

# BAY AREA AIR QUALITY MANAGEMENT DISTRICT

## APPROVED MINUTES

Board of Directors' Regular Meeting– November 5, 2008

### Call To Order

Opening Comments: Chairperson Jerry Hill called the meeting to order at 9:45 a.m.

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

Absent: Dan Dunnigan, Erin Garner, and John Silva

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

### Public Comment Period:

Francisco DeCosta, Director of Environmental Justice Advocacy, said he believes that Lennar's settlement of \$515,000 should be used toward good projects for the Bayview-Hunters Point community.

Jerome Carloss disagreed with results of Lennar air monitoring and believed the Air District is relying on outdated compliance information in its permitting process.

Cameron Wilson, Global Community Monitor, expressed concern regarding the issuance of permits to Custom Alloy Scrap Sales (CASS), believed the company emits high levels of toxins, and requested a hearing be set to address inadequate permitting.

Alex Nguyen, Oakland City Attorney, expressed concern regarding the Air District's permit renewal process, stating it was done without taking neighborhood impacts into consideration. He questioned the appeal process, said their office is also working with the Alameda County District Attorney's office on CASS facing criminal pollution charges, and requested improved permit conditions.

District Counsel, Brian Bunger discussed CASS's annual renewal process, said the company is operating within permit guidelines and discussed the appeal process.

In response to questions of the Board of Directors, Mr. Broadbent said the District is dedicating significant grant dollars toward the CARE Program to characterize the air quality in West Oakland. He reiterated that CASS's emissions are extremely low, but the District will put into place additional monitoring. Relative to the cumulative risk, he hoped to discuss

approaches for the Board to consider at their January retreat and have the Executive Committee or Stationary Source Committee review the issue.

Ray Kidd echoed previous speaker comments, said he lives three blocks from the CASS facility, disputed the Air District's results, and requested the matter return to the Board after new monitoring information is gathered.

Randolph Colosky, West Oakland Air Monitor, discussed CASS's operations and said their stack has not been inspected for compliance since 2007 and 8 tests performed by West Oakland Air Monitor's revealed 30 times the nickel standard, 16 times the cadmium standard, and 8 times the chromium standards.

Brittney Hamilton, Danyate Willingham, Jackie Le, and Nikos Clay, seniors at Excel High School, spoke of their class experiment conducted two years ago where they found heavy metal emissions from CASS and requested additional testing be done.

Elizabeth de Rham, Rose Foundation for Communities and the Environment, said they have been working with students at Excel High School and CASS about how to be better neighbors, reiterated concerns expressed by previous speakers, and requested the Board make the issue a priority.

Margaret Gordon, Commissioner, Port of Oakland; CARE Working Board member; and resident of West Oakland, said communities at risk were not involved in CASS's permit process, and questioned why a permit was issued without a thorough investigation.

Chair Hill requested Mr. Broadbent prepare a written report about alleged discrepancies of monitoring and he reported that the item would be agendaized for the Board of Directors Stationary Source Committee meeting on December 15, 2008.

### **Consent Calendar (Items 1 – 8)**

Director Uilkema requested removal of Item 5 from the Consent Calendar.

1. Minutes of October 1, 2008
2. Communications  
*Information only.*
3. Quarterly Report of Air Resources Board Representative – Honorable Jerry Hill
4. Quarterly Report of the Executive Office Activities
6. Consideration of Hiring Recommendation at Step E of Salary Range 148M for the Information Systems Manager Position  
*Consider hiring recommendation at Step E of Salary Range 148M for the Information Systems Manager position.*

7. Consideration of Adjusting Air District's Medical Contribution Declared to the California Public Employee's Retirement System (CalPERS)  
*The Board of Directors will consider approval of the attached resolution adjusting the District's Maximum Medical Contribution declared to CalPERS for management, confidential, represented, and miscellaneous employees and retirees.*
8. Set Public Hearing for December 3, 2008 to Consider Proposed Amendments to Regulation 8, Rule 45: Motor Vehicle and Mobile Equipment Coating Operations; and Regulation 3: Fees, Schedule R: Equipment Registration Fees; and Adoption of a CEQA Negative Declaration.

**Board Action:** Director Wagenknecht moved approval of Consent Calendar Items 1, 2, 3, 4, 6, 7 and 8; seconded by Director Uilkema; carried unanimously without opposition.

5. 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.*

Director Uilkema supported approval of the item and asked for the matter to be referred to the Executive Committee for discussion.

**Board Action:** Director Wagenknecht moved approval of Consent Calendar Item 5; seconded by Director Brown; carried unanimously without opposition.

### **COMMITTEE REPORTS AND RECOMMENDATIONS**

9. Report of the **Budget and Finance Committee** Meeting of October 22, 2008

**CHAIR: C. DALY**

Director Daly gave the report of the Budget and Finance Committee meeting of October 22, 2008, stating that the Committee met and approved the Budget and Finance Committee minutes of September 23, 2008.

The Committee received an update on the San Mateo County investment pool and recent actions undertaken by the Air District. Staff presented to the Committee background information on Air District funds held with the San Mateo County Treasurer; net losses sustained due to the Lehman Brothers bankruptcy totaling \$6.1 million; action taken to date by the Air District, including: implementation of a hiring freeze, reviewing discretionary funds, capital assets, and overtime expenditures, as well as unexecuted contracts. The Carl Moyer Program and Mobile Source Incentive Fund are sufficient to accommodate all current projects and fund the amount of the investment loss. The Transportation Fund for Clean Air fund is sufficient to fund all of the approved projects.

The San Mateo County Treasurer has retained an attorney to file suit against Lehman Brothers based upon fraudulent financial reporting and is revising its investment policy to

ensure that the Pool exposure is properly limited. The Air District has also retained counsel and a financial advisor to review the Air District's overall investment options.

The Committee then received a status report of Air District responses to comments contained in the 2006/07 Audit Management Letter, which was performed by Air District Auditors, Caporicci & Larson. The Management Letter contained observations and there were no findings. The Air District has responded and implemented measures to address observations stated in the Management Letter.

The next meeting of the Budget and Finance Committee will be at the call of the Chair.

Director Haggerty requested the Air District pursue its own investment fund, and asked that the matter be referred to the Legislative Committee.

**Board Action:** Director Daly moved to approve the report of the Budget and Finance Committee Meeting; seconded by Director Kishimoto; carried unanimously without opposition.

10. Report of the **Mobile Source Committee** Meeting of October 23, 2008

**CHAIR: T. SMITH**

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

- A) Transportation Fund for Clean Air TFCA County Program Manager Expenditure Plan for Napa County;*
- B) Authorize the Executive Officer/APCO to enter into funding agreement with the Napa County Program Manager to implement Board approved projects; and reallocate funds among Board approved projects, consistent with Board adopted TFCA Program Manager Policies;*
- C) TFCA County Program Manager Fund Policies to govern allocation of FY 2009/2010 TFCA funds presented in Item 5, Attachment A of the staff report;*
- D) Direct Mail Center as the contractor for the Vehicle Buy Back (VBB) Program direct mail service; and*
- E) Authorize the Executive Officer/APCO to execute a contract for up to \$112,250 with Direct Mail Center for direct mail services for the VBB Program, with the option to renew the contract for an additional year at the Air District's discretion.*

Director Smith gave the Report of the Mobile Source Committee, stating the Committee met on Thursday, October 23, 2008 and approved the Mobile Source Committee minutes of September 25, 2008.

The Committee considered staff's recommendation for the Fiscal Year 2008/2009 Transportation Fund for Clean Air County Program Manager Expenditure Plan for Napa County. The Air District received two projects from the Napa County Program Manager, and both projects were reviewed. Air District staff determined that one of the two projects

submitted in the FY 2008/2009 Napa County Program Manager expenditure plan met all the requirements including the cost-effective criteria. Air District staff will continue to work with the Napa County Program Manager to identify additional eligible projects for the remaining FY 2008/2009 TFCA Program Manager Expenditure Plan for Napa County.

The Committee recommends Board of Directors' approval of Fiscal Year 2008/2009 Transportation Fund for Clean Air Napa County Program Manager expenditure plan and authorize the Executive Officer to enter into funding agreements with the Napa County Program Manager to implement Board of Director approved projects; and reallocations of funds among Board of Director approved projects, consistent with Board of Director adopted TFCA Program Manager Policies.

The Committee also considered proposed revisions to the Transportation Fund for Clean Air County Program Manager Fund Policies that will govern the allocation of Fiscal Year 2009/2010 TFCA County Program Manager funds. A letter was before the Board from the Bay Area Congestion Management Agency Directors in support of the proposed policies. The Committee recommends that the Board of directors adopt the proposed TFCA County Program Manager Fund Policies that govern the allocation of FY 2009/2010 TFCA County Program Manager funds.

Finally, the Committee considered staff's recommendation for Direct Mail Center as the contractor for the Air District's Vehicle Buy Back program's direct mail service. The Committee recommends that the Board of Directors approve Direct Mail Center as the Air District's contractor for the Vehicle Buy Back program's direct mail service and authorize the Executive Officer to execute a contract agreement with Direct Mail Center in an amount not to exceed \$112,250 for direct mail services for the Vehicle Buy Back program direct mail services.

The next meeting of the Mobile Source Committee is scheduled for Wednesday, November 19, 2008 immediately following the Board of Directors meeting.

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

11. Report of the **Public Outreach Committee** Meeting of October 31, 2008

**CHAIR: M. ROSS**

Director Ross gave the Report of the Public Outreach Committee, stating the Committee met on Friday, October 31, 2008. The Committee received an update on the Wintertime Spare the Air Alert Campaign. Staff presented advertising and media outreach efforts focusing on the implementation of Regulation 6, Rule 3: Wood-burning Devices that began November 1st. Staff also presented a variety of campaign notification tools, such as website links, 877-4-NO-BURN, telephone and email alerts and widgets, which are devices that can be easily downloaded onto an organization's website to provide added outreach. The Committee discussed the process to be followed once an NOV is issued. Staff was requested to provide a Fact Sheet on enforcing the rule. The update concluded with the showing of a commercial on Check Before You Burn, showcased by Executive Officer/APCO Jack Broadbent.

The Committee then considered a request to establish a formal Community Grant Program which would augment the Air District's existing outreach efforts. The program would consist of a call for projects and staff working with groups to discuss their specific needs. The program is recommended to move forward to the Executive Committee in December and be launched early next year. The Committee recommends that the Executive Committee review the formal program, establish a funding level, and for staff to bring forth criteria, thresholds, and target areas for consideration. Once the program is in place, staff would go out with a call for projects, screen applications, and present those projects to the Executive Committee. The next meeting of the Public Outreach Committee is at the Call of the Chair.

Directors briefly discussed with Mr. Broadbent the District's ability to measure results of the campaign, polling which might assist in identifying the most impacted areas, and advertising and media outreach underway that focuses on the new wood-burning regulation.

**Board Action:** Director Ross moved to approve the report and recommendations of the Public Outreach Committee; seconded by Director Brown; carried unanimously without opposition.

12. Report of the **Nominating Committee** Meeting of November 5, 2008  
**CHAIR: J. Hill**

Chair Hill gave the report of the Nominating Committee, stating that the Committee met on Wednesday, November 5, 2008 and discussed at length the nominations for the Board Officers. On a unanimous vote, the Nominating Committee recommended that the Board of Directors approve the following slate of Board Officers for the 2009 term of office:

Pamela Torliatt, Chairperson  
Brad Wagenknecht, Vice-Chairperson  
Tom Bates, Secretary

**Board Action:** Chair Hill moved to approve the report and recommendations of the Nominating Committee; seconded by Director Haggerty; carried unanimously without opposition.

### **PUBLIC HEARING**

13. Public Hearing 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.*

Air Quality Specialist II, William Thomas Saltz, gave an overview of the proposed amendments to Regulation 8, Rule 20: Graphic Arts Printing and Coating Operations. He described currently regulated printing technologies and gave a background of the regulation's initial adoption in 1980 and subsequent amendment in 1999, stating a control measure SS-2 in the 2005 Ozone Strategy was developed.

He then presented current and proposed VOC limits for flexographic ink, proposed VOC limits for cleaning products, additional amendments to the regulation, current emissions and emission reductions, costs and CEQA analysis, the Rule development process and noted that 6 written comments were received at the conclusion of the workshop process. Comments from Pechiney Plastic Packaging, Inc. related to the timeline with which to label VOC information, and staff believed proper labeling could be achieved through application of stickers to existing product labeling.

District Counsel, Brian Bunger reported on a minor change in the text of the Rule which was omitted from the final Rule amendment. He said having not published this sentence, the Health and Safety Code requires adoption at the next public hearing. The text should read, as follows:

*“Effective July 1, 2009, manufacturers and suppliers of cleaning products that are sold for use in graphic arts operations within the District and of all inks, coatings, adhesives, and fountain solutions that are sold for use in digital printing within the District shall include a designation of their products’ VOC content, less water, as supplied, expressed in grams per liter or pounds per gallon, on data sheets.”*

Directors questioned the number and types of facilities affected by the amendment, the amount of pollution produced by graphic arts printing and coating operations, a streamlined and web-based registration and annual renewal process and associated fees and reductions of 1.65 tons per day.

Chair Hill opened the public hearing.

Karen Nardi, Bingham, McCutchen, representing Hewlett Packard Company, voiced support for the Rule's intent to reduce VOC emissions. She believed it will be important to review the digital industry and focus not only on VOC content but on the actual emissions, as some may be very minute.

Rita Loof, Director of Environmental Affairs, RadTech International, supported the proposed amendments to the Rule, stating that they have over 800 members involved in manufacturing in ultra-violet and associated chemistries. She said RadTech International has no control over the formulation of cleaners and hopes to engage in future discussions regarding testing methods. Regarding Regulation 2, she asked that facilities not be looked at on a mass emissions basis, as they will be in the permitting system regardless of whether their facility is conventional or if they put in a new line that emits zero VOC's. Consequently, this does not

recognize those that make capital investments, and she suggested future incentives be given to those making capital investments.

Brian Galley, Pechiney Plastic Packaging, Inc., supported the Rule revision and asked the District to consider revising its requirement to allow the use of a low-emitting vapor pressure cold cleaning solvent, as the revisions would require them to be connected to an oxidizer system at the plant, which is not cost-effective. He also asked the District to apply the exemption threshold on a per machine basis.

Mr. Saltz agreed to bring information back to the Board on the low vapor pressure cold cleaning solvent and he discussed the use of abatement equipment to clean presses. Regarding Ms. Loof's comments, Mr. Saltz said the industry uses electron beam and UV coatings and it is difficult to test for VOC emissions. However, test methodologies are being worked on and more rigorous testing must be done. Staff will return with information about Ms. Loof's concern relating to Regulation 2, Rule 1, stating the technology generally does not emit VOC's; however, cleaning products do and they want to separate out the applicability.

## **PRESENTATION**

14. Overview of the Air Resources Board AB 32 Climate Change Proposed Scoping Plan  
*Chuck Shulock, Manager of the Climate Change Program from the Air Resources Board provided an overview of the Proposed Scoping Plan.*

Chuck Shulock, Manager of the Climate Change Program, Air Resources Board, provided an overview of the proposed Scoping Plan which reduces greenhouse gas levels by 2010, AB 32's timeline and recommendations, which include a mix of strategies that combine market mechanisms, other regulations, voluntary measures and targeted fees, and said key elements include:

- Energy efficiency programs
- 33% renewable energy
- California cap-and-trade program linked to WCI partner programs
- Targets for transportation-related emissions
- Existing laws and policies
- Targeted fees

Mr. Shulock presented a table of reduction measures, from uncapped and capped sectors, stating that 596 MMTCO<sub>2</sub>E would be emitted under a business-as-usual plan, and a reduced, 422 MMTCO<sub>2</sub>E would be emitted under the Scoping Plan.

He then discussed the Cap-and-Trade program recommendation which is to implement a firm cap on emissions on electricity and major industrial sectors in 2012, and noted that transportation and natural gas would be added in 2015. The number of allowances is fixed and offsets are limited to less than half of the required reductions, and they will seek input from a broad range of experts on allowance allocation and use of revenue.

He further discussed sector-specific measures, local government actions, regional transportation-related greenhouse gas targets, economic and public health benefits, major



issues of the plan, GHG reporting, tools and verification, CEQA thresholds of significance, the preliminary staff proposal, and proposed thresholds of significance for industrial projects and residential and commercial projects.

Mr. Shulock said it will take two years to adopt AB 32 measures and ARB will partner with local air districts in moving forward to implement the program.

Directors confirmed with Mr. Shulock that the Scoping Plan was located on ARB's website. Directors further clarified that performance standards are being developed to address proposals for residential and commercial development; that revenues generated could potentially be used for incentives to further reduce emissions, and a discussion then ensued regarding reduction of GHG's to 1990 levels, as well as recycling and zero waste at landfills.

### **CLOSED SESSION**

#### **15. 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):*

- A) *Horn Blowers v. Bay Area AQMD, et al., San Francisco Superior Court Case No. CGC-07-464286*
- B) *Andrea Gordon v. Bay Area AQMD, United States District Court, Northern District of California, Case No. CV 08-3630 BZ*
- C) *James Culp v. Bay Area AQMD, San Francisco Superior Court, Small Claims Division, Case No. CSM08 826376*

### **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**

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

Mr. Broadbent congratulated Directors who were re-elected. He reported that Director Miley hosted a meeting with Air District staff and representatives from the Bayview-Hunters Point where progress was made. A community meeting will be held on November 15<sup>th</sup> to discuss projects and the CARE Program. He also reported that the EPA revised its standard significantly; however, the Bay Area is considerably below that standard.

#### **17. Chairperson's Report**

Chair Hill reported the receipt of a letter from the International Brotherhood of Teamsters regarding activities at the Port of Oakland, and requested Director Miley and the Ad Hoc Committee review the issue at their November 17, 2008 meeting.

18. Board Members' Comments

Director Bates reported on the City of Berkeley's receipt of grant monies totaling \$75,000 for solar projects applications and said that within 9 minutes, all applications for funding were expended. He thanked the District and hoped to make funding available to other cities.

19. **Time and Place of Next Meeting** – 9:45 a.m., Wednesday, November 19, 2008- 939 Ellis Street, San Francisco, CA 94109

20. **Adjournment** - The meeting adjourned at 12:08 a.m.

*/s/ Lisa Harper*  
Clerk of the Boards