

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

Board of Directors' Regular Meeting
December 16, 2009

APPROVED MINUTES

CALL TO ORDER: Chairperson Pamela Torliatt called the meeting to order at 9:56 a.m.

Roll Call: Chairperson Pamela Torliatt; Vice Chairperson Brad Wagenknecht; and Directors Chris Daly, Susan Garner, John Gioia, Carole Groom, Scott Haggerty, Jennifer Hosterman, Yoriko Kishimoto, Carol Klatt, Liz Kniss, Eric Mar, Nate Miley, Mark Ross, James Spring, Gayle B. Uilkema and Ken Yeager

Absent: Secretary Tom Bates; Directors Harold Brown, Dan Dunnigan and Shirlee Zane

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

Public Comments:

Marie Harrison requested the Board of Directors move aggressively by not allowing approval of additional permitting in CARE communities.

Board Member Comments: None

Commendations/Proclamations/Awards

The Board of Directors recognized outgoing Board Member Yoriko Kishimoto for her outstanding leadership on the Board this past year and spoke on her accomplishments, leadership, and service to improving air quality and addressing climate change.

Director Kishimoto thanked fellow Board Members for support of her service, said she was delighted with the significant progress made with regional agencies and regulatory powers to protect public health and the climate.

The Board of Directors recognized the following employees who have completed milestones of 25, 30 and 35 years of services with the Air District during the second half of the calendar year:

25 Years of Service: Dan Belik, Scott Owen, David Ray, Gregory Stone, Craig Ullery

30 Years of Service: Debra Mehlos

35 Years of Service: Ruth Argueta, Allan Chiu, Jim Karas

CONSENT CALENDAR (Items 1-5):

1. Approval of Minutes of December 2, 2009 Regular Meeting
2. Notice of Proposed Amendments to the Air District's Administrative Code Division I - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records (*Removed*)
3. Notice of Proposed Amendments to the Air District's Administrative Code Division III - Personnel Policies and Procedures - Section 11 Leave and Holidays: 11.5: Military Leave and 11.7: Family Care and Medical Leave
4. Advisory Council Report and Recommendations from the October 14, 2009 Meeting on California's 2050 GHG Emission Reduction Target: Electricity Generation and Commercial & Residential Energy Sectors
5. Proposed Regulatory Agenda for 2010

Director Garner requested removal of Consent Calendar Item 2.

Board Action: Vice Chairperson Wagenknecht made a motion to approve Consent Calendar Items 1, 3, 4, and 5; Director Kishimoto seconded the motion; carried unanimously without opposition.

Item Removed:

2. Notice of Proposed Amendments to the Air District's Administrative Code Division I - Operating Policies and Procedures - Section 11 adding new subsections 11.1 through 11.4 concerned with management, retention, and destruction of public records.

Director Garner questioned the retention and potential for the filing of claims relating to accident and injury claim files. She also questioned the retention period and the statute of limitations of personnel files. Deputy APCO Jeff McKay clarified that the trigger for accident and injury files is 3 years from the date of the accident; destruction of personnel files is 7 years from the date of retirement or resignation. He noted that adoption of the amendments is scheduled for the next Board of Directors meeting, and Chairperson Torliatt requested that staff provide clarification in the staff report memorandum.

Board Action: Director Garner made a motion to approve Consent Calendar Item 2; Director Hosterman seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

6. **Mobile Source Committee Meeting**
December 7, 2009
Report given by Chairperson S. Haggerty

The Mobile Source Committee met on Monday, December 7, 2009 and approved the minutes of the November 5, 2009 meeting.

The Committee received an overview of the Air District's Compliance Plan for enforcing CARB mobile source regulations at all CARE communities and Bay Area ports, and discussed regulations under the plan, an MOU and joint partnership with CARB, and implementation and compliance dates

for outreach and enforcement. The Committee voiced interest in touring the Port of Oakland to better understand enforcement and inspection processes.

The Committee then received an update on shorepower at the Port of Oakland, discussed infrastructure issues, grants supporting shorepower implementation and Staff's application for \$6 million in diesel emissions reduction act funds from the USEPA to support electrification at the Port.

The Committee then considered proposed revisions to Transportation Fund for Clean Air (TFCA) Regional Fund project approval process, which will further streamline and provide additional opportunities and flexibility for grantees, help leverage other funding opportunities and increase the volume of eligible applications, thereby increasing reductions of surplus emissions.

The Committee recommends Board of Directors' approval to authorize the Executive Officer/APCO to execute Grant Agreements for projects funded by the Transportation Fund for Clean Air (TFCA) Regional Fund, with individual grant awards up to \$100,000; and to execute no-cost amendments for TFCA Regional Fund projects, provided each project continues to meet all applicable Board-approved policies.

The next meeting of the Mobile Source Committee is scheduled for Thursday, January 28, 2010.

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

7. Climate Protection Committee Meeting

December 11, 2009

Report given by Chairperson Y. Kishimoto

The Climate Protection Committee met on Friday, December 11, 2009 and approved the Climate Protection Committee minutes of October 8, 2009.

The Committee received an overview of the new Joint Policy Committee initiative from Bruce Riordan, discussed outcomes from the first kick-off meeting held November 17 and activities planned for 2010. Mr. Riordan presented an outline of cross-sector and other top key initiatives representing inventories, discussed the comprehensive modeling efforts and local agency plans, and the need for public planning processes.

The Committee then received a status report on efforts to coordinate and plan for implementation of AB 32 greenhouse gas (GHG) reduction measures and the addition of Title V and PSD stationary source facilities which may fall under the District's permitting processes. The Committee also received a report on third party verification training and accreditation of District staff to participate in verification services for the mandatory reporting of GHG's.

The Committee then received and reviewed climate protection activities conducted by the Air District throughout 2009. The focus has been to work with local governments and provide technical assistance on how CEQA guidelines and initiatives on stationary sources work, GHG fee reporting and verification training, review of land use, energy and climate control measures, and building content on the Bay Area Climate planning web portal.

The next meeting of the Climate Protection Committee is Thursday, January 14, 2010 at 9:30 a.m.

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

Director Ross commended and recognized Climate Protection Committee Chairperson, Yoriko Kishimoto for her distinguished work as Chair of the Committee.

8. Personnel Committee Meeting

December 16, 2009

Report given by Vice Chairperson C. Groom

The Personnel Committee met on Wednesday, December 16, 2009 just prior to the Board of Directors meeting and approved the minutes of November 23, 2009.

The Committee held interviews of candidates to fill the vacancy of one incumbent member who is not seeking re-appointment, under the *Conservation Organization* category.

The Committee recommends that the Board of Directors appoint Debbie Mytels to the Advisory Council for a two-year term of office, effective January 1, 2010 through December 31, 2011, under the *Conservation Organization* category.

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

Board Action: Vice Chairperson Groom made a motion to approve the report and recommendations of the Personnel Committee; Director Uilkema seconded the motion; which carried unanimously.

Vice Chairperson Wagenknecht added that the Personnel Committee had interviewed four, very qualified candidates.

9. Consideration and Adoption of Proposed Bay Area Healthy Communities Resolution

Executive Officer/APCO Jack Broadbent gave a brief introduction of the item, stating the resolution is an important step in the ongoing effort to reduce disproportionate air quality impacts in six communities. The resolution formally identifies those six communities and adopts the policy of no new net increases in toxic air contaminant emissions.

Director of Planning and Research, Henry Hilken gave a PowerPoint presentation on the elements of the resolution which supports and advances District initiatives relative to local air quality impacts and does the following:

- Formally adopts the CARE Impacted Community boundaries;
- Adopts a policy of “No Net Increase” for CARE communities;
- Directs staff to identify baseline emission levels for each CARE community;
- Directs staff to conduct enhanced monitoring in CARE communities;
- Directs staff to continue targeting District grants in impacted communities; and
- Directs staff to collaborate with local jurisdictions in developing Community Risk Reduction Plans for impacted communities.

Chairperson Torliatt confirmed with Mr. Hilken that staff is recommending changes as outlined in the one page proposal before Directors and as proposed by the Bay Area Environmental Health Collaborative (BAEHC).

Directors discussed the District's plan to work with cities and counties in developing and implementing their risk reduction plans, clarified that while the resolution is not a regulation, it emphasizes the commitment of the District to encourage comprehensive, community-wide approaches to reducing impacts from new and existing sources. Director Uilkema suggested that the last "Be It Further Resolved" paragraph include wording that states, that "the District seeks a reduction of impacts" and to "minimize impacts in the communities."

Director Kniss suggested staff position itself positively from a public relations standpoint. Director Daly discussed broader language relating to no new net increases from sources within the District's regulatory jurisdiction and suggested that an additional sentence be considered and added to the fourth "Be It Further Resolved" statement, to add language that identifies no net increases occur under the District's current regulatory jurisdiction and within the CARE communities."

Director Haggerty confirmed with staff that the resolution had not been presented in Committee. He acknowledged the need for cleaner air, noted that there are communities that would have been included on the map of impacted communities had their economic criteria been removed. He suggested that the District additionally partner with community-based organizations in the lower income areas and those without health care to help increase awareness to help solve the health aspect of the problem.

Director Kishimoto strongly supported adoption of the resolution, referred to the fourth "Be it Further Resolved" paragraph and suggested adding no net increase for criteria pollutants. Mr. Broadbent stated there are high levels of PM in the Tri-Valley and Gilroy area which is due to photochemical PM as well as directly emitted PM. He believed including criteria was somewhat premature and suggested limiting it to toxic air pollutants for now.

Director Mar acknowledged that almost the entire eastern side of San Francisco is included within impacted communities, supported Director Uilkema's suggested language to seek a reduction as opposed to not having any increases, as well as Director Daly's suggestion to look at pollutants within the District's regulatory jurisdiction. He also voiced support for a tiered approach in the CEQA guidelines and the new source rule.

Director Gioia referred to the fourth "Be it Further Resolved" paragraph relating to "weighted according to their cancer potency..." and clarified that diesel particulate matter is the most potent of toxic air contaminants and that emissions data is collective data. He questioned the situation of new residential development resulting in additional traffic and potentially new mobile sources. Mr. Broadbent stated that risk reduction plans will serve as guiding documents which can allow for development as long as there is a reduction of risk, which can be carried out through local measures, grants and statewide measures.

Director Garner commended staff for considering BAEHC's comments and adding protective measures in the resolution's language. She supported Director Haggerty's suggestions about funding for solutions and hoped that the District can provide funding to communities that cannot afford air

monitoring equipment. She confirmed that the term, “support” in the fifth “Be it Further Resolved” paragraph means that some jurisdictions will want to take on air monitoring and that the District will work with them.

Director Yeager voiced frustration that the Board is being pressed for time and suggested holding a workshop for questions to be answered. He voiced concern about how the new source review may intentionally make it harder to get approved in-fill development projects that reduce automobile trips, and Mr. Broadbent explained that the resolution is strictly a policy and while Items 9 and 10 are somewhat connected, today staff is requesting that the Board acknowledge the six impacted communities, adopt the policy of no new net increase, and new source review permitting for stationary source equipment will be complimentary. He stated that all grant and CARB work will also reduce risk and it was not the District’s intent to impede infill development. He believed a third resolution could be developed to speak to reduction goals.

Director Ross cited the Air District’s mission statement, stating that he thinks the resolution is a new strategy, a good first step, and he supported a decrease of air pollution everywhere. How the policies affect the real working data is an important question; the resolution as policy supports the District’s core mission and strategy and he did not believe its adoption would stop residential development.

Public Comments:

Fabian Martinez, Richmond High School, cited inequities and poor air quality in impacted communities and asked the Board to adopt the resolution.

Tatiana Suriano, Richmond High School, cited poor air quality, asthma and hospitalization rates, and thanked the Board for allowing public comment on the matter.

Antonio Diaz, BAEHC, thanked the District for working with BAEHC and supported adoption of the resolution.

Marie Harrison, Green Action, supported adoption of the resolution for no new net increases of pollution.

Karen Cohn, BAEHC, San Francisco Health Department, supported adoption of the resolution and risk reduction plans, and hoped for available resources.

Ken Kloc, BAEHC, supported suggested amendments and adoption of the resolution and agreed the issue of particulate matter is complicated due to it being a primary and secondary pollutant.

Dennis Bolt, WSPA, voiced opposition to adoption of the resolution.

Linda Best, Contra Costa Council, voiced opposition to adoption of the resolution, cited the unintended consequences of completion of projects and job opportunities.

Janet Whittick, CCEEB, said she was very surprised with staff bringing forward the resolution for no new net increases, citing changes made which had not been vetted and requested delay of the resolution’s adoption.

Joyce Eden, West Valley Citizen Air Watch, Cupertino, asked that the resolution include no pollution trading, voiced support of the CARE program, and agrees with suggested amendments to include a decrease and not just no new net increases.

Mr. Broadbent recommended the Board of Directors consider adding another “Be it Further Resolved” paragraph that the Board of Directors seeks to reduce emissions in impacted communities. He stated that staff would not be supportive of BAEHC’s request to see no new permitting in these communities and suggested that the Board direct staff to return to a future Stationary Source Committee to review the concept and provide additional information. Regarding pollutants within the District’s jurisdiction, he said staff would not be supportive of having the resolution speak to only those facilities within the District’s regulatory jurisdiction, and also suggested reviewing this topic at a Stationary Source Committee as a future discussion item. He stated that the Board seemed to voice support for, and staff agrees, in having the discussion of minimizing impacts from new and existing sources in these communities.

Director Sperring suggested that in the future, the Board take public comment prior to Board Member comments. He voiced concern with how fast the resolution is being pushed forward and thinks that it will restrict development in impacted communities. He suggested for the matter to be positively presented, include language for clean air and a healthy, sustainable community, and said he would not support adoption of the resolution in its current form, believing it will cause significant impact to the economic health of communities.

Director Hosterman commended staff for what she believes to be a great body of work, but believed that it had not yet fully vetted. She supported discussion at a workshop or Committee, supported the direction of identifying six impacted communities, reducing emissions and improving the health of the Bay Area, but suggested time to further reflect and discuss the matter.

Director Gioia said he represents CARE communities and lives by a rail switching yard. He thanked students from Richmond High School for their comments and supports moving in a direction of decreasing impacts in communities. However, he asked for more thought and linkage to the community risk reduction plans and asked that the matter be returned on January 6 for consideration when there was a greater quorum of the Board.

Director Daly stated that the Board has been talking about the CARE program and communities. It has cumulative impact policy on record, has moved toward no new net emissions and reductions and agreed with Director Haggerty that the matter could have been taken to a committee but cited lengthy Board meetings. He voiced the preference to vote on the resolution, with amendments as identified, and supported further discussion of total emissions and emissions within the District’s regulatory jurisdiction at an upcoming Stationary Source Committee meeting.

Director Kishimoto agreed that the Board has discussed CARE communities for many years. She stated that it is not a matter of stigmatizing the communities as it is data-based decision making. She acknowledged that the entire Bay Area is in a non-attainment state, said communities need help from the District, and felt the District would do right by sending a message that dirty industries cannot locate in communities. She acknowledged concerns about transit-oriented communities and thinks the strategy of using risk reduction plans will work with offsets to allow for development of projects. The resolution is thoughtful and she supported its adoption, with additional language as recommended by Board Members and staff.

Director Kishimoto made a motion to adopt the resolution with additional language as recommended by staff. Director Mar seconded the motion.

Director Ross said he has heard that the resolution does not go far enough and that it also goes too far. He is sensitive to the concept that there is little time to absorb the idea, but stated that the District is a public health agency. The resolution recognizes the empirical and epidemiological data before the Board, the subject matter is not new, and he supported its adoption.

Director Garner echoed support of Director Spring's comments about hearing from the public first and questioned whether the process of CEQA guidelines conflicts with adoption of the resolution. Mr. Broadbent stated the resolution is not a regulation but a statement representing five years of work. He said staff has briefed the Board many times about disproportionately impacted communities. The CEQA guidelines are scheduled for the meeting of January 6, which will be complimentary of the resolution, with options for including or not including community risk plans. He said the resolution is not binding in terms of a regulatory effort; it is not designed to prevent the District from having permits in the communities, but rather defines the fact that communities are experiencing elevated levels of risk and cancer as a result of diesel particulate levels.

Director Gioia supported having a no net increase and reduction. He acknowledged that composition of the Board will soon change and supported the resolution, but asked for further discussion about how the District addresses infill projects, clarity of additional language, and motioned that the vote be taken up in January, which he thereafter withdrew.

Chairperson Torliatt stated that the Board has been dealing with the issue and identified communities over a year ago. She believed that language could be added to the resolution and if the Board does not take action on CEQA guidelines, the resolution, and new source review, it will be questioned as to why it is not protecting the public's health. She said the resolution is clear and represents the culmination of many years of work. She also noted that the majority of speakers are supportive of its adoption and she asked that it move forward.

Directors discussed delaying a vote to the first meeting in January, consensus by those present, availability of Board Members and the time to hold a workshop or committee meeting and confirmed that the item could be continued and kept open. Chairperson Torliatt received a commitment from those present to vote on the matter on January 6. She requested Directors to contact Mr. Broadbent if they had further questions or required clarification on the draft resolution. Mr. Broadbent stated that staff could also fully define information relating to infill development and community risk reduction plans as part of the CEQA discussion at that time.

Directors Kishimoto and Director Mar withdrew their previous motion and second.

Chairperson Torliatt requested that staff agendize the revised resolution paired with the CEQA guidelines and a separate item for the Toxics New Source Review Regulation 2, Rule 5.

10. Public Hearing to Consider Proposed Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, and Adoption of a CEQA Negative Declaration

Chairperson Torliatt confirmed with District Counsel Brian Bunger that the matter could be considered at the January 6, 2010 Board of Directors meeting.

OTHER BUSINESS:

11. **Report of Executive Officer/APCO:** Mr. Broadbent wished the Board of Directors a happy holiday.
12. **Report of the Chairperson** – Chairperson Torliatt reported that two new Directors would be sworn in at the next Board meeting.
13. **Time and Place of Next Meeting:** Regular Meeting - Wednesday, January 6, 2010 - 939 Ellis Street, San Francisco, CA 94109
- 14 **Adjournment:** The Board of Directors Meeting adjourned at 12:32 p.m.

/S/ Lisa Harper
Lisa Harper
Clerk of the Boards