

Bay Area Air Quality Management District
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APPROVED MINUTES

Summary of Board of Directors
Stationary Source Committee Meeting
9:30 a.m., Monday, November 16, 2009

Call to Order – Roll Call: Chairperson John Gioia called the meeting to order at 9:32 a.m.

Present: John Gioia, Chairperson; Vice Chairperson Carol Klatt; and Committee Members Susan Garner, Carole Groom, Scott Haggerty, Mark Ross, Gayle Uilkema and Brad Wagenknecht

Absent: Committee Member Nate Miley

Also Present: Board Chairperson Torliatt

Public Comment Period:

Ray Davis, Los Gatos, spoke in opposition to the Lehigh Cement Plant's permit renewal, citing health and safety concerns and pollution from cement plant dust spanning over several cities.

Bill Almon, Founder of Quarry No, spoke of the Lehigh Cement Plant's sources of toxic emissions, EPA's new stringent requirements which will take effect and are not included in the new permit for Lehigh, and he asked that the monitor at Stevens Creek School be moved from school to school to monitor all toxic elements.

Chairperson Gioia confirmed with Mr. Broadbent that an update on facilities will be presented at the February Stationary Source Committee meeting.

Barry Chang, Cupertino, Cupertino City Councilmember, requested the Committee delay approval of the Title V Permit for the Lehigh Plant and said he spoke with the plant's consultant who discussed improvements addressing EPA's new standards.

Cathy Helgerson, Citizens Against Pollution, requested permanent closure of Lehigh Southwest Cement Plant, spoke of significant health hazards, runoff, and pond pollution.

Ian Flint questioned proper monitoring, noted that autism rates in Cupertino schools are twice those of the Bay Area schools which have been linked to mercury, and he hoped that any decision regarding the permit takes into account all information about the plant's emissions. He said the plant has consistently broken the law and he has no faith that regulations will be followed.

Chairperson Gioia confirmed with Mr. McKay that the Title V Permit is public record and can be provided, and a Fact Sheet on the facility can also be downloaded from the District's website.

3. Approval of Minutes of October 19, 2009

Committee Action: Director Haggerty made a motion to approve the minutes of October 19, 2009; Director Ross seconded the motion; unanimously carried without objection.

4. Update on Proposed Amendments to the District's California Environmental Quality Act (CEQA) Thresholds of Significance

Executive Officer/APCO Jack Broadbent discussed the guidance the Air District provides to local land use decision-makers to be able to quantify and mitigate air quality impacts through its CEQA guidelines. He said the Board of Directors will consider staff's proposal relative to significance thresholds under CEQA, which are part of a larger set of guidelines last updated in 1999. The update is the result of an extensive process and includes Greenhouse Gases (GHGs), incorporation of findings in the CARE program and more stringent air quality standards. New ambient air quality standards have also been lowered which the CEQA document needs to take into account.

Mr. Broadbent stated there is correlation between both agenda items; CEQA Guidelines which requires update, and proposed amendments to District Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, which relates to how the District permits new and modified stationary sources.

Director of Planning and Research, Henry Hilken, gave the staff presentation and reiterated that the update of CEQA guidelines is guidance provided to cities and counties on how local lead agencies should evaluate air quality impacts from new development proposals and plans. He discussed the need for guidance, which the District considers interim until the State adopts thresholds.

He explained that thresholds are based on the AB32 Scoping Plan and described the three proposed options for land use projects: 1) a plan-based approach which is consistent with local climate action plans; 2) a "bright line" numeric threshold of 1,100 metric tons per year; and 3) an efficiency based threshold which is based on 4.6 tons/service population/year (residents and employees). Also proposed is a threshold for stationary sources of 10,000 metric tons per year.

Mr. Hilken then reviewed local community risks and hazards, noted that the thresholds promote infill while protecting residents, seek to reduce impacts from land use and transportation decisions, address vulnerable populations, address cancer risk, fine particulate concentrations and cumulative impacts, and the District will encourage cities and counties to adopt and utilize local risk reduction plans.

Committee Comments/Discussion:

Board Chairperson Torliatt questioned the definition of a qualified risk reduction plan. Mr. Hilken said the plan is a new concept and is similar to climate action plans. Cities/counties would inventory their emission sources, develop risk reduction targets, and identify a range of measures to achieve goals, implement the measures, track progress and update them as necessary. Mr. Broadbent noted the concept comes about as a result of city representatives that sit on the CARE Task Force, who want to add some measure of control when approving local development, such as adding buffer zones or project design elements which would be part of their decision-making process.

Chairperson Gioia confirmed the process is a new concept. He discussed how it would apply to a new receptor such as building a home in an infill area, and confirmed that Mr. Hilken would be presenting examples of approaches for new, planned development.

Director Ross confirmed that new development of a pre-industrial site, for example, may in and of itself reduce risk and be accounted for, and he discussed balancing out risk over a project's lifetime. Mr. Hilken described examples of proposed thresholds and single and cumulative new sources and receptors, how they are evaluated by the District, and discussed comparative changes made from the previous proposal. Comments were received from some cities that believed that setting different thresholds may drive development to non-CARE impacted communities and proposed a community risk reduction plan concept. Staff is tracking closely OEHHA's methodologies for calculating risk for new sources, which would effectively achieve the same level of health protection as setting the standard at this level. A change in the cumulative impact section involves the lowering of the PM 2.5 threshold from 2.0 to 0.8_{ug/m3}. Staff feels there is a substantial improvement over what is in place today.

Mr. Hilken then presented examples of siting new sources, new receptors and cumulative sources or receptors for PM 2.5 and cancer risk and explained the steps staff would take to determine significance. Mr. Broadbent also reiterated that more stringent rules will be imposed by ARB to reduce risk, citing the Port Drayage Truck Rule and rules for trains and ships which will reduce risk dramatically over time. He felt that the value of risk reduction plans will allow projects to move forward while addressing current and future emission patterns.

Director Uilkema confirmed with Mr. Hilken that added measures could be suggested to local agency planners to make projects more palatable in terms of public health and safety. Director Gioia agreed and believed a risk reduction plan would identify steps jurisdictions can take, as well as others. He then discussed steps taken for a jurisdiction to make sufficient findings to determine a Statement of Overriding Consideration.

Mr. Hilken then reviewed other thresholds proposed such as reducing criteria pollutant thresholds, construction impacts such as dust control, proposed new thresholds for diesel exhaust and local plans which will be consistent with air quality plan policies. He described the extensive outreach process and robust implementation plan, noting that the proposal has been presented five times to Board members.

Board Chairperson Torliatt believed that the message to local government is that if there are exceedances where thresholds cannot be met, a project should not be built. She supported a more stringent standard than other air districts, said the air district should lead the way and felt it was important to move forward on CEQA guidelines to improve air quality. She requested for staff to present the next agenda item prior to taking public comment and holding Board discussion.

Director Haggerty questioned the anticipated effective date for Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. Mr. Bateman said adoption would be effective immediately upon adoption by the Board. Director Haggerty cited a couple of projects in his District and the amount of money spent on their EIR's, fearing adoption would require re-circulation of the project EIR's.

Mr. Broadbent said he did not believe the projects would include stationary sources that the Air District currently permits; however, CEQA guidelines could affect those projects and the Board could propose an extended effective date such as 90 days. He confirmed that the District would conduct significant public outreach. Chairperson Gioia believed the rule would work well for new sources and he discussed new development in CARE communities and property values. Mr. Broadbent said if development is proposed in any CARE community, in some cases it is infill development which is good. However, it is important for local lead agencies to utilize risk reduction plans which can identify additional strategies such as grants being targeted to communities.

Director Uilkema questioned if air violation thresholds are disclosable in terms of land values and title and whether this would impact the value of properties relative to title insurance and other value-based factors. She suggested building in a one year review by the Stationary Source Committee of unforeseen consequences.

Director Ross discussed the host of different residential and commercial disclosure requirements, and said it is surprising there is no air quality information included in the reports, which have done nothing to diminish property values. Director Uilkema questioned whether or not air quality information will require to be disclosed and if so, what is the potential impact the District should be aware of.

Director Torliatt reminded the Board that CEQA guidelines are only guidelines; the local lead agencies make land use decisions and address overriding considerations in project areas.

Director Groom referred to ABAG regional housing numbers and cities' abilities to meet them through establishment of Transit-Oriented Development (TOD). She believed this should also be considered in the guidelines. Board Chairperson Torliatt noted that District staff has been working with ABAG to address air quality issues as they relate to Priority Development Areas (PDAs) which will help facilitate improvement in those areas.

Chairperson Gioia confirmed that the JPC was briefed on the matter as part of the Clean Air Plan. He asked that Agenda Item 5 be presented and thereafter, take public comment on both items.

5. Update on Proposed Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants

Director of Engineering, Brian Bateman, gave the staff presentation, stating the District Air Toxics New Source Review (NSR) program began in 1987 and was codified in 2005 as District Regulation 2, Rule 5. The program is for pre-construction permit review of new and modified stationary sources that emit toxic air contaminants. He discussed the goals of the program, examples of their applicability to diesel engines, gasoline dispensing facilities, soil-vapor extraction systems, furnaces, boilers and other combustion sources, and other types of sources including refinery processes, storage tanks, coffee roasters, crematories, furniture strippers, asphalt plants and others. The program is a risk-based program, and standards of the program are based on site-specific health risk assessment, which are based on guidelines from Cal/EPA Office of Environmental Health Hazard Assessment (OEHHA).

Mr. Bateman said the stringency of a risk-based regulatory program is related to both the risk assessment methodology and the risk management action levels used in the program. He then described OEHHA's mission, responsibilities, scientific review panel and SB25 (Escutia-1998) which requires OEHHA to explicitly consider infants and children in evaluating the health risks of air pollutants.

Mr. Bateman discussed health risk screening analysis which uses OEHHA's October 2003 guidelines, steps of the program, determination for cancer risk, non-cancer risk and an additive approach used for pollutant mixtures. The existing standards of Regulation 2, Rule 5 is the Best Available Control Technology for Toxics (T-BACT) which are quite low, at 1.0 in a million for cancer risk and 0.2 for hazard index. Residual emissions are then reviewed once T-BACT standards are applied and the overall risk from the project is reviewed, and there are caps or limits on those emissions and risks, at 10 in a million for cancer risk and 1.0 for chronic and acute (short-term) hazard index.

Mr. Bateman presented a chart of average trends in the Bay Area Ambient Air Monitoring Data for Carcinogenic Toxic Air Contaminants (TACs) for about 25 monitoring stations. The chart strikingly shows that the average risks have been reduced by about 70% over the last 18 years. Also to note is that most of the risk is driven by three toxics; diesel PM, benzene and 1,3-butadiene, with the vast majority of all three coming from mobile sources. He said risks elevated above the average tend to be that way because they are higher in terms of diesel PM concentration. Lastly, the reductions seen over the last 18 years do not reflect what has been done and improvements since 2008. The reduction in diesel PM will yield the greatest reduction in cancer risk and staff expects that over the next 10 years on a percentage basis, reductions would be at least at the same magnitude.

Mr. Bateman presented the initial draft proposal, which keeps the existing methodology but lowers the risk management action levels by a factor of 2 for projects located in CARE communities for both T-BACT and project risk limits. Staff also believed it was appropriate to apply standards to those sources close to schools and lastly, to add a provision for the District to track cumulative risks from permitted sources in the CARE communities over time.

Regarding outreach, a concept paper was released in March 2009. A public workshop was held on July 30 and meetings were held with various stakeholders. Regular briefings were provided at CARE Task Force and cumulative impacts working group, and staff met with interested industry and environmental groups. To date, eight (8) sets of written comments have been received and Mr. Bateman briefly reviewed a summary comments received.

In June, OEHHA adopted a Technical Support Document (TSD) for derivation of cancer potency factors which included age-sensitivity factors. When a lifetime cancer risk is evaluated relative to the existing methodology, all risks go up by a factor of 1.7. Mr. Bateman noted there is another OEHHA TSD which addresses exposure assessment and is expected to be adopted in 2010. When combined with the age sensitivity factors, will increase lifetime cancer risk by a factor of 2 to 3, which is significant. On the non-cancer side, OEHHA adopted a methodology document in December 2008, seven (7) reference exposure levels were updated to date, and more will be assessed over time.

Staff believes the current revised proposal:

- Provides a similar or greater degree of health protection relative to staff's initial proposal;
- Maintains existing risk management standards throughout the Bay Area;
- Incorporates the use of Age-Sensitivity Factors into the program upon adoption of rule amendments, and the District would be the first air district to do this;
- Requires the District to track TAC emissions from stationary, mobile, and area-wide sources in the CARE Priority Communities;
- Revises risk assessment methodologies resulting in an increase in rule stringency by a factor of two to three

Adopting the revised OEHHA methodologies and the more stringent risk management standards in the CARE Communities would:

- Increase rule stringency by a factor of 4 to 6;
- Not be technologically feasible and/or cost-effective to achieve for many projects;
- Result in adverse impacts for many small businesses

Director Garner clarified the rule's effect and its application to new or modified gasoline dispensing facilities and it was noted that in most cases, stations already have best control technologies and would meet levels.

Board Chairperson Torliatt requested explanation on how the amendments work with CEQA guidelines and thresholds. Mr. Bateman said there are requirements in regulations that say a permit cannot be issued unless it meets the requirements of CEQA. If there is a CEQA document, it must be certified. In addition to the requirements in this Rule, there are also CEQA requirements that provide another layer of review usually by the lead agency. As a responsible agency issuing a permit, the District would be involved in review and comment on the environmental documentation that the lead agency prepares under CEQA.

Mr. Broadbent referred to Items 6 and 7 on the agenda, noting that Amendments to Regulation 11, Rule 16: Perchloroethylene and Synthetic Solvent Dry Cleaning Operations, will be circulated for further public input. He suggested it be scheduled for the next Stationary Source Committee meeting. Regarding Regulation 8, Rule 50: Polyester Resin Operations, staff believes there is very little public concern with the proposal, and he suggested the report be waived in the interest of time.

There was consensus to defer discussion/presentation of Agenda Items 6 and 7.

Public Comments:

Karen Cohn, BAEHC and San Francisco Department of Public Health, stated that development is additive to the status quo and there is nothing in the guidance that mandates net reductions. She discussed the temporary TransBay Terminal Authority's approval of an EIR that indicated there were no child care centers in their vicinity. However, two centers with outdoor play areas are located directly across the street and she asked to see the actual goal to reduce pollution described in documentation.

Chairperson Gioia briefly reviewed with Mr. Hilken the District's evaluation of projects through the lead agencies' risk reduction plans.

Ken Kloc, BAEHC, recommended continuation of whether to consider priority standards in the CARE communities, recognizing that the bulk of the pollution is due to mobile sources and that the OEHHA is reducing methodologies which will ultimately reduce risk standards. He said risk assessment does not account for all hazards and risks which are already present in a community. He asked that differential significance levels defined for CARE communities be retained and asked for a significance level for PM2.5 for daily averages, as construction emissions can also cause health impacts.

Dr. Henry Clark, West County Toxics Coalition, asked for a "no project" option in the CEQA guidelines, said the new source review standards are not based on any realistic assessment of communities in terms of health in wealthier communities, and he did not believe Chevron refinery could be monitored appropriately.

Chairperson Gioia clarified with Mr. Hilken that the District has discretion to pursue the "no project" alternative, and this is already required under the CEQA guidelines.

Dennis Bolt, Western States Petroleum Association (WSPA), said WSPA and its members oppose the 10,000 metric tons/year threshold for GHG's, voiced concern that using a numerical significance thresholds would stifle development of projects, and add cost. He said the guidelines conflict with AB 32 and will make it tougher for industry to implement the low carbon fuel standard, and where there is a statewide or federally directed program for industry sectors, those approved programs should satisfy CEQA threshold requirements. Regarding Regulation 2: Rule 5, Mr. Bolt felt that outreach was well

done. He referred to slide 8 and reiterated that a huge proportion of reductions are from new projects which have consistently modernized facilities and improved the economy.

Tessie Ester, Hunter's View Mothers Committee, requested the Board limit toxins in CARE communities, cited the power plant operating from 10:00 p.m. to 4:00 a.m., spoke of a gas leak on Thursday, voiced concerns about the inability to breathe, and invited the Board to tour the area.

Leotus Martin concurred with Dr. Clark's statements.

Gordon Mar, BAEHC, supported additional efforts of thresholds, the proposed option to develop risk reduction plans to lower risk and asked additionally for a formal option for more protective standards for the siting of new pollution sources.

Andy Katz, Breathe California, BAEHC, voiced concern about exemptions for infill development, believed risk reduction plans were ambiguous and questioned how targets are set for reductions. He asked that the 1,000 foot radius be expanded to 2,000 feet, said OEHHA has already worked on the eight sensitivity factors and did not know whether they would make things three times as stringent for air quality impacts. He and suggested continued discussions with the Cumulative Impacts Working Group to determinate feasible levels for reductions in affected communities and echoed the necessity for a PM 2.5 threshold for 24 hours and mitigations for cleaner construction equipment.

Bill Quinn, California Council for Economic and Environmental Balance (CCEEB), said staff has made significant improvement in the latest proposal. He supports risk-based approaches, thinks OEHHA guidelines are strong and stringent and the current proposal is greatly improved because of the changes with how staff is differentiating requirements. However, they feel it would create a disincentive for new development and jobs and said small equipment/sources may trigger new requirements which could have an impact on the type of projects that go forward. He asked that the focus be on mobile sources and requested the District to look at something other than a straight numerical value for the GHG threshold.

Ray Davis, spoke of his suffering from pollution from the Lehigh Cement Plant and asked the District to develop a program to let communities know what is going on.

Cathy Helgerson, Citizens Against Pollution, voiced complaint about the Lehigh Cement Plant's Title V Permit and Apple Computers' R&D manufacturing facility. She asked that both facilities be shut down immediately and said she will next pursue closure of Stevens Creek Quarry which has contaminated the reservoir, recharge pond, and all waters in the aquifer.

Mr. Broadbent stated that the proposed CEQA guidelines update will be presented to Board of Directors on November 18, 2009. Staff recommends opening the public hearing and continuing the hearing. The proposed changes to Regulation 2, Rule 5 will be before the Board of Directors on December 16, 2009. Staff will take direction from the Committee and ensure information is incorporated for the presentation on Wednesday.

Director Groom requested that staff prepare a matrix of differences of the CARE Task Force's work and what is now being recommended to the Board. Mr. Broadbent agreed and said the key issue discussed is that staff had an approach that looked at establishing differential standards in the CARE communities. A permitting stationary source in a CARE community would have to have a lower or more stringent standard on a single source. As staff moved forward with this proposal, it became clear that the new risk methodology developed by OEHHA will achieve the same result. Therefore, the proposed changes on

December 16th incorporate the OEHHA methodology. Rather than having a differential standard for CARE communities, staff proposes to use this methodology for permitting over the entire Bay Area.

Board Chairperson Torliatt likened the issue of net reduction to a multi-pronged approach—the District is attempting to limit the amount of increase, but there are different areas where funding is put into place to reduce diesel impacts. She asked for the existing source rule to be addressed because she did not think people understand what authority the District has to deal with and reduce existing sources.

Chairperson Gioia said there would be time to provide additional guidance on development of risk reduction plans. He asked how the various threshold levels were arrived at and asked that this be summarized in the Board presentation, as well.

6. Status Report on Proposed Amendments to Regulation 11, Rule 16: Perchloroethylene and Synthetic Solvent Dry Cleaning Operations

Chairperson Gioia announced that the item is continued.

7. Proposed Amendments to Regulation 8, Rule 50: Polyester Resin Operations

Mr. Broadbent suggested waiving the presentation, as he did not believe there would be any speakers commenting on the matter. He confirmed the item was scheduled to be considered by the Board of Directors on December 2, 2009.

Chairperson Gioia confirmed there were no public speakers, and Directors had no questions or comments.

Chairperson Gioia continued the item to the December 2, 2009 Board of Directors Meeting.

Committee Member Comments/Other Business: There were none.

Time and Place of Next Meeting: Monday, February 15, 2010, at 9:30 a.m.

Adjournment: The meeting adjourned at 12:31 p.m.

/s/ Lisa Harper
Lisa Harper
Clerk of the Boards