

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

Board of Directors' Regular Meeting  
August 5, 2009

### **APPROVED MINUTES**

**CALL TO ORDER:** Chairperson Pamela Torliatt called the meeting to order at 9:45 a.m.

Roll Call: Chairperson Pamela Torliatt and Directors Harold Brown, Chris Daly, Susan Garner, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Carol Klatt, Nate Miley, Mark Ross, Michael Shimansky, James Spring and Gayle B. Uilkema

Absent: Vice Chairperson Brad Wagenknecht, Secretary Tom Bates, and Directors Dan Dunnigan, Yoriko Kishimoto, Liz Kniss, Eric Mar, Ken Yeager and Shirlee Zane

**PLEDGE OF ALLEGIANCE:** Chairperson Torliatt led the Pledge of Allegiance.

**Public Comments:** None

**Boardmember Comments:** Director Uilkema requested that Directors be provided with a paper recycling bin at their chair.

**CONSENT CALENDAR (Items 1-5):**

1. Approval of Minutes of July 1, 2009 Regular Meeting;
2. Communications;
3. District Personnel on Out-of-State Business Travel;
4. Quarterly Report of Air Resources Board Representative – Honorable Ken Yeager;
5. Quarterly Report of the Executive Office Activities.

Chairperson Torliatt announced the following amendments to be made:

- The August 5, 2009 Consent Calendar Agenda: Amend to read (Items 1-5);
- Item 1; July 1, 2009 Minutes: Page 1; Roll Call: Directors Dunnigan and Gioia should be noted as absent. Page 9; Adjournment: The Board adjourned the meeting to August 5, 2009.

**Board Action:** Director Spring made a motion to approve Consent Calendar Items 1, 2, 3, 4 and 5, as amended; Director Groom seconded the motion; carried unanimously without opposition.

**COMMITTEE REPORTS AND RECOMMENDATIONS:**

**Report 6.** Stationary Source Committee Meeting  
July 13, 2009  
Report given by Chairperson J. Gioia

Discussion/Actions:

The Stationary Source Committee met on Monday, July 13, 2009 and approved the Minutes of the April 20, 2009 meeting.

The Committee received a status report on the following Bay Area projects and facilities:

1. Lennar Bay View Hunters Point Shipyard Parcel A' Redevelopment Project (San Francisco)
2. Pacific Steel Casting Company (Berkeley)
3. Custom Alloy Scrap Sales, Incorporated (Oakland)
4. Lehigh Southwest Cement Plant (Cupertino)
5. Russell City Energy Center (Proposed Project in Hayward)
6. Marsh Landing and Willow Pass Generating Stations (Proposed Projects in Antioch and Pittsburg)

The Committee then received an update on the CARE Program and priority communities, the District's Air Toxics NSR Program, and the Air Toxics Hot Spots Program Implementation Update, which will evaluate establishing more stringent risk reduction thresholds.

The next meeting of the Committee is scheduled for Monday, October 19, 2009 at 9:30 a.m.

**Board Action:** Director Gioia made a motion to approve the report of the Stationary Source Committee; Director Uilkema seconded the motion; carried unanimously without opposition.

**Report 7.                   Ad Hoc Committee on Port Emissions Meeting**  
July 16, 2009  
Report given by Chairperson N. Miley

Discussion/Actions:

The Ad Hoc Committee on Port Emissions met on Thursday, July 16, 2009 and approved the minutes of March 12, 2009.

The Committee received an update on the Emission Reduction Strategy for the Port of Oakland and discussed development of an agreement for near term actions to reduce emissions. The Committee also discussed efforts that are being considered for inclusion in the agreement including a Marine Highway Project, the Port's plan for shorepower and joint efforts on regulatory enforcement. Public comments were received which focused on the Port's stakeholder process, the Port's emissions inventory, and future transportation planning for freight movement at the Port.

The Committee then received a presentation requesting consideration of funding for near term emission reduction projects at the Port of Oakland. Staff presented a number of projects currently being discussed with the Port, with the focus being a recommendation for a Marine Highway Project. This project is designed to move containers between the Ports of Oakland, Stockton and Sacramento on clean barges rather than trucks resulting in large emission reductions along Bay Area highways and in the West Oakland community. The Port has applied for a grant for the project and the San Joaquin Air District has also allocated \$750,000 in funding contingent upon action from the District.

Based on staff's recommendation, the Committee recommends Board of Directors approval of:

1. An allocation of \$750,000 in funding to support emissions reductions projects at the Port of Oakland seaport; and
2. Referral to and recommendation by the Budget and Finance Committee to transfer \$750,000 in funding from reserves to the fiscal year 2009/10 budget.

The Committee then received an update on the District's diesel emissions reduction enforcement strategy, which focuses on highly impacted communities, and especially West Oakland. Staff has begun specialized training to enforce CARB mobile source regulations for cargo handling equipment, trucks, ships and containers and has engaged in a collaborative effort with the Port of Oakland on program implementation at their terminals. A complete Draft of the Mobile Source Compliance Plan will be presented to the Board of Directors in fall of this year.

The next meeting of the Committee is at the call of the Chair.

**Board Action:** Director Miley made a motion to approve the report and recommendations of the Ad Hoc Committee on Port Emissions; Director Spring seconded the motion; unanimously approved without objection.

**Report 8.                      Executive Committee Meeting**  
July 29, 2009  
Report given by Chairperson P. Torliatt

Discussion/Actions:

The Executive Committee met on Wednesday, July 29, 2009 and approved the minutes of June 29, 2009.

The Committee received the Hearing Board Quarterly Report for the period April 2009 through June 2009. The Committee then received an update on the Production System and was presented with completed deliverables and future scheduled deliverables for the system.

The Committee then received an overview of the Air District's strategic facility planning process, the RFP process, and the resultant selection and contract award to HOK, Inc. The project schedule includes an initial kickoff meeting with the Facilities Working Group and Executive Management staff, a series of outreach, interviews and an employee survey, as well as regional agencies outreach.

The Committee then received an update on the Air District Foundation. Formation of the Foundation's 501(c)3 incorporation has been completed, and receipt of a settlement in the amount of \$250,000 will be deposited into the Foundation's account. An overview of the Foundation's goals and objectives, funding sources and mechanisms was provided, and staff will update the Committee as categories of projects for funding are determined.

The Committee then considered a Board of Directors' policy relative to appointments to the California Air Resources Board (CARB) of Directors and discussed various elements of applicability, a call for interested Board Members, format for endorsement, and support of other candidates. The Committee unanimously supported the Chair issuing a call for Board members to express their interest in being appointed to the CARB Board of Directors within a designated timeframe and for key information to be provided relevant to his/her appointment to the CARB Board of Directors. The Committee did not

support preparation of letters of recommendation by the Board or staff, and gave direction to staff to further refine the policy and return to the next Executive Committee meeting.

The Committee deferred the update on the Indirect Source Rule (ISR) to the next Executive Committee meeting. Chair Torliatt requested the ISR presentation be placed at the beginning of the agenda for the next meeting.

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 Uilkema seconded the motion; unanimously approved without objection.

### **PUBLIC HEARING:**

#### **9. Public Hearing to Consider Adoption of proposed amendments to Regulation 8, Rule 32: Wood Products Coatings; Manual of Procedures, Volume 1, Number 6: Emissions Averaging Procedure; and Adoption of a CEQA Negative Declaration – Staff Presentation by Rule Development Manager Dan Belik**

#### Overview:

Mr. Belik provided background on the 2005 Ozone Strategy Control Measure SS-5, discussed pertinent wood products and manufacturing facilities, VOC content limits, and stated that the amendment to Regulation 8, Rule 32 applies to three classes of wood products manufacturing facilities: 1) general wood products, 2) wood furniture, custom cabinets, and custom architectural millwork, and 3) custom furniture. He discussed proposed amendments, exemptions for refinishing and some wood products and specialty finishes, and stated that the averaging procedure is being updated. He discussed emissions reductions and costs, new equipment and adjustments to the manufacturing process and said the Socioeconomic Impact Analysis found no significant impacts.

He then discussed the Rule development process, reviewed public comments from CARB, NPCA and Lyondell Chemical and said the final proposal was published on July 2, 2009.

#### Recommendation:

##### By Resolution:

- Adopt proposed amendments to Regulation 8, Rule 32: Wood Product Coatings;
- Adopt proposed amendments to Manual of Procedures, Volume 1, Number 6: Emissions Averaging Procedure; and
- Adopt a Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for this rule-making activity.

#### Director/Staff Comments:

Directors discussed the intent of the Rule and thresholds, exemptions, CARB regulations, formaldehyde standards, and the Air District's obligation to enforce toxic air contaminants. Mr. Broadbent noted that proposed VOC limits go into effect in July 2010 and similar standards are currently in effect in other air districts. Staff will work with manufacturers on the 2012 requirement to analyze and estimate formaldehyde emissions. He added that the District will also develop a compliance advisory, notifying approximately 250 facilities of the proposed requirements.

Directors questioned cost effectiveness of the industry's approximate 1.48 tons per day of emissions which will transition into a 30% reduction. Mr. Broadbent explained that the District needs to make progress in achieving the federal and state ambient air quality standards. The average cost effectiveness is about \$15,000 per ton and is within the range. In response to the percentages of businesses switching to water-based products, profitability and coating operation locations, Mr. Belik commented that there are exempt solvents and other technologies to reach VOC levels.

Discussion by Directors followed regarding reduction of VOC limits by 50% for high solid stains and concerns that such reductions may trigger higher emissions levels. Mr. Belik said there are many types of VOCs in organic compounds; however, emission levels will be reduced. Mr. Broadbent reiterated that the proposed limits, which will become effective July 1, 2010, are based on limits already in effect in the South Coast and San Joaquin air districts.

The term, "outdoor" speakers, was discussed and Directors requested it be removed from any reference in the rule. Mr. Belik provided the historical background on speakers and agreed to remove the term in the final rule. Directors then discussed the comment and response process and confirmed that CARB provided a comment letter but does not typically provide a formal response.

Chairperson Torliatt opened the public hearing at 10:29 a.m.

Public Comments:

Toomas Baunis, President  
Chemical Coating Supply, Inc.  
3886 Industrial Way  
Benicia, CA 94510

Requested removing all formaldehyde emitting products from the general wood finishing products category; restrict the use of formaldehyde in the custom wood finishing category by establishing that no less than 5500 gallons of material can produce 32 pounds of formaldehyde; and remove reactive technology from the regulation.

Madelyn Harding  
Sherwin-Williams Company  
101 W. Prospect Avenue  
Cleveland, OH 44115

Concerns: 1) Water tends to have a problem disrupting the grain; she asked that the low-Solids stain, toner and wash coat category be increased to 240 g/l or delay implementation for an extra year; and 2) potential formaldehyde emissions from coatings is a result of a chemical reaction, which is temperature and humidity dependent; she asked staff to convene meetings with coating and resin manufacturers to arrive at a consistent policy.

David Darling  
Nat'l Paint and Coatings Assoc.  
1500 Rhode Island Avenue, NW  
Washington, DC 20005

Said emissions estimates cannot be determined, as variations occur from moisture content, humidity, temperature, application timing and where the products are actually coated. He requested deleting the formaldehyde requirement from the Rule and asked that staff work together the chemical and coating manufacturers to arrive at data for the future.

Chairperson Torliatt closed the Public Hearing at 10:38 a.m.

Committee/Staff Discussion:

Directors and staff discussed comments of speakers, staff responses and further modeling work to quantify emissions relating to formaldehyde. Director Gioia remarked that the word "outdoor" appears in the staff report and confirmed with staff that it was not contained in the Rule. Mr. Broadbent restated that California manufacturers are currently complying with limits and coatings available to

meet the 120 g/l. Over the next six months to a year staff will develop compliance advisories, will meet with companies, and conduct testing on low-VOC products.

**Motion:** Director Haggerty made a motion to adopt the resolution. Director Brown seconded the motion.

Directors supported amendments but remarked on lost jobs and relocation of businesses out of California, and suggested a survey be done to assess impacts. Chairperson Torliatt acknowledged impacts and asked that companies instead make use of the amendments as a marketing tool—to highlight their manufacturing of more environmentally-friendly products for the Bay Area.

Directors discussed possibly deferring the action and amending the low-solids coating level to from 120 g/l to 240 g/l. Mr. Broadbent recommended the Board adopt the proposed limits, direct staff to conduct an implementation workshop with facility representatives, develop a monitoring protocol about available coatings, and schedule an update for the Stationary Source Committee.

**Board Action:** Director Haggerty made a motion to adopt the Resolution approving proposed amendments to Regulation 8, Rule 32: Wood Products Coatings; Manual of Procedures, Volume 1, Number 6: Emissions Averaging Procedure, and Adopt a CEQA Negative Declaration; Director Brown seconded the motion; carried unanimously by the following vote: (14-0-8)

AYES: Brown, Daly, Garner, Gioia, Groom, Haggerty, Hosterman, Klatt, Miley, Ross, Shimansky, Spering, Uilkema and Torliatt

NOTES: None

ABSENT: Bates, Dunnigan, Kishimoto, Kniss, Mar, Wagenknecht, Yeager and Zane.

**Adopted Resolution No. 2009-10; A Resolution of the Board of Directors of the Bay Area Air Quality Management District Amending District Regulation 8, Rule 32: Wood Products Coatings and District Manual of Procedures, Volume 1, Procedure No. 6: Emissions Averaging Procedure; and Adopting a CEQA Negative Declaration for the Project**

**CLOSED SESSION:**

The Board of Directors adjourned to Closed Session at 11:02 a.m.

**10. Conference with Legal Counsel – Existing Litigation**

*Pursuant to Government Code Section 54956.9(a), a need exists to meet in closed session with legal counsel to consider the following cases:*

1. *Chevron Products Company, et al. v. Communities for a Better Environment, et al., California Court of Appeals, 1<sup>st</sup> Dist., Case No. A125531*
2. *Richard M. Peekema v. Bay Area AQMD, United States District Court, N.D. Cal., Case No. C09 03283 RS*

**OPEN SESSION:**

The Board of Directors reconvened in Open Session at 11:08 a.m.; there was no reportable action taken in Closed Session.

## **OTHER BUSINESS:**

### **11. Report of Executive Officer/APCO:**

- Presented Summary of 2009 Ozone Season through August 4, 2009 - Between June 29 and August 4, there were 2 days with a 1-hour excess, both in Livermore, and no national exceedances;
- The State budget will affect the Air District by an 8% reduction in property tax revenues; update to be presented at the September Budget & Finance Committee meeting;
- 300 truck retrofits have been installed to date at the Port of Oakland with a goal of 800 retrofits by the end of the year, as well as another 200-300 truck replacements;
- District employee, Christine Whiting recently passed away; condolences from the Board and District have been sent to the family;
- Mr. Broadbent introduced James Goldstein, Executive Officer, California Air Resources Board (CARB).

James Goldstein, Executive Officer, CARB, thanked the Board for their on-going partnership, leadership, the truck retrofit work at the Port of Oakland, and provided the following update:

- CARB adopted the low carbon fuel standard in April;
- CARB adopted a mandatory reporting rule and are working on a fee Rule for all state agencies involved in the implementation of AB 32;
- SB 375 was signed into law last year and their Regional Transportation Advisory Committee is meeting now to evaluate methodologies to set GHG targets for 18 regions, which will be brought to their Board later this year;
- CARB is also starting the process for cap and trade rule making;
- CARB has been following key events in Washington, D.C.

**12. Chairperson's Report:** Chairperson Torliatt reported that the regularly scheduled Board of Directors meetings of August 19 and September 2 are canceled; the next Board of Directors meeting will be held September 16, 2009.

**13. Time and Place of Next Meeting:** Regular Meeting - Wednesday, September 16, 2009  
939 Ellis Street, San Francisco, CA 94109

**14. Adjournment:** Meeting adjourned at 11:15 a.m.

*/s/ Lisa Harper*

Lisa Harper  
Clerk of the Boards