

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

Board of Directors' Regular Meeting  
September 16, 2009

### **APPROVED MINUTES**

**CALL TO ORDER:** Chairperson Pamela Torliatt called the meeting to order at 9:51 a.m.

Roll Call: Chairperson Pamela Torliatt; Vice Chairperson Brad Wagenknecht, Secretary Tom Bates; and Directors Harold Brown, Chris Daly, Dan Dunnigan, Susan Garner, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Liz Kniss, Eric Mar, Nate Miley, Mark Ross, Gayle B. Uilkema, Ken Yeager and Shirlee Zane

Absent: Directors Yoriko Kishimoto, Carol Klatt and James Spring

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

Chairperson Torliatt announced that Director Michael Shimansky had passed away yesterday, after having been hospitalized in San Diego since August 17, 2009. Director Shimansky served as Council Member and three-time Mayor with the Town of Danville since 1989 and an active member on the Air District Board since his appointment in June of 2005. Board Members will be informed as to funeral arrangements as additional information becomes available and she asked for a moment of silence in honor of Director Shimansky.

#### **Public Comments:**

Clinton Brownley, Intern with the City of Cupertino's City Manager's Office, acknowledged and thanked the Board of Directors and Advisory Council for their work in improving air quality in the region and for GHG reductions in the transportation sector.

#### **Board Member Comments:**

Director Brown thanked Deputy APCO Jeff McKay and Enforcement Director Kelly Wee in helping him provide a response to his concerned constituents.

Director Miley reminded Board Members and the public of a Community Forum and panel discussion; "Repairing California", hosted by the Alameda County Board of Supervisors in the Oakland Supervisors' Board Chambers, and he encouraged other cities and counties to hold similar forums.

Director Zane thanked Chairperson Torliatt for meeting with John Webley, an entrepreneur in the telecom industry, who has the patent for a solar air conditioner geared to reduce energy costs by 80%. Mr. Webley is active in forming relationships in the Bay Area and statewide, and Director Zane encouraged the District to lend support.

**CONSENT CALENDAR (Items 1-4):**

- 1. Approval of Minutes of August 5, 2009 Regular Meeting;**
- 2. Communications;**
- 3. District Personnel on Out-of-State Business Travel;**
- 4. Notice of Proposed Amendments to the Air District's Administrative Code Division I- Operating Policies and Procedures of the Board of Directors, Section 7: Advisory Council.**

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

**COMMITTEE REPORTS AND RECOMMENDATIONS:**

**5. Climate Protection Committee Meeting**

September 10, 2009

Report given by Vice Chairperson T. Bates

The Climate Protection Committee met on Thursday, September 10, 2009 and approved the Climate Protection Committee minutes of May 28, 2009.

The Committee received an update on the development of a climate protection best practices web portal that went live on September 1<sup>st</sup>. The portal was developed in collaboration with the Institute for Local Governments (ILG) with a goal of helping local governments find and implement best practices to reduce GHG emissions, and the site can be found at [www.ca-ilg.org/SFBayClimate](http://www.ca-ilg.org/SFBayClimate).

The Committee was presented with samples of site content, customized search capabilities, and shared source pages. Next steps include outreach to local governments, providing targeted outreach to non-government organizations and planning consultants, and further development and update of site content.

The Committee then received an update on the revisions to the Air District's CEQA Guidelines and the inclusion of thresholds of significance for GHG emissions. The public draft CEQA Guidelines report was released Friday, September 4, 2009 and objectives of the guidelines are to:

- Provide guidance to local lead agencies on air quality analyses in CEQA documents;
- Assist in attainment of state and federal standards;
- Protect public health, reduce emissions and support transit-oriented, smart growth and infill development.

The Committee discussed recommended new and revised thresholds at the Project and Plan Levels, as well as reasons for arriving at thresholds. Committee Members requested an additional workshop be scheduled in Santa Clara County and asked that guidelines address the development of megamansions, which was not specifically called out in the document. Next steps include continuation of workshops, a proposal to bring significance thresholds to the Board of Directors in the fall of 2009, staff to continue providing support to lead agencies, and review and comment on CEQA documents. The next meeting of the Climate Protection Committee is scheduled for October 8, 2009.

**Board Action:** Secretary Bates made a motion to approve the report of the Climate Protection Committee; Director Garner seconded the motion; which carried unanimously.

## **6. Budget and Finance Committee Meeting**

September 16, 2009

Report given by Chairperson C. Daly

The Budget and Finance Committee met just prior to the Board of Directors meeting today and approved the minutes of June 1, 2009.

The Committee received the financial report for the fourth quarter for Fiscal Year 2008/2009. The Committee then received a breakdown of current budget revenue and expenditures, fiscal challenges and responses. It is estimated there will be a total shortfall of 4.9% or \$3.2 million composed of a \$1.6 million property tax “take-away” and \$1.6 million in grant revenues not realized. In response, the District will maintain its vacancies, which are estimated to provide \$1.3 million in reduced costs, defer building capital upgrades by \$300,000, and will either reduce budgeted services and supplies by \$1.6 million, or else securitize the 8% property tax decrease. The Committee requested additional information on the identification of the reductions in service and supplies and also on the reduced workload associated with the goods movement funding.

The Committee then received an overview of the Marine Highway Project at the Port of Oakland and was informed of the previous Board action to allocate funding for the project and of the referral by the Board of Directors to the Budget and Finance Committee for the transfer of funds. Following the recommendation of the Board at its August 5, 2009 meeting, the Committee recommends the Board approve the transfer of \$750,000 from the Reserve for Economic Uncertainties to the fiscal year 2009/2010 budget.

The Committee then discussed the Air District’s development of improved process controls for grants administration. These controls were implemented for the Carl Moyer Program and have since been applied to current Transportation Fund for Clean Air Program projects.

The Committee recommends Board of Directors’ approval to move \$200,000 from the Undesignated Reserve into the FY 2009/2010 budget and to authorize the Executive Officer/APCO to solicit bids and execute agreements to review the historical TFCA program projects and ensure compliance with current documentation standards, and for the selection of bids to return to the Budget and Finance Committee.

The next meeting of the Budget and Finance Committee is at the call of the Chair.

Motion: Director Daly made a motion to approve the report and recommendations of the Budget and Finance Committee, as amended, to hold a separate, roll call vote on the Marine Highway Project; Director Wagenknecht seconded the motion.

Director Uilkema clarified with staff that the District has approximately \$20 million in reserves.

**Board Action:** Director Daly made a motion to approve the report and recommendations of the Budget and Finance Committee, as follows, and hold a separate roll call vote on transfer of funds for the Marine Highway Project: Approve moving \$200,000 from the Undesignated Reserve into the FY 2009/2010 budget and to authorize the Executive Officer/APCO to solicit bids and execute agreements to review the historical TFCA program projects and ensure compliance with current

documentation standards, and for the selection of bids to return to the Budget and Finance Committee; Director Wagenknecht seconded the motion, which carried unanimously.

Secretary Bates briefly described and recognized benefits of the Marine Highway Project. Director Garner asked to hear Director Daly's dissenting argument. Director Daly said his argument is based on him not having enough information that the reduction in diesel emissions in and around the Port of Oakland and the Bay Area would be worth the investment. He also believed that the project may increase the goods movement through the Ports of Sacramento and Oakland either through increased shipping or displacement from routes through Seattle or Los Angeles.

**Board Action:** Vice Chairperson Wagenknecht made a motion to approve the transfer of \$750,000 from the Reserve for Economic Uncertainties to the Fiscal Year 2009/2010 budget for the Marine Highway Project; Secretary Bates seconded the motion; which carried by the following roll call vote (15-1-1-4) Ayes: Bates, Brown, Dunnigan, Gioia, Groom, Haggerty, Hosterman, Mar, Miley, Ross, Uilkema, Wagenknecht, Yeager, Zane and Torliatt; Noes: Daly; Abstain: Garner; Absent: Kishimoto, Klatt, Kniss and Sperring.

## **PRESENTATIONS:**

### **7. Update on Preparation of the Bay Area 2009 Clean Air Plan**

David Burch, Principal Planner, provided an update on the Bay Area 2009 Clean Air Plan, stating that it will update the 2005 Ozone Strategy. The plan's purpose is to improve air quality, protect public health and protect the climate and ecosystems. He discussed the plan's holistic approach, conceptual groundwork, benefits of multi-pollutant planning and evaluation, and the broader objectives to identify emerging challenges and opportunities, help define where to focus the District's efforts and helps to better integrate land use, transportation and air quality planning and demonstrate leadership.

Mr. Burch said extensive public outreach was conducted, as well as coordination with regional agency partners, and progress to date includes documentation of control measure review process, development of the MPEM and the Draft Control Strategy. He provided a hand-out and described the 57 control measures contained in the Control Strategy, along with their benefits. Next steps will be for staff to consider comments submitted, issue the Draft Clean Air Plan and DEIR by the end of October, issue a Draft Socio-Economic Analysis, and bring the final plan to the Board of Directors for consideration in December 2009. Mr. Burch voiced broad support for the multi-pollutant concept and said planning for the plan presents such challenges as where to draw the line, finding emission reductions to match Clean Air Plan goals, and securing resources to implement the plan.

### **Chairperson Excused**

Chairperson Torliatt turned over the meeting at 10:30 a.m. to Vice Chairperson Wagenknecht, who chaired the remainder of the meeting.

Vice Chairperson Wagenknecht questioned the definition of VOC emitting trees. Mr. Burch said there are certain species that emit biogenic VOC's such as Eucalyptus and Liquid Amber which are high emitters and trees that are low emitters. Those that do not emit a lot of VOC's should be encouraged for planting.

Director Haggerty referred to slides 11 and 12, stating that he receives complaints about asphalt plants in his district. He questioned why it was not included in stationary source measures. Dan Belik said

there are two measures which could affect asphalt plants; one to control NOx emissions from dryers, ovens and kilns which would include asphalt plants, and complaints are most often received from the particulate matter and odor. Staff will begin looking at particulate matter regulations to reduce the allowable emissions, noting that the regulation has not been updated in decades.

Director Hosterman suggested staff keep moving ahead and be aggressive as possible, and when the Board actually implements the policy, it can then draw the line.

Director Ross specifically asked what would be done to the local land use, impact measures and air quality monitoring. Mr. Burch discussed the network of 28 air quality monitors around the region designed to measure air quality levels. For pollutants like toxics and PM, there is considerable localized variation. They have heard and acknowledge the need from impacted communities for more monitoring and resources are needed. Vice Chairperson Wagenknecht especially noted the importance of monitors' proximity to schools.

Director Zane echoed the issue of asphalt plants in her community. She asked Mr. Burch to speak more about the cumulative risk in LUM5 in terms of land use because she said it has a lot to do with asphalt plants, given their close proximity to homes, schools, and resorts. She also questioned cancer thresholds, as there has been criticism that the thresholds do not keep up with the latest research in terms of environmental illness.

Mr. Broadbent said the District is simultaneously working on a proposed change to its Toxics New Source Review Rule that would lower the threshold from 1 in a million to .5 in a million for new or modified permitted pieces of equipment. As part of the proposal, cumulative risk is also proposed to be tracked in the Bay Area. He said the new rule will be before the Board for consideration in the December/January timeframe.

Director Gioia voiced the need for discussion on the issue of buffer zones of development and industry. Infill development is often needed and located on sites, which is next to or nearby industry. He said there are objectives of having buffers for public health purposes and the objective of how to get infill development that achieves more dense development, which must be balanced. Mr. Broadbent said this has been raised with regional partners and more discussion should occur at the JPC.

Secretary Bates complimented staff for update of the Clean Air Plan, agreed the work is needed and said the District is one of the few in the U.S. who is pushing the envelope.

Vice Chairperson Wagenknecht agreed that the Clean Air Plan will break new ground and he challenged staff to be as large as it can in the outset, with the Board then narrowing it down.

## **8. Report on a Pilot Business Incentive for Industry Compliance Schools**

Barbara Coler, Air Quality Program Manager, introduced the Pilot Program, said the goals of the program are to provide compliance assistance for small business sectors, provide economic incentives for environmental education, with no reduction in environmental protection, and resulting in benefits for air quality and public health. The path used for the program is the District-run Industry Compliance Schools. She discussed benefits of the program, results that provide better understanding of regulations, higher compliance rates and improved air quality and public health.

Ms. Coler said the program will be for auto body shops and mobile coaters, are regulated under Regulation 8, Rule 45, and amended in December 2008. Because the operations are mobile, they are more difficult to inspect and verify compliance. The amended regulation requires them to register annually with the District, maintain recordkeeping and client-schedule lists, and lower VOC limits. The pilot program will include a \$50 discount on the initial registration fee of \$100 and the operators must attend the entire school course and register on-line.

Next steps are to hold schools in October, evaluate pilot effectiveness, with the potential to expand program for small business sectors subject to registration requirements, and staff will evaluate the program's effectiveness.

Directors supported the value of the educational component, confirmed that results are able to be measured, the District will see enhanced benefits in terms of compliance, registration will begin October 1<sup>st</sup>, and follow-up information will be presented to the Stationary Source Committee in the first quarter.

### **CLOSED SESSION**

The Board of Directors adjourned to Closed Session at 10:51 a.m.

#### **9. 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 case(s):*

1. **Communities for a Better Environment, et al. v. City of Richmond (Chevron Products Company, Real Party in Interest)**, California Court of Appeals, 1<sup>st</sup> Dist., Case No. A125618
2. **Richard M. Peekema v. Bay Area AQMD**, United States District Court, N.D. Cal., Case No. C09 03283 RS

#### **10. Conference with Legal Counsel – Potential Litigation**

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

1. **Tort Claim of Cheryl Yancey against the Bay Area AQMD** (Originally received 5/15/2009, amended July 15, 2009, and August 3, 2009)

### **OPEN SESSION**

The Board of Directors reconvened in Open Session at 11:02 p.m. District Counsel Brian Bunger stated that there was no reportable action taken in Closed Session on Item 9, and the Board denied the Tort Claim of Cheryl Yancey against the District in the amount of \$19,140 under Item 10.

### **OTHER BUSINESS:**

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

Mr. Broadbent presented a summary of the 2009 Ozone Season, stating there were 6 exceedances and 7 Spare the Air Days called.

He reported on the Port of Oakland Truck Emissions Reduction Project, stating that there are 1,300 trucks that need to be addressed. As of September 15<sup>th</sup> staff has issued 615 retrofit contracts; however, 1,175 applications have been received. Staff is in the process of processing the applications and feels confident in being able to issue contracts for those 1,300 trucks (200 new trucks replaced and 1,100 retrofitted trucks). He said the Port OT411 Center is also still in operation and is used for outreach and information.

Directors confirmed with Mr. Broadbent that the majority of truck drivers availed themselves of a total of \$22 million in funding for retrofits, and future TFCA monies will become available but it will not pay for as much of the retrofit.

**12. Chairperson's Report:** None

**13. Time and Place of Next Meeting:** Regular Meeting - Wednesday, October 7, 2009 - 939 Ellis Street, San Francisco, CA 94109

**14. Adjournment:** The Board of Directors Meeting adjourned at 11:09 a.m. in memory of Director Michael Shimansky.

*/s/ Lisa Harper*  
Lisa Harper  
Clerk of the Boards