Committee considered and recommended Board of Directors' approval to use carry-over funds in the amount of approximately \$200,000 to offer \$200 rebates for the purchase and installation of new gas stoves and inserts.

The Committee considered and recommended Board of Directors' approval of contract extensions for public outreach consultant contracts and authorization for the Executive Officer to execute contract extensions to assist with public outreach, to O'Rorke, Inc., for advertising Design and Production, in an amount not to exceed \$550,000, and to Allison & Partners for media relations and employer program services, in an amount not to exceed \$250,000. The Committee requested additional information from staff on the original

contract amounts relative to these contracts, and staff had attached documents in response to the Committee request.

The Committee then received an update on current activities of the Air District's Youth Outreach Program, including: the Clean Air Challenge 2008 campaign which reached an estimated 12,000 8th through 12th grade students; the Protect Your Climate Curriculum 2008 which reached an estimated 4,200 4th and 5th grade students; the eCO2mmute program; and a Cool the Earth event. The Committee received information on the Air District's participation in the Speakers Bureau, Teacher Science Fairs, Walk and Roll to School Days and media promotion, all of which target *Spare the Air* messaging throughout the school year. The next meeting of the Public Outreach Committee is at the call of the Chair.

Directors confirmed that the summer outreach campaign was successful and the monies not expended from that program will be used to fund the \$200 rebates for the purchase and installation of new gas stoves and inserts through the winter campaign. Director Kniss requested a comparison of the Air District's expenditures for contract services compared with others, which Ms. Roggenkamp agreed to provide.

**Board Action:** Director Ross moved that the Board of Directors approve the report and recommendations of the Public Outreach Committee; seconded by Director Wagenknecht; carried unanimously without opposition

#### 15. **Report of the Executive Committee Meeting of September 29, 2008**

Chair Hill gave the Executive Committee report, stating that the Committee met on Monday, September 29, 2008 and approved the Minutes of June 11, 2008.

The Committee received the Hearing Board Quarterly Report for the period April 2008 through June 2008.

The Committee received an update of the Advisory Council's activities and recommended that the Board of Directors approve the Council's Strategy related to Asthma and Indoor Air Quality, as well as Principles developed in response to the California Air Resources Board's request for comments on its AB 32 Climate Change Draft Scoping Plan. The Committee provided direction to staff.

The Committee also discussed the Advisory Council's role relative to the Board of Directors and the Executive Officer. The Committee provided direction to staff that will be brought back to the Board of Directors in the form of changes to the Air District's Administrative Code. The Executive Committee will review the Advisory Council structure in one year.

The Committee then received an update on the activities of the Joint Policy Committee from Ted Droettbomm and Bruce Riordan. Mr. Droettbomm conveyed a request by the Silicon Valley Leadership Group, to join a public/private partnership on climate change. There was consensus among Committee members that a JPC Partnership policy was needed and that continued coordinated efforts occur between all four agencies to address climate change.



The Committee then received an update and was presented with options on actions to address the Air District's OPEB liability from previous years. The Committee recommended that the Board of Directors pursue Option 2 in the future, which increases funding levels to address unfunded accrued actuarial liability (UAAL).

Finally, the Committee received an overview of the purpose of the Bay Area 2009 Clean Air Plan (CAP), the scope of the plan, the plan's schedule, public outreach and process for public input. The next meeting of the Committee is at the call of the Chair.

**Board Action:** Director Hill moved that the Board of Directors approve the report and recommendations of the Executive Committee; seconded by Director Silva; carried unanimously without opposition.

### **PRESENTATION**

16. Summary of the 2008 Ozone Season and Potential Attainment/Non-Attainment Designation of the Bay Area  
*Staff provided a summary of the 2008 Ozone Season and potential EPA attainment/non-attainment designation of the Bay Area for the revised 8-hour national ozone standard.*

Director of Technical Services, Gary Kendall, provided a summary of the 2008 ozone season and potential EPA attainment/non-attainment designation of the Bay Area for the revised 8-hour national ozone standard, stating that the EPA recently revised the ozone standard effective May 27, 2008 from 84 ppb to 75 ppb. He said through September 23, 2008 the revised 8-hour national ozone standard was exceeded on 11 days compared to 2 days in 2007. The 8-hour state ozone standard was exceeded on 16 days, and the 1-hour state ozone standard on 9 days.

Mr. Kendall discussed exceedances in major California air basins, presented Bay Area ozone and maximum temperature trends, showed comparisons of the 8-hour national standard at 77 ppb and its 3 year average, as well as the 8-hour national standard for future thresholds and discussed Bay Area VOC and NO<sub>x</sub> emission trends.

In response to Director's questions, Mr. Kendall said the Air District is not currently required to develop a new plan; however, it must await what information the EPA includes under the new rule. He confirmed that penalties would only be imposed for not having a plan for attaining the new standards.

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

### **CLOSED SESSION**

17. **Conference with Legal Counsel – Existing Litigation**  
*Pursuant to government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following case(s):*  
*Peter Rogosin v. Bay Area AQMD, et al., San Francisco Superior Court Case No. CGC 08 478154*

## **OPEN SESSION**

**Report of Closed Session:** District Counsel Brian Bunger reported that the Board of Directors had met in Closed Session and provided direction to Counsel.

## **OTHER BUSINESS**

### **18. Report of the Executive Officer/APCO**

Mr. Broadbent reported that improvements had been made to the Board Room over the summer months, at the direction of the Executive Committee, in order to improve the sound system, address safety items, and replace Board chairs to accommodate two new Boardmembers. Directors requested that for all future meetings, bollards be placed at each of the dais ends to restrict public access.

### **19. Chairperson's Report – None**

### **20. Board Members' Comments - None**

### **21. Time and Place of Next Meeting – 9:45 a.m., Wednesday, October 15, 2008 - 939 Ellis Street, San Francisco, CA 94109**

### **22. Adjournment - The meeting adjourned at 11:25 a.m.**

*/s/ Lisa Harper*  
Clerk of the Boards