

Bay Area Air Quality Management District  
City of San Jose Council Chambers  
200 East Santa Clara Street  
San Jose, CA 95113  
(415) 749-5000

Board of Directors' Special Meeting  
June 2, 2010

**APPROVED MINUTES**

**CALL TO ORDER:** Chairperson Brad Wagenknecht called the meeting to order at 9:52 a.m.

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

Absent: Directors Harold Brown, Chris Daly, Carol Klatt, Nate Miley, and Shirlee Zane

Director Kalra welcomed Directors, Air District staff and audience members to the City of San Jose, and introduced the City of San Jose's Mayor, Chuck Reed, who has been supportive of the District's efforts. Mayor Reed gave welcoming remarks.

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

**Public Comments:**

There were no comments

**Board Member Comments:**

Chairperson Wagenknecht announced that the public hearing regarding adoption of Proposed Amendments to the District's California Environmental Quality Act (CEQA) Guidelines would be moved on the agenda to be heard after adoption of the Consent Calendar.

**CONSENT CALENDAR (Items 1-4):**

1. Minutes of May 5, 2010;
2. Communications;
3. District Personnel on Out-of-State Business Travel;
4. Consideration of Authorization for Execution of Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures Section 4.3 Contract Limitations

**Board Action:** Director Torliatt made a motion to approve Consent Calendar Items 1 through 4; Director Garner seconded the motion; carried unanimously without opposition.

## **PUBLIC HEARING(S)**

### **9. Public Hearing to Consider Adoption of Proposed Amendments to the District's California Environmental Quality Act (CEQA) Thresholds of Significance**

Executive Officer/APCO Jack Broadbent expressed thanks to Directors and District staff for their work to date on the proposed amendments. He outlined the many hearings, workshops, public outreach and development of the proposed amendments which has occurred to date.

Director of Planning, Research and Rules, Henry Hilken, gave an overview of the District's CEQA Guidelines, the District's work with Bay Area city and county staff, technical training tools, workshops held, case studies, and a demonstration that the proposed thresholds are sound and an achievement of health protective goals of the District. He presented a summary of revisions made to date as a result of comments received during the public hearing process, and described the development of Community Risk Reduction Plans (CRRPs) and revised screening tools for risks and hazards.

Mr. Hilken reviewed the numerous public and written comments received to date, some of which allege the recommended thresholds are not stringent enough especially in CARE impacted communities, and others expressed concern regarding hindrances with development of infill, transit-oriented development, and development in priority areas. Staff believe the thresholds provide an important level of health protection, and do not believe that thresholds would hinder infill, as a number of case studies have been presented that reveal thresholds can be met.

Two issues that have come up in previous discussions relate to a tiered approach, and Mr. Hilken referred to copies before the Board Members of two tables for Board consideration; one a tiered approach and one without a tiered approach which is recommended by staff and which he described. He also presented and described two additional case studies as requested by the Executive Committee members at their May 24, 2010 meeting.

Mr. Hilken concluded his presentation, stating next steps include continued training for local agency staff and proceeding with CRRPs, continued technical assistance to cities and counties, monitoring and reporting implementation of CEQA guidelines, and reporting of issues that may arise to the Board. Staff recommended adoption of proposed amendments to CEQA thresholds of significance.

#### **Board Member Comments/Questions:**

Directors commended staff on their work in development of the proposed amendments, technical tools and training, and extensive outreach to cities and counties. They acknowledged and discussed initial trepidation regarding agencies/developers' ability to meet thresholds, as well as outstanding concerns by environmental stakeholders that thresholds are not strong enough. They discussed proposed changes to hazard indexes and trigger levels, public comment letters received citing the importance for a regional approach, CRRPs achieving greater health benefits than a project-by-project approach, and Mr. Hilken reviewed with Boardmembers how CRRPs would be developed.

Mr. Broadbent noted that staff believes the CRRPs represent the best way to provide for control on the local level. Staff recommended that it makes sense for the Board to implement a future effective date no later than January 1, 2011 for the risk and hazard thresholds for receptor projects, which will provide a six-month timeframe with which to develop CRRPs. He also noted that staff would be

reporting to the Board as to how plans are developing. He explained there are already many planners using information to put together the CRRPs.

Public Comments:

The following speakers provided public comments:

Kerrie Romanow, City of San Jose  
Laurel Prevetti, City of San Jose  
Andy Katz, Breathe California  
Matt Vespa, Center for Biological Diversity  
Jonathan Scharfman, Universal Paragon Corporation  
Andrew Smith, City of Walnut Creek  
Darin Ranelletti, City of Oakland  
Lydia Tan, Bridge Housing Corporation  
Katie Lamont, Eden Housing, Inc.  
Paul Campos, Bay Area Urban Policy Committee  
Marianna Grossman, Sustainable Silicon Valley  
Wafaa Aborashed, Bay Area Environmental Health Collaborative/DDDC & Bay Area Healthy 880 Communities  
Linda Best, Contra Costa Council  
Stephanie Shakofsky, Center for Creative Land Recycling  
Matt Regan, Bay Area Council  
Anna Lee, BAEHC/CBE  
Azibuike Akaba, Regional Asthma Management & Prevention  
Rosina Roibal, Bay Area Environmental Health Collaborative  
Jenny Bard, American Lung Association  
Cheryl O'Connor, Building Industry Association of Bay Area/BRIDGE  
Guy Bjerke, Western States Petroleum Association  
Jose Garcia, Building Trades Council  
Evelyn Stivers, Nonprofit Housing Coalition  
Joe Kirchofer, Mid-Peninsula Housing  
Evan Reeves, Center for Creative Land Use

Recusal: Director Haggerty recused himself from further participation on the matter due to an identified conflict of interest, and left the Council Chambers.

Mr. Broadbent reiterated staff's recommendation to the Board of Directors, asked them to consider timing, and suggested the Board monitor the implementation of the guidelines through Board Committees.

Motion: Director Kalra made a motion to adopt the CEQA thresholds of significance; adopt staff's proposal for CRRPs; delay implementation until January 1, 2011; hold an annual review of guidelines and new policies every June; ensure implementation of the thresholds is consistent with the goals of SB 375; work with regional partners on goals; explore specific roles the District can play through financial support with CRRPs with local jurisdictions; and for the screening process to be used to the greatest extent possible to help cities and projects in mitigating impacts to avoid having the need for a full EIR. Director Uilkema seconded the motion.

Mr. Broadbent suggested that direction to staff not be included as part of the motion to adopt the proposed thresholds. Directors Kalra and Uilkema agreed to the amendment, and restated the motion, as follows:

**MOTION:** Approve the proposed CEQA air quality thresholds of significance as described in the *Proposed Thresholds of Significance* (May 3, 2010) report (Attachment 1) and in the summary table of the proposed thresholds of significance in Attachment 2.

Directors held discussion and questioned whether the staff recommendation will be a hindrance to infill and priority development communities. Mr. Broadbent described in detail the history of the District's public outreach, workshops, extensive work and meetings with ABAG and MTC who are more supportive of the role the thresholds play. He said staff has reviewed those developments underway or those planned which represent the foundation of the case studies presented by staff. Directors acknowledged the benefit of CRRPs for communities for identifying risks, acknowledged the need to delay the project-by-project threshold on the receptor side to January 1, 2011 which will provide an opportunity for communities to develop and adopt CRRPs, and supported being more proactive in identifying ways the District could fund and/or lead in the development of plans.

Directors confirmed that adoption of the CEQA thresholds of significance would become effective immediately with the exception of receptor risk and hazard thresholds. Directors supported the suggestion to work with agencies in developing mitigation measures standards, voiced the need to be careful not to exacerbate cities' economic health or affordable housing, to properly analyze new developments, and reiterated the need for annual review.

**BOARD ACTION:** Director Kalra made a motion to adopt the CEQA Thresholds of Significance as set forth in Attachment A, discussed in the proposed thresholds of significance report dated May 3, 2010; and to adopt a Resolution of the Board of Directors of the Bay Area Air Quality Management District Adopting Thresholds for use in determining the significance of projects' environmental effects under the California Environmental Quality Act and in the summary table of the proposed thresholds of significance in Attachment 2. Vote 14-0-7-1: Ayes: Bates, Garner, Gioia, Groom, Hosterman, Hudson, Kalra, Mar, Ross, Spring, Torliatt, Uilkema, Yeager and Wagenknecht. Noes: None. Absent: Brown, Daly, Dunnigan, Klatt, Kniss, Miley and Zane. Recused: Haggerty.

***RESOLUTION: Adopted Resolution No. 2010-06; A Resolution of the Board of Directors of the Bay Area Air Quality Management District Adopting Thresholds for Use in Determining the Significance of Projects' Environmental Effects Under the California Environmental Quality Act.***

The Board gave direction to staff to present an annual review each June to the Board of Directors; to work with ABAG and other regional partners; to explore roles that the Air District can play with CRRPs; and for the District to work with the building industry, local planning partners, and stakeholders to assist in screening potential impacts and in development of standard mitigation measures.

## **COMMITTEE REPORTS AND RECOMMENDATIONS:**

### **5. Report of the Stationary Source Committee Meeting of May 13, 2010** Chairperson Uilkema

The Committee met on Thursday, May 13, 2010 and approved the Minutes of March 5, 2010 and April 12, 2010.

Public comment was received from a representative of Quarry No opposing Lehigh Southwest Cement Plant operations, citing a notice of violation.

The Committee received a presentation regarding proposed amendments to Regulation 9, Rule 10: Nitrogen Oxides (NO<sub>x</sub>) and Carbon Monoxide (CO) from Boilers, Steam Generators and Process Heaters in Petroleum Refineries. The Committee reviewed a history of the rule, a description of the regulated devices and the current NO<sub>x</sub> limits, a description of the proposed changes to the NO<sub>x</sub> limits, and associated emission reductions and costs. Next steps include preparation of a second draft of the proposed rule and solicitation of comments on the second draft, preparation of CEQA and socio-economic analyses, an update to the Committee, and a public hearing before the Board of Directors.

The Committee then received a presentation regarding petroleum refinery Flare Minimization Plans (FMPs), and discussed the 2<sup>nd</sup> Annual FMP Update submitted October 1, 2009, noting reductions of 56% in flare gas volume and 69% in emissions. The Committee then discussed flare emission trends and was presented with graphs of flare vent gas volumes, methane, non-methane hydrocarbon, and sulfur dioxide emissions. The Committee requested that flare activity and emissions from 2001 to the present be represented graphically by individual refinery in order to show improvements made by each refinery.

The Committee reviewed source reduction, recovery compressor, fuel gas balance, and sour gas scrubbing measures, flare regulation violations, and 5 year rolling averages of the period ending 2008 versus 2009. Overall, regulations are effective and considered as a model by other agencies. The 3<sup>rd</sup> Annual FMP Update is due October 1, 2010.

The next meeting of the Committee is scheduled for Friday, July 23, 2010 at 9:30 a.m.

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

### **6. Report of the Climate Protection Committee Meeting of May 19, 2010** Chairperson Torliatt

The Climate Protection Committee met on Wednesday, May 19, 2010 and approved the Climate Protection Committee minutes of March 3, 2010.

The Committee received an informational status report on the implementation of greenhouse gas (GHG) regulations and Scoping Plan measures for stationary sources, effective dates of regulations, recordkeeping, reporting requirements, affected statewide businesses and facilities, and performance standards for each regulation. The Committee then reviewed EPA's GHG mandatory reporting rule, EPA's GHG Tailoring Rule, Prevention of Significant Deterioration (PSD) permits, use of Best

Available Control Technology (BACT) to reduce GHG emissions, and delineation of specific requirements associated with monitoring, record-keeping and reporting of Title V permitting.

The Committee then considered Greenhouse Gas Reduction Grant Program recommended projects and contingencies, and discussed \$4.4 million in settlement funds provided by ConocoPhillips to complete energy efficiency projects in the communities surrounding the refinery. It was noted that projects operate on a reimbursement basis and approximately \$400,000 will be used for the Air District's administrative and audit costs. Public comments were taken from agency representatives with proposals recommended for grant funds, who thanked the District.

The Committee recommends that the Board of Directors approve up to \$4.4 million for the Greenhouse Gas Reduction Grant Program and authorize the Executive Officer/APCO to execute Grant Agreements for the recommended projects and contingencies to expend this funding.

The Committee then deferred the update regarding projects funded through the \$3 million Climate Protection Grant Program, but took public comment. Representatives from Marin Clean Energy, the City of El Cerrito, and San Mateo County thanked the District for funding under the Climate Protection Grant Program.

The next meeting of the Climate Protection Committee is at the Call of the Chair.

**Board Action:** Director Torliatt made a motion to approve the report and recommendations of the Climate Protection Committee; Director Uilkema seconded the motion; carried unanimously without objection.

7. **Report of the Executive Committee Meeting of May 24, 2010**  
Chairperson Wagenknecht

The Executive Committee met on Monday, May 24, 2010 and approved the minutes of February 22, 2010.

The Committee received the Quarterly Report of the Hearing Board for the period of January 2010 through March 2010.

The Committee received an update regarding Video Conferencing capabilities and reviewed possible goals to secure video conferencing in the Committee Room, the Board Room, establish pre-qualified remote locations, and/or to utilize District-owned remote locations. The Committee discussed associated advantages relating to greater public access, transparency, and use of technology, as well as potential barriers of cost and difficulties in running effective meetings. The Committee requested staff further investigate and return at the next meeting with information on the ability to webcast meetings, identify and pre-qualify remote locations, and report on any feedback received for cost sharing capabilities with regional agencies.

The Committee then received a status report on the Strategic Facilities planning process regarding the District's relocation. The Committee discussed a proposed scope of work that will:

1. Identify preliminary facility requirements/program for the Air District, MTC and ABAG,
2. Develop scenarios and a master plan to include feasibility studies; and
3. Include preparation of a preliminary cost/benefit evaluation by an advisory firm

The Committee reviewed a sample purchase scenario of a San Francisco office building, discussed its debt structure, loan balance, loan costs per square foot and current and future property values. The Committee received feedback about ABAG and MTC's interest in a regional governance center; discussed preferences for a San Francisco or Oakland based headquarters, and proposed Ad Hoc Committee representation. The Committee recommended Board of Directors' approval to establish a Strategic Facilities Planning Ad Hoc Committee comprised of the Chair, Vice-Chair and Executive Officer/Directors of the Air District, MTC and ABAG to provide direction and oversight of the project, and recommended that year-to-year Ad Hoc Committee representation be determined by the current District/Commission Chair.

The Committee then received an update on proposed revisions to the District's California Environmental Quality Act (CEQA) Guidelines, reviewed progress made to date on meetings and workshops held, development of technical support documents, training tools, and Community Risk Reduction Plans (CRRPs). A series of case studies were presented relating to projects which posed challenges. The Committee confirmed that initial focus would be in CARE communities and discussed risks and hazards of case studies presented, their economic feasibility, examples of mitigations, potential use of statements of overriding considerations, and examples of tools used which could move projects forward.

The Committee recommended that the Board of Directors select Sonoma Technologies, Inc. (STI) to assist with the development of local emission inventories to support community risk reduction plans; and authorize the Executive Officer/APCO to execute a contract with STI to assist with the development of local emission inventories to support CRRPs in an amount not to exceed \$207,200.

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

**Board Action:** Chairperson Wagenknecht made a motion to approve the report and recommendations of the Executive Committee; Director Torliatt seconded the motion; carried unanimously without objection.

8. **Report of the Mobile Source Committee Meeting of May 27, 2010**  
Vice Chairperson Groom

The Mobile Source Committee met on Thursday, May 27, 2010, and approved the minutes of the March 25, 2010 meeting.

The Committee received an overview of Transportation Fund for Clean Air (TFCA) projects with proposed grant awards over \$100,000. In total, these projects will reduce over 3 tons per year of criteria pollutants and over 1,000 tons per year of CO<sub>2</sub>. The Committee then discussed funding distributions awarded to date by County and by project type. The Committee recommends that the Board of Directors approve TFCA 2009/2010 projects with proposed grant awards over \$100,000 listed on Attachment 1, and also authorize the Executive Officer/APCO to enter into agreements for the recommended TFCA FY 2009/2010 projects on Attachment 1.

The Committee then received a presentation of TFCA County Program Manager Expenditure Plans for FY 2010/2011, reviewed recommended FY 2010/2011 allocations, and requirements for successful expenditure of funds within two years. The Committee recommends that the Board of

Directors approve the allocation of FY 2010/2011 TFCA County Program Manager Funds listed on Table 1, and authorize the Executive Officer/APCO to enter into funding agreements with the County Program Managers for the total funds to be programmed in FY 2010/2011 as listed on Table 1 and consistent with the Board-adopted TFCA Program Manager Fund Policies.

The Committee then considered proposed FY 2010/2011 TFCA Regional Fund policies and funding allocations for shuttle, ridesharing and bicycle projects, and program timelines for each project category, discussed proposed policies that will streamline evaluation criteria and administration, and maximize funding distribution. The Committee reviewed a chart of proposed funding allocations for the 2010/2011 cycle, and discussed the concept of bicycle sharing programs at transit facilities in Portland, Oregon and in Europe, and requested that staff evaluate the potential for funding these programs in the Bay Area.

The Committee recommends that the Board of Directors approve TFCA Fiscal Year 2010/2011 Regional Fund policies presented in Attachment A, and approve TFCA Regional Fund project category specific policies and set-asides which includes up to \$4 million for shuttles and rideshare projects, and up to \$600,000 for bicycle facilities projects. Any monies not spent in categories within 12 months will revert back to the TFCA Regional Fund for re-allocation.

The Committee then received an update on the Air District Truck Incentive Programs funded through the I-Bond, TFCA and CMP/VIP programs. The Committee discussed current and future funding levels under each program and projects funded, reviewed the initial and second allocation to trucks operating in and around the Port of Oakland, Air Resources Board's April 30, 2010 and June 30, 2010 deadlines, and outreach conducted. The District will continue to schedule public workshops, establish vendor partnerships, add trucking associations/trade groups to its mailing lists, and will consider off-site outreach locations, advertising on billboards, websites and trucker Wi-Fi points.

Lastly, the Committee received an update on the Air District's application for funding from Years 2 and 3 of the California Goods Movement Bond (I-Bond) program and a request from staff to recommend Board of Directors approval of a resolution in support of this application. The Committee discussed the I-Bond application process which included a request for \$45 million for on-road trucks, \$39.14 million for shore power projects and \$3.86 million for locomotive projects. The ARB will approve recommendations at their June Board meeting and the resolution's adoption is required as part of the application process. The Committee recommends that the Board of Directors adopt a resolution in support of the Air District's application for Goods Movement Bond funding.

The next meeting of the Mobile Source Committee is scheduled for Wednesday, June 30, 2010, at 9:30 a.m.

**Board Action:** Director Groom made a motion to approve the report and recommendations of the Mobile Source Committee; Director Hosterman seconded the motion; carried unanimously without objection.

***RESOLUTION: Adopted Resolution 2010-05, A Resolution of the Board of Directors of the Bay Area Air Quality Management District Accepting Goods Movement Emission Reduction Program Funds from the California Air Resources Board.***



## **CLOSED SESSION**

10. **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
  - B) **United States and Communities for a Better Environment v. Pacific Gas and Electric Company, et al.**, United States District Court, N.D. Cal., Case No. C-09-4503 SI

The Board of Directors continued the Closed Session items to the June 16, 2010 Board of Directors meeting.

## **OTHER BUSINESS**

11. **Report of the Executive Officer/APCO** – No Report
12. **Chairperson's Report** – No Report
13. **Time and Place of Next Meeting: Regular Meeting** - Wednesday, June 16, 2010, 9:45 a.m., 939 Ellis Street, San Francisco, CA 94109.
14. **Adjournment:** The Board of Directors Meeting adjourned at 1:15 p.m.

*/s/ Lisa Harper*  
Lisa Harper  
Clerk of the Boards