

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

APPROVED MINUTES

Board of Directors' Regular Meeting– December 3, 2008

Call To Order

Opening Comments: Chairperson Pamela Torliatt called the meeting to order at 9:46 a.m.

Roll Call: Present: Chairperson Pamela Torliatt; Secretary Tom Bates, Harold Brown, Chris Daly, Dan Dunnigan, Erin Garner, Scott Haggerty, Yoriko Kishimoto, Carol Klatt, Janet Lockhart, Jake McGoldrick, Nate Miley, Mark Ross, Michael Shimansky and Gayle Uilkema

Absent: Directors John Gioia, Liz Kniss, John Silva, Tim Smith, Vice Chairperson Brad Wagenknecht, and Ken Yeager

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

Public Comment Period:

Francisco DeCosta stated his concerns regarding Bayview-Hunters Point.

Consent Calendar (Items 1 – 4)

1. Minutes of November 19, 2008
2. Communications
Information only.
3. Proposed Regulatory Agenda for 2009
*State law requires each Air District to publish a list of potential regulatory measures for the upcoming year. No regulatory measures can be brought before the Board that are not on the list, with specified exceptions. Consequently, the list contains all measures that **may** come before the Board in 2009.*
4. Consideration of Transmittal of Air District Comment Letter on the Proposed AB 32 Scoping Plan to the California Air Resources Board (ARB)
The Board of Directors considered transmittal of Air District comments on the proposed AB 32 Scoping Plan to the ARB.

Board Action: Director Brown moved approval of Consent Calendar Items 1, 2, 3 and 4; seconded by Director Shimansky; carried unanimously without opposition.

5. Update on Recent Actions by the Port of Oakland

Staff briefed the Board of Directors on recent actions taken by the Board of Port Commissioners at its meetings of November 19, 2008 and November 20, 2008.

Mr. Broadbent updated the Board of Directors on recent decisions of the Port Commissioners, stating that the Air District has been working with Port staff emphasizing the need for emission reductions from maritime operations. A decision was made at the Board Port of Commissioners meeting of November 19th to postpone \$5 million in funding already committed to the Air District for drayage truck clean up. Also, at the Port Maritime Committee meeting of November 20, 2008, a decision was made to pull consideration of user fees to fund emission reduction projects and infrastructure improvements, and pull consideration of the Maritime Air Quality Improvement Plan.

Staff has continued in their communications with Port staff and has met with the City of Oakland staff. There is also a coordinated effort with the California Air Resources Board and communication with community groups.

Given the Board of Port Commissioners' inaction at this time, an adjustment to the Mobile Source Committee recommendations regarding Port drayage truck funding will be needed to reduce the level of funding by \$5 million. With this change, staff recommends that the Board approve the Mobile Source Committee grant recommendations in order to reduce the health risks in the West Oakland community. In the near future, the Air District will have to consider the ramifications of the lack of user fee revenues from the Port of Oakland for emission reduction projects to reduce health risks in the West Oakland community.

Directors discussed and concurred that the news was a devastating blow to the Air District and to residents adjacent to the Port. They asked that a meeting be scheduled with Oakland's Mayor Dellums, acknowledged that the Port has already provided the Air District with \$2 million of the \$5 million, as outlined in the signed Memorandum of Understanding, and they further discussed the Port's economic position which has led to reductions in discretionary expenditures.

Directors further voiced concern over the lack of leadership at the Port, cited public health risks and progress made to date, suggested the Air District move forward with using its regulatory authority, and confirmed with Mr. Broadbent that staff's recommendation is to utilize the Air District's \$10 million share to offset the cost of the retrofits, which would benefit 650 trucks versus 750 trucks. Mr. Broadbent then discussed state law requiring all trucks meet the state standard by January 1, 2010, and he agreed with the suggested need to explore regulatory options.

Directors did not support the Port's request to amend the Memorandum of Understanding, requesting the issue be brought to the Ad Hoc Committee on Port Emissions.

A motion was made by Director Haggerty, seconded by Director Uilkema to take no action on staff's recommendation and move forward with the Memorandum of Understanding, as outlined. However, Mr. Broadbent requested that action by the Board of Directors should be

taken under Item #7; the Report of the Mobile Source Committee. Director Haggerty and Uilkema withdrew their motion/second.

Board Action: Chair Torliatt directed Mr. Broadbent draft a letter to Mayor Dellums, indicate that the Air District will exert its regulatory authority, enforce the existing Memorandum of Understanding, not return the \$2 million already received by the Air District, not amend the recommendation of the Mobile Source Committee, forward the item to the Ad Hoc Committee on Port Emissions, and indicate that the Port is opening itself to a lawsuit which would ultimately cost time and money in attorney fees and not address clean up of the problem.

6. Report of the **Personnel Committee** Meetings of November 13 and 24, 2008
CHAIR: H. BROWN

Director Brown gave the report of the Personnel Committee, and said the Committee met on Thursday, November 13, 2008 and approved the minutes of July 31, 2008. The Committee conducted interviews of candidates to fill expired terms of office on the Advisory Council and to consider the reappointment of incumbent members. The Committee recommends Board of Directors' approval of the following candidates for a two-year term of office effective January 1, 2009 and expiring December 31, 2010:

Jonathan Ruel	Agriculture
Stanley Hayes	General Public
Neal Osborne	Community Planning
Jennifer Bard	Conservation Organization
Benjamin Bolles	General Contractor
Jane Martin	Public Health Agency
Sarah Martin-Anderson	Public Health Agency
Dorothy Vura-Weis	Public Health Agency
Rosanna Lerma	Registered Professional Engineer

The Committee also recommends Board of Directors' approval of the following incumbent re-appointments for a two-year term of office effective January 1, 2009 and ending December 31, 2010:

Louise Wells-Bedsworth	Transportation
Robert Bornstein	Colleges & Universities
John Holtzclaw	Conservation Organization
Robert T.P. Huang	Public Member

The Personnel Committee met again on Monday, November 24, 2008 and approved the minutes of November 13, 2008. The Committee conducted one interview of a candidate, who had previously not been interviewed, to fill an expired term of office on the Advisory Council in the General Contractor category, and recommends maintaining its current slate of candidate recommendations to the Board of Directors. The next meeting of the Committee will be at the call of the Chair.

Board Action: Director Brown made a motion to approve nine (9) appointments and four (4) reappointments to the Air District's Advisory Council effective January 1, 2009; seconded by Director Shimansky; carried unanimously without opposition.

7. Report of the **Mobile Source Committee** Meeting of November 19, 2008
CHAIR: T. SMITH

Director McGoldrick gave the report of the Mobile Source Committee, and said the Committee met on Wednesday, November 19, 2008 and as part of its actions approved the minutes of its October 23, 2008 meeting. The Committee then considered and recommends Board of Directors' approval of the Fiscal Year (FY) 2008/2009 Vehicle Buy-Back Program contractors, and authorization for the Executive Officer/APCO to execute contracts for vehicle scrapping and related services with Environmental Engineering Studies, Inc., Pick-N-Pull, and Pick Your Part. These companies will distribute, on a monthly reimbursement basis, up to \$7 million allocated to the Program this fiscal year.

The Committee then considered and recommended Board of Directors' approval of \$41,498,544 in funding for eligible projects under the California Goods Movement Bond Program, and authorization for the Executive Officer/APCO to execute all necessary contracts and contingencies to expend the requested funds.

Finally, the Committee received the results of an audit of the TFCA Regional Program for Projects ending June 30, 2006. The Committee recommends that the Board of Directors receive and file this report. The next meeting of the Mobile Source Committee is scheduled for Thursday, January 22, 2009.

Board Action: Director McGoldrick made a motion to approve A) the selection of Environmental Engineering Studies, Inc., Pick-N-Pull, and Pick Your Part as the vehicle scrapping contractors for the fiscal year (FY) 2008/2009 Vehicle Buy Back Program; and authorization for the Executive Officer/APCO to execute contracts for vehicle scrapping and related services with Environmental Engineering Studies, Inc., Pick-N-Pull, and Pick Your Part; B) \$41,498,544 in funding for eligible projects under the California Goods Movement Bond Projects and authorize the Executive Officer/APCO to enter into all necessary contracts to expend the requested funds; and C) Receive and file the results of the TFCA Audit Report #10, an audit of TFCA Regional Fund projects, including the auditor's findings and recommendations to improve the administration and fiscal management of the TFCA Program; seconded by Director Lockhart; carried unanimously without opposition.

Public Comment:

Roger W. Lowther, Co-Founder of CleanAir Logix, Inc., presented a PowerPoint presentation on a clean air proposal relating to cold ironing solutions for ocean going vessels. He discussed documented pollution reduction efforts and results, and said he hoped to work further with the Air District, the City of Oakland, and the Port of Oakland.

8. Report of the **Executive Committee** Meeting of November 24, 2008
CHAIR: P. TORLIATT

Chair Torliatt gave the report of the Executive Committee, and said the Committee met on Monday, November 24, 2008 and approved the minutes of September 29, 2008. The Committee received the Hearing Board Quarterly Report for the period of July 2008 through September 2008. The Committee received the Report of the Advisory Council activities for the period of July 2008 through November 2008. The Committee recommends that the Board of Directors approve the Advisory Council's Resolution on Climate Change and Regional Pollution

The Committee continued discussions relative to the role of the Advisory Council. Staff provided an update to the Committee on meetings and discussions held between the Advisory Council 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 Committee considered a Community Grant Program funding level which would fund local community projects. The goals of the program are to enhance public health, reduce sources of air pollution, provide education and outreach and allow communities to become part of the solution. Staff will develop the program's guidelines and target areas; issue a call for projects, and will present projects for the Committee's consideration and Board approval. The Committee unanimously recommends Board of Directors' approval of a \$250,000 funding level for implementation of the Community Grant Program.

The Committee then received an update from staff on the Production System, with a demonstration of search engine capabilities for permits, geospatial information and discussed the system's firewalls.

The Committee also received an update on the activities of the Joint Policy Committee from Bruce Riordan, Climate Change Coordinator. Mr. Riordan reported that the Joint Policy Committee adopted a Climate Protection Partnership policy. Mr. Riordan provided information to the Committee on the status of SB 375, the Air Resources Board hearing on the proposed AB 32 Scoping Plan, the Berkeley First program, and next steps to identify the top Climate Protection items the JPC should focus on in the next few years.

The Committee held a closed session to conduct public employee performance evaluations. A closed session will be agendized for the December 17th Board of Directors meeting. The next meeting of the Committee is scheduled for Friday, December 5, 2008 at 2:30 p.m.

Board Action: Director Torliatt made a motion to approve a funding level in the amount of \$250,000 for implementation of a Community Grant Program; seconded by Director Uilkema; carried unanimously without opposition.

PUBLIC HEARING

9. Public Hearing to Consider Adoption of proposed amendments to District Regulation 8, Rule 45: Motor Vehicle and Mobile Equipment Coating Operations and amendments to Regulation 3: Fees, Schedule R: Equipment Registration Fees, and Adoption of a CEQA Negative Declaration.

Proposed amendments to Regulation 8, Rule 45 would reduce emissions from automobile refinishing and motor vehicle and mobile equipment coating by reducing the allowable VOC content in paints and cleaning solvents. The proposed amendments would also require mobile refinishers to register their operations with the District Proposed amendments to Regulation 3 would set registration fees for mobile refinishing operations.

Principal Air Quality Specialist, Victor Douglas, gave an overview of the request for the Board of Directors to consider adoption of proposed amendments to District Regulation 8, Rule 45: Motor Vehicle and Mobile Equipment Coating Operations and amendments to Regulation 3: Fees, Schedule R: Equipment Registration Fees, and adoption of a CEQA Negative Declaration. He noted that in the Bay Area, coating operations contribute to VOC sources from auto refinishing operations and mobile equipment coating. Coatings involve surface preparation, primers, topcoats and other coatings, and solvents are used for spray equipment cleaning and surface cleaning.

Mr. Douglas presented a series of photographs showing workers preparing surfaces, priming, a spray booth, color coat and clear coating operations, and drying equipment. He discussed the current Rule which was adopted in 1989 and amended in 1994 and 1999. The Rule affects auto body shops, mobile refinishers, coating manufacturers, and manufacturers of heavy equipment, and the Rule sets VOC limits for automotive coatings and other requirements such as transfer efficiency, operation and maintenance and recordkeeping.

The regulatory proposal is the result of Control Measure SS1 from the 2005 Ozone Strategy. It is based on ARB 2005 Suggested Control Measure, incorporates coating categories, VOC limits and other requirements from the SCM, as well as additional requirements for mobile refinishers and clients and said the effective date is October 2009.

He further presented proposed VOC limits by coating categories and noted that a few categories would not be effective until January 1, 2010. Mobile refinishing requirements require registration in lieu of a permit, notification, properly operated filtration systems, and recordkeeping, and he said it is expected that total emissions of 5.8 tons per day will be reduced to 3.8 tons per day.

Mr. Douglas then discussed costs and cost effectiveness, stating operators may need enhanced drying equipment and coatings cost may increase by 20%. Mobile refinisher registration fees are initially \$100 and annually; \$60, with a cost effectiveness of \$800 per ton.

Staff visited numerous auto body shops, met with manufacturers and distributors, consulted with the ARB, other districts, and the EPA, and three workshops were held in August. Responses included comments regarding the reasonableness of drying equipment, compliance dates and allow time to convert, clarified definitions and maintenance of sales consistent with current requirements.

Mr. Douglas noted that staff does not recommend an exemption for TBAC and said there have been no exemptions allowed in 2007 and 2008. He discussed the fact that health data has raised toxicity concerns, and the 1993 Board Policy does not exempt potential

carcinogens. Staff recommends the Board adopt proposed amendments to Rule 8, Regulation 45: Motor Vehicle and Mobile Equipment Coating Operations and amendments to Regulation 3: Fees, Schedule R: Equipment Registration Fees, and adopt the CEQA Negative Declaration

Directors briefly questioned and confirmed the cost effectiveness of the amendment.

The public hearing was opened.

Public Comments:

Dr. John Budroe, Staff Toxicologist with the Office of Environmental Health Hazard Assessment, voiced concerns about potential health hazards of TBAC which shows cases of kidney and thyroid cancer in rats and causes of mutations and DNA bacteria, and he supported staff's recommendation.

Michael Veney, Sherwin-Williams, INPCA, Cleveland, thanked the Board and staff for their work on the Rule and requested an exemption for TBAC, stating that 49 other states have exempted the requirement, as well as other air districts. Without an exemption, he said the solvent would be unusable to them, it is not cost effective, and he requested the Board reconsider staff's recommendation.

The public hearing was closed.

Mr. Broadbent responded to public comment, stating that the Air District is fully aware of the concern and recommends that the Board not exempt TBAC at this time even though it sets us apart, as there is enough of a question regarding cancer risk.

Board Action: Director McGoldrick made a motion to adopt proposed amendments to Rule 8, Regulation 45: Motor Vehicle and Mobile Equipment Coating Operations and amendments to Regulation 3: Fees, Schedule R: Equipment Registration Fees, and adopt the CEQA Negative Declaration; seconded by Director Uilkema; carried unanimously without objection.

OTHER BUSINESS

10. Report of the Executive Officer/APCO

Mr. Broadbent reported on the Wood Smoke Program, stating it has created a great deal of interest. It was launched on November 1st and to date, 3 Spare the Air Nights were called on November 19, 24 and 25. Approximately 70 complaints were received each night, notification, advertisement and outreach were provided, staff was deployed, and hundreds of telephone calls were received regarding the program.

Directors discussed Contra Costa and Santa Clara newspaper editorials regarding the need for more notice, and requested that staff address the need for increased noticing and advertisements. Directors questioned statistics on the numbers of staff deployed on the 3 Spare the Air Nights. Mr. McKay reported that there were 8 inspectors, 18 warning letters

were issued, and staff has been fielding telephone calls to assist people in understanding the process. Mr. Broadbent also distributed a chart showing wood smoke complaints by county.

11. **Chairperson's Report**

Chairperson Torliatt thanked the Board for the privilege to serve as Chair and reported that she has been working on milestones for the Board Retreat which will be held on January 21, 2009.

12. **Board Members' Comments**

Directors acknowledged those Board Members' expiring terms, and confirmed a recognition event would be scheduled for the December 17th Board of Directors meeting.

13. **Time and Place of Next Meeting** – 9:45 a.m., Wednesday, December 17, 2008- 939 Ellis Street, San Francisco, CA 94109.

14. **Adjournment** - The meeting adjourned at 11:10 a.m.

/s/ Lisa Harper
Clerk of the Boards