

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

Board of Directors Regular Meeting  
April 18, 2012

## **APPROVED MINUTES**

### **CALL TO ORDER**

Chairperson John Gioia called the meeting to order at 9:50 a.m.

### **PLEDGE OF ALLEGIANCE**

Director Piepho led the Pledge of Allegiance.

### **ROLL CALL**

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; Secretary Nate Miley; and Directors Tom Bates, Susan Garner, Carole Groom, David E. Hudson, Carol L. Klatt, Eric Mar, Mary Piepho, Mark Ross, Jim Spring, Brad Wagenknecht, Ken Yeager and Shirlee Zane.

Absent: Directors John Avalos, Susan Gorin, Scott Haggerty, Jennifer Hosterman, Liz Kniss, Edwin M. Lee and Katie Rice.

### **PUBLIC COMMENT ON NON-AGENDA MATTERS**

None.

### **COMMENDATIONS/PROCLAMATIONS/AWARDS**

Chairperson Gioia, on behalf of the Board of Directors, and Jack Broadbent Executive Officer/Air Pollution Control Officer (APCO), on behalf of Air District staff, recognized Will Travis for his years of service with the San Francisco Bay Conservation and Development Commission.

NOTED PRESENT: Director Miley was noted present at 9:53 a.m., Director Yeager was noted present at 9:54 a.m., and Director Kalra was noted present at 9:55 a.m.

Will Travis expressed his gratitude for the recognition and commended the Air District for its past and ongoing work.

## **CONSENT CALENDAR (Items 1 – 6)**

- 1. Minutes of the Board of Directors Regular Meeting of March 21, 2012;**
- 2. Board Communications Received from March 21, 2012, through April 17, 2012;**
- 3. Air District Personnel on Out-of-State Business Travel;**
- 4. Approval of Board Members to Attend the Air & Waste Management Association 105<sup>th</sup> Annual Conference & Exhibition**
- 5. Consideration of Authorization for Expenditures for the Implementation of the Production System and its Integration with the JD Edwards Financial System; and**
- 6. Quarterly Report of California Air Resources Board Representative – Honorable Ken Yeager.**

Board Comments: None.

Public Comments: None.

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

## **COMMITTEE REPORTS AND RECOMMENDATIONS**

- 7. Report of the Budget and Finance Committee Meeting of March 28, 2012**  
Chairperson C. Groom

The Committee met on Wednesday, March 28, 2012, and approved the minutes of February 22, 2012.

The Committee received a Summary of Draft Fee Amendments for Fiscal Year Ending (FYE) 2013. The Committee reviewed the background, the current Cost Recovery Policy adopted by the Board of Directors on March 7, 2012, details of the draft fee amendments and proposed changes to fee schedules, examples of the likely monetary impacts on various small business types and the five Bay Area petroleum refineries, a fee comparison with the South Coast Air Quality Management District (SCAQMD), summary of public comments received and the schedule which proposes an adoption date of June 6, 2012, and an effective date of July 1, 2012.

The Committee received and discussed the Proposed Budget for Fiscal Year Ending 2013. The Committee reviewed the status of the current fiscal year ending 2012, an overview of the revenue and expenditure forecast for fiscal year ending 2013, proposed responses to challenges for fiscal year ending 2013, a summary of personnel costs, and a detailed review of revenue and expenditures, including trends in cost cutting. The proposed budget is a balanced budget without the use of reserves, and includes a reduction in Other Post-Employment Benefits and a reduction in funding for various programs.

The Committee received an Update on Production System Replacement of Databank. The Committee reviewed the information systems budget, including a project timeline from 2006 to the present, a summary of those facilities already and anticipated to be transferred to the Production System, and a detail of project expenditures from fiscal years ending 2007 through 2013.

The next meeting of the Committee is Wednesday, April 25, 2012, at 9:30 a.m.

Board Comments: None.

Public Comments: None.

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

## **8. Report of the Personnel Committee Meeting of March 28, 2012**

Chairperson B. Wagenknecht

The Committee met on Wednesday, March 28, 2012, and approved the minutes of November 14, 2011.

The Committee received the Advisory Council Interview summary material for the agriculture category, conducted interviews of selected applicants, and recommended Board of Directors' approval of candidate Kathryn Lyddan for appointment to the Air District's Advisory Council.

The Committee considered the appointment of the regular and alternate member positions for the attorney member category on the Air District's Hearing Board and recommended Board of Directors' approval of the re-appointment of both incumbents, member Rolf Lindenhayn and alternate member Valerie Armento, to the Hearing Board.

The Committee went into Closed Session to conduct Public Employee Performance Evaluation of Mr. Broadbent and returned with no reportable action.

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

Board Comments: None.

Public Comments: None.

Board Action: Director Wagenknecht made a motion, seconded by Director Hudson; and carried unanimously without objection to approve the report of the Personnel Committee and its recommendations as follows:

- A. Appoint candidate Kathryn Lyddan to the Air District's Advisory Council agriculture category; and
- B. Re-appoint Rolf Lindenhayn, Regular member, and Valerie Armento, Alternate Member, to the Air District's Hearing Board attorney category.

**9. Report of the Climate Protection Committee Meeting of April 16, 2012**

Board Chairperson J. Gioia read on behalf of Committee Chairperson J. Hosterman

The Committee met on Monday, April 16, 2012, and postponed approval of the minutes of October 31, 2011, for lack of a quorum.

The Committee received a Local Government Climate Action Plan Update. The Committee reviewed the state of climate action planning at large; Air District initiatives that spurred climate planning; increases in climate action planning in the Bay Area; the interplay between the California Environmental Quality Act, climate action plans and the Sustainable Communities Strategy (SCS); those localities the Air District has confirmed to have adopted climate action plans; forms of Air District assistance in plan development; current trends and innovative measures; and the next steps in climate action plan efforts. The Board of Directors will be briefed these matters at an upcoming meeting.

The Committee received and discussed an Update on Assembly Bill 32 (AB32) Implementation and U.S. Environmental Protection Agency Programs to Reduce Greenhouse Gas Emissions under the Federal Clean Air Act. The Committee reviewed the background, scoping plan and revised scoping plan of Assembly Bill 32; the history and a detail of the Cap-and-Trade Regulation, including the scope, cap, allowances, offsets and recent activity in Cap-and-Trade; the AB32 landfill methane and semiconductor operations rules; the stationary refrigerant management program; California Air Resources Board and Air District coordination; U.S. Environmental Protection Agency regulation of greenhouse gases under the Federal Clean Air Act; the greenhouse gas tailoring rule and Clean Air Act Permit Programs and proposed new source performance standards for fossil-fueled power plants.

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

Chairperson Gioia noted the re-appointment of Director Hosterman to the Board of Directors of the Air District by the Alameda County Mayors' Conference.

Board Comments:

Mr. Broadbent requested the agendizing of a presentation regarding the SCS at the next Board of Directors or a future Executive Committee meeting. Chairperson Gioia confirmed it should be agendized before the Board of Directors at the regular meeting on May 2, 2012.

Director Hudson expressed his lingering concern about the interplay between SCS, Community Risk Reduction Plans, Climate Protection Plans and reforestation protocol.

Public Comments: None.

Board Action: Chairperson Gioia made a motion to approve the report of the Climate Protection Committee; Director Ross seconded; carried unanimously without opposition.

## **PUBLIC HEARINGS**

### **10. Public Hearing to Receive Testimony on Proposed Amendments to Air District Regulation 3: Fees**

Brian Bateman, Director of Compliance & Enforcement, gave the staff presentation Proposed Fee Regulation Amendments, including the background; a snapshot of the Air District revenue sources for the fiscal year ending (FYE) 2012 budget; a look at Regulation 3 fees and fees schedules; fee rates and activity levels as they equate to fee revenue; fee revenue trending; the current Cost Recovery Policy adopted by the Board of Directors on March 7, 2012; details of draft fee amendments and proposed changes to fee schedules; examples of likely monetary impacts on various small business types; a look at Air District regulation of gas stations; a fee comparison with the SCAQMD; a summary of public comments received; and the schedule proposing an adoption date of June 6, 2012, with an effective date of July 1, 2012.

NOTED PRESENT: Director Garner was noted present at 10:09 a.m.

Director Hudson asked, regarding slide 4, Air District Revenue Sources (FYE 2012 Budget), if 52% of the revenue is generally from fees and 34% is generally from taxes. Mr. Bateman replied that the fee revenue has crept up over the years from a percentage in the high forties and that taxes typically represent about one-third of the revenue. Director Zane asked if this is the first instance where reserves were utilized. Mr. Bateman responded that reserves were used the prior fiscal year as well but were not for the ten years preceding that. Director Zane asked if cost of living adjustments were granted to Air District staff to which Mr. Bateman replied in the affirmative. Director Zane asked the current balance of the reserves to which Jeffrey McKay, Deputy APCO, answered approximately \$9 million. Director Zane asked what percentage of total operating costs the current reserves represent to which Mr. McKay responded that the general revenue fund is approximately \$60 million, so the reserves are 15% of general revenue fund, the floor level set by the Board of Directors.

Mr. Bateman added, regarding slide 7, Trends in Fee Revenue, that the decline in actual fee revenue is attributed to a decline in activity, not fee recovery.

Mr. Bateman added, regarding slide 14, Additional Proposed Fee Amendments, that these fees are best characterized as administrative or regarding permit renewals.

#### **Board Comments:**

Director Piepho asked, relative to slide 4, Air District Revenue Sources (FYE 2012 Budget), what the fees, as an estimated percentage of total revenue, will be after the increase is implemented. Mr. Bateman replied that it will rely heavily on activity levels and otherwise stay nearly the same. Director Piepho confirmed, referencing slides 7 and 9, Trends in Fee Revenue and Details of Draft Fee Amendments respectively, that there has been a fee increase of 10% per year for four years; noted that the projected and actual fee revenue levels diverge at the time the 10% per year increases were implemented; and suggested that continuing along this path may very well risk discouraging investment in the Bay Area while admitting that the economic downturn likely plays a role in this trend as well. Director Piepho asked, relative to slide 8, Cost Recovery Policy, how the Air District monitors cost recovery analyses conducted at fee schedule-level. Mr. Bateman replied that a contractor does a study once every five years and staffs conduct one annually, using the contractor's

methodology. Director Piepho suggested Board of Directors review more frequently than once every five years. Director Piepho asked, regarding slide 14, Additional Proposed Fee Amendments, that, when utilizing percentages in future presentations, at least one dollar figure be provided to give a sense of what the percentages represent. Director Piepho asked, regarding slide 14, Additional Proposed Fee Amendments, what the total projected revenue increase will be as a result of the fee increase to which Mr. Bateman replied \$1.85 million. Mr. Broadbent added that the cost recovery study is done in coordination with stakeholder working groups and not by staff alone.

Chairperson Gioia noted, regarding slide 8, Cost Recovery Policy, that it is the policy driving the proposed fee increase and while slide 13, Proposed Changes in Fee Schedules, is very helpful, it would be appreciated if staff could prepare something similar that encompasses the entire range of proposed changes.

Director Piepho suggested, regarding slide 19, Public Comments, and more specifically the impacts on small and large businesses, that they are something the Air District should remain aware and cautious of.

Director Zane asked whether the Air District is making equal cuts to its own staff in light of fee revenue being down as a result of decreased activity and the Air District's willingness to increase fees on its constituents despite the downturn. Mr. Broadbent replied that the Air District has 363 approved staff positions of which only 320 are currently staffed, resulting in an 11-12% vacancy rate achieved primarily through not filling positions after staff retirements. Mr. Broadbent added that this proposal is the result of a policy adopted by the Board of Directors to address in four years' time the discrepancy resulting from a comparison between fee costs and recovery. Mr. Broadbent went on to say that Proposition 26 dictates how fees may be imposed and the current proposal and Cost Recovery Policy both comply with the same. Director Zane asked if Air District staff levels in relation to the fee program specifically have been cut. Mr. Broadbent suggested the question to be a fairly comprehensive one and requested an opportunity to return with that information. Chairperson Gioia noted that the fee proposal stems from the Cost Recovery Policy. Mr. Broadbent briefly summarized the proposed budget cuts and reemphasized the need to increase fees pursuant to discussions relative to the Cost Recovery Policy. Director Zane asked what the Air District is doing to reduce its expenditures relative to the administration of permits. Chairperson Gioia suggested that staff be granted the opportunity to compile the requested information and that the matter be brought back before the Budget & Finance Committee and then back to the Board of Directors.

Director Groom stated that the Budget & Finance Committee had a number of rigorous discussions on this matter, with a range of topics including property taxes, when and how the use of reserves is acceptable, the potential impacts on businesses resulting in individual Director outreach to their respective constituencies, work groups with business groups' representatives, namely Guy Bjerke, Manager, Bay Area Region & State Safety Issues, Western States Petroleum Association (WSPA), and that the comments will be brought back to the Budget & Finance Committee.

Director Yeager noted, regarding slides 17 and 18, BAAQMD/SCAQMD Fee Comparisons, that SCAQMD doesn't enjoy property taxes as a source of revenue and asked if the proposed Air District cost recovery as a percentage of total revenue is in line with SCAQMD's and suggested this might be something the Budget & Finance Committee could look at.

Director Spering asked, regarding slide 15, Impacts on Small Businesses, what percentage of all gas stations in the Bay Area are in the medium and small categories to which Mr. Bateman replied approximately 10% combined. Director Spering stated that gas stations have no mechanism to recovery, as they don't have control of the price of gas, so in some cases the fee increase will result in jobs lost and it is important for the Air District to consider some way to provide assistance. Director Spering asked if fees were 52% of budget revenue because that was the amount of fees recovered or it was the target for recovery. Mr. Broadbent replied that the 52% is not a target but provided as a budget snapshot and that the Board of Directors tour of a local gas station planned for May 16, 2012, may provide more insight as to the justification for the proposed increase. Director Spering asked, regarding 8, Cost Recovery Policy, for clarification of the intent of the Policy noting that he thought the matter was settled for four years. Mr. Broadbent replied that the Cost Recovery Policy set forth a plan but the Board of Directors must consider the actual fee increase annually.

Director Ross asked if the Matrix study would help address Director Zane's inquiry. Mr. Broadbent said that Director Zane's inquiry would be best answered with a report in which positions are detailed as they related to and are funded by fee revenue. Director Zane concurred, saying that she is seeking balance on both sides. Director Ross said that the Air District must be sensitive to small business but also note that if a category of small business is not paying equitable fees then other small businesses are, in essence, subsidizing them through the payment of their fees; that fees should be commensurate to the costs of regulating; business interests appreciate predictability; and that the Air District's significant investment in the new Production System is an effort in increasing the efficiency of a process that currently costs businesses both time and money.

Public Comments:

Mr. Bjerke addressed the Board in support, clarifying that although major stationary source fees may be misinterpreted as not increasing based on the presentation, that they are increasing because various source fees that apply to the operation of major stationary sources are increasing.

Director Spering added that he is not proposing subsidization of gas stations by other business types but that in order to fully appreciate the justification for the fee increase, more needs to be understood about the process, efficiency options and so forth.

Mr. Broadbent said that the understanding sought by Director Spering is just what staff is hoping to provide in inviting the Board of Directors to a tour of a gas station on May 16, 2012.

Director Zane said that she wants the staffing information and some sense of what the Air District is doing technologically before she will be able to vote on the matter. Director Gioia said that the Production System, as previously presented to the Board of Directors, is just the technological remedy sought by Director Zane. Director Zane asked for more information on the Production System.

Director Piepho reiterated her interest in seeing the cost recovery projections monitored through the budget process.

Board Action: None; informational only.

**11. Continuation of Public Hearing to consider adoption of Regulation 8, Rule 53: Vacuum Truck Operations, amendments to Regulation 2, Rule 1: Permits, General Requirements and adoption of a CEQA Negative Declaration**

William Saltz, Air Quality Specialist, gave the staff presentation Proposed Adoption of Regulation 8, Rule 53: Vacuum Truck Operations Proposed Amendments to Regulation 2, Rule 1: General Requirements, including the background and photo examples of vacuum trucks in use; a detail of the regulatory proposal, regulated materials, proposed emission limits, and an emission reductions and cost comparison; a detail of the rule development process, questions received at the public hearing on March 21, 2012, and events subsequent to the public hearing; and recommendations.

Public Comments:

Mr. Bjerke addressed the Board in support, thanking the Air District and its staff for the revisions made and for its efforts in the development process.

Board Comments:

Director Ross asked, relative to monitoring costs, at what point operators will need to bring on additional staff merely for monitoring purposes. Mr. Saltz replied that monitoring will be required when an operator is loading regulated materials and the exhaust is exiting the truck's barrels and individual operators will determine how to staff and equip those needs. Director Ross asked how the monitoring is expected to function. Mr. Saltz replied that the monitoring device will indicate the user if there is an exceedance, at which point the operator will have three minutes to modify its activity to come into compliance or cease operations. Director Ross asked if it was reasonable to expect that level of self-monitoring to which Mr. Broadbent replied that this approach is common among other monitoring activities in the Bay Area. Director Ross asked if staff knew of a more cost effective measure proposed in the last 10 years to which Mr. Saltz conceded there may not be one.

Board action:

Director Wagenknecht made a motion, seconded by Director Spering and carried unanimously without objection to close the public hearing and adopt:

- A. Proposed Regulation 8, Rule 53: Vacuum Truck Operations;
- B. Proposed amendments to Regulation 2, Rule 1: General Requirements; and
- C. A Negative Declaration pursuant to the California Environmental Quality Act for the proposed rule and amendments.

**CLOSED SESSION**

The Board of Directors adjourned to Closed Session at 11:14 a.m.



**12. PUBLIC EMPLOYEE PERFORMANCE EVALUATIONS (Government Code Sections 54957 and 54957.6)**

Pursuant to Government Code Sections 54957 and 54957.6, the Board met in closed session to conduct a performance evaluation of the Executive Officer/APCO.

**13. 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 11:48 a.m. with no reportable action from the Closed Session.

**PUBLIC COMMENT ON NON-AGENDA MATTERS**

None.

**BOARD MEMBERS' COMMENTS**

Director Bates noted that the Board of Directors meetings are now being televised and recorded and asked for a staff report on how it works and is being used.

**OTHER BUSINESS**

**14. Report of the Executive Officer/APCO:**

Mr. Broadbent reported that the Board of Directors meeting on May 16, 2012, will be at the Air District Office followed by a site visit to a local gas station; a Board of Directors meeting will be held on May 21, 2012, in Cupertino followed by a site visit at the Lehigh Southwest Cement Company-Permanente plant; and the Air District is moving forward with the relocation to 390 Main Street, having recently completed the purchase and sale agreement and condominium agreement, with special thanks to Mr. McKay and Brian Bunger, District Counsel, for getting the documents completed, adding that full reports on the financing options will be brought before the Budget & Finance and Executive Committees, as well as the Board of Directors.

**15. Chairperson's Report: None.**

16. **Time and Place of Next Meeting:** Wednesday, May 2, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, CA 94109 at 9:45 a.m.
17. **Adjournment:** The Board of Directors meeting adjourned at 11:52 a.m.

*/s/ Sean Gallagher*

Sean Gallagher  
Clerk of the Boards