

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

Board of Directors Special Meeting
May 16, 2012

APPROVED MINUTES

CALL TO ORDER

Chairperson John Gioia called the meeting to order at 10:11 a.m.

ROLL CALL

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; Secretary Nate Miley; and Directors Susan Gorin, Scott Haggerty, Jennifer Hosterman, David E. Hudson, Carol L. Klatt, Eric Mar, Katie Rice, Mark Ross, Jim Spering, Brad Wagenknecht, Ken Yeager and Shirlee Zane.

Absent: Directors John Avalos, Tom Bates, Susan Garner, Carole Groom, Liz Kniss, Edwin M. Lee, and Mary Piepho.

PLEDGE OF ALLEGIANCE

Director Wagenknecht led the Pledge of Allegiance.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

PROCLAMATIONS/AWARDS

Chairperson Gioia made introductory comments regarding the Air District's recognition of employees who have completed milestones of 25, 35 and 40 years of service with the Air District during this first half of the calendar year.

Chairperson Gioia recognized Hari Doss, Air Quality Engineer of Engineering, for his years of service with the Air District. Mr. Doss addressed the Board in gratitude for the recognition.

Director Haggerty recognized Nancy Yee, Senior Air Quality Engineer of Engineering, for her years of service with the Air District. Ms. Yee addressed the Board in gratitude for the recognition.

Director Miley recognized Tim Underwood, Principal Air Quality Engineer of Technical Services, for his years of service with the Air District. Mr. Underwood addressed the Board in gratitude for the recognition.

Director Yeager recognized Donald Van Buren, Senior Air Quality Engineer of Compliance & Enforcement, for his years of service with the Air District. Mr. Van Buren addressed the Board in gratitude for the recognition.

CONSENT CALENDAR (Items 1 – 5)

- 1. Minutes of the Board of Directors Regular Meeting of May 2, 2012;**
- 2. Board Communications Received from May 2, 2012, through May 15, 2012;**
- 3. Quarterly Report of Executive Office and Division Activities;**
- 4. Consider Authorization for Execution of a Contract and Associated Purchase Orders in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures, Section 4.3 Contract Limitation, for Continued Operation of the BioWatch Monitoring Network; and**
- 5. Consider Approval of Recommendation to Establish the Classification of Health and Science Officer.**

Board Comments: None.

Public Comments: None.

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

ACTION ITEM

6. Update on Senate Bill 1149 (DeSaulnier)

Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO), introduced Thomas Addison, Senior Advanced Projects Advisor, who gave the staff Update on Senate Bill (SB) 1149 (DeSaulnier) and explained that the bill has changed very little in the two weeks since it became public except the commissioners governing the Bay Area Regional Commission (BARC) will not be directly elected, however, it is not clear how the governing board would be populated in the alternative.

Mr. Addison provided a summary of the highlights provided in the staff report, Update on SB 1149 (DeSaulnier), dated May 10, 2012.

Mr. Addison stated that the bill must clear the Senate Appropriations Committee by May 25, 2012, in order to go to the Senate floor.

Mr. Addison said that he had spoken with Senator DeSaulnier several times in the last week as well as attending the hearings before the Senate Transportation and Housing Committee on May 8 and the Senate Governance and Finance Committee on May 9, where at each time he expressed the Air District's desire to work collaboratively with its sister agencies for the benefit of Bay Area residents

and to relay a concern about the lack of opportunity for the public, local agencies, interest groups and other concerned citizens to discuss the local governance repercussions in light of the timing of its release.

Mr. Addison noted that Senator DeSaulnier made a commitment to work with Board members from the agencies involved and that several of these meetings have been scheduled for the following days.

Mr. Addison suggested that Brown Act requirements resulted in delays in responses to the bill from public agencies but that is changing with time and of those that have weighed in, or are about to, it has been solely in opposition.

Mr. Addison reported that he relayed to Senator DeSaulnier the concerns expressed by the Board at the meeting on May 2, 2012, namely that the bill will group the Air District, fundamentally a regulatory public health agency, with several regional planning and funding agencies and staff's belief that a conflict of interest will develop between the goals of improved mobility and economic development and that of public health. Mr. Addison stated that Senator DeSaulnier seems to recognize the issue but has not provided a clear response on how best to address it. Mr. Addison said that staff recommends the Air District oppose the bill unless amended, noting that the Air District shares Senator DeSaulnier's goal of effective regional governance in collaboration with other regional agencies while maintaining a commitment to achieving the individual goals of each agency.

Mr. Addison reminded the Board that SB 1149 (DeSaulnier) is one of three bills put forward by Senator DeSaulnier regarding Bay Area regional governance, including SB 1545 and SB 878.

Board Comments:

Director Haggerty stated his dislike for BARC and suggested that before the recent change in how commissioners were to be seated, SB 1149 (DeSaulnier) seemed to be creating a place for members of the legislature to go when they term out in the legislature, that the bill is likely to come to nothing and despite Senator DeSaulnier's past good work for the State, that this bill is not going in the right direction. Director Haggerty recalled a recent meeting Senator DeSaulnier attended where some positive, collaborative work between the agencies occurred and expressed his hope that the Senator took from that meeting a better sense of the efforts being made. Director Haggerty suggested it is nonsensical to group a regulatory agency with non-regulatory agencies and asked how BARC will be funded. Mr. Addison responded that BARC's funding will come from the regional agencies as well as receiving all of the federal transportation planning funds currently going to the Metropolitan Transportation Commission (MTC) and Bay Area Toll Authority. Director Haggerty replied that the bill suggests it is inappropriate for toll bridge revenue to be used for the purchase of a building as a regional agency headquarters but it is acceptable for the same revenue to pay for BARC and explained that, as an Alameda County representative, it is deeply upsetting for the disproportionate share of this cost to fall to the residents of the East Bay. Director Haggerty stated his intention to vote against SB 1149 (DeSaulnier) at every opportunity, as it is unnecessary, and urged the legislature to work on its own financial house before looking to streamline local governance processes.

Director Hudson inquired how the Joint Policy Committee (JPC) is populated and to whom they will be held accountable. Mr. Broadbent responded that JPC is made up of five members each from the Air District, MTC, Association of Bay Area Governments and San Francisco Bay Conservation and

Development Commission. Chairperson Gioia added that the Board appoints the Air District's five members. Director Hudson replied that the inquiry was for the benefit of the audience because BARC is intended to replace JPC and it is important that they know the current state. Chairperson Gioia stated that SB 1449 (DeSaulnier) is currently vague in that it no longer provides for elected members but it does not explain who appoints them. Director Hudson read several excerpts from SB 1149 (DeSaulnier), noting the redirection of significant revenue, the proposed use of resources for the formation, staffing and housing of an entirely new agency, and the channeling of revenue enjoyed from increased efficiencies to the BARC general fund.

Chairperson Gioia urged, for the sake of time, that a motion be advanced or that comments be brief.

Director Hudson agreed and continued to cite provisions of SB 1149 (DeSaulnier) deemed nonsensical and suggested BARC is intended to provide a place for members of the legislature to go when they term out.

Director Hudson made a motion to oppose SB 1149 (DeSaulnier) and Director Haggerty seconded.

Director Zane stated that the County of Sonoma Board of Supervisors adamantly opposes SB 1149 (DeSaulnier) as it is backwards legislation that creates a bureaucratic layer to regulate a regulatory agency in a time of diminishing resources and urged the Board to strongly oppose the bill.

Director Spering noted that SB 1149 (DeSaulnier) is permeated by land use issues that should be a cause for concern to all local government officials, that among the BARC's revenue sources is revenue currently going to local congestion management agencies, and that it adds another layer of government. Director Spering suggested instead that the Board oppose and urge withdrawal of the bill for further discussion with the regional agencies.

Public Comments: None.

Board Action: Director Hudson amended his motion to make a motion to oppose and urge withdrawal for further discussion with the regional agencies; Director Haggerty seconded; unanimously approved without objection.

CLOSED SESSION

The Board of Directors adjourned to Closed Session at 11:00 a.m.

7. 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

8. POTENTIAL LITIGATION (Government Code Section 54956.9(c))

Pursuant to Government Code Section 54956.9(c), a need existed to meet in closed session with legal counsel to consider initiating one item of potential litigation.

OPEN SESSION

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

OTHER BUSINESS

9. Report of the Executive Officer/APCO:

Mr. Broadbent noted that the Board of Directors will meet on Monday, May 21, 2012, Quinlan Community Center, Cupertino Room, 10185 N. Stelling Road, Cupertino, CA 95014 at 10:00 a.m.

10. Chairperson's Report:

Chairperson Gioia noted the re-appointment of Director Bates to the Board of Directors of the Air District by the Alameda County Mayors' Conference on May 9, 2012.

PRESENTATION

11. Tour of Gas Dispensing Facility

Mr. Broadbent introduced John Marvin, Air Quality Program Manager of Compliance & Enforcement, who gave the staff presentation District Gasoline Dispensing Facility (GDF) Program Overview, including background information, a history of vapor recovery at GDFs, an overview of the Air District GDF program, a look at enhanced vapor recovery and introduced a GDF tour to occur at the close of the Board meeting.

Mr. Marvin noted, regarding slide 5, History of Vapor Recovery, that the Air District was the first air quality management district, along with San Diego, to adopt regulations requiring vapor recovery systems.

Director Haggerty asked, regarding slide 4, Vapor Recovery Program, the meaning of statements from the Obama administration that boots on nozzles will no longer be necessary in light of advances in the manufacturing of automobiles. Mr. Broadbent responded that the statements are regarding the withdrawal of Phase II Vapor Recovery requirements no longer being necessary as a result of Onboard Refueling Vapor Recovery (ORVR), a ruling that the Air District and State will likely disagree with. Brian Bunker, District Counsel, added that the Phase II Vapor Recovery program will no longer be required under federal law but instead leaves to the states the setting of standards and stated that the California Air Resources Board (ARB) has indicated they will maintain the requirement, at least in those areas where it is already in place as it is not currently universal. Director Haggerty suggested a possible savings of millions of dollars to which Mr. Broadbent agreed. Director Haggerty asked for more information and an in depth discussion on the topic. Mr. Broadbent agreed

and suggested that there will be little effect for the Air District as the ARB is expected to continue to insist upon it and suggested that staff will bring the matter back to Committee.

Chairperson Gioia indicated the matter should go to the Stationary Source Committee and asked where the vapors from the car are released. Mr. Marvin responded that they are fed into the underground storage tank where they are stored until the truck refills the underground storage tanks and loads the vapors.

Chairperson Gioia asked, regarding slide 11, ORVR, the fate of the vapors in the ORVR. Mr. Marvin responded that they burn off during engine operation.

Director Zane asked why some large trucks smell so strongly of gasoline when others do not. Mr. Marvin suggested that not every large truck has an ORVR or it is possible that the GDF's vapor recovery system is not working properly. Director Zane asked the amount of the penalty imposed for these violations to which Mr. Marvin responded that the federal government deals with that. Director Zane asked for confirmation that the Air District is not fining GDFs that don't have the proper equipment. Mr. Marvin responded that he misunderstood the previous question to be relative to ORVR. Director Zane asked if the Air District is fining GDFs for not having the proper nozzle to capture the vapor and whether all nozzles have been updated or, if not, whether the Air District fines and for how much. Mr. Broadbent responded that the Air District has a rigorous enforcement program and fines vary by circumstances. Mr. Bungler added that there are a number of components and potential problems to consider in setting a fine or penalty in the range from several hundred dollars to several thousand, the larger fines generally being applied for failure to have the proper equipment. Director Zane asked if there is general compliance overall to which Mr. Bungler responded in the affirmative, noting that there are peaks in non-compliance when a new regulation is put in place. Director Zane asked if there is a grant program in place, similar to the Port Drayage Truck Program, to provide funding to assist GDF owners with facility upgrades. Mr. Broadbent responded that the Air District generally does not, adding this is caused primarily by the regulations being a part of the Air District's own statutory requirements and it is difficult to find a way to correctly use grant money for this purpose but that staff routinely look to see how a facility can be brought back into compliance as quickly as possible and a lot of these concerns are taken into consideration in that process. Director Zane asked for information regarding compliance levels and suggested that if non-compliance is significant she will request the Board revisit the possibility of a grant program.

Board Comments: None.

Public Comments: None.

Board Action: None; informational only.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

BOARD MEMBERS' COMMENTS

None.

OTHER BUSINESS (CONTINUED)

12. **Time and Place of Next Meeting:** Special Meeting on Monday, May 21, 2012, Quinlan Community Center, Cupertino Room, 10185 N. Stelling Road, Cupertino, CA 95014 at 10:00 a.m. A tour to Lehigh Southwest Cement Company, located at 24001 Stevens Creek Boulevard, Cupertino, California 95014, immediately following.

13. **Adjournment:** The Board of Directors meeting adjourned at 11:30 a.m. and attendees departed to receive a tour of the Shell Gas Station located at 800 Turk Street, San Francisco, California 94102.

151 Sean Gallagher

Sean Gallagher
Clerk of the Boards