

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

Board of Directors' Regular Meeting
April 15, 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, Secretary Tom Bates and Directors Harold Brown, Chris Daly, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Carol Klatt, Liz Kniss, Eric Mar, Nate Miley, Mark Ross, Michael Shimansky, Gayle Uilkema

Absent: Directors Dan Dunnigan, Susan Garner, Yoriko Kishimoto, James Spring, Ken Yeager and Shirlee Zane

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

Chairperson Torliatt requested that items be taken out of order due to a lack of a quorum at the beginning of the meeting.

OTHER BUSINESS:

Report of Executive Officer/APCO: Mr. Broadbent reported that the Port of Oakland Board of Commissioners met last week and considered and adopted the Maritime Air Quality Improvement Plan (MAQIP) on a vote of 5-1 (Gordon voting no). He said the plan does not contain any commitments; it does not call for specific strategies and relies heavily on enforcement by the Air District, the State, EPA and others. He, along with representatives from the EPA and County Health Department testified and urged the Port Commissioners to defer adoption of the plan and to add specific commitments.

Mr. Broadbent then reported that the \$5 million originally committed for retrofit of trucks was considered and approved by the Port Board of Commissioners, and staff will be scheduling a Closed Session to discuss next steps.

Chairperson's Report: Chairperson Torliatt reminded Board Members of the A&WMA Conference to be held June 16-19, 2009 in Detroit, Michigan, as well as the May 4, 2009 Climate Summit, to be held at the Fox Theater in Oakland.

Public Hearing to Consider Testimony on Proposed Amendments to Air District Regulation 3: Fees – Staff Presentation by Director of Engineering, Brian Bateman

Overview:

Mr. Bateman provided a background of proposed amendments, discussed the Air District's authority to assess fees to fully recover reasonable costs of implementing and enforcing regulatory programs, said cost recovery analyses indicates that fee revenue falls well short of program costs and the gap is filled annually by property tax revenue. Based upon a three-year outlook, staff is assuming no increase in discretionary expenses, capital and FTE's and is retaining vacancies. Assumptions are based upon a 10% reduction in property taxes, a 12% increase in CalPERS, an 11% increase in salary and benefits and other take-a-ways. He briefly discussed revenue sources, the estimated imbalance in FY 2012 by 13%, and fee revenue needed to balance the budget in FY 2012 and noted that, on average, SCAQMD permit fees for small businesses are 40% higher than BAAQMD fees.

Summary of Proposed Fee Amendments:

- Increase overall fee revenue by 9.3% from revenue projected for the current fiscal year
 - Increase in CPI for Bay Area was 3.3%
 - Additional \$2.6 million in revenue
- Target fee schedules with the most significant cost recovery gaps for the largest fee increases
 - Most fee schedules would increase by 3, 6, 9, 12 or 15%
 - 50% increase for refinery flares
 - No increase for several fee schedules
- 6% increase in administrative fees
- New Fee Schedule for Indirect Source Review (ISR)
- Hearing Board Court Reporter Fee
- Back fee provision for equipment registrations

Impacts on small businesses:

- Annual permit renewal fees for most small businesses would increase by \$15-\$80;
- Annual permit renewal fees for most gas stations would increase by \$100 to \$300;

Mr. Bateman summarized examples of permit renewal fee increases. Public comments received to date ask that the District consider the cost of EVR compliance, poor economic conditions, and to use reserve accounts/cut staff salaries. Comments were also received in support of the proposed ISR rule and fees.

Remaining Rule Development Schedule:

- Initial draft fee regulation amendments issued on January 29, 2009;
- Public workshop held February 23, 2009;
- Revised proposals issued March 18 and 24, 2009;
- Budget and Finance Committee briefings held February 25 and March 30, 2009;
- Public hearings on April 15 and May 20, 2009;
- Amendments effective July 1, 2009.

Board Comments/Discussion:

Director Daly reported that the Budget and Finance Committee met, discussed the District's budget and proposed fee increases, and considered the economic climate and small business impacts. The Committee voted to move forward with staff's recommendation and supported cost recovery, recognizing that the District's fee revenues fall well short of program costs.

The public hearing was opened.

Public Comments: Dennis Bolt, WSPA, opposed the proposed fee increases and suggested the District look at further efficiencies in its operations.

Irwin Dawid, Sierra Club, supported staff recommendations and the Air District's use of the ISR.

Board Action: None needed; a public hearing has been set for May 20, 2009 to consider adoption of the proposed fee amendments and approval of filing of a Notice of Exemption from the California Environmental Quality Act.

CONSENT CALENDAR (Items 1-6):

Chairperson Torliatt announced that Item 5 was requested for removal from the Consent Calendar by a member of the public.

1. Approval of Minutes of April 1, 2009;
2. Communications;
3. Quarterly Report of Air Resources Board Representative-Honorable Ken Yeager
4. Quarterly Report of the Executive Office Activities
6. Set Public Hearings for May 20, 2009 to Consider Testimony and June 3, 2009 to Consider Adoption of the Air District's Proposed Budget for FYE 2010

Board Action: Director Wagenknecht moved to approve Consent Calendar Items 1, 2, 3, 4, and 6; seconded by Director Kniss; carried unanimously without opposition.

5. Set Final Public Hearing for May 20, 2009 to Consider Adoption of Proposed Fee Amendments to District Regulation 3: Fees, and Consider Approval of a Notice of Exemption from CEQA

Public Comments: Camille Kustin, Environmental Defense Fund (EDF), reported on EDF's continued work on ISR fees with the San Joaquin Valley and on rule development in the South Coast and Sacramento region. She noted that courts have upheld air districts' authority to require ISR fees and she looks forward to working with the Air District on the Rule.

Board Action: Director Bates moved to approve Consent Calendar Item 5; seconded by Director Wagenknecht; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

Report 7. Public Outreach Committee Meeting

April 2, 2009

Report given by Chairperson M. Ross

September 26, 2008 (as amended) and October 31, 2009 Committee minutes approved.

Discussion/Actions:

The Committee received an update on the Wintertime Spare the Air Alert Outreach Campaign and discussed with staff the kick-off media blitz, including special “news outlets” appearances, TV broadcast spots, shopping ad carts, telephone and email alerts and widgets, front page newspaper flags, incentives, campaign coverage areas, movie theater ads and metro radio station spots, which resulted in a total of 1156 bonus spots or a 200% increase from the original 350 spots purchased by the Air District. A commercial by Executive Officer/APCO Jack Broadbent, *Check Before You Burn*, was also shown.

The Committee received samples of campaign advertising, survey results, and successes of the campaign, which included the following statistics:

- AirAlert sign-ups had doubled to 100,000,
- 12,000 residents signed up for phone alerts,
- 877-4-NO BURN number received 500,000 calls,
- Results of the survey show 77% supported the wood burning rule,
- An increased number of households (24%) indicated they did not burn or reduced their wood burning; and
- 1,000 gas fireplace rebates were awarded.

The Committee then discussed and considered recommending Board of Director’s approval of staff recommendations on contractors for Advertising and Media Services for Summer and Winter Spare the Air campaigns, Smoking Vehicles Campaign, and Grants and Incentives advertising. A total of 12 proposals were received upon conclusion of the RFP process, and after review and evaluation of criteria, three contractors were interviewed for advertising services and three contractors for media/public relations services.

The original staff recommendation was revised to recognize the need to maintain continuity in the Employer Program and to recognize the strong relationship that Allison & Partners has with existing employees and employers. Therefore, the Committee recommends Board of Directors’ approval of staff recommendations on Public Outreach Contracts, to award:

- Advertising Services for Spare the Air–O’Rourke Inc. - Not to exceed \$1,200,000;
- Advertising Services for Smoking Vehicles and Grants–RHDG - Not to exceed \$475,000;
- Media/Public Relations Services for Spare the Air–MS&L Public Relations - Not to exceed \$500,000;
- Media/Public Relations Services for Employer Program–Allison & Partners, (as amended) - Not to exceed \$150,000.

The next meeting of the Public Outreach Committee is scheduled for May 7, 2009 at 9:30 a.m.

Board Action: Director Ross moved that the Board of Directors approve the report and recommendations of the Public Outreach Committee; seconded by Director Kniss; unanimously approved without objection.

Chairperson Torliatt referred to the presentation given to Committee members at the April 2nd meeting, and complimented Ms. Fasano and staff on their outstanding public outreach efforts.

Public Hearing to consider Adoption of Proposed Amendments to Regulation 8, Rule 33: Gasoline Bulk Terminals and Gasoline Delivery Vehicles and Regulation 8, Rule 39: Gasoline Bulk Plants and Gasoline Delivery Vehicles, and Adoption of a CEQA Negative Declaration – *Staff Presentation by Air Quality Engineer, Guy Gimlen*

Guy Gimlen, Senior Air Quality Engineer, presented the staff report regarding amendments proposed to Regulation 8, Rules 33 and 39 which implement the District's 2005 Ozone Strategy Control Measure SS-7. A public hearing was held on February 4, 2009, but continued after guidance was received from the Air Resources Board who met on March 11th and posted proposed amendments. The recommended action by the Board of Directors is to:

- Adopt proposed amendments to Regulation 8, Rule 33: Gasoline Bulk Terminals and Gasoline Delivery Vehicles;
- Adopt proposed amendments to Regulation 8, Rule 39: Gasoline Bulk Plants and Gasoline Delivery Vehicles; and
- Adopt a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for this rule-making activity.

Amendments would reduce emissions from gasoline transfer at bulk terminals and bulk plants, including episodic emissions, by requiring monitoring systems in bulk terminals and improving operating practices in terminals and plants. Mr. Gimlen then discussed the typical gasoline bulk terminal and bulk plant distribution system and presented a video example of a vapor leak.

Proposed Amendments:

- Monitoring
 - Monitor vapor recovery system backpressure
 - Reduce VOC emissions standard and monitor vapor recovery unit performance
 - Monitor vapor storage tanks, connectors and pressure/vacuum valves for leaks
 - Develop a monitoring, inspection, notification and reporting protocol
- Miscellaneous
 - Reduce liquid leak limit
 - Install additional valves for maintenance
 - Provide portable container for cleanup and maintenance
 - Hang vapor hoses out of the truck driveway
 - Install sample lines to inaccessible pressure/vacuum valves

Since the February 4th public hearing, staff received guidance from the ARB indicating the Air District has regulatory authority over vapor leaks, and the hearing was continued to impose a more stringent vapor leak limit. He said the limit is currently 100% of the lower explosive unit, or 50,000 ppm; however, much lower limits can be met. Staff proposes setting the limit at 3,000 ppm which was proposed in the final Rule and posted on March 11, 2009 for public comment. The lower limit applies to connector fittings and pressure/vacuum valves and allows for a repair period when self-discovered.

Economic Impacts:

- The rule is primarily monitoring focused, and the CEQA analysis shows no significant negative environmental impact;
- Seven (7) terminals already comply with hydrocarbon and back-testing monitoring;
- Five (5) will need to install facilities, with a total cost estimated to be \$50,000 to \$65,000 annually;
- The economic impact to bulk plants is less than \$3,000 annually;
- The cost effectiveness is \$13,200 per ton;
- Socioeconomic analysis shows no significant impact to terminals or bulk plants, with no job losses or impacts on small businesses.

Mr. Gimlen then reviewed the extensive Rule development process. Revisions have been incorporated into the proposed Rules and there were no additional public comments received after the March 11th posting of the notice.

The public hearing was opened.

Public Comments: Dennis Bolt, Western States Petroleum Association, supported the fee increase but disagreed with Sections 309.5.1 and 309.5.2 of the Rule, stating he believes it violates the principles of leak detection and repair, and requested leak detection be allowed to be detected by the operator.

Andy Katz, Breathe California, supported an indirect source review (ISR) of the Rule, believed this was an important action to help address impacts and an important measure to encourage infill development.

Chairperson Torliatt thanked Mr. Katz for his comments, and suggested that he speak under Item 9, which had not yet been presented to the Board.

Director of Planning and Research, Henry Hilken, responded to Mr. Bolt's comments, stating that staff added the provision at the specific recommendation of the Petroleum Association and wants operators maintaining and inspecting facilities. He believed that Mr. Bolt's proposal is limited and said most connectors are covered and receive the 72-hour repair period window; the provision only applies to the connection from the truck back to facilities. Staff also believes it is reasonable to employ penalties if violations occur.

The public hearing was closed.

Board Action: Director Groom moved to adopt proposed amendments to Regulation 8, Rule 33: Gasoline Bulk Terminals and Gasoline Delivery Vehicles; Adopt proposed amendments to Regulation 8, Rule 39: Gasoline Bulk Plants and Gasoline Delivery Vehicles; and Adopt a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for this rule-making activity; seconded by Director Ross; unanimously approved without objection.

PRESENTATION:

Advisory Council Report and Recommendations from the February 11, 2009 Meeting on Air Quality and Public Health – *Presentation by Advisory Council Chairperson Harold Brazil, and Council Members Sarah Martin-Anderson and Jennifer Bard.*

Deputy APCO, Jean Roggenkamp introduced Advisory Council Chairperson Harold Brazil and Council Members Jennifer Bard and Sarah Martin-Anderson.

Chairperson Brazil reported that the Advisory Council had revised their meeting schedule to hold 4 symposiums, each on a specific topic, with additional meetings to review and arrive at recommendations. At the February 11, 2009 meeting, the Advisory Council received the following presentations:

- Community Air Risk Evaluation Program (CARE) Overview – Dr. Phil Martien, Ph.D., CARE Program Manager, BAAQMD
- Public Health, Air Quality and Equity – Dr. Anthony Iton, Alameda County Health Officer
- Health Disparities in Contra Costa – Dr. Wendel Brunner, Director of Public Health, Contra Costa County Health Services Department
- Air Pollution Hot Spots: Unregulated Health and Environmental Justice Issues in the United States – Dr. Rajiv Bahtia
- Air Quality and Public Health Santa Clara County – Dr. Martin Fenstersheib, Santa Clara County Health Officer

Sarah Martin-Anderson described the presentations as powerful, with consistent themes of health inequity and air quality, which identified:

- Low-income communities of color bear the burden of ill health in the Bay Area;
- Poverty is a social condition that interacts with air pollution to create this over-burden;
- The historical context of neighborhoods is important-cumulative impacts are reality;
- The responsibility of BAAQMD is to protect the public's health.

Ms. Martin-Anderson presented statistics from Alameda County Poverty and Life Expectancy by Tract maps taken from Dr. Iton's presentation, which revealed that poor health is concentrated in low income communities and poverty, race, lack of political power and air pollution have complex interactions that contribute to poor health and shortened life expectancy. Health and social inequities are positively correlated with exposure to sources of air pollution, such as freeways and industrial sources.

She said the Advisory Council received information about physical and mental health, respiratory disease, mental co-pollutants, noise, blight, and all speakers viewed the Air District

as a fellow public health agency and stressed their charge as protecting the public's health. She presented a correlation between neighborhood poverty rates and the Asthma Emergency Department Visit Rate, which shows West Oakland has two times the overall County rate. Also, data drives policy and empowers communities, and data must be accessible and easily understood, useable and participatory, as information empowers communities. Data should be localized and incorporate specific pollutant effects to assist health departments with conducting Health Risk Assessments. The Air District should continue to be a leader by expanding alliances with public health departments.

Statistics reveal that transportation is the largest source of ozone precursors, particles, TAC's and GHG; the Air District must be more proactive in regulating mobile sources within legal constraints; and public health and planning officials need Air District technical assistance in land use decision-making.

Council Member Jennifer Bard presented the Advisory Council's Recommendations, as follows:

1. Reducing health impacts from air pollution

Take all steps necessary to close gaps in monitoring programs to address cumulative impacts and "hot spot" areas, and emphasize actions that produce immediate risk reduction, including:

- Integrate consideration of both fine and coarse PM into all Air District programs, including the CARE Program, and establish PM fine and PM coarse health-based action levels for permitting.
- Review current rules to identify potential gaps in permitting related to the establishment of PM action levels noted above, including non major sources.
- Develop additional new source and existing source rules using a cumulative impacts approach to limiting health risk at the geographic scale of one or several city blocks.
- Conduct additional studies along freeway corridors and in areas impacted by multiple pollution sources, including localized saturation monitoring studies such as the CARE Program West Oakland Measurement Study.
- Require "hot spot" analysis of regional projects (roadway expansion), and/or coordinate with transportation project sponsors who may be responsible to conduct "hot spot" analysis.
- Implement expanded air quality modeling beyond identified toxic hot spots (to include near roadway areas).
- Develop an indirect source inventory for the Bay Area that identifies both small and large indirect sources of air pollution.

2. Public Outreach and Community Collaboration

- Present air pollution data in simple, understandable language and format and make it easily available to community stakeholders.
- Work with local Public Health Departments to engage community residents on air pollution issues, and use participatory methods, like the CARE Program West Oakland On-road Diesel Truck Survey, to better assess localized impact.

- Conduct a review of the effectiveness of current community outreach efforts at the Air District and develop an outreach program based on best practices.
- Develop land use best practices for local planning agencies to reduce air pollution and greenhouse gases and increase technical assistance on methods for Environmental Impact Review processes, hot spot analyses, and mitigation strategies.
- Add a Health Officer position to the BAAQMD staff, similar to the position at the South Coast AQMD. The Health Officer could provide guidance on decision making, act as a community liaison, monitor health outcomes related to air quality, and assist local governments with land use planning strategies that reduce air pollution and greenhouse gas emissions.

3. Legislation, Regulation and Policy

The Air District should continue to take a leadership role in advocating for strong regulations and aggressive enforcement, in addition to supporting legislation to protect overburdened communities:

- Increase enforcement and be more aggressive in requiring pollution reduction plans from major polluters, such as ports, facilities, and in monitoring implementation of those plans in highly polluted areas.
- Establish more stringent requirements for large and small point sources in overburdened communities, including grandfathered sources.
- Implement Indirect Source Rules (ISR) in order to ensure protection for overburdened communities and incorporate them in updated CEQA guidelines.
- Support strong regional greenhouse gas reduction targets through the AB 32 and SB 375 implementation process, to maximize air quality co-benefits.
- Support implementation of Container Fees at Ports to pay for air pollution mitigation and public health programs and support the upcoming Lowenthal bill.
- Investigate other strategies to fund emissions reductions and increase public transit service, such as gas taxes, increased vehicle license fees, and incentive programs, and support legislation to implement those strategies.
- Investigate what limits the agency's current legislation ability to regulate mobile sources, and propose changes to the law to increase our efforts in this area.

Ms. Bard acknowledged that the Air District was already engaged in many of the recommendations which will guide and support efforts to protect public health, and on behalf of the Advisory Council, she thanked the Board of Directors and staff for their leadership.

Discussion/Comments:

Directors thanked Advisory Council Members for formulating the report and recommendations and urged continuance of grass roots efforts. They agreed that the Air District is a partner in public health, discussed the need to address emissions at neighborhood levels and partner with health departments, and supported the need for a Public Health Officer.

Directors further discussed active community participation, susceptibility of children, seniors and other sensitive receptors. Mr. Broadbent noted that staff was working on increased

regulatory measures for sensitive receptors, i.e., preschools, schools, long-term health care facilities, and disproportionate communities.

Directors made the following recommendations/suggestions:

- (Gioia) Suggested a timetable and cost estimate be developed to address the Advisory Council's recommendations.
- (Miley) Requested two policy items be added to the recommendations: 1) Efforts be undertaken for cities and counties to create Public Health Elements as part of their General Plans; and 2) Further investigate alternative means of transit, specifically the promotion of bicycles.
- (Groom) Reported that all local hospitals must prepare a Community Health Assessment every five years; The San Mateo County Health Officer has prepared template language which agencies can utilize to assist in adopting Health Elements for their General Plans.
- (Haggerty) Questioned whether Valley Care Hospital was contacted, stating that the asthma rate reflected in Dr. Iton's map along the I-580 corridor was almost non-existent.

Public Comments: Dennis Bolt, WSPA, supported a Public Health Officer position, discussed statistics regarding emergency room visit rates and briefly discussed a study he conducted in 1994 on paramedic responses; stating Oakland experienced more than double the responses over San Jose, and San Pablo and Richmond's responses were even higher. He cited the dismantling of the public health system, the primary determinant of infant mortality as household employment, and asked for cautious review when expanding businesses.

Board Action: None; Directors received and filed the Report and Recommendations of the Advisory Council.

Board Member Comments: None

Time and Place of Next Meeting: 9:45 a.m., Wednesday, May 6, 2009, Board Room, 939 Ellis Street, San Francisco, CA 94109.

Adjournment: Meeting adjourned at 11:35 a.m.

/s/ Lisa Harper
Clerk of the Boards