

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

Board of Directors Regular Meeting
December 15, 2010

APPROVED MINUTES

CALL TO ORDER: Chairperson Brad Wagenknecht called the meeting to order at 9:48 a.m.

Roll Call: Chairperson Brad Wagenknecht; Vice Chair Bates; Secretary John Gioia; and Directors Chris Daly, Dan Dunnigan, Carole Groom, Scott Haggerty, Jennifer Hosterman, David Hudson, Ash Kalra, Liz Kniss, Eric Mar, Nate Miley, Mark Ross, James Spring, Pamela Torliatt, Gayle B. Uilkema, and Ken Yeager

Absent: Director Harold Brown, Susan Garner, Carol Klatt, and Shirlee Zane

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

PUBLIC COMMENTS: None

BOARD MEMBER COMMENTS: None

PROCLAMATION(S)/AWARDS

Chairperson Wagenknecht reported that the Board of Directors will recognize outgoing Directors, Chris Daly, Dan Dunnigan, and Pamela Torliatt at the January 19, 2011 Retreat and Regular Board Meeting.

LEADERSHIP DEVELOPMENT PROGRAM RECOGNITION

The Board of Directors recognized employees who graduated from the Air District's first Leadership Development Program (LDP). Graduate Tim Underwood provided comments about the program, which he said is designed to groom staff to be future leaders.

CONSENT CALENDAR (Items 1-5):

- 1. Minutes of December 1, 2010 Regular Meeting;**
- 2. Communications;**
- 3. Transportation Fund for Clean Air (TFCA) Report on Regional Fund Expenditures and Effectiveness for Fiscal Year 2009/10;**
- 4. Consider Authorization of Contract for Geospatial Computer Services;**

5. Consider Authorization of Contract for Training Materials and Training Implementation

Board Action: Director Dunnigan made a motion to approve Consent Calendar Items 1, 2, 3, 4, and 5; Director Kniss seconded the motion; unanimously approved without objection.

COMMITTEE REPORTS AND RECOMMENDATIONS

6. Report of the Legislative Committee Meeting of December 6, 2010

Chair: B. Wagenknecht, on behalf of Chair S. Garner

The Legislative Committee met on Monday, December 6, 2010 and approved the Minutes of October 4, 2010.

The Committee discussed a potential 2011 legislative agenda and requested that staff explore the following:

- Protect existing District programs and revenues from State rollbacks and cuts; and
- Co-sponsor, with MTC, a bill that deals with adoption of a transit benefit ordinance, similar to requirements in San Francisco, Berkeley, and Richmond.

The bill would require certain sized employers to provide pre-tax commute benefits to their employees.

The Committee also expressed interest in identifying upfront costs and impacts to small businesses and the amount of pre-tax dollars savings, and recommended the Board of Directors accept the 2011 legislative agenda, as presented.

The Committee then discussed possible impacts to the District from Proposition 26, a Constitutional Amendment that defines a tax as a “levy, charge, or exaction of any kind”. The provision is not retroactive for local governments, but applies to new taxes and fees going forward, and to increases to existing fees. With certain exceptions, it requires a two-thirds vote of the Legislature or the public for many things that previously required only a majority vote.

The Committee reviewed exemptions that relate to specific government services, reasonable regulatory costs for permits and inspections, fines or penalties relative to a violation of a law, and government property rental, purchase or lease.

Separately, the Budget and Finance Committee met on December 8, 2010 and will provide a Committee Report on how Proposition 26 affects the District’s fee schedules.

The next meeting of the Legislative Committee is at the Call of the Chair.

Board Action: Chair Wagenknecht made a motion to approve the report and recommendations of the Legislative Committee; Director Hudson seconded the motion; carried unanimously without opposition.

7. Report of the Budget and Finance Committee Meeting of December 8, 2010

Chair: C. Groom

The Budget and Finance Committee met without an initial quorum on December 8, 2010.

The Committee received the Financial Report for the first quarter for Fiscal Year 2010/11 and reviewed a comparison of budget to actual revenue, actual expenditures, investment balances, fund balances, and year end results.

The Committee received a District financial overview and reviewed reserve and OPEB funding levels per Board direction, current staff vacancies, personnel costs and turnover, a breakdown of General Fund revenue sources, cost recovery, and utilization of staff resources.

The Committee asked that staff return with a plan to address District-wide fee restructuring during the fee schedule and budget review process in the spring.

A quorum of the Committee was established and the minutes of April 28, 2010 were approved.

The Committee then considered and recommended Board of Directors' approval to accept an EPA Grant in the amount of \$200,000 and award a contract to Sonoma Technology for continued development of data management system services for ambient air quality and meteorological data.

The Committee discussed potential impacts of Proposition 26 on the District. The provision is not retroactive for local governments, but applies to new taxes and fees going forward and increases to existing fees. With certain exceptions, it requires a two-thirds vote of the Legislature or the public for many things that previously required only a majority vote.

The Committee received an overview of District fees prior to Proposition 26. The Committee discussed potential strategies for fee schedule adjustments in the upcoming budget review to achieve greater cost recovery, while still adhering to the 15% cap on fee increases and to Proposition 26.

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

Board Action: Director Groom made a motion to approve the report and recommendations of the Budget and Finance Committee; Director Uilkema seconded the motion; carried unanimously without opposition.

8. Report of the Stationary Source Committee Meeting of December 13, 2010

Chair: G. Uilkema

The Committee met on Monday, December 13, 2010 and approved the minutes of November 27, 2010.

The Committee received a status report on the Flare Minimization Plan 3rd Annual Update submitted under Regulation 12, Rule 12: Flares at Petroleum Refineries. The Committee reviewed basic flare systems, prevention and minimization, discussed Bay Area refinery maintenance flaring, vent gas volumes, and methane, hydrocarbon, and sulfur dioxide emissions from flares from 2004 to 2009. Next steps will be to consider public comments, and review and evaluate FMPs for approval.

The Committee received a status report on the Lennar Bayview Hunters Point (BVHP) Parcel “A” Redevelopment project, discussed readings taken from ambient asbestos monitors and results from additional mitigation measures and locations of air monitors. A map showing future redevelopment projects and their projected transfer dates from the Navy was presented to the Committee. The Committee asked for information on asbestos background levels and locations of naturally occurring asbestos and District responses to elevated readings, and for presentation materials to be made available to BVHP representatives, who were not in attendance.

Chair Uilkema provided additional comments to the Committee report, stating that in response to requests from BVHP community groups, the Committee had rescheduled the content of the December 13, 2010 meeting and staff prepared special reports and information. The Committee asked her to express disappointment that no BVHP members appeared at the meeting.

The Committee then received a report on the Odor Evaluation Technical Conference sponsored by the District on August 2, 2010. An overview of speaker presentations on community perspectives and the science of odors were presented, as well as monitoring technologies, and current District training and field testing.

The Committee lastly received an update on the proposed Agricultural Engine Rule: Regulation 11, Rule 17 and reviewed the current Airborne Toxic Control Measure’s (ATCM’s) requirements. A proposed Alternative Compliance Plan (ACP) defers replacement of engines used less than 100 hours per year. The Committee reviewed costs and extension of eligibility for District funding programs, greater reductions achieved from adoption of the new rule, extensive outreach efforts conducted by District staff, and next steps to finalize the proposed Rule and schedule it for public hearing in March.

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

Motion: Director Uilkema made a motion to approve the amended report of the Stationary Source Committee; Director Hudson seconded the motion.

Director Daly opposed the amendment by the Chair, and said the situation was currently being explored.

Board Action: Chair Uilkema made a motion to approve the original report of the Stationary Source Committee and omit her proposed amendment; Director Torliatt seconded the motion; carried unanimously without opposition.

Chairperson Wagenknecht reorganized the agenda and announced that the Board of Directors would adjourn to Closed Session.

CLOSED SESSION:

The Board of Directors adjourned to Closed Session at 10:13 a.m.

11. EXISTING LITIGATION (Government Code Section 54956.9(a))

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):

OPEN SESSION

The Board of Directors reconvened in Open Session at 10:38 a.m. District Counsel Brian Bunger announced that the Board of Directors met in Closed Session and no reportable action was taken.

PRESENTATION(S)

9. Update on Implementation of the District's California Environmental Quality Act (CEQA) Guidelines and Consideration of a Recommendation to Set the Effective Date for the Threshold of Significance for Risks and Hazards for New Receptors at May 1, 2011

Director of Planning and Research, Henry Hilken, gave the staff presentation and reviewed work efforts since the June 2, 2010 Board meeting. He described responses to comments and the Board's discussion and recommendation on the effective date. He presented examples of the District's desire to have healthy infill developments to help meet the SB 375 target.

Mr. Hilken discussed work to date on implementation of CEQA guidelines. Many city and county agencies are finding that projects meet thresholds and are making commitments through development of Community Risk Reduction Plans (CRRPs) to address local risk such as Santa Clara, San Pablo, Walnut Creek, Dublin, San Francisco, and Redwood City. Staff has also been working with regional agencies, ABAG and MTC, and has established an Air Quality/Priority Development Area (PDA) Workgroup. Staff have developed a model to calculate benefits of transportation measures in PDAs, and are meeting regionally with the Bay Area Planning Director Association (BAPDA) to coordinate regional programs and support local planning and development.

Work is underway with District staff providing assistance on CRRPs. Pilot projects are starting in San Jose and San Francisco. Staff is preparing local emission inventories, making progress on modeling, mapping growth areas and outreach plans, simplifying processes for analyzing and mitigating risk and hazard impacts, standardizing setbacks and mitigation measures for specific sources, and working on worksheets/checklists to streamline the approach.

There have been questions and comments heard which involve concerns about the guidelines making infill and affordable housing development more difficult, and that screening tables are overly conservative. Mr. Hilken said that screening tables and technical support tools are intended to be helpful, and affordable housing development should not place residents in unhealthy locations. Comment letters received since June 2, 2010 are included in the packet.

Mr. Hilken discussed current activities to date to address concerns, and staff is recommending extending the risk and hazards thresholds to May 1, 2011 to allow cities and counties to become more comfortable with the guidelines. Staff has been working on charts and technical tools, putting information on the District website, updating screening tables, and he suggested setting up a technical work group of staff and commenters to work through materials while in draft form.

He discussed the risk and hazard screening approach, stating that simplified and conservative assumptions in a screening table, save time and resources. He said screening tables are based on the

highest traffic volumes. If projects do not pass the screen, they still are able to conduct further analysis, obtain local traffic data next to the proposed project and scale project setbacks accordingly. He then presented draft disclaimer language to be included on the website which refers to screening tables being conservative and the ability to further refine projects. He noted that another helpful step is stationary source screening tables, and most comments have focused on these tables.

Mr. Hilken said lastly, staff wants to hold another round of workshops in late January/early February for local governments, as staff has found it very helpful to continue dialogue. Staff's recommendation is that the Board of Directors set the effective date for risk and hazard thresholds for new receptors to May 1, 2011.

Chairperson Wagenknecht reviewed public comment protocols due to the number of speakers, suggested speakers focus on risk to new receptors, and repeated the recommendation which is to set the effective date to May 1, 2011.

Public Comments:

John Rahaim, Director, San Francisco Planning Department, expressed support for a delay until the City's plan can be put into place and acknowledged the CRRPs as an important tool to look at the plan in a broader way rather than a project-by-project basis. However, numerous housing units proposed along PDAs and near transit centers, which creates regional air quality benefits, will most likely present the City with a problem.

Tom Rivard, San Francisco Department of Public Health, said more time is needed to complete modeling, and he asked for cooperation from the staff and Board regarding how to assess mitigations and build new housing in areas that would be considered challenging.

Darin Ranelletti, City of Oakland Planning Department, supported delayed implementation and healthy infill, and believes this can largely be achieved through mitigated air quality impacts. In Oakland, typical mitigation is through the use of filters; however, District staff has informed them that use of filters is not sufficient and only addresses indoor air and not outdoor air. The methodology recommended does not distinguish between this and provides an inadequate assessment of risk. He suggested the Board direct staff to revise the methodology to provide an accurate assessment and take comments from stakeholders.

Laura Tam, San Francisco Urban Research Association (SPUR), thanked the District for updating the guidelines, appreciates the work to improve sustainability and wants to support thresholds and staff recommendations to delay implementation until May. However, she thinks there could be unintended consequences. She urged changes be made in the meantime, and reviewed the five suggestions as outlined in the letter submitted by SPUR and made part of the record.

Jacques Pelham, Assistant Counsel, BRIDGE Housing Corporation, expressed thanks to the Board and to staff for working with the affordable housing community to address concerns. District staff made a presentation last week. There was concern regarding failure rate of projects near generators and stationary sources. There are ongoing revisions to screening models that will improve the accuracy of results. He expressed concern that the existing tables are still on the website and are being used, and asked that they be removed until they are made accurate.

Linda Best, Contra Costa Council, supports delay in the effective date for new receptors and asked to be sure screening tools can be revised to clear up false positives and refine mitigation measures. She also supported taking tools off the website until further refined.

Evan Reeves, Center for Creative Land Recycling (CCLR), thanked staff for their continued accessibility, are encouraged tools are a work in progress, and they remain hopeful that they will have a tool to reliably identify sites where there is a real concern for air quality. They also support the recommendation to delay implementation, but asked that website information be removed and replaced with guidance for local agencies.

Ignacio Dayrit, Center for Creative Land Recycling (CCLR), suggested working with redevelopment agencies because they are not aware of the guidelines. He asked to bring up issues regarding housing elements, Proposition 65, and whether rehabilitation of a building affects agencies with housing element funding.

Rosina Roibal, Bay Area Environmental Health Collaborative (BAEHC), supports CEQA and has pushed for more stringent thresholds. She thinks there should not be affordable housing projects in polluted areas, does not support delaying implementation, believes developers are more concerned with profits and not health and asked that the Air District be committed in its original recommendation.

Azibuike Akasa, Regional Asthma Management Program (RAMP), said RAMP supports CEQA guidelines and staff recommendations for technical support, do not support the delay because recommendations and refinements can be done simultaneously, suggested CRRP models be propagated throughout the counties, and for a status report to be provided in the future.

Marie Harrison, GreenAction, Bayview Hunters Point, expressed support of CEQA guidelines and staff's recommendation and said BVHP was not aware of the Stationary Source Committee meeting, and noted miscommunication.

Leotus Martin echoed comments of the last three speakers, suggested new receptor thresholds not be delayed, and was opposed to building houses on contaminated land.

Matt Regan, Bay Area Council, asked that the strongest language be put on website so that data is reflected as a work in progress, and that information be removed until data is refined and updated. He acknowledged the District's focus on public health, thinks sustainable infill development has moving parts and healthy air is only one of them.

Stephanie Reyes, Greenbelt Alliance, agreed air quality levels are unhealthy for new housing developments, agreed with technical tools, thinks thresholds are good metrics to assess impacts and should be used, and supported staff recommendation for a May 1st implementation.

Andy Katz, Breathe California, said they appeared last year to support GHG and risk and hazardous receptor thresholds, and asked staff to develop options to enhance information, to continue providing assistance, and to continue moving forward.

Evelyn Stivers, Non-Profit Housing Association (NPA), expressed support of the general concept of thresholds, but said affordable housing developer members with small infill projects are having

trouble with the CEQA process. She supported removing stationary sources information from the website, asked that peer review be done to come to a common agreement and asked that guidelines be removed or disclaimer language added to the website.

Tim Colen, Executive Director, San Francisco Housing Action Coalition and former geologist for EPA Region IX, expressed concern about the failure rate for affordable housing sites, believes that funding affordable housing is already difficult and supported the addition of a disclaimer on the website.

Chairperson Wagenknecht said that tools may be overly conservative, but the information is scientifically based, and he asked for comment by the Executive Officer/APCO. Mr. Broadbent summarized steps taken by staff which responds to concerns heard. The District stands by its recommendation to move the effective date to May 1, 2011, and if the Board chooses there will be an annual review in June 2011. The District strongly believes tools to date are scientifically based and sound. A strong disclaimer can be posted that if a project fails the screen, additional steps will be taken. He said staff has removed higher emission estimates, flow charts and inventories are provided and work and coordination will continue between staff and developers and environmental representatives relative to guidelines.

He also noted that the representative from the City of Oakland mentioned filters may not go far enough, and he would want to revisit this issue and work with him, as this is not the experience with the City of San Francisco.

MOTION: Vice Chair Bates made a motion to approve the recommendation, appreciates testimony, feels strongly that the notion of removing the guidelines from the website is too late, as it is public knowledge. He supports the May 1, 2011 delay and while some people want thresholds in place now, delaying it will allow the District to hold meetings and further refine the guidelines. He also asked that the disclaimer be included that states conservative information is being relied upon and there are modifications that can be made. Secretary Gioia seconded the motion.

DISCUSSION: Director Torliatt said last June when guidelines were adopted, the Board made a compromise by having an effective date of January 1, 2011. She did not agree with extending it further, thinks the reality is that guidelines are out there and the only thing that will change is the District may not comment until May 1, 2011 on the guidelines. It is very exciting what San Francisco is doing in moving forward on their CRRP and this is the kind of push the District was trying to work with cities on to look at the larger picture.

She entertained a substitute motion to continue with the existing effective date of January 1, 2011, and asked for discussion.

Director Sperring was opposed to removing screening criteria from the website, stressed the need to strengthen disclaimer language and include a statement that guidelines are not intended to be a detriment to affordable housing in transportation corridors.

Director Mar thanked speakers for their comments, agreed that delays made in June were a compromise and was supportive of Director Torliatt's suggestion for a substitute motion.

Director Hudson suggested an amended substitute motion for an extension to June 1, 2011 to be aligned with the District's update.

Director Daly expressed support for Director Torliatt's substitute motion.

Director Yeager questioned how screening criteria might change between now and May and whether any problems would occur given the current website information. Mr. Broadbent explained that staff will ensure project proponents have the most updated and reliable information for that particular stationary source, which will go a long way to address concerns and the proposed disclaimer will also assist users.

Director Kalra thinks the issue raised is not having accurate information, although if a project were to fail initial screening and additional steps are taken, the additional work would not be burdensome. He added that people were well aware that guidelines adopted in June were not a finished product. It should not be a surprise that more refinement is being done. He supported the District's recommendation, believes communication is important with cities, counties and regional agencies and agreed the website should reflect accurate information.

Substitute Motion: Director Torliatt made a substitute motion to maintain the effective date for risk and hazard thresholds for new receptors as January 1, 2011; Director Daly seconded the motion; which failed by the following roll call vote (4-12-0-4): Ayes: Daly, Kalra, Mar, and Torliatt. Noes: Bates, Dunnigan, Gioia, Groom, Haggerty, Hosterman, Hudson, Miley, Ross, Spering, Yeager, and Wagenknecht. Abstain: None. Absent: Brown, Garner, Klatt, and Zane.

Chairperson Wagenknecht gave staff direction to coordinate the effective date and annual review date as May 1, 2011.

Board Action: Vice Chair Bates made a motion to adopt a Resolution extending the effective date of the District's CEQA Risk and Hazards Thresholds of Significance for New Receptor Projects until May 1, 2011; Secretary Gioia seconded the motion; which was approved by the following roll call vote (16-0-0-5): Ayes: Bates, Daly, Dunnigan, Gioia, Groom, Haggerty, Hosterman, Hudson, Kalra, Mar, Miley, Ross, Spering, Torliatt, Yeager, and Wagenknecht. Noes: None. Abstain: None. Absent: Brown, Garner, Klatt, Kniss and Zane.

Adopted Resolution 2010-14: A Resolution of the Board of Directors of the Bay Area Air Quality Management District Extending the Effective Date of the District's CEQA Risk and Hazards Thresholds of Significance for New Receptor Projects until May 1, 2011.

PUBLIC HEARING(S)

10. Public Hearing to Consider Adoption of Proposed Amendments to Regulation 9, Rule 10: Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators and Process Heaters in Petroleum Refineries; and Adoption of a CEQA Negative Declaration

Julian Elliot, Senior Air Quality Engineer, gave the staff presentation on Amendments to Regulation 9, Rule 10: NO_x and CO from boilers, steam generators and process heaters in petroleum refineries. He reviewed the Rule's history, described refinery heaters, current NO_x limits, proposed amendments, the rule development process, the regulation's requirements. He also discussed Continuous Emissions

Monitoring Systems (CEMS) and District compliance audits to verify effectiveness of alternative monitoring and possibly propose future rule changes.

He said staff recommends the Board adopt the CEQA Negative Declaration and adopt proposed amendments to Regulation 9, Rule 10: NOx and CO from boilers, steam generators and process heaters in petroleum refineries.

Public Comment:

Guy Bjerke, Western States Petroleum Association, thanked staff for preparing the rule, said his comments are reflective of the consensus of refineries, noted it expands the applicability of heaters and boilers, they appreciate staff's response with a correction in 301.5 and said their concern is that some boilers and heaters operate very rarely. When refineries use boilers or heaters, the typical normal usage is something that the District should recognize in its calculations for compliance purposes.

Todd Lopez, Valero Refinery, Benicia, referred to a provision in the existing rule that has to do with a disincentive of replacing units rather than installing controls on existing units, which he thinks has a detrimental environmental impact in that a replacement unit will be better for the environment. He thinks there should be an incentive for this as opposed to installing controls and asked that the Board not adopt the rule at this time but try to remove the disincentive for replacing units to make sure they are coming up with the most emission reductions as possible, and deal with how the rule overlaps with GHG regulations. Valero is on the cusp of spending \$850 million on NOx controls and furnaces and they want to comply both with this rule and GHG regulations. He also pointed out that the agenda report states the rule will help reduce GHG emissions, but CEQA analysis states they will increase, but it is not quantified. The increases may be mitigated by replacement units which he asked to be incentivized.

Mr. Broadbent acknowledged Mr. Lopez' comments, he stands by staff's recommendation and suggested exploring ways to incentivize refineries.

Board Action: Director Hosterman made a motion to adopt CEQA Negative Declaration and adopt proposed amendments to Regulation 9, Rule 10: NOx and CO from boilers, steam generators and process heaters in petroleum refineries, and directed staff to explore incentivizing refineries; Director Daly seconded the motion; which carried by unanimous voice vote.

Mr. Broadbent briefly outlined the length of time further study would occur as being 18 to 24 months.

Adopted Resolution 2010-13: A Resolution of the Board of Directors of the Bay Area Air Quality Management District Amending District Regulation 9, Rule 10: Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators and Process Heaters in Petroleum Refineries and Adopting a CEQA Negative Declaration for the Project.

OTHER BUSINESS

12. **Report of the Executive Officer/APCO:** Mr. Broadbent reported that two Spare the Air days were called on December 1 and 12, 2010, and briefly reported on new security measures implemented at District Headquarters.
13. **Chairperson's Report** - None
14. **Time and Place of Next Meeting:** Special Meeting/Retreat - Wednesday, January 19, 2011, 9:45 a.m., Ed Roberts Campus, Osher Education Conference Room, 3075 Adeline St., Berkeley, CA 94703.
15. **Adjournment:** The Board of Directors meeting adjourned at 12:23 p.m.

/s/ Lisa Harper

Lisa Harper
Clerk of the Boards