

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

Board of Directors' Regular Meeting
November 4, 2009

APPROVED MINUTES

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

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

Absent: Directors Dan Dunnigan, Yoriko Kishimoto and Liz Kniss

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

Public Comments: Gordan Mar, Bay Area Environmental Health Collaborative (BAEHC), cited submission of written comments, opposed removal of key equity provisions to CEQA guidelines one day prior to the end of public comment period, and urged the Board to reinstate original recommendations.

Marie Harrison, GreenAction, voiced opposition to reduced thresholds, requested the Air District put people's health first and not allow industry to influence the decision.

Ray Davis, spoke in opposition to the Lehigh Cement Plant's permit renewal, citing health and safety concerns and the plant's pollution of over one million tons of cement plant dust.

Dr. Henry Clark, Executive Director, West County Toxics Coalition, requested the Board adopt policies to reduce and eliminate negative impacts and asked to approve "No Project" options in addressing EIR mitigation.

Bruce Ramsay, spoke of a friend with lung cancer who had passed away and who lived downwind from someone who regularly burned wood, voiced support of current and more stringent regulations and enforcement, and requested the Air District monitor and measure locally instead of countywide.

Patricia Weisselberg, Families for Clean Air, spoke of the need to enforce wood smoke, suggested changing the advisory on the District's website for non-Spare the Air days-"Okay to Burn" and asked it to read, "No Excessive Smoke

Allowed.” She also asked that District inspection staff enforce regularly on evenings and weekends.

Joel Ervice, Regional Asthma Management and Prevention, BAEHC, spoke of the Board’s work to address cumulative impacts of mobile and stationary sources, discussed CEQA guidelines proposed in September which had a tiered approach with added protective thresholds, and his disappointment to learn of its removal a day before the public comment period ended. He asked the Board to reinstate the tiered approach.

Ken Kloc, BAEHC, echoed concerns of speakers, requested reinstatement of tiered approach in the CEQA guidelines, and asked for stronger measures over time.

Teresa Fau Mui, Mothers Committee and resident of Bay View Hunter’s Point, asked the Board to consider humans first and those who are suffering.

Andy Katz, Breathe California, Clean Air Task Force, BAEHC, spoke of pollution, asthma and cardiovascular risks which he said are severe in the Bay Area. He asked that environmental justice groups have a chance to comment on the revised proposal, and requested that staff present the analysis which led to the revision.

Board Member Comments:

Chairperson Torliatt stated that the District will hold their next meeting on November 18, 2009 to deliberate on the CEQA Guidelines. The Board will be provided with an analysis, options, and staff recommendations and a presentation on the Wood Smoke Program would also be given. She believed staff has done a lot to heighten awareness of the matter, has reviewed lessons from the year prior, and is crafting an enhanced program.

CONSENT CALENDAR (Items 1-9):

Director Daly requested removing Consent Calendar Item 9 and asked for discussion regarding the process by which staff used to change their recommendations.

Chairperson Torliatt noted a minor edit to page 8 of the October 7, 2009 Minutes.

1. Approval of Minutes of October 7, 2009 Regular Meeting;
2. Communications;
3. District Personnel on Out-of-State Business Travel;
4. Quarterly Report of the Executive Office Activities;
5. Quarterly Report of Air Resources Board Representative – Honorable Ken Yeager;
6. Consider Adjusting the Air District’s Medical Contribution Declared to California Public Employee’s Retirement System (CalPERS): **Adopted Resolution 2009-12: Fixing the Employer’s Contribution Under Public Employees’ Medical and Hospital Care Act.**

7. Notice of Proposed Amendments to the Air District's Administrative Code Division III – Personnel Policies and Procedures – Section 3 adding a new subsection 3.12, entitled Fraud, Misconduct, and Dishonesty in the Workplace;
8. Approve an Administrative Instruction regarding Capital Assets and Depreciation Policy

Board Action: Vice Chairperson Wagenknecht made a motion to approve Consent Calendar Items 1, as amended, and Consent Calendar Items 2, 3, 4, 5, 6, 7 and 8; Director Brown seconded the motion; carried unanimously without opposition.

9. Set a Public Hearing for November 18, 2009 to receive testimony on proposed amendments to the District's California Environmental Quality Act (CEQA) Thresholds of Significance. The hearing will be continued on December 2, 2009 at which time adoption of the proposed amendments will be considered.

Executive Officer/APCO Jack Broadbent explained that the Consent Calendar item sets the public hearing for CEQA guidelines. The Air District has been working extensively to prepare the guidelines for local city/county decision-making on land use. The guidelines have not been updated for years; proposed is new GHG thresholds, lowering criteria smog contaminant thresholds, and addressing the local toxics impacts in and around the Bay Area.

Mr. Broadbent also noted that staff has been engaged in modifying the District's Toxics New Source Review Program, which pertains to all stationary source permitting and the toxics impacts associated with it. This rule will be brought before the Board of Directors on December 16, 2009 after being discussed at the Stationary Source Committee meeting on November 16, 2009. He stated that staff was also meeting with BAEHC on November 13, 2009 to discuss concerns.

Director Daly confirmed with Mr. Broadbent and Chairperson Torliatt that the recommendation and reasons why the District is recommending changes will be addressed and discussed prior to the public hearing. Mr. Broadbent explained that the State has come out with methodologies on how risk is calculated which raises the relative risk, thus the need for more stringent standards. He agreed to review details of the process, what the State's new methodology is, and the revised recommendation.

Director Zane commented that the North Bay Air District had adopted some strict regulations in terms of stationary engines for the agricultural industry, which she said also affect the Bay Area AQMD.

Director Ross believed it would be helpful for staff to explain what the State Office of Environmental Hazard Assessment's role is and why the Air District would try to align itself with those guidelines.

Director Daly requested staff provide the original September report with an explanation and justification of why the previous recommendation was made, and Mr. Broadbent agreed to present this at the Stationary Source Committee meeting.

Board Action: Director Uilkema made a motion to approve Consent Calendar Item 9; Director Ross seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

10. Continued discussion of the Executive Committee Meeting of September 24, 2009 to amend the Air District's Administrative Code regarding Board of Director's Officers' term of Office

Report given by Chairperson P. Torliatt

The Executive Committee met on Thursday, September 24, 2009 and approved the minutes of July 29, 2009. The report and recommendation of the Committee was presented to the Board of Directors at the October 7, 2009 meeting and was continued by the Chair to this meeting.

The Committee continued its discussion to consider amending the Administrative Code Division I, Section 2.1, to re-establish a two-year term of office for Board Officers. After lengthy discussion, the Committee, by a vote of 4-2, recommended that the Board of Directors establish a two-year term for the Chairperson, commencing with the Vice Chairperson's term in 2010.

Chairperson Torliatt made a motion to approve the recommendation; Director Bates seconded the motion.

Director Uilkema voiced her preference for a model where all board members and jurisdictions have an opportunity to advance forward, spoke of the leadership opportunity, noted that Boards of Supervisors and City Councils change Chairpersons every year, and looks at the agenda as the collective Board's agenda.

Director Hosterman echoed comments and said Section 2.7 talks about Officer Rotation in a manner to ensure participation from a wide representation of the membership. She believed it was good for the Board and communities to have varied representation every year and supported a one-year Officer term.

Director Garner supported comments, questioned and cited those Board Members with and without term limits, said her comments in no way reflect those currently on the Board, and supported a one-year Officer term.

Director Haggerty did not disagree with many comments, thinks that a two-year term may be difficult for the Executive Director and that his Board of Supervisors have two-year Chairs. He supported the Executive Committee's recommendation, believes that the Chair's role is to run the meetings and reiterated that the Executive Officer/APCO works for the entire Board and not just the Chair.

Vice Chairperson Wagenknecht believed there was relevance that other regional bodies are two year terms and supported it working in a Board situation. He believes that the Chair is the person the Executive Officer checks in with every day, which adds to the relationship and he also thinks that moving things forward on a regional basis would be easier to follow through to completion. While he understands arguments, he supported the Committee's recommendation.

Secretary Bates cited the importance of continuity, said he is opposed to term limits, and supported the Committee's recommendation.

Director Yeager said he would not support the motion, stating that Santa Clara County and many of its cities have term limits which limit the time Directors can serve. He supported a one-year Officer term

as sufficient and believes that allowing more people in a leadership role also strengthens the perception of the Board.

Director Ross said he personally benefitted from the one year term and had it been two years, he would still be the Chair. He cited the time it takes in educating members and getting projects completed. While he understands the term limit argument, City Council members must also be appointed by their City Selection Committees and therefore, he supported the Committee's recommendation.

Board Action: Chairperson Torliatt made a motion to approve the report and recommendation of the Executive Committee; Director Bates seconded the motion; which failed by the following roll call vote (8-9-1-3): Ayes: Bates, Daly, Haggerty, Mar, Ross, Wagenknecht, Zane, Torliatt; Noes: Brown, Garner, Gioia, Groom, Hosterman, Klatt, Spering, Uilkema, and Yeager. Abstain: Miley. Absent: Dunnigan, Kishimoto and Kniss

11. Climate Protection Committee Meeting

October 8, 2009

Report given by Vice Chairperson T. Bates

The Climate Protection Committee met on Thursday, October 8, 2009 and approved the Climate Protection Committee minutes of September 10, 2009.

The Committee received a breakdown of the 2007 transportation sector emissions and an overview of electric vehicle technologies, which included neighborhood electric vehicles, hybrid electric vehicles and plug-in hybrids. Committee members discussed pros and cons of electric vehicles, master planning for infrastructure needs, the diversity of charging mechanisms, building retrofits, and requested that focus be placed on what is the District's best investment for technology and infrastructure in support of electric vehicles.

The Committee then received an update on the 2009 Clean Air Plan, with an emphasis on measures to reduce greenhouse gases emissions. The Committee reviewed benefits of a multi-pollutant evaluation methodology which helps analyze control measures, and reviewed examples of the five different categories in the Control Strategy. The draft 2009 Clean Air Plan will be out for review later this year. CEQA and socio-economic analysis will be done and will be presented to the Board of Directors early 2010.

The next meeting of the Climate Protection Committee is Thursday, December 10, 2009 at 9:30 a.m.

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

12. Public Outreach Committee Meeting

October 15, 2009

Report given by Chairperson M. Ross

The Public Outreach Committee met, without a quorum, on Thursday, October 15, 2009, and deferred the minutes of May 7, 2009.

The Committee received an overview of the Community Grant Program awards which allotted grants in three different categories: Outreach and Education; Implementing Behavior Changes; and Respiratory Health Improvement. A total of 57 applications were received which represented \$2.2 million in requests. The Committee reviewed the selection process, scoring criteria, geographic locations served, and requested that the entire list of applications be provided by their dollar amounts, to identify whether they are fully or partially funded, and for them to be listed in priority order. The Committee also requested that five (5) additional projects be discussed at an upcoming Budget and Finance Committee meeting for consideration of funding.

The Committee received a Report on the 2009 Summer Season Spare the Air Campaign. The campaign lasted from May 11th through October 2nd with the slogan, “*Any Ride is Worth Sharing*”. The Committee discussed campaign elements, targeted outreach, advertisements, website refinements, and 2009 highlights which focused on carpooling, taking transit and behaviors. A report on the feedback received from focus groups will be presented at the next Public Outreach Committee meeting.

The Committee then received a presentation on the 2009-2010 Winter Spare the Air Communication Strategy and discussed the doubling of communication alert sign-ups, updated program elements, offender penalties for wood burning, and the development of an exemption guidance document. A presentation of the 2009-2010 Wood Smoke Reduction Program will be presented at today’s Board meeting.

The Committee then considered renewal of a contract with Community Focus for facilitation of Air District Resource Teams in the amount of \$200,000. The Committee confirmed that a full RFP process had been undertaken, that the current consultant’s proposal was the only response received, and that Community Focus has been very successful in their facilitation efforts. It was unanimously recommended by those Committee Members in attendance to recommend Board of Directors’ approval of a contract with Community Focus for facilitation of Air District Resource Teams in the amount of \$200,000.

The next meeting of the Public Outreach Committee is scheduled for Friday, November 13, 2009 at 9:30 a.m.

Board Action: Director Ross made a motion to approve the report and recommendations of the Public Outreach Committee; Director Wagenknecht seconded the motion; which carried unanimously.

13. Stationary Source Committee Meeting

October 19, 2009

Report given by Chairperson J. Gioia

The Committee met on Monday, October 19, 2009 and approved the minutes of July 13, 2009.

The Committee received a status report on the Flare Minimization Plan (FMP) Second Annual Updates under Regulation 12, Rule 12: Flares at Petroleum Refineries. The Plan mandates that refineries update their FMP annually to incorporate any new prevention measures. The Committee received reports of progress in the reduction of frequency and magnitude of flaring and noted that regulations serve to function as a continuous improvement process.

The Committee then received an update on Bay Area emission trends, the distribution of 2005 annual average emissions, and all sources of emission trends from 1980-2010 including stationary source, refinery, power plants and cogeneration. The Committee reviewed trends in air quality monitoring data and discussed emission reductions as a result of adopted control measures from 1992-2008. Public comment was received regarding refinery emissions reductions, cleaner burning fuels, the Air District's collaboration in adoption of rules, and a request for the Air District to address pollution from the Lehigh Cement Plant.

The next meeting of the Committee is scheduled for Monday, November 16, 2009 at 9:30 a.m.

Board Action: Director Gioia made a motion to approve the report of the Stationary Source Committee; Director Klatt seconded the motion; which carried unanimously.

14. Ad Hoc Committee on Port Emissions Meeting

October 26, 2009

Report given by Chairperson N. Miley

The Ad Hoc Committee on Port Emissions met on Monday, October 26, 2009 and approved the minutes of July 16, 2009.

The Committee received an update on the Emission Reduction Strategy for the Port of Oakland and discussed the Joint Work Program established between the Port of Oakland and the Air District to address near term projects to reduce emissions, measures to track progress, specific emission reduction projects, and compliance assistance and enforcement. Mr. Richard Sinkoff attended the meeting and briefly discussed the Port's update of its 2005 emissions inventory, development of the Joint Work Program and the group's active and positive working relationship. The final draft Joint Work Program will go to the Port Maritime Committee on November 4, 2009 and to the Port Board of Commissioners on November 17, 2009.

The Committee received an update on the Drayage Truck Retrofit Program at the Port of Oakland, and discussed a timeline of activities, program successes to date, and the program's goal of achieving 1,500 compliant trucks at the Port of Oakland by January 1, 2010. The Committee reviewed current issues and recognized the unprecedented \$22 million in funding for the retrofit program. Committee members voiced their desire to assist the remaining 800 non-retrofitted truckers, and the Chair agreed to facilitate a future meeting to discuss the matter.

The Committee then received a report on the Compliance Plan for Enforcement of mobile source regulations. The goal of the plan is to reduce the diesel particulate matter health risk in CARE impacted areas, with special focus on the Port of Oakland and West Oakland through enforcement activities. The Committee reviewed plan implementation which involves truck, ships, boat, equipment and locomotive regulations.

The Committee further reviewed the establishment of partnerships which led to development of the plan, and highlight that the Air District is the first in the State to enter into a comprehensive mobile source enforcement partnership agreement with CARB.

The Committee then received an overview of shore power at the Port of Oakland and discussed the California Air Resources Board's (ARB) enactment of an Air Toxics Control Measure (ATCM),

which requires vessel owners, terminals and California Ports work to reduce emissions and requires that (they) choose between two emissions reduction options by July. Facilities at the Port of Oakland have chosen to utilize grid-based shore power where 50% of the vessels visiting must be able to plug into grid-based shore power by July 2014.

The Committee reviewed costs to electrify all berths, infrastructure and funding and strongly recommended that the Board of Directors consider future use of Carl Moyer funds, for discussion to be held at the JPC, and that the Port consider working with the private sector for providing infrastructure on a lease basis.

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

Directors said they were pleased that the District and the Port of Oakland were working together and progress was being made. Mr. Broadbent noted that some of the subjects discussed at the Ad Hoc Committee on Port Emissions would be discussed at the upcoming November 5th Mobile Source Committee meeting and he noted that the MOU with CARB should also be signed, which will allow the District to enforce regulations at the Port.

Board Action: Director Miley made a motion to approve the report of the Ad Hoc Committee on Port Emissions; Director Wagenknecht seconded the motion; which carried unanimously.

15. Budget and Finance Committee Meeting

November 2, 2009

Report given by Vice Chairperson M. Ross

The Budget and Finance Committee met on November 2, 2009 and approved the minutes of September 16, 2009.

The Committee reviewed and discussed consideration for the District to participate in the Proposition 1A Securitization Program, a program authorized under ABX4 14 and ABX4 15 and instituted by California Statewide Communities Development Authority, to enable local agencies to sell their respective Proposition 1A Receivables to California Communities. Under the Securitization Program, California Communities would simultaneously purchase the Proposition 1A Receivables, issue bonds and provide each participating local agency with the cash proceeds which will equal 100% of the amount of the property tax reduction.

The Committee recommends that the Board of Directors adopt the proposed Proposition 1A Sale Resolution and Purchase and Sale Agreement, and recommends that the Board of Directors authorize the APCO and DAPCO to sign all necessary documents on behalf of the District, and adopt Resolution No. 2009-11, A Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and related documents with respect to the sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith.

The Committee received an update on itemized reductions in the Services and Supplies Budget, Grants staffing budget considerations, transfers of staffing from core programs which would have been temporarily funded from Grants Administration revenue rather than from General Fund revenue, and utilization of Enforcement employees. The Committee questioned the status of Lehman Bros.

litigation and requested that a future Closed Session be held to discuss protection of the District's interests.

The Committee then reviewed and discussed consideration for the District to create a Carbon Offset Fund, funded by the ConocoPhillips settlement in the amount of \$4,443,025, and adjustment of the Air District's FY 2009/10 Strategic Incentives Division budget, which will be used to provide grants and staff administrative costs. Examples of projects could include energy efficiency projects for public buildings, and solar, wind and renewable projects.

The Committee recommends that the Board of Directors approve the creation of a Carbon Offset Fund Program Number 311, funded by the ConocoPhillips settlement in the amount of \$4,443,025, and adjust the Air District FY 2009/10 Strategic Incentives Division budget accordingly.

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

Board Action: Director Ross made a motion to approve the report and recommendations of the Budget and Finance Committee; Director Hosterman seconded the motion; which carried unanimously.

16. Personnel Committee Meeting

November 2, 2009

Report given by Director C. Daly, on behalf of Chairperson H. Brown

The Personnel Committee meeting scheduled to be held at 9:00 a.m. today was canceled.

The next meeting of the Personnel Committee will be held on November 18, 2009 at 9:30 a.m. and thereafter, a meeting of the Personnel Committee will be held on November 23, 2009 to consider re-appointment and appointment of Advisory Council Members.

Board Action: Director Daly made a motion to approve the report of the Personnel Committee; Director Uilkema seconded the motion; which carried unanimously.

17. 2009-2010 Winter Wood Smoke Reduction Program

Director of Compliance and Enforcement, Kelly Wee, presented the report, stating that the program has been successful and the District has continued to fine-tune it. He presented peak winter PM 2.5 percentages and reviewed specific requirements of Regulation 6, Rule 3 adopted July 9, 2008. Mr. Wee recapped the 2008/2009 Winter season, and said there were 11 *Winter Spare the Air Alerts*, 13 exceedances, nearly 1,500 wood smoke complaints received, inspectors conducted patrols in high priority areas for curtailment enforcement, with 254 warning letters issued and one \$400 penalty.

Changes to the program for the 2009/2010 winter season include:

- Calling *Winter Spare the Air Alerts* at 2:00 p.m. for the next day, which takes effect at midnight and in effect for 24 hours;
- Wood smoke complaints will be mapped for patrols;
- Second offense will be charged a \$400 penalty which will increase for repeat violations;
- Issuance of an exemption guidance document

Director of Communications and Outreach, Lisa Fasano, discussed the District's public outreach program, media launch highlights, and increased advertisements on the Internet. She presented a sample video commercial, presented *Spare the Air* snuggies, and distributed web widgets which contain a host of materials that can be downloaded on agency websites.

Mr. Wee said many regulatory efforts rely on enforcement to gain compliance, and he presented staff's mapping out and patrol routes of wood smoke complaints on Google. He reviewed the burn ban exemption guidance which was issued this fall to provide additional information about under which circumstances a resident can be exempt from the burn ban in the rule. He said the "only source of heat" exemption does not apply if other forms of permanently installed heating exist in a residence. Propane heating must be used if available. Residents claiming permanently installed heat is insufficient to heat the entire residence are not exempt, and residents with broken heaters are granted a one-season exemption.

Mr. Wee concluded his report with the wood smoke message, check before you burn number, website information, news and television alerts, and email and telephone notification.

Director Comments/Questions:

Director Uilkema questioned space heaters and specific exemptions, stating that of the 18 communities in her District that indicate they burn wood, 3 of those communities indicate they do so at a rate of over 60%, and she suggested they be targeted.

Director Gioia questioned how the broken heater exemption works and voiced concern for low income families and the cost of repairs or purchase of new heaters. Mr. Wee said no economic thresholds have been set to date, but staff works with residents and their individual situations when they receive a warning letter.

Director Zane cited the tough economy, thinks media information is important, encouraged Directors to post widget information on their websites, and offered to work with staff on media exposure in Sonoma County with the Press Democrat.

Director Garner supported staff's work on the program, likes the simple language, and suggested the District pilot a communication/education program with a school in a hot spot community.

Director Ross thanked staff and thinks the program is well thought-out and executed; it is a behavioral change on a large scale and it has freedom issues that the District will overcome.

Vice Chairperson Wagenknecht thanked staff for their work and educational materials for websites, and suggested continuing the aggressive outreach so people understand wood smoke is a serious health issue.

Chairperson Torliatt referred to low income families and noted that AB 811 funding is available to homeowners in some counties.

Public Comments: Patricia Weisselberg, Families for Clean Air, suggested the message in outreach materials about the ban on excessive wood smoke be changed to read, "throughout the entire year."

CLOSED SESSION

The Board of Directors adjourned to Closed Session at 11:40 a.m.

18. 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. **Patricia Howell vs. Bay Area AQMD, et al.**, San Francisco Superior Court Case No. CGC 07 461887

OPEN SESSION

The Board of Directors reconvened in Open Session at 11:44 p.m. District Counsel Brian Bunger stated that there was no reportable action taken in Closed Session.

OTHER BUSINESS:

19. Report of Executive Officer/APCO:

Mr. Broadbent anticipated that the next two Board of Directors' meetings will be longer due to significant interest from the public on public hearing items.

Director Uilkema confirmed that the 4th Floor Conference Room is used for overflow crowds and is equipped with audiovisual and cameras, that security will be in place for the meetings, as well as bollards.

Director Zane confirmed that staff will conduct a poll for the November 18, 2009 Board meeting to ensure a quorum of Directors, given the CSAC conference on the same date.

21. Time and Place of Next Meeting: Regular Meeting - Wednesday, November 18, 2009 - 939 Ellis Street, San Francisco, CA 94109

22. Adjournment: The Board of Directors Meeting adjourned at 11:47 a.m.

Lisa Harper
Clerk of the Boards