

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

Board of Directors Regular Meeting
March 7, 2012

APPROVED MINUTES

CALL TO ORDER – ROLL CALL

Vice Chairperson Ash Kalra called the meeting to order at 10:04 a.m.

Present: Vice Chairperson Ash Kalra; Secretary Nate Miley; and Directors Susan Garner, Jennifer Hosterman, David E. Hudson, Eric Mar, Mary Piepho, Mark Ross, Jim Sperring, Brad Wagenknecht and Ken Yeager.

Absent: Chairperson John Gioia; and Directors John Avalos, Tom Bates, Susan Gorin, Carole Groom, Scott Haggerty, Carol L. Klatt, Liz Kniss, Katie Rice and Shirlee Zane.

PLEDGE OF ALLEGIANCE

Vice Chairperson Kalra led the Pledge of Allegiance.

PUBLIC COMMENT ON NON-AGENDA MATTERS

Dr. Henry Clark, Member, West County Toxics Coalition, addressed the Board regarding the proposed Lawrence Berkeley National Laboratory facility in Richmond and the potential air quality issues that may result from its operation.

COMMENDATIONS/PROCLAMATIONS/AWARDS

Vice Chairperson Kalra recognized outgoing Director Johanna Partin, in absentia, for her service, leadership and dedication to protecting air quality in the Bay Area and relayed that a token of appreciation from the District will be delivered by mail, as requested.

CONSENT CALENDAR (Items 1 – 7)

- 1. Minutes of the Board of Directors Special Meeting of February 1, 2012;**
- 2. Board Communications Received from February 2, 2012, through March 6, 2012;**
- 3. Air District Personnel on Out-of-State Business Travel;**
- 4. Quarterly Report of Executive Office and Division Activities;**

5. **Set a Public Hearing for March 21, 2012, to consider adoption of Regulation 8, Rule 53: Vacuum Truck Operations, amendments to Regulation 2, Rule 1: Permits, General Requirements and adoption of a California Environmental Quality Act (CEQA) Negative Declaration;**
6. **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; and**
7. **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 Comments/Discussion: None.

Public Comments: None.

Board Action: Director Wagenknecht made a motion to approve Consent Calendar Items 1, 2, 3, 4, 5, 6 and 7; Director Spring seconded; unanimously approved without objection.

COMMITTEE REPORTS AND RECOMMENDATIONS

8. **Report of the Executive Committee Meeting of February 15, 2012**
Vice Chairperson Kalra on behalf of Chairperson Gioia

The Committee met on Wednesday, February 15, 2012, and approved the minutes of December 19, 2011.

The Committee received the Update on Protocol for Video Conferencing from the Fourth Floor Conference Room. The current protocol allows Board Members to participate in committee meetings remotely when the agenda includes only non-action items. The Committee reevaluated the background material and current protocol to consider amending the same to specifically allow Board Members the opportunity to participate remotely in meetings when the agenda includes both action items and non-action items. The Committee agreed to keep the current protocol in place and agreed that Vice Chairperson Kalra and Director Bates will work with staff to explore the technology and legal considerations in greater depth for future consideration by the Committee.

The Committee received a Status Report on Regional Agency Headquarters (RAHQ) Project, including a review of the project history to date and a general description of the acquisition details, the financing terms, and the next steps in the project.

The Committee went into Closed Session to receive a report on Existing Litigation, specifically *California Building Industry Association v. Bay Area AQMD*, Alameda County Superior Court, Case No. RG-10548693.

The next meeting of the Committee is Monday, March 19, 2012, at 9:30 a.m.

Jeffrey McKay, Deputy Air Pollution Control Officer, presented briefly to amplify several points regarding the building acquisition, namely that the condominium agreement has been delivered to the Metropolitan Transportation Commission (MTC); the Lease/Purchase Option Agreement will be delivered to MTC on March 10, 2012; the financing arrangements through Bay Area Toll Authority will be arranged on a date to be determined; and requests for proposals for the 939 Ellis disposition are scheduled for August 2012; and MTC expects to have the new building completed in 2013.

Board Comments/Discussion:

Director Garner expressed her support of the concept of allowing broader video conferencing options for members of the Board of Directors and asked about the completion timeline. Vice Chairperson Kalra responded that no timeline is set and some significant legal issues must be considered. Director Garner replied that the matter has been ongoing for two years and requested a timeline be established. Vice Chairperson Kalra said he will confer with Director Bates at the next Executive Committee meeting to develop a timeline.

Director Spering inquired about the status of Senator DeSaulnier's proposed legislation regarding an audit of the building purchase, whether it is being monitored by staff, and if expenditures related to the building acquisition are being held back until its resolution. Jack Broadbent, Executive Officer/Air Pollution Control Officer, responded that staff are monitoring the legislation and will present a staff position to the Legislative Committee immediately preceding the next Board of Directors meeting on March 21, 2012. Mr. Broadbent provided a brief summary of the bill and expressed the Air District staff's opposition to the bill, indicating that a separate audit of the Air District's involvement only, as conducted by the Bureau of State Audits, is almost complete. Director Spering suggested that staff aggressively oppose the proposed legislation if we are serious about the new building and the efforts expended to house the regional agencies in one building.

Director Hudson recommended the Air District consider of selling 939 Ellis via a lease option on carry back.

Director Wagenknecht seconded Director Spering's recommendation to engage the legislative proposal, noting that this was a carefully thought out and well deliberated purchase that should not be undone by the State at this point. Mr. Broadbent offered to find and provide to the members of the Board a copy of the full legislative bill.

Director Piepho asked about the policy elements for opposition and the Air District's anticipated position and level of advocacy before the legislature. Mr. Broadbent responded that staff will present to the Legislative Committee and they, in turn, to the Board of Directors on the matter, all of which will occur on March 21 and that the Air District has followed a careful and thoughtful process resulting in a move that will be a benefit to the public. Director Piepho inquired whether there has been any communication with Senator DeSaulnier by Air District staff to which Mr. Broadbent replied in the negative and suggested it was likely that MTC staff had communicated with the Senator. Jean Roggenkamp, Deputy Air Pollution Control Officer, noted that the bill is Senate Bill 1545.

Public Comments: None.

Board Action: Director Piepho made a motion to approve the report and recommendation of the Executive Committee; Director Wagenknecht seconded; carried unanimously without opposition.

9. Report of the Public Outreach Committee Meeting of February 16, 2012

Chairperson: M. Ross

The Committee met on Thursday, February 16, 2012, and approved the minutes of October 31, 2011.

The Committee received the 2011-2012 Winter Spare the Air Season Summary, including a campaign overview and detailed review of the District's use of advertising, media outreach, social media, and finally, a final look at the media coverage and compliance levels that resulted.

The Committee received an overview of the Air District's retreat with the Bay Area Environmental Health Collaborative (BAEHC). Staff reported the retreat helped BAEHC and the District find common goals and areas of mutual understanding. The Committee heard about ongoing efforts to potentially develop a monthly meeting where District staff and BAEHC can continue to address ongoing concerns and challenges regarding the protection of air quality.

The Committee received an update on the Public Engagement Policy and Guidance Plan Workshop Strategy. The Committee reviewed the background of this plan to develop a District-wide, consistent approach to engage stakeholders in Air District processes, the establishment of a Stakeholder Advisory Task Force, plans to host regional workshops and conduct supplemental outreach via additional public meetings, surveys, newsletters and media promotion, and the proposed next steps in the project.

The next meeting of the Committee is Thursday, March 15, 2012, at 9:30 a.m.

Public Comments: None.

Board Comments/Discussion: None.

Board Action: Director Garner made a motion to approve the report and recommendation of the Public Outreach Committee; Director Wagenknecht seconded; carried unanimously without opposition.

10. Report of the Budget and Finance Committee Meeting of February 22, 2012

Vice Chairperson Kalra on behalf of Committee Chairperson Groom

The Committee met on Wednesday, February 22, 2012, and approved the minutes of December 14, 2011, and January 25, 2012.

The Committee received the Air District Financial Audit Report for Fiscal Year Ending 2011. The Committee reviewed the Independent Auditors' Report confirming that the Air District's financial statements "...present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Bay Area Quality Management District as of June 30, 2011, and the respective changes in the financial position, for the year then ended in conformity with accounting principles generally accepted in the United States of America."

The Committee received a report on development of a Cost Recovery Policy. The Committee reviewed the work to date on this project and the revisions to the initial draft Cost Recovery Policy which were made based on input received from the Cost Recovery Policy Stakeholder Advisory Group. The revised policy would set a goal of achieving 85 percent cost recovery within the next four years, instead of 90 percent within the next five years as the initial draft policy specified. The Committee voted to recommend to the Board of Directors the approval of the revised Cost Recovery Policy, and provided further direction that a review of the Policy be performed in two years.

The next meeting of the Committee is Wednesday, March 28, 2012, at 9:30 a.m.

Mr. McKay presented briefly to amplify several points regarding the proposed Cost Recovery Policy, namely the continued implementation of cost containment measures and updating of cost recovery analysis; that cost recovery as a matter of policy should generally fully recover regulatory program activity costs; the Air District will continue existing provisions that use tax revenue; the policy will establish a goal to increase overall cost recovery to 85 percent over the next four years; there will be adjustments in fee schedules in consideration of cost recovery analyses as they are completed; and fee revenue will need to be increased by an estimated 6.4% per year for four years in order to meet the 85% cost recovery goal.

Public Comments:

Sunny Campbell, Executive Director, California Service Station & Automotive Repair Association, addressed the Board in opposition to the adoption of the proposed Cost Recovery Policy citing the imposition of these fees as being overly burdensome on small business owners.

Guy Bjerke, Manager, Bay Area Region and State Safety Issues, Western State Petroleum Association, addressed the Board in support of the adoption of the proposed Cost Recovery Policy citing the Association's appreciation for the certainty the policy will provide despite their standing desire to minimize fees as much as possible.

David Sahagun, President, California Service Station & Automotive Repair Association, addressed the Board in opposition to the adoption of the proposed Cost Recovery Policy citing the imposition of fees and taxes on small business owners by various governmental entities as being overly burdensome to the point of forcing the closure of small businesses.

Board Comments/Discussion:

Mr. Broadbent clarified that the action item before the Board today is not whether or not to impose the fees and at what level, but rather the adoption of a Cost Recovery Policy itself, which will merely establish a cost recovery plan to provide certainty to all parties about what to expect in the next few years and that Air District staff will be working through a proposal with the Budget and Finance Committee in the coming months, with consideration by the Board likely to occur in May.

Director Hosterman said that all of the Directors are struggling with how best to attract and retain businesses in their home constituencies and, meanwhile, working to satisfy the Air District's needs, and asked the Air District to consider stretching out the schedule beyond four years or the implementation of some method by which special fee payments can be arranged for businesses in need.

Director Wagenknecht noted that the policy is in satisfaction of a long term goal of the Air District, that fees have increased substantially over the last several years in an effort to make up lost ground, that 6.4% increases each year is an averaged figure representing the Air District's increased recovery, not an absolute fee increase for all regulated parties, and that the Policy is the result of some carefully considered work to balance the needs of all those involved.

Director Miley expressed his general agreement with Director Hosterman's sentiment, his dislike of unintended consequences, and his compassion for the plight of the small business person, noting in closing that when the fee increase is proposed it will be subject to his careful scrutiny.

Director Hudson said that the current goal of 85% over four years is itself a retreat from the original goal of 100% recovery and the more recently proposed 90% recovery over five years assumes a 2% cost increase per year, and suggested that the Air District maintain its focus on getting recovery back on track and consider establishing some basement figure to avoid a return to the 62% the Air District was recovering at the lowest recent point.

Director Piepho expressed her appreciation for the public comments as a reminder to the Board that these policy and fees changes should not be viewed in isolation from those whom they affect and urged close monitoring of the policy.

Director Garner inquired whether the fee schedule increases are tiered by business size to which Mr. Broadbent replied in the negative, explaining that they are based on the cost and service needs required, pursuant to past practice and recent legislation.

Director Ross noted that the policy is difficult to shoulder in these uncertain times but the Air District has worked to provide a degree of certainty in this proposal and that the targets will undoubtedly move again over time.

Director Sperring explained that small business owners are often left without a means to recover these costs, whether by price increases on products or otherwise, and suggested the imposition of these increases over the course of six or seven years rather than the four currently proposed, combined with a provision that the matter may not come back for further review without a compelling reason, as its continuous review adds controversy and undermines the consistency that is a stated goal of the policy. Mr. Broadbent replied that consistency is precisely the goal and noted that the Board cannot bind future Boards, so if reconsideration is what is desired at some point in the future then it will occur.

Director Wagenknecht inquired whether the proposed fee increase and implementation of the policy will go before the Budget and Finance Committee to which Mr. Broadbent replied in the affirmative and shared that this discussion has informed that process for staff.

Director Sperring and Mr. Broadbent discussed what precisely was before the Board.

Board Action: Director Wagenknecht made a motion to approve the report and recommendation of the Budget and Finance Committee noting the comments and discussion; Director Mar seconded; carried unanimously without opposition.

11. Report of the Mobile Source Committee Meeting of February 23, 2012

Committee Vice Chairperson Miley on behalf of Committee Chairperson Haggerty

The Committee met on Thursday, February 23, 2012, and approved the minutes of November 28, 2011.

The Committee reviewed projects with proposed grant awards over \$100,000 and recommends Board of Directors approval of six projects that will replace four pieces of off-road equipment and twelve marine engines and authorization for the Executive Officer to enter into agreements for the recommended Carl Moyer Program projects.

The Committee also reviewed a request to authorize Air District participation in Year 14 of the Carl Moyer Program and Year 3 of the Goods Movement I-Bond Program and recommends that the Board of Directors:

1. Adopt a resolution authorizing the Executive Officer to execute all necessary agreements with the Air Resources Board relating to the Air District's receipt of Carl Moyer Program funds for Program Year 14;
2. Allocate \$5 million in Mobile Source Incentive Funding for projects eligible for funding under the Carl Moyer Program; and
3. Authorize the Executive Officer to enter into agreements with the Air Resources Board related to the acceptance of I-Bond funding for the Year 3 Port Truck replacement program and to enter into agreements for port truck projects ranked and approved by the Air Resources Board.

The Committee reviewed a request to select a contractor to assist the Air District in the drafting of Regional Plug-In Electric Vehicle Readiness plans for the U.S. Department of Energy and California Energy Commission. The Committee recommends that the Board of Directors:

1. Approve the selection of ICF International as the Air District consultants;
2. Authorize the Executive Officer to enter into all necessary agreements with ICF International to produce the required planning documents; and
3. In the event that a contract cannot be agreed upon with ICF International, authorize the Executive Officer to enter into an agreement with the next highest ranking bidder, UC Berkeley.

The Committee received an informational report on the Air District Grant Programs. The report recapped the allocations of funding made by the Air District in calendar year 2011 and previewed the projected funding, upcoming opportunities and challenges for Air District grant programs in calendar year 2012.

The Committee reviewed recommendations regarding the Air District's Port Drayage Truck Program and recommends that the Board of Directors:

1. Approve changes to the fiscal year ending 2012 Transportation Fund for Clean Air Regional Fund Policies and current Program Manager Fund Policies to include engine model year 2005/2006 drayage truck replacement projects as an eligible project type.
2. Authorize the expenditure of the remaining Regional Fund monies from the engine model year 2004 port truck program and the allocation of an additional \$1 million in Regional Funds to implement a program to replace engine model year 2005/2006 port drayage trucks registered in the Bay Area;
3. Authorize the Executive Officer to enter into all contracts and make all expenditures necessary to allocate the program funds to eligible projects; and
4. Authorize the Executive Officer to accept, enter into contracts for and allocate funding from additional sources for the engine model year 2005/2006 Drayage Truck Replacement Program.

The next meeting of the Committee is on March 29, 2012.

Public Comments: None.

Board Comments/Discussion: None.

Board Action: Director Miley made a motion to approve the report and recommendations of the Mobile Source Committee; Director Hudson seconded; carried unanimously without opposition.

PRESENTATION(S)

12. Overview of Bay Area Environmental Health Collaborative Retreat

Lisa Fasano, Director of the Communications & Outreach Office, gave the staff presentation Overview of the Retreat with Bay Area Environmental Health Collaborative, including a summary of the objectives, participants, common goals and outcome.

Board Comments/Discussion:

Director Mar thanked the Air District staff for their expenditure of resources and time towards rebuilding trust with these community based groups.

Public Comments:

Dr. Clark again addressed the Board, expressing his organization's gratitude for the work done.

Rosina Roibal, Program Coordinator, Bay Area Environmental Health Collaborative, addressed the Board to second Director Mar's expression of gratitude to Air District staff, characterized the retreat as a positive process and shared that the organization looks forward to the prospect of further cooperation.

Board action: None; informational only.

13. Update on Regional Plug-In Electric Vehicle Deployment and Planning

Ms. Roggenkamp introduced Karen Schkolnick, Air Quality Program Manager of the Strategic Incentives Division, who gave the staff presentation Update on Regional Plug-In Electric Vehicle Deployment and Planning, including a review of the Air District's efforts to date; an explanation of charger technology; a detail of Air District deployment efforts from 2009 through 2012; summary of regional planning to prepare for mass adoption of plug-in electric vehicles in September 2012; and a review of the next steps.

Public Comments: None.

Board Comments/Discussion:

Director Ross noted that utilization of software, such as phone applications, is an integral component of deployment outreach efforts and asked how much it would cost to charge an average car to which Ms. Schkolnick answered approximately \$1 to \$1.50 to charge a car at home during off-peak hours and slightly more at a public station to cover likely surcharges. Director Ross suggested the distribution of promotional debit cards at program launch as an initial incentive.

Director Yeager extended his gratitude to Air District staff for working so well with the staff of Santa Clara County on this project and asked how much of the planning efforts have been focused on coordinating the dual availability of cars and charging stations. Ms. Schkolnick said that item is a component of the planning efforts.

Director Mar asked about the adoption rate statistic provided in the presentation and for speculation as to their popularity in the Bay Area. Ms. Schkolnick replied that this data point is 2011 sales information for the Nissan Leaf only and suggested that the Bay Area's high adoption rate may be attributed to the technology focus of the population, the compatibility of the vehicles with the Bay Area environment, and the Air District's commitment to their implementation. Director Mar and Ms. Schkolnick discuss the cost range for the various types of charging stations and the charges they provide. Director Mar inquired as whether rental car companies are purchasing as well, to which Ms. Schkolnick replied that Enterprise Rent-A-Car and car sharing companies, namely City CarShare, have expressed interest. Damien Breen, Director of Strategic Incentives, indicated that the Mobile Source Committee can anticipate a presentation towards the end of the year on a program focused on upgrading the fleets of cities and counties throughout the Bay Area.

Director Hudson asked if there has been outreach to the building industry with the idea of providing the charger technology as a built-in option in new homes.

Director Wagenknecht noted the lack of progress in Napa and Solano counties as shown in the presentation materials to which Mr. Breen noted that work with Solano is underway, that the District considers both counties to be critical parts of this program, and that 95% of charging is currently done at home which warrants the cautious build-up of public options and is the foundation for the Air District's current focus of updating city and county fleets.

Director Hosterman noted that new stations have been up and running in Alameda County for approximately four weeks, with free use through April, and they have proven quite popular so far.

Director Piepho discussed with Director Ross the software he mentioned previously. Director Piepho responded by asking Air District staff if this is being promoted by the Air District to which Mr. Breen replied that a new electric vehicle readiness website has been developed that will be launched soon and will have links to various resources.

Director Piepho noted that the road maintenance tax is currently applied through the sale of gasoline and as electric vehicles become more common this decreased tax revenue will likely become an issue. Mr. Breen said that this issue has been taken up by various groups and a number of proposals are developing.

Mr. Broadbent offered the Directors the opportunity to test drive a plug-in electric vehicle from the Air District fleet and invited requests for same.

Board action: None; informational only.

CLOSED SESSION:

The Board of Directors adjourned to Closed Session at 11:39 a.m.

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

Pursuant to Government Code Section 54956.9(a), a need existed to meet in closed session with legal counsel to consider the following case:

California Building Industry Association v. Bay Area AQMD, Alameda County Superior Court, Case No. RG-10548693

OPEN SESSION

The Board of Directors resumed Open Session at 11:44 a.m. with no reportable action from the Closed Session.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

BOARD MEMBERS' COMMENTS

None

OTHER BUSINESS

15. Report of the Executive Officer/APCO:

Mr. Broadbent reported that a comprehensive review of the 2011-2012 Winter Spare the Air Program will be presented at the next Board of Directors meeting, after which the Board will be invited to provide feedback on some possible refinements for the upcoming year; that the first phase of the new Production System for permit management has gone live and the next phases are on schedule, with a presentation of the system being readied for the upcoming Executive Committee and Board meetings; and finally that the Air and Waste Management Association meeting in San Antonio, Texas is June 19 through 22, and any members interested in attending should contact the Executive Office.

Director Yeager complimented Mr. Broadbent's op-ed piece as published in the San Jose Mercury-News and asked if it has or will be published elsewhere.

Director Piepho asked if the public comment at the Board of Directors February meeting has spurred any action by Air District staff to which Mr. Broadbent responded in the affirmative, reporting that a financial hardship exemption from the wood smoke regulation will be a discussion topic before the Board at the next meeting.

16. Chairperson's Report: None.

17. Time and Place of Next Meeting: Wednesday, March 21, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, CA 94109 at 9:45 a.m.

18. Adjournment: The Board of Directors meeting adjourned at 11:50 a.m. in honor of Supervisor Hal Brown.

15/ Sean Gallagher
Sean Gallagher
Clerk of the Boards