

Bay Area Air Quality Management District  
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## APPROVED MINUTES

Summary of Board of Directors  
Stationary Source Committee Meeting  
9:30 a.m., Monday, May 19, 2008

1. **Call to Order – Roll Call:** Chairperson Scott Haggerty called the meeting to order at 9:36 a.m.  
  
**Present:** Scott Haggerty, Chair, John Gioia, Jake McGoldrick, Michael Shimansky and Pamela Torliatt  
  
**Absent:** Nate Miley, Mark Ross, John Silva, Gayle B. Uilkema
2. **Public Comment Period:** There were none.  
  
Acting Chair Torliatt announced the receipt of a request to hear Item 6 ahead of Items 4 and 5.
6. **Status of Proposed Regulation 6; Rule 3: Wood-Burning Devices:** *The Committee received a status report on the proposed Regulation 6, Rule 3: Wood-Burning Devices. A public hearing on the rule is scheduled for July 9, 2008.*

Kelly Wee, Director of Compliance and Enforcement, said the proposed regulation seeks to achieve particulate matter from reductions of wood smoke. He presented an overview covering the Rule's development process, explaining that staff conducted extensive outreach and held 7 public workshops to introduce the Rule, held 9 information meetings to explain the new draft rule, modified the draft in response to workshop comments, coordinated the preparation of an extensive EIR to meet CEQA requirements, responded to comments received, prepared a draft staff report and final Draft Rule, and that a public hearing will be held to consider its adoption.

The Rule prohibits burning on nights with high PM forecast; it limits visible emissions from wood burning devices, requires cleaner burning technology for sale of new and used devices and in new construction, prohibits burning garbage in WBDs, and requires seasoned wood sales and solid fuel labeling. Comments received over the last six months include requests for a curtailment exemption for clean burning devices, allowing masonry heaters in new construction and remodels, smaller curtailment zones, for solid fuel labeling requirement not to be so costly, and request for replacement of existing non-certified devices. The Air District has responded to comments and has indicated clean burning masonry heaters can be allowed, labeling requirements can be simplified to reduce costs, and extensive upgrades to existing homes are not mandated.

The public comment period ends June 18, 2008 on the Draft EIR. Staff will draft its staff report and respond to comments. The socio-economic analysis has been completed and a public hearing is scheduled for the adoption of the rule and approval of the EIR on July 9, 2008.

Directors held discussion regarding how the regulation will be enforced in terms of notification to departments in cities and counties. Mr. Wee said many agencies are already familiar with how regulations are enforced and have adopted the model ordinance, which is similar. In answer to a question, Mr. Bunger said the regulation will only affect remodeling projects for which the permit is sought after the rule is adopted.

Mr. Wee reported receiving comments from companies regarding the high cost of re-labeling products and whether or not the District would offer economic incentives such as rebates for non-certified or outdated devices. He said the requirement would restrict sales for used devices; new devices are already certified. The Air District had previously participated in an incentive program which was highly successful and staff will look at this and modify it for the next year. Staff will also conduct a post-installation survey to obtain a baseline.

Directors thanked Mr. Wee for his outreach efforts and work on the Rule, and Chair Haggerty acknowledged receipt of a letter from Susan Goldsborough, Executive Director of Families for Clean Air, in support of the Air District's efforts to adopt the Rule, which was made part of the record.

**Committee Action:** None. The Committee received and filed the report.

3. **Approval of Minutes of March 17, 2008:** Director McGoldrick moved approval of the minutes; seconded by Director Shimansky; carried unanimously without objection.
4. **Overview of Process for Settlement of Notices of Violations:** *Staff presented an overview of the Air District's process for settlement of Notices of Violations.*

Brian Bunger, District Counsel, presented an overview of the process for settlement of Notices of Violation, stating that the Air District has authority to collect civil penalties. Health & Safety Code Section 42403 provides that civil penalties are pursued through civil actions. He discussed the issuance process for NOVs which are essentially an allegation of violation of a rule. Each case is handled individually and violators are given an opportunity to correct the violation.

Mr. Bunger further discussed the review of the facts in each case and said levels of culpability are determined which range from \$1,000 up to \$1 million in penalties. In evaluating the cases, Legal staff is also required to look at a number of factors which the statute Section 42403 sets out 9 factors the court or the Air District examines in setting the appropriate penalty, including, among other factors are set forth in frequency of past violations, the extent of harm caused and record of maintenance, any action taken by the defendant to mitigate the violation and the financial ability to pay.

Mr. Bunger discussed the staff who handle settlement and prosecution of NOVs: 1) Mutual settlement staff that address routine cases and those without attorney representation; and 2) Attorney staff who address larger cases such as Title V facilities. Small claims court is used for cases with values under \$5,000 and Superior Court is used for cases above that limit.

In closing, he said the effective settlement is one that all parties agree to and as long as they believe the numbers were reached legitimately by applying principles, the Air District ends up with a program that is viewed as credible and effective.

Director Haggerty confirmed with Mr. Bungler that civil penalties are embodied in State legislation under the Health and Safety Code.

Director Gioia acknowledged that enforcement is through civil litigation and often times there can be an agreement with the violator in order to avoid litigation the ceilings on civil penalties set forth in the Health and Safety Code. He confirmed with Mr. Bungler that the standard of proof in litigation is preponderance and the last time were increased was approximately 10 years ago.

**Committee Action:** Chair Haggerty recommended, and the Committee agreed, that penalty caps and public nuisance multiplier issues be referred to the Legislative Committee for further discussion.

**Committee Action:** None. The Committee received and filed the report.

**5. Status of Selected Bay Area Projects:** *The Committee received a status report on selected Bay Area projects.*

Mr. McKay said the Air District issues approximately 2500 permits per year. Some generate more interest than others, and he would review for the Committee, 5 permits which have generated particular interest in the community, as well as Lennar, a project operating under an air toxic control measure for asbestos.

He provided an overview of each of the project, as follows:

1. Chevron Energy & Hydrogen Renewal Project – a large project to replace the refinery’s hydrogen generation and a variety of other elements. Chevron is seeking authority to construct and the Air District should be ready to move forward, given the City of Richmond’s adoption of the EIR.
2. Alco Iron & Metals Pyrolysis Furnace – a small furnace in San Leandro. The District has issued a temporary permit to operate, but San Leandro subsequently determined that a use permit is required for the furnace and the future status of it is in question.
3. Hayward Power Plants: Russell City Energy Center and Eastshore Energy Center –two power plants approximately ½ mile apart from each other in Hayward. The CEC has approved the Russell City Energy Center, the Air District has issued the authority to construct and it has not yet begun. The CEC has not approved the proposed Eastshore Energy Center.
4. Hanson Permanente Cement Plant: Increase in Petroleum Coke Usage – The Air District has approved a change in Hanson’s fuel ratio to stop using coal and use petroleum coke. There is a somewhat related topic of the quarry’s reclamation plan and the fact that it expires in 2010.
5. Lennar Bay View Hunters Point Shipyard Parcel A Redevelopment Project – This project is a plan to build rental and for-purchase housing, shops, parks, industrial and commercial space, a public housing project, and potentially a new 49er stadium. There is naturally occurring asbestos

in the area and of concern is compliance for the work with the Air District-approved Asbestos Dust Mitigation Plan.

6. San Francisco Electric Reliability Project – Three gas turbines are proposed in Potrero and one at the Airport. The City has requested an authority to construct, which is in process.

Dr. McKay reviewed the District's permit authority, power plant permitting process; permit applications that require publication and public comment and public concern over projects.

Brian Bateman, Director of Engineering, made a presentation regarding the Chevron project, said it is an approximately \$1 billion project. Chevron has not requested an increase in the quantity of crude oil they are allowed to process as part of this project but have requested permits for replacement for a number of parts and processing units. A portion of the project is to replace a circa-1930s oiler plant with a more modern cogeneration plant, to replace an existing hydrogen plant built in the 1960s with a more modern facility, equipment changes focused on improving the purity of hydrogen, and plans to replace catalytic reformer units.

In terms of air quality, Mr. Bateman said on an overall basis, the project's net emissions generally decrease by 10% in the facility's NO<sub>x</sub> emissions, in excess of 100 tons per year. There are also decreases in sulfur dioxide and particulate matter emissions of 1%-2%. The project will not result in an increase in POC emissions, there are no significant health risks for toxic air contaminants, and there will be an increase in GHGs because the hydrogen plant has a much higher capacity to produce hydrogen than what is currently at the facility. Mr. Bateman said the approach used is through CEQA to mitigate the increases in GHGs, notably CO<sub>2</sub>, by establishing a baseline. As emissions from the project begin to increase to the point where there would be a net increase in CO<sub>2</sub> the facility will begin to reduce emissions at the facility or elsewhere. There is also a hierarchy of reductions starting at the facility, then within the City of Richmond boundaries, within the Air District boundaries, and then within the State.

The Chevron project: did not trigger a formal public comment period because of its net air emissions decrease. However, there is a great deal of interest and a community meeting was held in Richmond on February 13<sup>th</sup> to discuss the permitting process. The Air District has been very involved in the EIR process and Air District staff has been working with the City of Richmond on their air quality mitigation measures and have attended all public hearings held on the project.

Issues raised by environmental groups include crude slate issues, processing crude oil with higher sulfur content and the need for greater specificity of measures used to reduce GHGs. The Planning Commission has asked City staff to address those two issues and report back on June 5<sup>th</sup>.

Alco Iron and Metals Pyrolysis Furnace: The project is located southeast of the Oakland Airport. The facility processes and recycles metals and other materials. The facility submitted a permit application for a propane-fired pyrolysis furnace which decomposes organic materials such as varnish and epoxy off of metals. The unit is equipped with an after-burner where all organic material is combusted at high temperatures. Upon receipt of the application, the District Engineers evaluated it and determined emissions were under the New Source Review (NSR) thresholds and qualify for an accelerated permit, which he briefly discussed.

In December of 2007, the Air District was contacted by community groups to discuss their concerns with the furnace. The Air District agreed to hold a public comment period and a source test. Twenty (20)

comment letters were received which mostly made the point that, even though furnace emissions would be very low, they are some emissions and a no emissions increase should be allowed. The City has confirmed the facility does require a use permit and must remove the source or apply for a use permit, which has not yet been made.

The Hayward Power Plants: The Russell City project is the larger of the two and is a 600-megawatt load-following combined cycle power plant with 2 gas turbines and heat recovery steam generators. The other is the Eastshore project which would produce 115 MW in a peaking load and features 14 large internal combustion engines. The emission controls on both projects are similar; they feature catalytic reduction for NOx emissions, oxidation catalysts for CO and the exclusive use of natural gas fuels.

Both projects are under the purview of the CEC and Mr. Bateman described the Notice of Determination of Compliance in June 2007, their license issued in September 2007, the District Authority to Construct issued in November 2007, and the Air District's issuance of FDOC for the Eastshore project in October 2007. The CEC has not finished their process and has recommended disapproval of the project based on an aviation safety issue. For both projects, the CEC has required PM emissions be reduced locally through fireplace retrofit programs and monies will be available within the City of Hayward or the County.

The Hanson Permanente Cement Plant: The project is at the only cement manufacturing plant in the Bay Area and is located in Cupertino and involves an increase in petroleum coke usage. The facility has been in place since 1939, but in 1980 their cement kiln was replaced and converted to a dry process. More recently in November of 2006, they applied to increase their permitted coke usage, to 100% petroleum coke. The Air District evaluated the permit and issued a permit to combust up to 20 tons per hour. The evaluation concluded that the increased coke usage would not significantly change the emissions from the facility.

There was source testing conducted at the Hanson facility and the Air District allowed them to conduct the testing for the permit change which was done in December 2007. The report was submitted to the Air District in February of 2008 and staff noticed that the level of hexavalent chromium was much higher than expected and had previously been measured differently at the facility with a different mix of fuels. Air District staff met with the facility, an error was found in their calculation methodology, and the facility submitted revised test reports showing much lower hexavalent chromium emissions and the Air District is in the process of evaluating that revision. The EPA has also requested a more in depth analysis of the changes in criteria pollutant emissions.

Mr. Bateman said there has been some community interest in the project, the County issued a proposed amendment to the quarry's Reclamation Plan which would allow for another 25 years of quarrying and also move the quarrying potentially closer to where people live. Air District staff met with residents to discuss their concerns in November relating to truck traffic and dust from the facility, and the Air District's Grants Section is obtaining information from independent truckers who use the facility to apply for diesel retrofits using I-Bond money and installing a particulate air monitor near the facility.

Lennar Bay View Hunters Point Shipyard Redevelopment Project: is in an area of serpentine rock and there is a California Air Resources Board Air Toxics Control Measure which regulates emissions when there are construction activities or grading in areas of naturally occurring asbestos. The facility is required to submit an Asbestos Dust Mitigation Plan (ADMP) to the District for approval which was

done in this case. Lennar's approved ADMP requires dust mitigation measures and the District required them to additionally install asbestos air monitoring.

Mr. Bateman said the project began in January 2006 with grading activities and a couple of compliance problems. The Air District issued two notices of violation for failure to properly conduct air monitoring for a period of time, failure to provide a truck wheel wash at an exit road, overfilling trucks, and improper maintenance of truck wheel wash station. Lennar is now in the infrastructure phase of construction and later this year hopes to start construction of the project.

In terms of health issues, the Air District reviewed all results and feels it is reasonable to conclude that there is no significant level of health risk from exposure to asbestos. Mr. Bunger reported that the Air District is currently in the settlement process on the NOVs and discussions are progressing.

The San Francisco Electric Reliability Project: The City has indicated the need for the existing Mirant Potrero Power Plant to shut down. The project consists of two parts; one is located within the boundaries of the City close to the existing plant and has 3 gas turbines. The other part is for a 4<sup>th</sup> gas turbine to be located at the airport. The emission controls are similar to the other power plants previously described and the health risk screening analysis conducted has shown health risks to be below significance levels. The SFPUC has recently submitted necessary Emission Reduction Credits needed for the Air District to issue an Authority to Construct. The airport project came later and staff is still working on evaluating it, but it seems to meet all necessary requirements.

Director Gioia questioned the District's response to public concerns over the range of crude slate for the Chevron project. Mr. Bateman said the Air District does not believe the project would allow Chevron a wider range of crude slate. But, if they were to go to heavy crudes they would need to make additional improvements to the refinery as well as apply for permits to make those physical changes. He further discussed Chevron's current processing of light to intermediate crudes which have somewhat higher sulfur contents and discussed hydrogen purity improvements.

Mr. Broadbent acknowledged concerns of the environmental community and said another issue made known is that the Air District typically does not condition the type of product a refinery will be able to process. However, if Chevron wishes to do so, it can voluntarily accept such a condition.

Public Comment:

Leslie Fowler, West Valley Citizens Air Watch, formally requested an EIR process be initiated for Hanson's increase of petroleum coke from 8 to 27 tons/hour, that Hanson be required to update their pollution control technology, and that Hanson kiln switch to natural gas for their main fuel.

**Committee Action:** None. The Committee received and filed the report.

**7. Committee Member Comments/Other Business:** There were none.

8. **Time and Place of Next Meeting:** Monday, 9:30 a.m. on Monday, September 15, 2008.
9. **Adjournment:** The meeting adjourned at 11:08 a.m.

*/s/ Lisa Harper*  
Clerk of the Boards