

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

Board of Directors Regular Meeting
May 5, 2010

APPROVED MINUTES

CALL TO ORDER: Chairperson Brad Wagenknecht called the meeting to order at 9:50 a.m.

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

Absent: Directors Harold Brown, Liz Kniss, and Shirlee Zane

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

Public Comments:

There were no public comments.

Board Member Comments:

There were no Board Member comments.

CONSENT CALENDAR (Items 1-6):

1. Minutes of April 7, 2010 and Special Meeting of April 14, 2010, as amended.
2. Communications
3. Quarterly Report of Executive Office and Division Activities
4. Quarterly Report of Air Resource Board Representative - Honorable Ken Yeager
5. Consider Establishing New Job Classification of Audit and Special Projects Manager with a Salary Set at Pay Range 148M
6. Consider Reclassifying Positions

Chairperson Wagenknecht announced a minor correction to the bottom of page 1 of the Special Meeting Minutes of April 14, 2010: change the word, "Off-Road" to "On-Road".

Board Action: Director Torliatt made a motion to approve Consent Calendar Items 1 through 6; Director Hosterman seconded the motion; carried unanimously without opposition.

COMMITTEE REPORTS AND RECOMMENDATIONS:

7. **Report of the Stationary Source Committee Meeting of April 12, 2010**
Chairperson Uilkema

The Committee met on Monday, April 12, 2010 and due to a lack of a quorum, deferred the minutes of March 5, 2010.

The Committee received a presentation regarding Pacific Steel Casting Company's three plants, discussed plant locations, process operations, air pollutants and emissions from the plants, the Odor Management Plan, and a complaint history of all three plants, noting that the last complaint received was November 2008.

Public comment was received regarding the need for additional improvements and reductions, a request to conduct fence-line mobile monitoring and re-evaluate risks, a request to disallow grandfathering of existing facilities, and for pre-noticing to child care centers during high emission operations.

The Committee then received a presentation on the proposed Metal Melting Rule and an overview of metal melting and processing facilities. The Committee reviewed applicable federal, state and District rules. Next steps in rule development include additional technical research, outreach to stakeholders, workshops, socioeconomic and environmental analysis, preparation of the final proposal, and public hearings to be held in the fall.

Public comment was received from a representative of the California Metals Coalition who supported the District's efforts in meeting with them early in the process.

The Committee then received a presentation of the 55 proposed Stationary Source measures in Draft Bay Area Clean Air Plan (CAP), reviewed the CAP's purpose to update the 2005 Ozone Strategy, and to develop an integrated multi-pollutant plan. The Committee discussed the District's extensive public outreach, workshops, collaboration with regional agency partners, consultation with CARB and neighboring air districts, and development of a multi-pollutant evaluation methodology.

The Committee then reviewed the District's Rule Development process and the draft 2010-2013 regulatory agenda.

The next meeting of the Committee is scheduled for Thursday, May 13, 2010 at 9:30 a.m.

Board Action: Director Uilkema made a motion to approve the report of the Stationary Source Committee; Director Ross seconded the motion; carried unanimously without objection.

8. **Report of the Budget and Finance Committee Meeting of April 28, 2010**
Chairperson Daly

The Budget and Finance Committee met on April 28, 2010 and approved the minutes of March 24, 2010.

The Committee received the Financial Report for the third quarter for Fiscal Year 2009/2010. The Committee reviewed a comparison of budget to actual revenue and actual expenditures, investment balances and fund balances. Prior to making its recommendation on the proposed budget, the Committee held discussion on proposed amendments to Regulation 3: Fees.

Committee members discussed proposed fee increases, the District's fiscal year 2009 cost recovery gap of 46%, cost containment measures, existing tracking of Title V permit preparation and enforcement, potential impacts that an increase may have on facilities, and staff's proposal to initiate a cost recovery study.

Public comment was received from the California Council for Environmental & Economic Balance (CCEEB) opposing the proposed 10% increase for Schedule P fees and supporting an across-the-board 5% increase.

A motion was made to forward staff's recommendation to the Board of Directors to increase all fees by 5% and Schedule P fees at 10%. A substitute motion was then made to forward a recommendation to increase all fees by 5% across-the-board. Both motions resulted in a tie 4-4 vote. The Committee requested the matter be forwarded to the Board of Directors with an explanation of the Committee's deliberations.

The Committee then continued its discussion of the proposed budget. The discussion included a review of the District's response to budget challenges. The response is a balanced, multi-faceted and multi-year approach that includes maintaining vacancies, reducing services and supplies, deferring capital spending, and addressing cost recovery in permit fees. The Committee discussed assumptions for property tax projections and suggested periodic review of appropriate reserve targets.

The Committee recommended Board of Directors' approval of the proposed budget for Fiscal Year 2010/2011, with the caveat that depending upon the action of the Board relating to the fee schedule, if lower fees are proposed, the difference be taken from the services and supplies budget which would be an additional across-the-board cut to that line item.

The Committee then considered and recommended Board of Directors' authorization for the Executive Officer/APCO to enter into a capital lease agreement for server, network and telephone systems.

The next meeting of the Budget and Finance Committee is scheduled for May 20, 2010. Director Daly made a motion that the Board of Directors approve the report and recommendations of the Budget and Finance Committee, with the exception of the proposed increases to permit fees.

Board Action: Director Daly made a motion to approve the report and recommendations of the Budget and Finance Committee, with the exception of the proposed increases to permit fees; Director Uilkema seconded the motion; carried unanimously without objection.

Director Uilkema confirmed that an explanation would be provided regarding the Committee's deliberation of the 5% versus the 10% for Schedule P fees during discussion of the next item.

PUBLIC HEARING(S)

9. Public Hearing to Receive Testimony on Proposed Amendments to Air District Regulation 3: Fees

Director of Engineering, Brian Bateman, presented the proposed fee regulation amendments and reviewed background information on the authority to assess fees, the cost recovery gap due to revenues falling short of full cost recovery, and the limitation for permit fees to be increased by 15%.

He presented a chart of District revenue sources for FYE 2010 budget, and budget challenges which include increasing program requirements, rules and regulations, and decreases in expected revenue.

Mr. Bateman discussed the District's responses to budget challenges of reducing expenditures, maintaining vacancies, increasing efficiency through business process improvements, making modest use of reserves, and increasing cost recovery through fee increases. An illustration of fee increase effects on cost recovery shows that fees would need to be increased by 72% to reach full cost recovery.

Average fee increases have been 9% each year. Staff proposes a 5% increase in all fees, except for Fee Schedule P (Title V) which is proposed for a 10% increase. Mr. Bateman discussed the extensive work and public processes involved with Title V Permits, noting that the effect on fee revenue would be about a 5.5% increase which would otherwise result without a fee increase, and represents \$1.6 million in revenue. A total of 97 Title V facilities exist in the Bay Area, and the average increase would be 6.4%. The overall range of increases is 5.3% to 8.0%, and proposed increases for the five refineries would range from 5.6% to 6%.

Mr. Bateman discussed the additional proposed fee amendments to:

- Expand definition of "small business" from \$600,000 to \$750,000;
- Create new "green business" application fee discount of 10%;
- Create new application fee discount for attendance at Industry Compliance School;
- Move temporary amnesty provision to Regulation 3 (penalty fees), and extend applicability to registrations; and
- Update Schedule N fee calculations to be based on Cancer Potency Factors rather than Unit Risk Factors.

For small businesses, Mr. Bateman noted that increases in annual permit renewal fees would range from \$33 to \$120. He presented a comparison of Bay Area AQMD fees with the South Coast AQMD, which shows South Coast's fees to be 2.5 times higher, with the exception of PERC dry cleaners which he said will be phased out over time.

Mr. Bateman discussed verbal and written comments received from CCEEB, who opposes the 10% increase but supports an across-the-board 5% increase. WSPA commented that the District needs to contain costs and that increased fees should yield an increased level of service to fee payers. Two auto body shops and a gas station opposed fee increases, citing hardships due to the economic downturn.

Regarding responding to comments, staff proposes hiring an accounting firm to update the District's cost recovery study. The same methodology would be used as in 2005 which could be completed by the end of this calendar year for use in next year's fee schedule review. He noted that the proposal would convene a stakeholder steering committee to review cost increases over time and look at cost containment measures. He said another option would be to adopt an across-the-board 5% increase, which would reduce fee revenue by 150,000. Fee revenue would be thereby increased by \$1.45 million versus \$1.6 million. Each District department would reduce its service and supplies budget by an additional 1% to pay this difference.

Mr. Bateman then reviewed the Rule development schedule, with consideration for adoption on June 16, 2010, with an effective date of July 1, 2010.

Board Member Comments/Discussion:

Director Torliatt voiced concerns with the District incurring continued cost recovery issues, citing the annual restriction to raise fees by 15%, and she questioned further budget impacts proposed legislation would have on the District if facilities permitted under Title V are expected to double. Mr. Bateman indicated that EPA's tailoring rule, if adopted, will not be effective until next January. Additional facilities filing Title V applications will not be due within a year from that date, and therefore, the District will not see much difference or impact in the next fiscal year.

Director Torliatt suggested, and Mr. Bateman confirmed, that additional amendments proposed such as discounts to small and green businesses would be advertised.

Director Daly suggested the cost recovery study include all Title V facilities in the Bay Area and he voiced strong opposition to the District continuing to not recover its costs when large companies have invested millions to thwart the District's mission.

Public Comments:

Bill Quinn, CCEEB, requested the Board adopt an across-the-board alternative of 5% increases, given severe economic conditions. He acknowledged the District was not in full cost recovery, supported the cost recovery study be completed, and reported on CCEEB's support on AB32.

Director Ross questioned and confirmed that staff would need to clarify whether a mid-year budget adjustment could be done, given results from the cost recovery study. He said he sees the 58% cost recovery gap as a District-paid subsidy, and while he is supportive of business, he did not know any business that would sell their products 58% cheaper. He recommended the District stay on the path to cost recovery.

Director Yeager questioned and confirmed with staff that the South Coast Air District's fees are higher due to them having less property tax revenues, different rate structures and emission-based fees, and fees on air pollution control equipment, which this District does not support.

Director Sperring confirmed with Mr. Broadbent that staff utilizes the same methodology each year from the cost recovery study done in 2005 which only looks at cost recovery. Mr. Broadbent added that the new study would include a thorough review and include review of cost containment, as well. Director Sperring voiced concerns with burdening businesses and supported a modest fee increase, completion of a cost recovery and containment study, and then suggested the District determine the actual need for further increases.

Director Haggerty echoed comments made by Director Daly, stating he did not sympathize with Title V facilities given their billions in profits, and also echoed comments made by Director Sperring.

Board Motion: Director Haggerty made a motion to increase all fees, implement a cost recovery and containment study, and if justified, increase fees by another 5%; Director Hosterman seconded the motion.

Discussion: Director Hudson discussed differences in the number of days it takes the South Coast Air District to process permits versus this District and confirmed that staff continues to meet with WSPA regarding further efficiencies.

Director Kalra said he could not support the current motion given recent discussions at the Budget and Finance Committee meeting. He believed that the cost recovery information is accurate and justified, said a 10% increase for Schedule P fees is moderate, and that the District has been providing a substantial subsidy. He also pointed out that the largest Title V facility would incur a \$1,500 increase, with smaller facilities paying far less.

Director Uilkema echoed comments made by Director Spering, and supported conducting the cost recovery study to justify increasing fees by 10%. Director Hosterman voiced appreciation for comments made and supported a 5% across-the-board increase and completion of a cost recovery and containment study.

Director Ross questioned why the District should spend \$150,000 on a consultant to determine that it is behind in its cost recovery. He is empathetic about economic times and burdens placed on businesses; however, Title V facilities would simply pass increases onto consumers, and if it is found that the District is making a profit, it could always reimburse permittees.

Director Torliatt did not support the current motion, citing the existing cost recovery gap and future requirements placed on the Air District by the EPA, which will cause further subsidies. Secretary Bates echoed Director Torliatt's comments and agreed that taxpayers would be underwriting Title V companies, which he thinks is appalling. Director Garner also supported a 10% increase in Schedule P fees and opposed having a cost recovery study done because the District already knows it is not recovering costs. She pointed out that approval of a 5% across-the-board increase would impose a \$300,000 burden on the District.

Secretary Gioia further reviewed results from the 2005 cost recovery study with Mr. Broadbent and clarified that an updated study would look at efficiencies put in place by the District, cost recovery, costs of permitting, and containment costs. He confirmed that the 10% increase in Schedule P fees would actually result in the largest facility incurring an actual 8% increase and the smallest facility, a 5.3% increase, and supported staff's recommendation.

Director Haggerty asked for a vote on the proposed motion.

Vote on Initial Board Motion: Director Haggerty made a motion to increase all fees by 5%, implement a cost recovery and containment study, and if justified, increase Schedule P fees by an additional 5%; Director Hosterman seconded the motion. Motion failed by the following Roll Call Vote (7-12-3): Ayes: Groom, Haggerty, Hosterman, Hudson, Miley, Spering and Uilkema. Noes: Bates, Daly, Dunnigan, Garner, Gioia, Kalra, Klatt, Mar, Ross, Torliatt, Yeager, Wagenknecht. Absent: Brown, Kniss and Zane.

Board Motion: Secretary Gioia made a motion to approve 5% increase in all fees, except for Fee Schedule P, approve 10% increase in Schedule P fees, and implement a cost recovery and containment study; Director Daly seconded the motion.

Discussion: Director Garner confirmed with Mr. Broadbent that the consultant conducting the study would not only evaluate cost recovery, but would also review efficiency gains, cost containment, and look at loss in revenue. The scope of the study would be presented to the Budget and Finance Committee.

Board Action: Secretary Gioia made a motion to approve 5% increase in all fees, except for Fee Schedule P, approve 10% increase in Schedule P fees, and implement a cost recovery and containment study. Motion approved by the following Roll Call Vote: (18-1-3) Ayes: Bates, Daly, Dunnigan, Garner, Gioia, Haggerty, Hosterman, Hudson, Kalra, Klatt, Mar, Miley, Ross, Spering, Torliatt, Uilkema, Yeager and Wagenknecht. Noes: Groom; Absent: Brown, Kniss and Zane.

PRESENTATION

10. Update on Proposed Revisions to the District's California Environmental Quality Act (CEQA) Guidelines and Thresholds of Significance

Mr. Broadbent stated that on June 2, 2010, the Board of Directors will consider proposed revisions to the District's CEQA guidelines and thresholds of significance, stating that last January the proposed updates were considered and the Board directed staff to work with cities and counties. He stated Mr. Hilken would review the extensive outreach and work done to date.

Director of Planning and Research, Henry Hilken, discussed the need to update the District's CEQA guidelines, citing transportation, land use and air quality impacts. He discussed the District's extensive outreach efforts in the form of workshops for both the public and government sector, presentations, meetings, telephone calls, email updates, Board meetings, CARE Task Force meetings. He gave a summary of workshop comments and feedback, and provided an overview of technical tools and training, proposed GHG thresholds and local community risks and hazards thresholds. He stated that support exists for community-wide planning approaches, and he described collaboration between the District and local governments and progress made to date. Case studies were conducted to test thresholds and demonstrate technical tools and he presented various case studies performed in The Uptown, Oakland; North Richmond Specific Plan; and Japantown Redevelopment Project in San Jose.

Next steps include conducting URBEMIS training for local staff in May, risk and hazard evaluation training in June/July, proceeding with CRRP pilot projects, seeking Board approval of significance thresholds June 2 in San Jose, and continuing with provisions for on-going District technical assistance to lead agencies.

Board Member Comments/Discussion:

Director Yeager requested examples of case studies for suburban projects that may not necessarily meet CEQA thresholds.

Director Kalra echoed the request made by Director Yeager, commended District staff for their outreach efforts to agencies, and said he looks forward to the June 2, 2010 Board Meeting in San Jose.

Director Groom also acknowledged staff outreach and indicated local concerns had been allayed.

Secretary Gioia questioned the opportunity to have guidelines effective at the time CRRPs are approved in order to allow agencies to consider alternatives. He requested more detail guidance on CRRPs and asked to align the effective date of the threshold guidelines so that communities can have some time to complete CRRPs, citing a potentially affected development proposed in the City of Richmond. Lastly, he questioned and confirmed that the CEQA amendments would be presented to the MTC Planning Committee on May 14, 2010 and to the JPC on May 21, 2010.

Director Haggerty thanked staff for their work, confirmed that questions and comments were being received and tracked at workshops and meetings by staff, requested staff explain how case studies were chosen, and supported examples of real projects that have problems meeting the guidelines, such as the Santa Clara Stadium project.

Director Sperring commended staff for their efforts to link land use efforts and MTC. He believed it was important to engage the JPC with discussion on the case studies where projects do not meet guidelines, as well as to the Board. He cited the process as a balanced approach and a working tool, and thinks it will serve the District well, reiterating the fact that the guidelines make communities better.

Director Uilkema commended staff for clarifying questions, but thinks people are concerned with the effect guidelines will have on long-range housing goals. She also supported the suggestion for additional review of case studies where projects do not meet guidelines.

Director Hosterman stated that she was initially skeptical about what the increased thresholds might mean in her community, given the economy, but her fears have been allayed with added clarity on the guidelines and CRRPs.

Mr. Broadbent appreciated Board Member comments and direction, and noted that staff will present case studies of projects that may not pass guidelines.

Secretary Gioia referred to the pilot projects for the cities of San Jose and San Francisco and questioned availability of funding for other jurisdictions.

Mr. Broadbent reported that the Executive Committee will meet and consider selection of a contractor to assist with the development of local emissions inventories to support CRRPs, which will be brought to the Board for approval at the June 2, 2010 Board meeting.

CLOSED SESSION

The Board of Directors adjourned to Closed Session at 11:57 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):

A) Andrea Gordon v. Bay Area AQMD, United States District Court, N.D. Cal., Case No. CV 08-8630 BZ

OPEN SESSION

The Board of Directors reconvened the Regular Board Meeting at 12:01p.m. District Counsel Brian Bunger reported that there was no reported action taken.

OTHER BUSINESS

12. **Report of the Executive Officer/APCO**

Executive Officer/APCO Jack Broadbent reported that dry cleaning facilities are facing a July 1, 2010 deadline, and many who are still relying on PERC and have financing issues will find themselves

unable to comply with regulations. The District is formulating compliance agreements which will allow facilities more time to move toward wet cleaning alternatives. He indicated that Director Mar has been meeting with affected businesses in his District who have switched to wet cleaning alternatives.

Mr. Broadbent provided an update on the Port of Oakland, stating that CARB has allowed an extension of the compliance deadline to April 30, 2010 for truckers to secure retrofit devices. He noted that some truckers have received funding and some have not, who are protesting.

He reported that the District was a recipient of a number of awards, which were presented to the Board and read into the record from Breathe California and the Climate Action Reserve. He also reported that the Spare the Air season began on May 3, 2010 and noted that outreach and news stories will be advertised.

13. **Chairperson's Report**

Chairperson Wagenknecht announced that at its April 14, 2010 meeting, the Alameda Mayors Conference re-appointed Tom Bates to serve another two-year term on the District Board of Directors. Chairperson Wagenknecht also announced the cancellation of the May 19, 2010 Board of Directors meeting.

14. **Time and Place of Next Meeting: Regular Meeting** - Wednesday, June 2, 2010, 9:45 a.m., San Jose City Hall, Council Chambers, 200 E. Santa Clara Street, San Jose, CA 95113.
15. **Adjournment:** The Board of Directors Meeting adjourned at 12:15 p.m.

/s/ Lisa Harper
Lisa Harper
Clerk of the Boards