

Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
(415) 749-5000

Board of Directors' Regular Meeting  
April 1, 2009

### **APPROVED MINUTES**

**Call To Order:** Chairperson Pamela Torliatt called the meeting to order at 9:58 a.m.

Roll Call: Chairperson Pamela Torliatt, Vice Chairperson Brad Wagenknecht, Susan Garner, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Yoriko Kishimoto, Carol Klatt, Liz Kniss, Eric Mar, Mark Ross, Michael Shimansky, James Spering, Gayle Uilkema, Ken Yeager, Shirlee Zane

Absent: Secretary Tom Bates and Directors Harold Brown, Chris Daly, Dan Dunnigan and Nate Miley

**Pledge of Allegiance:** Chairperson Torliatt led the Pledge of Allegiance.

### **Public Comment Period:**

Kerrie Romanow, City of San Jose, supported Director Yeager's proposal to realign Board seats, spoke of San Jose's demographics, expected population growth, green initiatives, business and economic base.

### **Consent Calendar Items 1-4:**

Director Shimansky requested removal of Item 4 for clarification purposes.

1. Approval of Minutes of March 18, 2009;
2. Communications;
3. District Personnel on Out-of-State Business Travel

**Board Action:** Director Shimansky moved to approve Consent Calendar Items 1-3; seconded by Director Yeager; carried unanimously without opposition.

### **Discussion:**

4. Consideration of Mediated Grievance Settlement between the Air District and the Employees' Association Regarding Limited Term Employees

Director Shimansky confirmed with staff that the mediated grievance settlement related to the interpretation of terms of the Employees' Association MOU, and that its approval was required by the Board of Directors.

**Board Action:** Director Shimansky moved to approve Consent Calendar Item 4; seconded by Director Uilkema; carried unanimously without opposition.

**Committee Reports:**

**Report 5. Legislative Committee Meeting**  
 March 23, 2009  
 Report given by Vice Chairperson B. Wagenknecht

March 23, 2009 Committee minutes approved.

Discussion/Actions:

The Committee discussed bills of air quality significance and corresponding agency positions and recommends Board of Directors' approval of eleven (11) positions on bills:

<b>BILL</b>	<b>AUTHOR</b>	<b>DESCRIPTION</b>	<b>POSITION</b>
AB 28	Jeffries	Prohibits air districts from restricting use of public agency natural gas engines to pump water	OPPOSE
AB 118	Logue	Repeals California Global Warming Solutions Act of 2006	OPPOSE
AB 318	Emmerson	Smog check amnesty cleanup (fixing last year's bill)	SUPPORT
AB 859	Jones	Annual smog inspection of older vehicles	SUPPORT
AB 892	Furutani	Allows Prop 1B Goods Movement Emission Reduction Program funds to be reallocated when a project is no longer feasible	SUPPORT
AB 1135	Skinner	VMT data collection at time of registration	SUPPORT
AB 1186	Blumenfield	Requires non-residential building lessors to separately list parking costs in the lease agreement	NEUTRAL UNLESS AMENDED
SB 435	Pavley	Adds post-2000 motorcycles to smog check program	SUPPORT
SB 554	Hollingsworth	Prohibits air districts from restricting the installation or use of wood-burning equipment	OPPOSE
SB 632	Lowenthal	Requires container ports to assess and report their infrastructure and air quality needs	SUPPORT

<b>BILL</b>	<b>AUTHOR</b>	<b>DESCRIPTION</b>	<b>POSITION</b>
SB 728	Lowenthal	Imposes civil penalty for violation of parking cashout law, and allows air districts to impose additional penalties and compliance mechanisms	SUPPORT

The Committee then discussed survey results on Board size and composition, whether to cap the Board at its current size, ramifications of thresholds contained in Option 3, grandfathering in existing City/County representation, and the Committee requested staff to re-poll the Board of Directors. The poll was before the Board who were asked to respond to the survey and leave it at their places.

The Committee then discussed changing the “per day” Board Member compensation language to “per diem” and suggested that legislation be considered and introduced as a two-year bill next year.

Next Legislative Committee Meeting: April 15, 2009 immediately following the Board of Directors meeting, Board Room, 939 Ellis Street, San Francisco, CA 94109.

Board Member Discussion/Comments:

Director Spering voiced non-support of the Committee recommendation, as he did not necessarily agree with all of the bills. Director Shimansky indicated he would support approval, but had voted no on AB 118 and AB 1135, and this was reflected in the Legislative Committee’s March 23rd minutes.

Directors discussed final survey options and additional proposals. The consensus was for additional proposals to be discussed at the next Legislative Committee meeting, to add Director Yeager’s proposal to the final survey, and that the Memorandum regarding Final Survey on Board Size would thereafter be revised as necessary and provided to the Board of Directors.

**Board Action:** Director Wagenknecht moved to approve the report and recommendations of the Legislative Committee; Director Uilkema seconded the motion; carried by a roll call vote of 16-1-5 (Spering-no; Bates, Brown, Daly, Dunnigan and Miley-absent).

**Report 6.**                      **Climate Protection Committee Meeting**  
March 23, 2009  
Report given by Chairperson Y. Kishimoto

February 20, 2009 Committee minutes approved, as amended.

Discussion/Actions:

The Committee received an update on the 2009 Climate Action Summit on May 4, 2009 at the Fox Oakland Theater, discussed key logistics and breakout sessions which included:

- Elected Officials Roundtables on Financing Climate Protection, and Technology and the Green Economy;
- Breakout Sessions on SB 375, General Plans and Climate Action Plans, Adaptation Planning, Sustainable Community Financing, Green Building, and Transportation Strategies.

Committee members received a copy of a memorandum from JPC Climate Consultant, Bruce Riordan, regarding Regional Agency Climate Priorities for 2009/2010 which will be agendaized and discussed at the next Climate Protection Committee meeting.

Next Climate Protection Committee Meeting: At the Call of the Chair.

**Board Action:** Director Kishimoto moved to approve the report of the Climate Protection Committee; Vice Chairperson Wagenknecht seconded the motion; carried unanimously without objection.

**Report 7. Mobile Source Committee Meeting**  
March 26, 2009  
Report given by Chairperson S. Haggerty

February 26, 2009 Committee minutes approved.

Discussion/Actions:

The Committee received an update on the TFCA regional fund program trends which have experienced rapid growth over the past two years and are projected to increase to \$148 million in FY 2009/10. This is due mainly to funding for Heavy-Duty Diesel Vehicles (HDV) projects.

The Committee received an update on federal stimulus funding actively being pursued by Air District staff, considered recommendations for the proposed Transportation Fund for Clean Air Regional Fund policies and evaluation criteria for Fiscal Year 2009/2010. The Committee recommends the Board of Directors approve:

1. The proposed Fiscal Year 2009/2010 TFCA Regional Fund Policies and Evaluation Criteria presented in Attachment A of Agenda Item 5;
2. A shift to an ongoing-call for TFCA Regional Fund applications; and
3. The following TFCA Regional Fund set-asides:
  - a. Up to \$4 Million for shuttles and rideshare projects;
  - b. Up to \$2 Million for vehicle-based advanced technology demonstration projects; and
  - c. Up to \$750,000 for new alternative-fuel/hybrid, heavy-duty trucks in low-mileage, idling service.

The Committee then received an update on the Carl Moyer Voucher Incentive Program and, following extensive discussions regarding its applicability and the matching funds required, the Committee recommended the Board of Directors reserve up to \$2 million in Mobile Source Incentive Funds (MSIF) to match \$2 million in California Air Resources Board (CARB) funds to establish this program.

Next Mobile Source Committee Meeting: April 23, 2009, 9:30 a.m., 4<sup>th</sup> Floor Conference Room, 939 Ellis Street, San Francisco, CA 94109.

**Board Action:** Director Haggerty moved to approve the report and recommendations of the Mobile Source Committee; Vice Chairperson Wagenknecht seconded the motion; carried unanimously without objection.

**Report 8. Budget and Finance Committee Meeting**  
March 30, 2009  
Report given by Director G. Uilkema

March 30, 2009 Committee minutes approved.

Discussion/Actions:

The Committee received an update on the proposed fee amendments to Regulation 3: Fees and discussed the estimated loss of County property tax, loss of state subvention, impacts to small businesses, additional public comments received to date, trends relating to recovery of costs, ARB's EVR Phase II requirement deadline of April 1st, a modified fee proposal for refinery flares which would increase revenue from \$2.5 million to \$2.6 million, and the remaining Rule development schedule. The Committee recommended first holding discussion of the proposed Budget for Fiscal Year 2009/2010 prior to making any recommendations on proposed fee increases.

The Committee reviewed the Budget for FY 2009/2010, discussed dollar and percentage changes of the FYE 2009 Amended Program Budget versus the FYE 2010 Proposed Program Budget for Consolidated Revenues, Consolidated Expenditures and General Fund Expenditure.

- Fiscal challenges include declining County revenues, the threat of "take-away's, unfunded medical Liability (OPEB), and deferred maintenance of Air District facilities/equipment;
- Total projected grant funding is expected to be \$85 million;
- Air District Initiatives would continue such as the CARE and related Programs; Spare the Air Summer/Winter Program, Woodsmoke Program, and the Climate Protection Program.

The Committee discussed building maintenance versus capital expenditures, possible installation of photovoltaic, building code requirements, future projected receipt and disbursement of California Goods Movement Bond funds, total FTE's, current vacancies, rate of attrition and the suggestion to conduct a management audit of the Human Resources Department.

The Committee recommended that the following revisions be made to the Budget for Fiscal Year 2009/2010, and that further discussion be held during the April 29, 2009 Budget and Finance Committee meeting:

- 1) Calculate property tax revenue on a county-by-county basis (versus combined) to confirm the estimated 5% in property tax reductions;
- 2) Provide Line Item details for Travel In-State (Service & Supplies Expenditures).

The Committee unanimously supported the Air District staff's original recommendation of proposed amendments to Regulation 3: Fees, which would increase overall fee revenues by 9%, or result in an additional \$2.5 million in revenue.

The Committee then considered and recommended that the Board of Directors:

- 1) Amend the FY 2008/2009 Operating Budget by increasing the Section 103 Environmental Protection Agency Grant Revenue by \$113,908, and correspondingly increase the Capital Equipment Budget for the Laboratory (Program 803); and
- 2) Authorize the Executive Officer/APCO to issue a purchase order for the instrumentation required by the grant.

The Committee received an update on the Air District's response to recommendations relative to Administrative Policies. The Committee reviewed proposed policies and their expected date for Board consideration and recommended calendaring items accordingly for Board consideration.

Next Budget and Finance Committee Meeting: April 29, 2009, 4<sup>th</sup> Floor Conference Room, 939 Ellis Street, San Francisco, CA 94109.

**Board Action:** Director Uilkema moved to approve the report and recommendations of the Budget and Finance Committee; Director Kniss seconded the motion; carried unanimously without objection.

## **PRESENTATION**

**Overview of 2008/2009 PM Season** – *Staff Presentation by Gary Kendall, Director of Technical Services*

### Presentation Highlights:

- Winter 08-09 / 07-08 PM Season Summary showing more drought-like winter conditions and as a result, the number of days the PM 2.5 standard was exceeded increased from last year.
- There were 11 days over the PM 2.5 standard this winter compared to 7 days last winter and correspondingly, Winter Spare the Air Alerts were called on 11 days as compared to 6 days last winter.

- Seasonal rainfall totals were presented from November 1, 2008 through February 28, 2009 as well as the number of days the PM 2.5 was exceeded.
- Winter was unusually warm and dry, with daytime temperatures in the low 70's which is due to high pressure systems over California.
- Transport has been more of a factor than in previous winters.
- Satellite images presented from March 10, 2009 (clear conditions). PM levels in the Central Valley were about twice the PM 2.5 standard while those in the Bay Area were below PM 2.5 standard. During the period, they had northerly winds that kept the valley PM out of the Bay Area. However, on January 17, 2009 winds changed and PM 2.5 standard was exceeded in the Bay Area.
- Bay Area PM 2.5 trends presented and three year averages for each three year period since 2001.
- 2006-EPA reduced National PM 2.5 standard from 65 to 35 ug/m<sup>3</sup>
- 2008-EPA made attainment/nonattainment designations-Bay Area designated as nonattainment.
- Plans for attainment due 3 years after effective date (2012)
- Attainment 5 years after effective date (2014)

To reduce PM and precursors, the Board adopted SB 656 Particulate Matter Implementation Schedule in November 2005 and the Wood Burning Rule in July of 2008 (included in SB 656 schedule). Since 2005 Board has adopted 15 rules to reduce ozone & PM precursors and directly emitted PM. Staff are developing 2009 Bay Area Clean Air Plan (CAP) which will be presented to the Board for adoption.

Air District staff are analyzing the effects of the Wood Burning Rule and will present the results of the analyses at the April 20<sup>th</sup> Stationary Source Committee meeting. Analyses include:

- Field and telephone surveys
- Comparison with previous years
- PM modeling
- PM transport
- PM composition

#### Board Discussion/Comments:

Director Shimansky questioned and confirmed with Mr. Kendall that EPA regulations allow for exceptions for events such as wild land fires, which can be flagged and would not count toward attainment or non-attainment.

Director Kniss questioned incentive program and follow-up results from District funding and suggested analyses include those cities that may have already banned wood burning. Mr. Broadbent discussed incentives and remaining funding and said that on April 20<sup>th</sup> staff will conduct an entire review of the program for the Stationary Source Committee.

Director Kishimoto questioned sources of PM in the Central Valley. She confirmed with Mr. Kendall that transport can go in both directions and that weather conditions tend to affect PM more so in the Central Valley.

**Update on Port of Oakland Maritime Air Quality Improvement Plan (MAQIP) – Staff Presentation by Deputy APCO Jean Roggenkamp**

Ms. Roggenkamp provided the following update:

- The Board adopted a Resolution on March 18, 2009 calling for the Port of Oakland to include in its MAQIP some additional near-term actions to improve air quality and public health.
- She presented the Resolution to the Maritime Committee on March 19<sup>th</sup>.
- Commissioner Margaret Gordon asked that Port staff meet with Air District staff to come to an agreement about what might be included in the MAQIP document.
- Air District and Port staff met on March 31<sup>st</sup> with Commissioner Gordon. Port staff indicated they would take a recommendation to the Port Commission on April 7<sup>th</sup> to reinstate \$2 million of the original \$5 million committed for truck retrofits and to consider how the additional \$3 million might also be included.
- Staff is not recommending any changes to the Air District Board's position on the MAQIP document.
- Ports were hurting economically and the southern California ports show the most significant decline but they continue to implement their environmental programs.

Ms. Roggenkamp presented a “Comparison of Short Term Measures to Achieve Public Health Benefits”, which demonstrates Southern California Ports as taking significant near-term actions to improve air quality and reduce public health impacts. A chart reflecting changes in container volumes and comparison of current container fees was also presented.

Public Comments:

Richard Sinkoff, Port of Oakland, discussed the continued dialogue regarding the Board's Resolution, believed a significant step was the Port's recommendation to move forward with the \$2 million and the potential to add \$3 million which would go before their Port Commissioners on April 7<sup>th</sup> and said additional meetings would cover how funds might be used.

Board Member Comments/Discussion:

Directors discussed and confirmed that Southern California Ports may have templates or programs which could be used by the Port of Oakland to achieve similar levels of progress and benefits.

Directors voiced frustration with inaction by the Port, suggested forced media exposure to bring about public pressure, cited significant health impacts, suggested the Chair draft a letter for the Port to make improvements without the threat of litigation being a driving force. The chart presented contradicted the Port's economy and business levels as diminishing and it was



noted that 80% of the cargo was used for the Bay Area. Directors suggested Port representatives be invited to the next Board meeting to discuss their position and listen to the Board's concerns.

Mr. Broadbent reported that he would be testifying on April 7<sup>th</sup> at the Port Board of Commissioners regarding the District's position. Chairperson Torliatt noted that she and District staff met with Port staff, Commissioners Uno, Gordon and individually met with Commissioner McClure who was somewhat disappointed that action had not been taken at their prior meeting. She said Commissioner McClure assured her that the Port Commissioners were moving forward on April 7<sup>th</sup> and she requested that a copy of the presentation on "Comparison of Short Term Measures to Achieve Public Health Benefits" be forwarded to Commissioners.

Directors confirmed with staff that the Resolution suggests prioritizing, setting timelines for the Port of Oakland to address short term measures and are geared to achieve the most public health benefit.

Chairperson Torliatt thanked Mr. Sinkoff for his comments, agreed both parties need to continue to meet, and confirmed that the status of the draft Regulation addressing the Port was forthcoming and would be discussed at the meeting of the Ad Hoc Committee on Port Emissions.

Directors voiced the need to hear from both sides, agreed that a timeline was needed on proposed measures, and suggested a Closed Session be held regarding the legal authority to regulate the Port of Oakland.

Director Gioia suggested a motion to 1) Schedule a Board of Directors Closed Session discussion on the legal issues regarding the Air District's regulatory authority on the Port of Oakland; 2) refer follow-up action to the Port's Ad Hoc Committee on Port Emissions; and 3) continue to provide direction to staff to work toward the Port making improvements on a voluntary basis; Director Kniss seconded the motion.

Discussion:

Directors confirmed that Port representatives would be invited to attend the Ad Hoc Committee on Port Emissions and the next Board of Directors meeting in order to be able to respond to the information presented today.

**Board Action:** Director Gioia made a motion to 1) Schedule a Board of Directors Closed Session discussion on the legal issues regarding the Air District's regulatory authority on the Port of Oakland; 2) refer follow-up action to the Port's Ad Hoc Committee on Port Emissions; and 3) continue to provide direction to staff to work toward the Port making improvements on a voluntary basis; Director Kniss seconded the motion; Director Kniss seconded the motion; unanimously carried without objection.

**CLOSED SESSION**

The Board of Directors adjourned to Closed Session at 11:18 a.m.

**Public Employee Performance Evaluation (Government Code Section 54957 and 54957.6)**

**OPEN SESSION**

The Board of Directors convened in Open Session at 12:18 p.m. Chair Torliatt gave the following report out from Closed Session:

“On behalf of the Board of Directors, we would like to take this opportunity to convey our support for the work Jack Broadbent does on behalf of the Bay Area Air Quality Management District. We would also like to convey our confidence in your honesty, integrity, and workplace conduct. The Board unanimously finds this and we find that Jack Broadbent has not violated District policy and has been absolutely truthful.”

**OTHER BUSINESS:**

**Report of Executive Officer/APCO:**

**Update on Air District’s Applications for Federal Stimulus Competitive Grant Funding Opportunities**

Director of Strategic Incentives Jack Colbourn reported that Air District staff is applying for Diesel Emissions Reduction Act (DERA) funding (\$10-\$15 million) for replacement, retrofit and repower of diesel heavy-duty trucks, retrofits, locomotive buses and marine vessels. They hope to leverage approximately \$2 million in local funding from BAAQMD and approximately \$5 million from local transportation companies, and if successful, up to 1500 jobs would be created and/or preserved. The application is due April 28, 2009.

The second program is the Clean Cities Program (Department of Energy). The District is working with all 101 cities in the Bay Area and all 9 counties to create electric vehicle use throughout the Bay Area. The District has been asked by the cities of San Francisco, San Jose, and Oakland to serve as the coordinating agency amongst cities and counties in the Bay Area. Individual jurisdictions will be asked for support of the program and how they can participate. Local funds will be leveraged totaling approximately \$7 million, along with \$7 million in matching funds from the private sector and local cities and counties and the application due date is May 29, 2009.

Mr. Broadbent noted that the Mobile Source Committee will be kept apprised of all efforts.

Director Haggerty reported that he was one of 75 county officials privy to a meeting with the Vice President who agreed to provide assistance in securing stimulus funding.

**Enhanced Vapor Recovery Phase II Deadline for Gas Stations – April 1, 2009:**

Mr. Broadbent said many gas station owners have expressed concern regarding regulations implemented by the Air Resources Board for gas stations to install upgrades to equipment. The

compliance date is today and some station owners are having difficulty obtaining credit to finance the purchase of equipment. The Governor's Office instructed the Chair of the ARB to delay implementation and/or provide further instruction.

There are approximately 2,000 stations and 2/3 of those stations are in compliance or close to it, and there are over 300 stations working in good faith with staff to come into compliance. Permits are being expedited, compliance agreements are being negotiated, and accessibility to District staff has been expanded.

**Chairperson's Report:** Chairperson Torliatt said her Report would be emailed to Directors.

*Public Comment – Reopened:*

Commissioner Gordon said she is committed to continue to hold discussions regarding resolution to the Port of Oakland's emission reduction issues.

**Board Member Comments:** None

**Time and Place of Next Meeting:** 9:45 a.m., Wednesday, April 15, 2009, Board Room, 939 Ellis Street, San Francisco, CA 94109.

**Adjournment:** Meeting adjourned at 12:28 p.m.

*Lisa Harper*  
Clerk of the Boards