

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

Board of Directors Regular Meeting
June 6, 2012

APPROVED MINUTES

CALL TO ORDER

Chairperson John Gioia called the meeting to order at 9:48 a.m.

ROLL CALL

Present: Chairperson John Gioia; Secretary Nate Miley; and Directors Tom Bates, Susan Garner, Carole Groom, Scott Haggerty, Jennifer Hosterman, David E. Hudson, Eric Mar, Mary Piepho, Katie Rice, Mark Ross, Jim Spering and Brad Wagenknecht.

Absent: Vice Chairperson Ash Kalra; and Directors John Avalos, Susan Gorin, Carol L. Klatt, Liz Kniss, Edwin M. Lee, Ken Yeager and Shirlee Zane.

PLEDGE OF ALLEGIANCE

Director Wagenknecht led the Pledge of Allegiance.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

OTHER BUSINESS

1. Report of the Executive Officer/Air Pollution Control Officer (APCO):

Jack Broadbent, Executive Officer/APCO, distributed the Clean Air Every Day Annual Report 2011 to the Board and announced the appointment of Jaime Williams to the position of Director of Information Systems Services, effective May 21, 2012, and the anticipated appointment of Brian Bateman to the position of Public Health and Science Officer, to be effective July 1, 2012.

Mr. Broadbent introduced Thomas Addison, Senior Advanced Projects Advisor, who provided a legislative update regarding various bills pending in the California State Legislature regarding regional government. Mr. Addison reported SB 1149 (DeSaulnier) has been withdrawn by its author.

Chairperson Gioia interjected to confirm its withdrawal and the author's commitment to discuss the principles of regional government in the Bay Area with the Joint Policy Committee (JPC) at a meeting that has yet to be scheduled.

Mr. Addison reported that SB 1545 (DeSaulnier), regarding the new regional agency office headquarters, is moving ahead and the Bureau of State Audits has not yet released its report but it is expected sometime before the end of July 2012.

Mr. Addison reported that SB 878 (DeSaulnier) moved through the State Senate last year and is now before the Assembly in a gutted and amended form; the version relating to regional governance has not yet been heard by any policy committees; and the new amendments to the bill were made public for the first time on Tuesday, June 5, 2012, and that staff were not briefed on amendments made but that, in some ways, they do not appear to represent a significant change to the bill. Mr. Addison noted that the Board previously took a watch position on SB 878 (DeSaulnier), a bill that before amendment would serve to have the JPC talk about regional reorganization, look for ways to improve efficiency and coordination between the Association of Bay Area Governments, Metropolitan Transportation Commission (MTC), San Francisco Bay Conservation and Development Commission, and the Air District, direct the JPC to consider a regional economic development plan and program, direct each of the four agencies to report to the State Legislature on public outreach efforts; and noted a tone throughout the bill that current public outreach is inadequate and agency actions are not adequately transparent. Mr. Addison summarized the amendments as drawing from the principles detailed in Senator DeSaulnier's handout to the JPC on May 18, 2012, without any work in conjunction with the regional agencies and noted that some appear on their face to be acceptable while others will likely be a source of contention for some of the directors. Mr. Addison noted that some significant changes are relative to the economic development plan and how that is to be prepared, including the establishment of an advisory committee to the JPC, which will be composed entirely of members from the business, business-interests or business-minded academic communities with no members from the public, environmental organizations, agricultural industry or others that would lend to the creation of a more diverse body. Mr. Addison said the California State Assembly Committee on Local Government is scheduled to hear the bill this Wednesday, June 13, 2012, and that the Board may not take a position on the bill today but staff wanted to bring it to the Board's attention.

Mr. Addison invited questions and comments to relay to Senator DeSaulnier and the State Committee.

NOTED PRESENT: Director Miley was noted present at 10:01 a.m.

NOTED PRESENT: Director Haggerty was noted present at 10:02 a.m.

NOTED PRESENT: Director Bates was noted present at 10:03 a.m.

Mr. Broadbent stated that staff is concerned that Senator DeSaulnier did not allow for the input that he promised relative to SB 1149, the bill calling for an economic development report to be generated and increased efforts to ensure Air District work is coordinated with other regional agencies. He noted that their goals make a great deal of sense, and staff want to encourage Senator DeSaulnier to engage in the promised dialogue. Chairperson Gioia reiterated the understanding coming out of the JPC meeting in May and summarized the composition of the proposed advisory committee. Mr. Addison noted the absence of environment organizations, community interest groups and agriculture.

Director Hudson read several excerpts from SB 878 (DeSaulnier), said the lack of agricultural representatives in the committee composition will disenfranchise entire counties, and noted provisions that leave open the possibility of establishing a new regional committee instead of working with the JPC and changing how it does business. Director Hudson added that SB 1149 (DeSaulnier) was not withdrawn, as previously stated, but was instead canceled before the California State Senate Appropriations Committee, meaning only that it can't get through the Legislature this year.

Director Hosterman said that SB 878 (DeSaulnier) represents an end run and expressed her hope that the Board will send a strong message to the author that the Board will not support legislation of this sort until he is willing to sit down with the agencies prior to promulgating new legislation.

NOTED PRESENT: Director Garner was noted present at 10:07 a.m.

Director Wagenknecht concurred with Director Hosterman that process is key and Director Hudson that agriculture must be a part of any advisory body, noted the Board was promised involvement which was subsequently denied by virtue of the timing and lack of cooperation, and suggested the Board issue a strong message.

Director Bates concurred with Director Wagenknecht's comments and urged Senator DeSaulnier to meet with local leaders as promised or, if not, that the Board oppose SB 878 (DeSaulnier). He said that a letter is being drafted by members of the JPC relaying the same concept, and pointed out that the bill has an unfunded mandate. Director Bates said SB 878 (DeSaulnier) has problems as there is an appropriations issue.

Chairperson Gioia said that his understanding from the JPC meeting was that Director Bates was to set up a discussion with Senator DeSaulnier before any amendments to SB 1149 (DeSaulnier) or other, related bills are issued. Director Bates agreed and said they are working on scheduling now.

Director Piepho echoed the comments of her colleagues and Air District staff, noted that Senator DeSaulnier has expressed a desire to improve public outreach by the regional agencies of the Bay Area while at the same time showing his own professional outreach to be lacking as he seems unwilling to discuss these bills in a transparent way, and echoed the need for agricultural representation on an advisory body.

Director Haggerty concurred with Director Bates.

Chairperson Gioia suggested Mr. Addison carry a message to Senator DeSaulnier to follow through on the commitments made before the JPC to meet with regional agency representatives prior to the introduction of any new amendments or bills.

CONSENT CALENDAR (Items 2 – 4)

- 2. Minutes of the Board of Directors Budget Hearing of May 16, 2012, and Board of Directors Special Meetings of May 16, 2012, and May 21, 2012;**
- 3. Board Communications Received from May 21, 2012, through June 5, 2012; and**
- 4. Air District Personnel on Out-of-State Business Travel.**

Board Comments: None.

Public Comments: None.

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

COMMITTEE REPORTS AND RECOMMENDATIONS

5. Report of the Mobile Source Committee Meeting of May 24, 2012

Chairperson S. Haggerty

The Committee met on Thursday, May 24, 2012, and approved the minutes of April 26, 2012.

The Committee reviewed Carl Moyer Program projects with proposed grant awards over \$100,000 and recommended Board of Directors approval of three projects that will replace five pieces of equipment and authorization for the Executive Officer/APCO to enter into agreements for those projects.

The Committee received an update on the Lower-Emission School Bus Program, including a summary of recent projects and buses funded through 2007, projected demand for compressed natural gas tanks and funds available, current solicitation and outreach efforts, and recommended that the Board of Directors authorize the Executive Officer/APCO to enter into funding agreements with grantees meeting the requirements of the program.

The Committee also received an informational presentation on a Marine Highway Project, including a review of the current truck transportation model, the marine highway concept, the current project and its possible emissions reductions, and next steps. The Committee was joined for the item by representatives of the US Department of Transportation, Maritime Administration, and the Port of Oakland.

Finally, the Committee received an informational presentation on the Port Drayage Truck Program, including a review of the current drayage truck population, California Goods Movement Bond Program Year 3 funding, Engine Model Year (MY) 2004 Replacement Program, and Engine MY 2005/2006 Replacement Program.

The next regularly scheduled meeting of the Committee on Thursday, June 28, 2012, is cancelled. Staff is working to identify a new date and time before the Special Meeting of the Board of Directors on July 11, 2012.

Board Comments:

Director Haggerty congratulated Director Miley on the election results.

Director Hudson requested additional information regarding the Marine Highway Project and the rumored rail line into the port.

Public Comments: None.

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

6. Report of the Public Outreach Committee Meeting of May 31, 2012
Chairperson M. Ross

The Committee met on Thursday, May 31, 2012, without establishing a quorum.

The Committee received an update on the Spare the Air Campaign & Great Race for Clean Air, including an overview of the 2012 campaign and its focus on “smart transportation.” Advertising will be repurposed this year and greater attention will be paid to messaging through Bay Area employers. Social media presence has been expanded to include Facebook, Twitter, Pinterest, You Tube and Google Plus. Partnership with 511 and the MTC will be a key focus of media opportunities and messaging.

The Committee received the staff presentation regarding Website Rebuild and Redesign, including background information, the request for proposals process and evaluations. Staff recommended approval of the following: 1) Contract for Lightmaker USA not to exceed \$100,000 for first phase of website project, 2) Allocating up to \$500,000 for website project over two fiscal years (FY), \$250,000 from FY 2012 and \$250,000 from FY 2013 and 3) Funding of \$150,000 to be held from FY 2012 budget to be added to FY 2013 project budget to complete website rebuild and redesign project. A consensus of the members present recommended that the Board of Directors approve the staff requests.

The Committee received the staff presentation regarding approval of Spare the Air Resource Team Contractor, including project background, the request for proposals process, review team composition, evaluation criteria and proposal scores. Staff recommended approval of the following: 1) Selection of Community Focus for the Spare the Air Resource Team contractor and 2) Contract with Community Focus for an amount not to exceed \$227,000 per contract year for up to three contract years. A consensus of the members present recommended that the Board of Directors approve the staff requests.

The next meeting of the Committee is Tuesday, July 17, 2012, at 9:30 a.m.

Board Comments: None.

Public Comments: None.

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

PUBLIC HEARINGS

7. Public Hearing to Consider Adoption of Proposed Amendments to Air District Regulation 3: Fees

Jeffrey McKay, Deputy APCO, introduced Brian Bateman, Director of Compliance & Enforcement, who gave the staff presentation Proposed Fee Regulation Amendments for Fiscal Year Ending (FYE) 2013 (cont.), including the rule development schedule, summary of staff proposal, proposed amendments for fee schedules, an overview of Air District regulation of gas stations, an alternative fee increase for consideration and the impacts thereof on Title V facilities, and recommendations.

Chairperson Gioia clarified, regarding slide 8, Impact of Alternative on Title V Facilities, that the source of the increase in fee revenue under the alternative fee schedule for gas dispensing facilities (GDF) is large refineries.

Chairperson Gioia noted, regarding slide 7, Alternative for Consideration, that the decrease for GDF from a 9% fee increase to a 5% fee increase will result, for example, in a fee increase of approximately \$96 instead of \$164, effectively a cost savings of \$70 per year for a hypothetical GDF.

Mr. Broadbent noted that the staff recommendation today is not the alternative fee proposal, based on discussions in the Budget and Finance Committee meetings.

Chairperson Gioia opened the public hearing, and hearing none, Director Bates made a motion to close the public hearing; Director Wagenknecht seconded; carried unanimously without opposition.

Board Comments:

Director Piepho clarified that the motion brought by Director Bates and seconded by Director Wagenknecht is for approval of the original proposed amendments, expressed her preference that the Board approve the alternative version, and suggested the effective date be phased in after July 1, 2012, as that is only several weeks away.

Chairperson Gioia suggested that supporting the staff and committee recommendation makes sense and asked for a staff response on the topic of the effective date. Mr. Broadbent responded that this timeline is standard practice for the Air District in conjunction with the beginning of the next fiscal year and the corresponding budget and that notices are phased throughout the year so everyone is not billed at the beginning of the fiscal year. Director Piepho suggested the Air District be mindful of the budgets of small business owners.

Director Sperring said that he will not be supporting the motion but noted that staff has worked hard, expressed his gratitude to staff for exploring an alternative proposal, stated that GDF do not have cost recovery options, and noted that it is just this provision regarding GDF that he does not support.

Chairperson Gioia stated that large facilities are already paying a greater cost recovery percentage, comparatively speaking, and concluded that increases in fee recovery need to come from those areas where the Air District is recovering at lower rates. Mr. Broadbent agreed, said that staff reviewed

costs through staff time sheets with the assistance of a third-party and found that GDF recovery does not cover the cost of the work required to regulate them, and noted that although GDF are largely small businesses, their operations are the only operation that involves the public use of air pollution control equipment and that GDF are collectively the single biggest source of emissions.

Chairperson Gioia asked for cost recovery figures for GDFs and large facilities for comparison purposes. Mr. Bateman responded that the fee schedule for GDFs is under 50% recovery. Chairperson Gioia asked what the Air District is recovering from those facilities listed on slide 8, Impact of Alternative on Title V Facilities. Mr. Bateman responded that it is hard to tease out the exact number as there are multiple sources at most large facilities, however, the larger facilities show a more complete cost recovery rate than GDF. Mr. Broadbent interjected that the large facility recovery rate is approximately 80%. Mr. Bateman said the figure represents near total recovery for large facilities.

Director Sperring said that every dollar raised at the refinery level is passed along to the consumer and GDF do not have that capability so it only seems appropriate to impose the fee on large facilities. Director Bates suggested Director Sperring's idea to be an interesting one and asked how the alternative fee would play out in the long term. Mr. Broadbent responded that it will take longer to recover costs on GDF.

Director Groom said, leaving aside the debate about the appropriateness of the fee increase, that the Budget and Finance Committee worked on this proposal and the related cost recovery policy for the better part of a year with rigorous discussions on both topics; noted that a stakeholder committee was convened on the cost recovery matter; reported a 4-to-3 vote on the initially proposed GDF fee increase and suggested it as an example of the difficult discussions and shifting votes on this topic; and noted the Board responsibility is much greater than this single fee increase, and that although disagreement among the Board is welcome, the directors should understand the work that has been invested up to this point.

Director Hudson said that the Air District has already accepted a diminished recovery rate of 85% as full recovery instead of 100% and are now considering a proposal to decrease it even further for certain industries instead of others and to do so based on an assumption that one will be able to recover the loss and another will not, and asked if the Air District is going to stick its own established policy.

Chairperson Gioia suggested that if the Board is going to deviate from the fee recovery policy then it seems appropriate to invite representatives from every regulated sector to discuss the impacts of the fee increase or, instead, to raise the fees in a way that is consistent with a standard.

Director Groom suggested that the stakeholder meetings were held to get the very input Chairperson Gioia alluded to.

Chairperson Gioia said that the large industrial sector did not oppose either of the proposals despite their shouldering more of a cost share and a fee increase already and noted that GDF are well organized and mobilized.

Director Hudson clarified that the large industrial sector did oppose the proposals initially but expressed their understanding with an 85% recovery rate.

Public Comments: None.

Board Action: Director Bates made a motion to approve staff's and the Budget and Finance Committee's proposed amendments to District Regulation 3: Fees, effective July 1, 2012; Director Wagenknecht seconded; Chairperson Gioia called for a roll call vote on the pending motion; motion was carried by the following vote of the Board:

AYES: Chairperson Gioia; and Directors Garner, Groom, Hosterman, Hudson, Mar, Rice and Wagenknecht.

NOES: Directors Bates, Haggerty, Miley, Piepho, Ross and Spring.

ABSENT: Directors Avalos, Gorin, Kalra, Klatt, Kniss, Lee, Yeager and Zane.

8. Public Hearing to Consider Adoption of the Air District's Proposed Budget for Fiscal Year Ending (FYE) 2013

Mr. McKay gave the staff presentation Proposed Fiscal Year End 2013 Budget, including revenue and expenditure for FYE 2013, responses to challenges for FYE 2013 and a detailed review of revenue and expenditure.

Board Comments:

Director Piepho asked where the Air District is in the process of fully funding instead of keeping up with the costs of funding Other Post-Employment Benefits based on the latest actuarial. Mr. McKay responded that it is 20% funded.

Director Bates asked how much money is being discussed relative to the decreased community grant fund. Jean Roggenkamp, Deputy APCO, responded that approximately \$200,000 to \$250,000 was allocated by the Board several years ago for a community grant fund and that upon continued review, staff deemed it unsustainable at this time. Director Bates asked what the funds were used for. Ms. Roggenkamp responded that it was spent working with community groups, such as Ditching Dirty Diesel on outreach regarding idling, and with good results but staff determined that cuts were necessary and this was deemed a possibility, particularly in light of other work done with the communities. Director Bates replied that he appreciates community-level work and encouraged staff to consider restoring the fund in the future, even if at diminished levels, in light of the total cost being only \$250,000.

Public Comments: None.

Board Action: Director Wagenknecht made a motion to adopt the Air District Proposed Budget for FYE 2013; Director Hudson seconded; carried unanimously without opposition.

OTHER BUSINESS (CONTINUED)

9. Chairperson's Report:

Chairperson Gioia said that the Board of Directors regular meetings on June 20, 2012, July 4, 2012, July 18, 2012, August 7, 2012, and August 21, 2012 are canceled.

Chairperson Gioia noted a Board of Directors special meeting on July 11, 2012, at ConocoPhillips, 1380 San Pablo Avenue, Rodeo, California 94572 at 1:30 p.m.

Chairperson Gioia reported that committees will continue to meet through the summer months as needed.

BOARD MEMBERS' COMMENTS

Director Piepho commended staff for typographical changes made in the preparation of the meeting agenda packet.

CLOSED SESSION

The Board of Directors adjourned to Closed Session at 10:57 a.m.

10. 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 11:08 a.m. with no reportable action.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

OTHER BUSINESS (CONTINUED)

11. Time and Place of Next Meeting: Wednesday, July 11, 2012, at ConocoPhillips, 1380 San Pablo Avenue, Rodeo, California 94572 at 1:30 p.m.

12. Adjournment: The Board of Directors meeting adjourned at 11:08 a.m.

151 Sean Gallagher

Sean Gallagher
Clerk of the Boards