

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

Board of Directors' Regular Meeting
November 18, 2009

APPROVED MINUTES

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

Roll Call: Chairperson Pamela Torliatt; Secretary Tom Bates; and Directors Harold Brown, Chris Daly, Dan Dunnigan, Susan Garner, Carole Groom, Scott Haggerty, Jennifer Hosterman, Yoriko Kishimoto, Carol Klatt, Nate Miley, Mark Ross, Gayle B. Uilkema, Ken Yeager

Absent: Vice Chairperson Brad Wagenknecht; Directors John Gioia, Liz Kniss, Eric Mar, James Spering and Shirlee Zane

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

Chairperson Torliatt announced protocols for the public hearing and noted that there was overflow meeting capacity in the 4th Floor Conference Room.

Public Comments:

Ray Davis, Las Gatos, spoke in opposition to the Lehigh Cement Plant's permit renewal.

Cathy Helgerson voiced concern of pollution from the Lehigh cement plant, asked that the plant be shut down, and questioned accessibility of documents on the District's website.

Barry Chang, Cupertino Councilmember, voiced opposition to the Lehigh cement plant's Title V permit renewal and requested the Air District delay issuance of the permit.

Bill Almon stated that the Air District submitted the proposed permit for Lehigh to the EPA, believed the matter was a significant public issue, and voiced concern with the process moving forward to stop the permit's issuance.

Board Member Comments:

Chairperson Torliatt requested clarification on comments, and Mr. Broadbent reported that the Title V permit for the Lehigh facility has not yet been issued. The public comment period has closed and the District's normal process is to send the permit to the EPA for comment. A decision will not be made until the first quarter of next year and the matter will be discussed again at the February Stationary Source Committee meeting. Mr. McKay confirmed that information is posted on the District's website.

CONSENT CALENDAR (Items 1-5):

Director Daly requested removal of Item 3 for discussion.

1. Approval of Minutes of November 4, 2009 Regular Meeting;
2. Set a Public Hearing for December 2, 2009 to consider adoption of proposed amendments to Regulation 8, Rule 50: Polyester Resin Operations, and the adoption of a Negative Declaration pursuant to the California Environmental Quality Act (CEQA);
3. Set Public Hearing for December 16, 2009 to Consider Proposed Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants; and Adoption of a CEQA Negative Declaration;
4. Contract with the City of Fremont Redevelopment Agency for Interchange Improvement Costs;
5. Adjust Pay Range for the Strategic Facilities Manager Classification to 148M in accordance with all other District Manager classifications

Board Action: Director Uilkema made a motion to approve Consent Calendar Items 1, 2, 4, and 5; Director Yeager seconded the motion; carried unanimously without opposition.

Director Daly reiterated his request for staff to provide the original September report with an explanation and justification of why the previous recommendation was made, and Mr. Broadbent replied that the report would be provided in the staff presentation on Item 11.

Board Action: Director Daly made a motion to approve Consent Calendar Item 3; Director Klatt seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

6. **Nominating Committee Meeting**
November 4, 2009
Chair: P. Torliatt

The Nominating Committee met on Wednesday, November 4, 2009 and approved the Nominating Committee minutes of November 5, 2008. The Committee considered the 2010 Board Officers for the 2010 Term of Office, discussed Board Member interest, rotation between supervisor and city members, diversity of representation, and knowledge and experience, and recommended the following Board Officers for 2010: Chairperson Brad Wagenknecht, Vice Chairperson Tom Bates, and Secretary John Gioia. The next meeting of the Nominating Committee is at the call of the Chair.

Board Action: Chairperson Torliatt made a motion to approve the report and recommendation of the Nominating Committee; Director Uilkema seconded the motion; which carried unanimously.

7. **Mobile Source Committee Meeting**
November 5, 2009
Report given by Chairperson S. Haggerty

The Mobile Source Committee met on Thursday, November 5, 2009 and approved the minutes of the October 5, 2009 meeting.

The Committee considered approval of Carl Moyer Program Year 11 Projects with grant awards over \$100,000. Eight (8) projects were evaluated for a total of 54 engines, with over 160 tons of lifetime emission reductions, and \$2,962,895 in total awards. The Committee recommends Board of Directors' 1) approve Carl Moyer Program Year 11 projects with proposed grant awards over \$100,000; 2) authorize the Executive Officer/APCO to execute all necessary agreements for the recommended Carl Moyer Program Year 11 projects.

The Committee then considered the extension of contracts and a request to reserve \$4.5 million in Mobile Source Incentive Funds for the Vehicle Buy Back Program. Based on an increase of two years in vehicles eligible for the program, its volume has increased by 32% this year. In order to capitalize on this success, the Committee was informed about a complimentary State Bureau of Automotive Repairs (BAR) program, staff monitoring of vehicles retired, and the necessity to extend current contracts.

The Committee recommends that the Board of Directors:

- 1) Authorize the Executive Officer/APCO to execute contract extensions for vehicle scrapping and related services with Environmental Engineering Studies, Inc and Pick-N-Pull, which will distribute, on a reimbursement basis, up to approximately \$4.5 million in Mobile Source Incentive Funds until April 1, 2010, at which time the Air District's Vehicle Buy Back (VBB) program will cease temporarily and be reactivated in the likely event that the California Bureau of Automotive Repair (BAR) program runs out of funding; and
- 2) Allocate an additional \$4.5 million in Mobile Source Incentive Funds (MSIF) to fund the VBB Program during fiscal Year 2009/2010 and increase the VBB Program FY 2009/2010 budget accordingly.

The Committee then considered proposed revisions to three Transportation Fund for Clean Air Regional Fund Projects which had previously been approved by the Board. Staff explained that ranking, scoring and cost effectiveness for the projects need to be changed due to California Air Resources Board regulations and public transit fleet rules, but that the projects continue to meet TFCA cost effectiveness criteria and have good emissions reduction potential.

The Committee recommends that the Board of Directors approve proposed revisions to three (3) Transportation Fund for Clean Air Regional Fund Projects.

The Committee then considered approval of Fiscal Year (FY) 2008/2009 Transportation Fund for Clean Air (TFCA) Expenditures and Effectiveness Report. Expenditures totaled \$7.16 million and reductions in criteria pollutant emissions over project lifetimes totaled 743 tons.

The Committee recommends that the Board of Directors approve Fiscal Year (FY) 2008/2009 Transportation Fund for Clean Air (TFCA) Expenditures and Effectiveness Report.

The Committee then considered proposed revisions to Transportation Fund for Clean Air Regional Fund policies and evaluation criteria for Fiscal Year (FY) 2009/2010, previously approved by the Board on May 6, 2009 for alternative fuel vehicle and infrastructure projects. The Committee discussed how these changes would increase funding opportunities for public entities and how the proposed revisions will streamline and simplify the application process.

The Committee recommends that the Board of Directors approve the proposed revisions for FY 2009/2010 Transportation Fund for Clean Air Regional Fund Policies and Evaluation Criteria.

The next meeting of the Mobile Source Committee is scheduled for Monday, December 7, 2009.

Public Comment:

David Head, Fleet Manager, County of Sonoma, spoke in favor of the report and recommendations of the Committee which will include local government participation for furthering electric vehicle technologies.

Board Action: Director Haggerty made a motion to approve the report and recommendations of the Mobile Source Committee; Director Ross seconded the motion; which carried unanimously.

8. Legislative Committee Meeting

November 12, 2009

Report given by Chairperson T. Bates

The Legislative Committee met on Thursday, November 12, 2009 and approved the Minutes of April 15, 2009.

The Committee received a summary of the 2009 legislative year, which was dominated by California's financial problems. Few bills with air quality benefits became law. On the other hand, all policy bills that the District opposed were also blocked from becoming law. Unfortunately, two trailer bills were passed as part of the budget deal that will be harmful to air quality. One of these delays CARB's off-road diesel regulations by several years, and the second allows Carl Moyer funds to be used to pay for agricultural equipment compliance with air quality regulations.

The Committee judged that while the District-sponsored bill to cut emissions at the Port of Oakland did not move forward (AB 1431 by Assemblymember Jerry Hill) it seems to have had a positive effect by causing the Port to take air quality issues more seriously.

The Committee discussed potential legislative proposals for a 2010 legislative agenda. Specifically, the Committee discussed and requested that staff explore several possible bills:

- Broad reforms to the smog check program;
- Include motorcycles into the smog check program;
- Making changes to air pollution laws dealing with penalties, such as including a cost of living adjustment in the penalty ceilings

The Committee also expressed interest in increasing the District's federal advocacy efforts, including potentially working with the Port of Oakland on obtaining federal funds to cut goods movement emissions. The Committee also directed staff to look at the issue of the District taking positions on ballot measures.

The next meeting of the Legislative Committee is January 14, 2010.

Board Action: Director Bates made a motion to approve the report of the Legislative Committee; Director Dunnigan seconded the motion; which carried unanimously.

9. Public Outreach Committee Meeting

November 13, 2009

Report given by Chairperson M. Ross

The Public Outreach Committee met, without a quorum, on Friday, November 13, 2009, and deferred the minutes of May 7, 2009 and October 15, 2009.

The Committee received a report on Spare the Air focus group findings which re-affirmed the need for broad-based outreach and education, highlighted the critical relationship between employer advocacy and increased carpool/rideshare activity, showcased the need to present motorists with a variety of emissions-reducing behaviors, and validated the importance of messaging.

The Committee then received an update of the Bayview Hunter's Point community dialogue meetings, which were held on July 25th and 30th, with over 80 participants. A request for a Request for Proposals (RFP) for air filtration systems in Bayview will be prepared and recruitment is underway for a Health Officer.

The Committee then received an update and tour of the newly redesigned Spare the Air website and discussed its interactive capabilities.

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

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

10. Stationary Source Committee Meeting

November 16, 2009

Report given by Vice Chairperson C. Klatt

The Committee met on Monday, November 16, 2009 and approved the minutes of October 19, 2009. The Committee received a status report on the update to the District's CEQA Guidelines and to recommend CEQA Thresholds of Significance. Proposed thresholds of significance include more stringent air quality standards, local impacts of air toxics and fine particulate matter, and address greenhouse gases. The thresholds include stronger criteria for evaluating local impacts and recommend use of more health-protective risk factors in calculating impacts, adding a new threshold for local PM 2.5 impacts, adding a new threshold for cumulative impacts and recommending preparation of local risk reduction plans to provide comprehensive, community-wide approach to reducing impacts from existing and new sources. Today, and again on December 2nd, the Board of Directors will consider thresholds of significance.

The Committee then received an update on proposed amendments to District Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants which would increase the stringency of the standards in the District's jurisdiction by incorporating revised methodologies adopted by OEHHA. The update would also require tracking of emissions in CARE communities. Comment was received from a variety of stakeholders representing business, government and environmental groups.

The Committee discussed the effective date of the proposed amendment and considered extending the effective date to more than 90 days. The Committee suggested amendments be reviewed by the Committee a year after their effective date, to review numeric “bright” line thresholds of 1,100 metric tons/year, and to also confirm the level of authority the District has in the existing source rule.

The Committee deferred discussion and status report on proposed amendments to Regulation 11, Rule 16: Perchloroethylene (PERC) and Synthetic Solvent Dry Cleaning Operations and proposed Amendments to Regulation 8, Rule 50: Polyester Resin Operations.

The next meeting of the Committee is scheduled for Monday, February 15, 2010 at 9:30 a.m.

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

PUBLIC HEARING(S)

- 11. Public Hearing 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.**

Chairperson Torliatt reviewed the public hearing protocols and confirmed with Mr. Broadbent that the public hearing would be opened, public testimony would be received, and the public hearing would be continued to December 2, 2009.

Director Hosterman cited the significance of the public hearing item, announced her anticipated absence at the December 2, 2009 Board meeting, cited the pending holiday season, and suggested the Board of Directors consider continue the matter to January. Secretary Bates and Directors Garner, Groom, Haggerty and Dunnigan voiced support for Director Hosterman’s request.

Chairperson Torliatt suggesting that staff present the item, for the Board to consider the matter after hearing from the public and discussion amongst Directors.

Executive Officer/APCO Jack Broadbent said the District takes its role seriously in quantifying air quality impacts and provided background, stating CEQA guidelines were last updated in 1999 and staff has worked extensively in the update process. The update will provide guidance on how to mitigate greenhouse gases (GHGs) from land use projects which does not exist today, and will provide guidance on toxic air contaminants and ambient air quality standards, especially tighter standards in CARE communities. He encouraged the Board of Directors to take time, be mindful that local city and county planners need guidance and to keep adoption within a reasonable amount of time. He confirmed with Directors that staff has been working with cities and counties’ community development directors.

Director of Planning and Research, Henry Hilken, presented the staff report and referred to the one-page summary dated November 2, 2009 which summarizes all of the thresholds. Regarding greenhouse gases, Mr. Hilken acknowledged that guidance is needed for local planning departments, and that as statewide guidance would be desirable. Once the California Air Resources Board (CARB)

adopts statewide guidelines, the Air District considers the thresholds as interim, and will have the ability to revise them.

GHG thresholds are based on AB 32 and Scoping Plan and incorporate threshold options, which he briefly described as: 1) plan based; 2) “bright line” of 1,100 metric tons/year; and 3) efficiency based. There is also a threshold for stationary sources of 10,000 metric tons/year.

Mr. Hilken then described local community risks, hazards and thresholds and referred to a hand-out dated November 18, 2009, stating shading areas indicate revisions from the previous proposal to the current proposal. He noted that revisions made by the Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA) guidelines result in greater health protection, provide increased cancer potency for infants and children, increased breathing rates, and the net result is an estimated cancer risk of two to three times higher than previous methodology.

Mr. Hilken reported that comments were also received from local governments and business about impeding infill development and he briefly discussed the District’s proposal for local risk reduction plans. A greater level of health protection can be achieved using lower thresholds, more conservative risk assumptions but could result in difficulty approving common local projects, such as gas stations and back-up generators, which will require new controls on projects through the permitting process.

Mr. Hilken concluded his presentation and said the recommendation is to use more stringent thresholds and health protective risk factors in calculating impacts, add a new threshold for local PM2.5 impacts, add a new threshold for cumulative impact, and recommend the preparation of local risk reduction plans.

Director Comments/Questions:

Directors received explanation and examples from Mr. Hilken of affected businesses, OEHHA guidelines, differences in the previous tiered approach versus the current recommendation which results in added health protectiveness, qualified risk reduction plans which the District will formulate, and the overall effect on allowable cancer risk in the current proposal. Directors confirmed with staff that the GHG threshold for stationary sources at 10,000 metric tons would apply to new or modified projects, District staff have been and will continue to work with agencies on their approved risk reduction plans, and that the effective date of the proposal could change depending upon continuation of the public hearing.

Public Comments:

Gordan Mar, BAEHC, strongly believes the proposed guidelines need to be further strengthened to address pollution disparities and urge the Board to adopt the original proposal for a tiered approach.

Leonard Webster supported a “no project” option in the CEQA guidelines.

Dr. Henry Clark supported a “no project” option in the CEQA guidelines.

Chairperson Torliatt reiterated that the “no project” option is included by default under CEQA which the Board of Directors supports.

Antonio Diaz, PODER/BAEHC, presented a letter signed by 28 organizations and urged the District to adopt stricter revisions to CEQA guidelines.

Tessie Ester, Hunters View Mother Committee, cited the young people in attendance, and invited the Board to visit Hunter's Point.

Marie Harrison, Green Action for Health and Environmental Justice, discussed the work to date with impacted communities, asked for enforcement of rules that are adopted, and suggested the Board of Directors hold their next meeting in an appropriate facility to accommodate more people.

Johnny White, Community Focus, asked for the "no project" option and for the District to take action in enforcing its rules.

Nile Malloy, Communities for a Better Environment, cited significant asthma rates, asked to support land base decisions to offset pollution, said they found indoor pollution to be twice as dangerous, supported BAEHC's request for the original proposal, and suggested more research be done on the proposed 1,000 foot measurement.

Anna Lee, CBE, BAEHC, said CBE has documented over 200 sources of hazards in close proximity to schools, playgrounds, recreation centers, libraries, churches and homes, counted over 11,000 diesel trucks traveling over a four day period in East Oakland and conducted air monitoring of PM2.5 and found unsafe levels of toxics, and urged the Board to consider a more health protective threshold and 24 hour and not average measurements.

Adrienne Bloch, CBE, cited problems with cumulative impacts analyses, said the threshold of 1,000 feet from the proposed source is inadequate and there is no evidence to support it, and urged the Board to make suggested more stringent revisions to the proposed recommendations.

Shawn Lazerow, CBE attorney, spoke regarding the "no project" alternative and the reasoning for such language to be included.

Theresa Faunnul, Hunters View Mothers Committee, said she has been diagnosed with asthma and bronchitis, cited the need to wear goggles due to gas leaks which have become stronger, cited daily nose bleeds and overall health impacts.

Venitta Logan said her 22 month old grandson is getting sicker by the day and she pleaded with the Board to take action and stop making promises.

Dennis Bolt, Western States Petroleum Association, discussed the loss of business and jobs given the current recommendation, opposed the numeric threshold components, and believed that development projects will not become approvable.

Matt Vespa, Center for Biological Diversity, stated that the South Coast Air District has already adopted an identical threshold for stationary sources, there have been no complaints, and it is working. He believed the District proposes a serious and most stringent approach that provides needed guidance to California and allows projects through and meets varying viewpoints. He recommended adoption of thresholds on December 2nd with no delay.

Jackie Kepke, California Wastewater Climate Change Group, asked that biogenic CO2 not be counted toward the significance threshold, as they do not contribute to climate change and should be viewed separately.

Paul Campos, California Building Industry Association and Home Builders Association of Northern California, supports adoption of GHG thresholds but voiced significant concerns with the substance of staff's proposal and processes, stating that the District would be violating CEQA which prohibits piecemeal and project splitting. He also voiced concern with proper circulation of revisions.

Lucia Cordell, CBE, voiced concerns of impacted communities, cited asthma problems, and pollution traveling from other communities.

Wafau Aborashed, BAEHC and Healthy 880 Communities, echoed comments of CBE speakers, said she knew 15 people who have recently passed away in her neighborhood, and believed land use guidance is needed.

Kendrick Moore, Black America, cited illness growing up in Bayview Hunter's Point and echoed comments of other speakers.

DeSean Atchan said he and his brothers have asthma and cannot play sports, and asked for action in impacted communities.

Deon Taylor, Mother Committee Youth, said he was born with asthma and has a two-year old daughter with asthma and asked for action.

David Schonbrunn, TRANSDEF, supported what has been published and said he is appreciative of the District's leadership, spoke of the need for enforceable measures, asked for mandated, rigorous language, and said thresholds proposed would not accomplish the 2020 goal because it assumes existing development.

Darin Ranelletti, City of Oakland, voiced concern that staff is proposing adoption of the thresholds but not the CEQA guidelines, which would allow their update without returning to the Board of Directors. He recommended convening a short-term stakeholder group to sort through issues and adopt both together.

Bradley Angel, GreenAction and EJAQC, acknowledged and appreciated the work of the District, said staff's proposal struck a balance for impacted communities and business, but not for health, suggested the 1,000 foot radius be expanded and asked for a no more pollution period mandate.

Rosalynn Ruiz, BAEHC, asked for action with results and a plan to reduce cumulative air pollution and attach it to a timeline.

Julie West, American Lung Association, thanked the District for their leadership, encouraged the Board to continue making steps and to quickly adopt the most stringent guidelines as possible.

Rob Simpson believed that the Air District has been systematically ignoring CEQA law and discussed the Russell City permit process.

Gwendolyn Powell, WCTC, said she is a former teacher/administrator and voiced concern with existing industry polluting the air, cited disturbing rates of asthma among children who miss school and thereby receive improper education.

Ken Kloc, BAEHC, asked that the annual average ambient PM2.5 be changed to 24 hour and voiced concern with risk reduction plans and their true effect.

Emily Lee, Chinese Progressive Association and BAEHC, urged support of the Collaborative's protocol and for new rules to be adopted for San Francisco's Portal and Excelsior Districts, which are close to highways and are impacted. She also cited poor health in southeast San Francisco, the lack of nearby hospitals, and requested no new incremental risks be allowed.

Andy Katz, Breathe California, said the guidelines will improve public health, strongly encouraged the strictest adoption and approval within 60 days or less if the public hearing is continued. He asked for a 24 hour PM threshold, felt the 1,000 foot radius is arbitrary and requested it go to at least 2,000 feet or more, and thinks the lead agency should extend its measurement ratio, as well.

Brian Matthews, Alameda County Waste Management Authority, spoke of the Authority's aggressive plan to divert more organics, voiced concerns specific to thresholds regarding odors, noted that many complaints received are from odors from adjacent facilities, and requested amendment to the significance thresholds.

Natalie Gee, Chinese Progressive Association, said she lives in the Portal neighborhood, discussed its diversity and the significant pollution from Highways 101 and 280.

Chairperson Torliatt recommended, and the Board concurred, that the public hearing be continued to December 2, 2009. She reviewed the following issues, which the Board will consider and provide direction on at that time:

1. Consideration for a 24-hour PM2.5 threshold;
2. Consideration of maintaining or changing the 1,000 foot radius;
3. Consideration of biogenic emissions exemption;
4. Clarification on the "no project" option;
5. Determine an effective date for CEQA guidelines to take effect;
6. Further clarification on risk reduction plans and what they may entail;
7. Clarification about the CEQA process and whether the District has complied with CEQA in postings and availability of material.

Directors discussed and requested the following additional considerations:

8. Final adoption to occur January 2010 (Torliatt);
9. Direction to staff to continue to meet with other city and county staff to work through implementation of guidelines (Torliatt);
10. Consideration to add the tiered system versus staff proposal (support from Directors present);
11. Consideration separating out the adoption of significance thresholds and adoption CEQA guidelines (Hosterman);
12. Consideration for revision to indicate "No new net pollution" (Kishimoto);
13. Consideration for threshold standards for "active" construction (Kishimoto);
14. Consideration to differentiate between CEQA guidelines and what the District does with its New Source Rule (Daly);

15. Consideration to add consideration of odors in the CEQA guidelines (Garner);

12. Personnel Committee Meeting Report

November 18, 2009

Chair: C. Groom (for Chairperson H. Brown)

Pursuant to Government Code Section 549567 and 54957.6., the Committee met in Closed Session to conduct performance evaluation of Legal Counsel.

The Personnel Committee met on November 18, 2009 and approved the minutes of March 6, 2009 and May 27, 2009. The Committee met in closed session pursuant to Government Code Section 549567 and 54957.6., to conduct performance evaluation of Legal Counsel. No reportable action was taken. The next meeting of the Personnel Committee is scheduled for Monday, November 23, 2009.

OTHER BUSINESS:

- 13. Report of Executive Officer/APCO:** Mr. Broadbent reported that there is a great deal of interest in the Oakland Port truck situation, said staff is on track to retrofit trucks and he confirmed that there will be many trucks available to service the Port of Oakland.
- 14. Report of the Chairperson – None**
- 15. Time and Place of Next Meeting:** Regular Meeting - Wednesday, December 2, 2009 - 939 Ellis Street, San Francisco, CA 94109
- 16. Adjournment:** The Board of Directors Meeting adjourned at 12:52 a.m.

/s/ Lisa Harper
Lisa Harper
Clerk of the Boards