

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

Board of Directors' Regular Meeting
July 1, 2009

APPROVED MINUTES

CALL TO ORDER: Chairperson Pamela Torliatt called the meeting to order at 9:48 a.m.

Roll Call: Chairperson Pamela Torliatt, Vice Chairperson Brad Wagenknecht, Secretary Tom Bates and Directors Chris Daly, Carole Groom, Scott Haggerty, Jennifer Hosterman, Yoriko Kishimoto, Carol Klatt, Eric Mar, Nate Miley, Mark Ross, Michael Shimansky and Gayle B. Uilkema

Absent: Harold Brown, Dan Dunnigan, Susan Garner, John Gioia, Liz Kniss, James Spering, Ken Yeager and Shirlee Zane

PLEDGE OF ALLEGIANCE: Alison Keane led the Pledge of Allegiance.

Public Comments: Francisco DeCosta questioned proper legal posting of agendas on the Air District's website and expenditure of Lennar settlement funds.

Boardmember Comments:

Chairperson Torliatt questioned and confirmed with Mr. Bunger the Air District's legal standard for noticed meetings and physical and website postings of agendas.

Executive Officer/APCO Jack Broadbent reported that extensive work has been completed by staff regarding Lennar settlement dollars. The District has engaged the community to develop a series of tools which can be duplicated elsewhere in the Bay Area. There are a number of viable projects in communities and a plan will be presented at the July 13th Stationary Source Committee meeting as part of a report on high profile facilities.

Proclamation(s)/Awards

The Board of Directors recognized the following employees who have completed milestones of 25, 30 and 40 years of service with the Air District during this first half of the calendar year:

25 Years: Steven Chin, Emmanuel Jimenez, Scott Lutz, and Michelle Torres
30 Years: Virginia Manalo
40 Years: Tom Story

CONSENT CALENDAR (Items 1-7):

1. Approval of Minutes of June 3, 2009 Regular Meeting;
2. Communications;
3. District Personnel on Out-of-State Business Travel;
4. Quarterly Report of the Executive Office Activities;

Director Shimansky requested removal of Items 5, 6 and 7.

Board Action: Director Wagenknecht made a motion to approve Consent Calendar Items 1, 2, 3 and 4; Director Kishimoto seconded the motion; carried unanimously without opposition.

Items Removed from Consent Calendar:

5. Consideration of Authorization for Execution of Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures Section 4.3 Contract Limitations
6. Consideration of an Amendment to a Contract for the West Oakland Measurement Study
7. Set Public Hearing for August 5, 2009 to Consider Proposed Amendments to Regulation 8, Rule 32: Wood Products Coatings; Manual of Procedures, Volume I, Number 6: Emissions Averaging Procedure; and Adoption of a CEQA Negative Declaration

Director Shimansky questioned why Items 5 and 6 had not been agendaized for review by a Committee. Mr. McKay explained that the items are budgeted and their expedient approval was necessary. Ms. Roggenkamp noted that Item 6 is also a budgeted item and is the request is to augment funds for an existing contract.

Mr. Broadbent explained that Item 7 is to set a public hearing August 5 and staff recommends cancellation of the July 15th and August 19th Board meetings. Chairperson Torliatt requested that staff poll Directors as to their availability for an August 5th Board meeting.

Board Action: Director Shimansky made a motion to approve Consent Calendar Items 5, 6 and 7; Director Klatt seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

Report 8. Mobile Source Committee Meeting
June 25, 2009
Report given by Chairperson S. Haggerty

May 28, 2009 Committee minutes approved.

Discussion/Actions:

The Mobile Source Committee met on Thursday, June 25, 2009 and approved the Minutes of the May 28, 2009 meeting.

The Committee considered Board of Directors' approval of the Carl Moyer Program Off-Road Equipment Replacement Program and discussed program guidelines, eligible projects, cost effectiveness, total emissions reductions, existing and future District outreach efforts.

The Committee recommends Board of Directors' approval of:

1. Implementation of an Off-Road Equipment Replacement Program component of the Carl Moyer Program; and
2. Authorization for the Executive Officer/APCO to execute contracts with vendors and dismantlers to implement the Carl Moyer Program Off-Road Equipment Replacement Program.

The Committee then considered Board of Directors' approval of Carl Moyer Program Year 11 Projects with Proposed Grant Awards over \$100,000 and discussed recommended grant awards, eligible projects, emissions reductions and cost-effectiveness, marine-related and agricultural project applications. The Committee recommends Board of Directors' approval of:

1. Carl Moyer Program Year 11 projects with proposed grant awards over \$100,000; and
2. Authorization for the Executive Officer/APCO to enter into agreements for the recommended Carl Moyer Program Year 11 projects.

The Committee then received the FY 2009/2010 Bicycle Facility Program: Annual Report for FY 2008/2009 and considered the proposed revisions to Policies and Program funding allocation for FY 2009/2010. The Committee discussed definitions of Class I, II and III bikeways, the availability of funding to local agencies, and requested that staff investigate the possibility of a pooled purchase for bicycle rack and locker equipment. The Committee also discussed the possibility of increasing the funding allocation for the FY 09/10 Bike Facility Program and requested staff to return to the Mobile Source Committee with information about the program's history and a proposal to increase the program's funding allocation.

The Committee recommends that the Board of Directors:

1. Receive and file the Annual Report for the Bicycle Facility Program for Fiscal Year 2008/2009;
2. Approve the proposed Bicycle Facility Program Policies, presented in Attachment B, for use in Fiscal Year 2009/2010 and in subsequent years; and
3. Approve the allocation of \$600,000 in TFCA Regional Funds to the Bicycle Facility Program for Fiscal Year 2009/2010, and the authorization for the Executive Officer/APCO to execute funding agreements in accordance with the Board-approved Bicycle Facility Program Policies.

The next meeting of the Mobile Source Committee is scheduled for Thursday, July 23, 2009.

Board Action: Director Haggerty made a motion to approve the report and recommendation of the Mobile Source Committee; Director Kishimoto seconded the motion; carried unanimously without opposition.

Report 9. **Executive Committee Meeting**
June 29, 2009
Report given by Chairperson P. Torliatt

May 18, 2009 Committee minutes approved.

Discussion/Actions:

The Committee then received an update on the Joint Policy Committee from Ted Droettboom on six climate change priorities approved by the JPC for the 2009/2010 fiscal year, which include:

1. A Sustainable Community Strategy pursuant to SB 375

2. An Indirect Source Rule;
3. Parking policies relating to climate change;
4. Implementation of electric and alternative fuel vehicles, noting that the Air District has submitted a grant under the Federal Stimulus Program to facilitate fleet purchases and infrastructure;
5. Solar Installation Energy Finance Program, which is being led by ABAG and intended to be an extension of the program implemented in Berkeley; and
6. Adaptation, principally around sea level rise which is being led by BCDC and ABAG, and looks at development implications of a linear rise and a certain 16-inch sea level rise by 2050.

Mr. Droettboom reported that the JPC proposes the formation of Climate Bay Area, an organizational entity which recognizes the hundreds of climate initiatives across the Bay Area and intended to be led by regional agencies in partnership with business organizations. The JPC also proposes a Sustainable Community Strategy, to be developed as a genuine partnership between regional agencies and local governments and as an integrated land use and transportation plan which will serve to reduce CO₂ from automobile and light trucks across the region.

The Committee briefly discussed examples of sea level rise asked that a mechanism be in place for participation of stakeholders and environmental justice advocates, requested the Climate Bay Area be more clearly defined; that it identify how people are appointed and whether it is objective or policy-based and that the JPC revisit the policy of requiring a percentage of housing to be affordable.

The Committee then received an update and discussed objectives of the Air District's CEQA guidelines, the Air District's participation and lead on statewide CEQA & land use issues, thresholds of significance for greenhouse gas, toxic air contaminants, criteria pollutants, plan level thresholds, and their analytical methodologies.

The Committee then received an update on the Air District's 2009 Clean Air Plan and discussed its purpose, progress to date, benefits of multi-pollutant planning, and evaluation and stages of methodologies. The Clean Air Plan's framework includes various mobile and stationary source measures and land use/local impacts and strategies. The Clean Air Plan will be brought to the Joint Policy Committee in September where additional perspectives can be heard by regional agencies.

The Committee deferred discussion of the Strategic Facility Visioning Process and discussions to amend the Air District's Administrative Code regarding the Board of Directors Officers' Term of Office to the next Executive Committee meeting in July.

The Committee also deferred an overview of select milestones/activity for 2008/2009, which will be presented by the Executive Officer/APCO at today's Board of Directors' meeting. The Committee considered sending a letter of support for appointment to the California Air Resources Board. After a brief discussion, the Committee provided direction to staff to develop a policy relative to letters of support for appointments to the Air Resources Board.

The Committee then adjourned to Closed Session, pursuant to Government Code Section 54957 and 54957.6, to conduct performance evaluations of the Executive Officer/APCO and District Counsel. The Committee reconvened in Open Session and had no reportable action. The next meeting of the Committee is at the call of the Chair.

Board Action: Chairperson Torliatt made a motion to approve the report of the Executive Committee; Director Wagenknecht seconded the motion; unanimously approved without objection.

PUBLIC HEARING:

Public Hearing to Consider Adoption of proposed amendments to Regulation 8, Rule 3: Architectural Coatings, and adoption of a CEQA Negative Declaration – Staff Presentation by Principal Air Quality Specialist Victor Douglas

Recommendation: Adopt proposed Amendments to Regulation 8, Rule 3: Architectural Coatings and CEQA Negative Declaration.

Overview:

Mr. Douglas gave a presentation on regulatory review, labeling requirements, the regulatory proposal, current and proposed VOC limits, emissions and reductions, costs and cost effectiveness, the rule development process, and the following response to comments:

- Continue working on inclusion of a reactivity option – He said VOCs have varying abilities to form ozone in the atmosphere. The formability is called reactivity. Regulating compounds is another option for reducing ozone and staff believes reactivity may be appropriate and a feasible option can lead to greater reduction in ozone formations for coating regulations. However, during the rule development process, staff was not able to quickly reach consensus on the form of the reactivity stand it should take. Staff believes this should not hinder the implementation of the proposal and reduction of emissions that would be achieved. They are committed to continuing to work with the ARB, manufacturers, and EPA on developing a reactivity option for this and other coating rules.
- Another comment requested exempting TBAC as a VOC in this rule. Staff concluded that under Rule 8-45 Auto Body Refinishing operations, that available data on TBAC raised concerns about cancer health effects. The California Office of Environmental Health Hazard Assessment (OEHHA) recommended in testimony to the Board that the District not exempt TBAC as a VOC, and staff believes they are the best agency to make findings on compounds.
- Staff is confident that the proposed VOC limits can be met without reliance on TBAC. There are many coatings that are not formulated with TBAC, and further, the ARB did not exempt TBAC in the Architectural Coating Suggested Control Measures (SCM) or in the Aerosol Coating Rule. Therefore, TBAC is not exempted in this proposal.
- The proposal extends the compliance date by one year, as recommended in the 2000 SCM.
- Staff was requested to make modifications to labeling requirements which were made to allow greater flexibility. Further, minor changes were requested to be made in the definitions which were also done where appropriate.
- Corrected typographical errors

Director Comments/Questions:

Director Shimansky referred to VOC current and proposed limits and questioned why equal limits were not being set for all coating categories. Mr. Douglas explained there are different coatings and flats have different properties and needs. Aluminum roofing coatings are used to weather conditions

and their formulation must be different. The way paints dry and settle and react with substrates requires different formulations, therefore, it may require more VOCs than typical house paint.

Director Ross questioned the reason why certain lacquers have recommended guidelines for temperatures above and below 65°. Mr. Douglas discussed the formulation of lacquers, said humidity associated with temperature affects lacquers and it takes longer to cure when applied in a humid environment.

Director Kishimoto questioned any consequences of substituting chemicals to reduce VOC limits by manufacturers. Mr. Douglas said when coating manufacturers experiment and formulate products to reduce VOC limits and meet regulations they operate independently; certain products set the foundation for VOC limits. Some compounds can be substituted for exempt compounds, and because health effects for TBAC are not resolved staff does not want to allow their use as an exempt compound. She confirmed that the District does not tell manufacturers what they can and cannot use as long as they do not exceed VOC limits.

Director Hosterman questioned the timeframe for implementation of the new regulation, and Mr. Douglas said the new regulation is proposed to take effect January 1, 2011, and there are four more categories proposed for next January.

Chairperson Torliatt opened the public hearing.

Public Comments:

Alison Keane, National Paint and Coatings Association, Washington D.C., said they are happy the District adopted the ARB SCM for uniformity purposes. Their comments focus on where they saw differences with the ARB's SCM and the District's Rule:

1. Rust preventative coatings in the Aesthetic Compliance Section, Definitions, where the District uses a double negative; "Cannot be used for other than non-industrial purposes." She proposed it simply say it must be "for industrial use only."
2. In the Industrial Maintenance Sections, they are concerned with label statement changes, particularly with those with labels in stock. They would like to see all four standard label requirements instead of the two currently listed.
3. For Zinc-Rich Primers, they want to see all four label statements included. At the very least it should say "for professional use only" as well as "for industrial use only."
4. Staff has introduced the definition of medium density fiberboard and they agree with this.
5. The Sales Data Section inadvertently cited only one of two provisions they need for calculating VOC regulatory and they need both low solid and non-low-solid calculations, which she said has been done.
6. Regarding TBAC and unintended consequences of substituting a VOC or solvent to get VOC emission reductions, they strongly suggest that the Air District exempt TBAC. They need safe alternative substitutes. It has already been exempted in 49 states, 13 counties, for IM coatings at the South Coast and all end coatings in San Joaquin.

Robert Wendoll, Director, Dunn-Edwards Corporation, said he supports the Air District Rule implementing the SCM as given, except for minor modifications for statewide uniformity. He thanked Air District staff for their work in devising a transition mechanism for a phasing out process, for clarification to written responses and comments on the question of whether the sell-through provision

would apply to coatings in categories to be deleted, and for staff's work in investigating the possibility of a reactivity based option for the Rule.

Jim Nyarady, ARB, supported proposed amendments, said they developed the SCM through an extensive two year public process and found all limits are technically and commercially feasible. He discussed the variety of data sources on which they relied, and said the rule will reduce emissions by over 5 tons per day in the Bay Area. The District will be the first to incorporate the 2007 SCM into its Architectural Coatings Rule and they believe the current data supports the proposed limits as technologically and commercially feasible and urged the Board to adopt the amendments.

Ryan Kenny, Solvents Industry Group of the American Chemistry Council (SIG), said SIG strongly supports the adoption of reactivity based standards as a sole compliance option or at least as an alternative compliance option for all product categories and urges the District to include a Board Resolution committing the District to work on reactivity based approach for future architectural coating rules which would provide a highly efficient means for reducing ozone and afford industry formulation flexibility. The reactivity based rules are cost effective, enforceable, and promote the use of less toxic compounds.

Chairperson Torliatt closed the Public Hearing.

Committee/Staff Discussion & Comment:

Mr. Broadbent stated that in response to reactivity based standards, District staff is committed to evaluate and pursue reactivity based standards, has included it as part of the further study measure as part of the Clean Air Plan, and the District is not comfortable in recommending this type of approach at this time. There are complexities to work out and regulating the products have merit and possibilities for future amendments to the regulation, but staff is not prepared to recommend a reactivity based approach in the current amendments. He requested staff address public comments regarding labeling and other comments.

Mr. Dan Belik explained that staff tried adding labeling requirements contained in the draft so there is some flexibility which is consistent with the suggested control measure. They also heard a comment about a double negative and they worked through this and referenced the legal definition of non-industrial. They believe it is ultimately clearer and understood by all manufacturers and enforcers.

Mr. Broadbent confirmed with Chairperson Torliatt that staff was not suggesting any further amendments and industry representatives have participated and provided input.

Director Hosterman questioned the first speaker's request for exemption. Mr. Broadbent said TBAC is a particular compound the District believes should not be exempted due to the finding of toxic cancer impacts associated with coatings. Other air districts have allowed this, but they are also in the process of re-evaluation.

Mr. Douglas reiterated that the South Coast allowed TBAC for one category; industrial maintenance coatings, but they have a 100 g/l on the coating and it is used in a narrow field. In the Bay Area's proposal, they have a 250 g/l limit and feel confident that at that level, it can be formulated without the use of TBAC. Mr. Broadbent feels the more prudent thing to do is not to exempt it, continue to monitor health information associated with TBAC and if staff feels its use would not create a toxic impact, a further amendment can be brought forward.

Director Uilkema questioned when the District would conduct further review. Mr. Broadbent said architectural coatings represent the largest stationary source emissions in terms of VOC and is continually reviewed. They have included it as part of a measure in the Clean Air Plan, which will occur in a couple of years.

Director Kishimoto questioned if reactivity based standards was more of a performance based standard, and Mr. Broadbent said all VOCs in paints do not create ozone the same. There has been a concerted effort to have a standard that would treat VOCs differently and the District is supportive of this approach. To make further gains in this source category, it makes sense to thoroughly review its regulation and implementation. He noted the federal EPA has encouraged Air Districts to consider this and it will be included it as part of the Clean Air Plan. Mr. Douglas added that the ARB did adopt an Aerosol Rule solely based on reactivity.

Vice Chair Wagenknecht complimented staff on their work and responsiveness to comments in amending the Regulation 8, Rule 3.

Board Action: Director Uilkema made a motion to adopt the Resolution approving proposed amendments to Regulation 8, Rule 3: Architectural Coatings; and adopt a California Environmental Quality Act (CEQA) Negative Declaration; Director Hosterman seconded the motion; carried unanimously without opposition.

CLOSED SESSION:

Public Employee Performance Evaluations (Government Code Section 54957 and 54957.6 - Pursuant to Government Code Section 54957 and 54957.6, the Board of Directors met in closed session to conduct performance evaluations of the Executive Officer/APCO and District Counsel.

Chairperson Torliatt deferred the Closed Session matter to the August 5, 2009 meeting.

OTHER BUSINESS:

Report of Executive Officer/APCO: Mr. Broadbent introduced Ms. Jennifer Chicconi, Manager of Executive Operations, formerly with Allied Waste, EPA and the South Coast Air District.

Mr. Broadbent presented a Summary of 2009 Ozone Season through June 30, 2009 and milestones underway and those completed to date. He provided an update on the Port Truck Emissions Reduction Project, stating that the new Rule takes effect January 1st and staff expects to continue to receive retrofit applications throughout July and August.

Director Uilkema confirmed with Chairperson Torliatt that the Executive Committee will discuss the Air District Foundation at their July 29th meeting. Chairperson Torliatt also requested an explanation and update be provided by staff at the July 29th meeting regarding a 2009 completion date for the ISR Rule.

Chairperson's Report: Chairperson Torliatt announced the cancellation of the July 15, 2009 Board of Directors meeting and requested that staff poll Directors as to their availability on August 5, 2009.

Vice Chairperson Wagenknecht, Directors Haggerty, Ross and Uilkema provided a brief report on their attendance at the A&WMA Conference held June 16-19, 2009 in Detroit, Michigan.

Board Member Comments: Secretary Bates reported that the Legislative Committee took a position on Assemblymember DeSaulnier's Bill for an increase on vehicle license fees, which he reported was moving forward.

Time and Place of Next Meeting: Regular Meeting – Wednesday, August 5, 2009 - 939 Ellis Street, San Francisco, CA 94109

Adjournment: Meeting adjourned at 11:21 a.m.

/s/ Lisa Harper
Clerk of the Boards