

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, August 7, 2013

APPROVED MINUTES

CALL TO ORDER: Chairperson Ash Kalra called the meeting to order at 9:49 a.m.

OPENING COMMENTS:

Chairperson Kalra made opening comments regarding the scope of the agenda and to request that speakers respect the need to collectively manage time.

ROLL CALL

Present: Chairperson Ash Kalra; Vice-Chairperson Nate Miley; Secretary Carole Groom; and Directors John Avalos, Teresa Barrett, Tom Bates, John Gioia, Scott Haggerty, Carol Klatt, Liz Kniss, Eric Mar, Jan Pepper, Mary Piepho, Mark Ross, Jim Spering, Brad Wagenknecht and Shirlee Zane.

Absent: Directors Susan Adams, David Hudson, Edwin Lee, Tim Sbranti and Ken Yeager.

PLEDGE OF ALLEGIANCE: Chairperson Kalra led the Pledge of Allegiance.

PUBLIC COMMENT ON NON-AGENDA MATTERS:

Kathy Kerridge, Good Neighbor Steering Committee, addressed the Board regarding concerns relative to the environmental impacts of a recent permit application by the refinery in Benicia.

CONSENT CALENDAR (ITEMS 1 – 9)

- 1. Minutes of the Board of Directors Regular Meeting of June 19, 2013;**
- 2. Board Communications Received from June 19, 2013, through August 6, 2013;**
- 3. Quarterly Report of California Air Resources Board (ARB) Representative – Honorable John Gioia;**
- 4. Quarterly Report of Executive Office and Division Activities;**
- 5. Air District Personnel on Out-of-State Business Travel;**
- 6. Notice of Violations Issued and Settlements in Excess of \$10,000 in June 2013;**
- 7. Approval of Contract for California Environmental Quality Act (CEQA) Analyses and Documentation for Air Quality Plans and Rules;**

8. **Approval of Contract for Air Quality Monitoring Study; and**
9. **Authorize Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures, Section 4.3 Contract Limitations, for Continued Operation of the BioWatch Monitoring Network.**

Board Comments: None.

Public Comments: None.

Board Action: Director Wagenknecht made a motion to approve Consent Calendar Items 1, 2, 3, 4, 5, 6, 7, 8 and 9; Director Piepho seconded; and the motion carried unanimously.

COMMITTEE REPORTS AND RECOMMENDATIONS

10. **Report of the Personnel Committee (PC) Meeting of June 20, 2013**
Committee Chairperson Wagenknecht

The PC met on Thursday, June 20, 2013, and postponed approval of the minutes for lack of a quorum.

The PC received the Hearing Board Interview summary material for the public category alternate seat, conducted interviews of applicants, and recommends Board of Directors' approval of the appointment to the Air District's Hearing Board of Barbara Toole O'Neil to the public category alternate seat, effective immediately.

The next meeting of the PC was scheduled for Wednesday, July 24, 2013, at 9:30 a.m.

NOTED PRESENT: Director Kniss was noted present at 9:55 a.m.

Public Comments: None.

Board Comments: None.

Board Action:

Director Wagenknecht made a motion to approve the report and recommendation of the PC; Director Piepho seconded; and the motion carried unanimously.

11. **Report of the Climate Protection Committee (CPC) Meeting of July 18, 2013**
Committee Chairperson Avalos

The CPC met on Thursday, July 18, 2013, and approved the minutes of October 31, 2011, April 16, 2012, and May 9, 2013.

The CPC received a staff presentation on the Keystone XL Pipeline project. The CPC discussed the project, and with the support of the majority of the CPC members present, the CPC Chair directed staff to prepare a resolution opposing the Keystone XL Pipeline project for consideration by the Board

of Directors. At the end of this committee report, staff gave the presentation on the Keystone XL Pipeline project to help inform the Board's discussion.

The CPC then received the staff presentation Climate Protection Grant Program Update, including a review of the grant program's objectives and the types of projects funded, highlights of certain projects, a summary of the results, and lessons learned.

The CPC also received the staff presentation Assembly Bill (AB) 32 Scoping Plan Update, including background on AB 32 and the scoping plan, the State's strategy for achieving AB 32 greenhouse gas (GHG) goals, the goals of the 2013 Scoping Plan Update, a description of an upcoming Bay Area workshop on the Scoping Plan Update, and the Air District's involvement.

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

Jean Roggenkamp, Deputy Air Pollution Control Officer (DAPCO), introduced Michael Murphy, Advanced Projects Advisor of Planning, Rules & Research, who gave the staff presentation Keystone XL Pipeline, including project background, a summary of the nature of oil sands, possible GHG impacts, and an overview of Bay Area refineries and potential local emissions.

Director Zane asked, regarding slide 7, Local Emissions, whether the information provided is based upon Canadian imports comprising 1% of current capacity and if one could reasonably conclude there will be a noticeable change should that percentage increase, which questions were answered by Mr. Murphy.

Mr. Murphy concluded the staff presentation.

Public Comments:

Taylor Hawke, 350 Bay Area, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Robert Gould, M.D., Physicians for Social Responsibility, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Floyd Earl Smith, 350 Bay Area, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Jed Holtzman, 350 Bay Area, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Aaron Reaven addressed the Board in support of a resolution opposing the Keystone XL Pipeline project and to suggest further action by the Board in opposition to similar industry practices.

NOTED PRESENT: Director Mar was noted present at 10:25 a.m.

Bill Pinkham, 350 Bay Area and Richmond Progressive Alliance, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Guy Bjerke, Western States Petroleum Association, addressed the Board in opposition to a resolution opposing the Keystone XL Pipeline project.

Joanne Orengo, 350 Bay Area Action Committee, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

David McFarlane, 350 Bay Area, addressed the Board in support of a resolution opposing the Keystone XL Pipeline project.

Board Action:

Director Avalos made a motion to approve the report of the CPC; Director Mar seconded; and the motion carried unanimously.

Board Comments:

Chairperson Kalra made introductory comments regarding the Board discussion of this topic and expressed his support for the resolution.

Director Avalos thanked Air District staff for their work and the public for its involvement, made introductory comments regarding the resolution, the state of the global climate and the ever increasing importance of its protection, and expressed his support for the resolution.

Board Action:

Director Avalos made a motion to adopt the Resolution Urging the President of the United States of America to Reject the Application of TransCanada Corporation to Construct the Keystone XL Pipeline; and Director Mar seconded.

Board Comments:

Director Zane said agenda item 16, Work Plan for Action Items Related to Accidental Releases from Industrial Facilities, is Air District work and the current subject probably is not. Director Zane asked if letters had been sent to the ARB or Environmental Protection Agency (EPA), which question was answered by Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO). Director Zane asked why the Board is spending time on this topic and suggested letters be sent to the agencies mentioned.

Board Action (continued):

Director Avalos made a motion to amend the pending motion to adopt the Resolution Urging the President of the United States of America to Reject the Application of TransCanada Corporation to Construct the Keystone XL Pipeline to include direction to staff to prepare and send letters to the ARB and EPA urging their participation in the discussion; and Director Mar seconded.

Board Comments (continued):

Director Wagenknecht expressed his gratitude for the information presented and his concern about the Air District reaching beyond its purview and said he will not be supporting the resolution.

Director Miley asked about the Air District's authority relative to the subject and what the resolution will serve to do, which questions were answered by Mr. Broadbent. Director Miley said the briefing was inadequate and asked whether the existing pipeline capacity had reached its maximum, whether President Obama has the final decision, and who is on record as supporting and opposing the project, which questions were answered by Messrs. Broadbent and Murphy and Ms. Roggenkamp.

Director Haggerty asked about the likely destination for tar sands extracted material, which question was answered by Mr. Murphy. Director Haggerty said, regarding slide 4, Getting Oil Sands to Market, there is no obvious implication for California in the proposal and asked why the project being denied is a concern, which question was answered by Damien Breen, Director of Strategic Incentives. Director Haggerty asked if it is correct that another pipeline through California is being planned, which question was answered by Mr. Murphy. Director Haggerty said Canadian west coast ports are thriving and asked why a pipeline is not being constructed there, why Bay Area refinery production is expected to increase with the approval of the project, whether an environmental impact report (EIR) exists and whether it has been reviewed by staff, whether the proposed expansion will do more environmental harm than good, and whether the material will be refined at or shipped from the Gulf Coast, which questions were answered by Messrs. Murphy and Broadbent and Ms. Roggenkamp.

Director Ross asked, regarding slide 5, GHGs, whether California crude is included in "Domestic Crude Oil," which question was answered by Mr. Murphy. Director Ross asked about the difference between the environmental impact of tar sands and California crude and whether refineries are installing hydrogen plants to better situate them for accommodating these dirtier crudes, which questions were answered by Mr. Murphy and Ms. Roggenkamp. Director Ross said California crude is some of the dirtiest in the world so it is difficult to point fingers at other dirty operations, noted his personal experience working with dirty crude as well as efforts to remediate the damage done through its extraction and processing, and said he has worked to impose GHG limits on Bay Area residents for the good of the global community so he is comfortable with essentially asking the same of the global community for its own sake in this instance. Director Ross asked for an amended motion to revise the proposed resolution, page 2, third paragraph from the bottom, last sentence, to include "high" before "sulfur" and language at the end of the sentence referencing the "notoriously heavy California crude oil."

Board Action (continued):

Director Avalos made a motion to amend the pending motion to adopt the Resolution Urging the President of the United States of America to Reject the Application of TransCanada Corporation to Construct the Keystone XL Pipeline to include the language requested by Director Ross, as set forth above; and Director Mar seconded.

Board Comments (continued):

Director Bates said he was long ago moved to do everything in his power, personally and professionally, to mitigate the damage done to the climate, that it is the obligation of the Air District to take a leadership role, and one must only look at the numbers presented today to see that a shift in behavior, no matter how difficult, must occur, and that the resolution must be approved by the Board.

Director Kniss thanked the public for their involvement, said she is troubled by the lack of precedent for the Air District to address national issues and suggested staff craft a procedural outline for how to handle similar situations in the future, commended Director Miley's comments, and said it difficult to vote against the resolution and will vote to support it but the lack of information available in preparation for today's meeting is troubling.

Director Spering said he will not support the resolution, noting his responsibility to lower the cost of fuel for the Bay Area population, the expansion of poverty by actions such as these, the limited mobility of so many people, the dependency on transportation for nearly all goods, decreased U.S. reliance on oil from other foreign countries as a result of the expanded pipeline, the climate cooling concern held by the U.S. and Canada in the not so distant past, the immeasurable fraction that the proposed project will contribute to global emissions, the lack of agreement by the National Academy of Science with any of the statements in the proposed resolution, the Bay Area regulating of refineries to keep the air clean regardless of the source of materials, the inappropriate bringing of this resolution that is time-consuming and divisive, and the alternative, much preferred, approach of a letter campaign should the Board be so inclined, and finally stated his taking issue with some of the information provided by staff.

Director Gioia expressed his respect for the varying opinions stated, said it was time well spent hearing from informed individuals about climate change and air quality, both of which are within the Air District's purview, recalled the Air District's first-in-the-nation fee for GHG emissions, expressed his support for the resolution, and suggested a simpler version of the resolution be considered in the future should it not be approved today because constituents from all walks of life are looking to the Air District to take a leadership position.

Director Pepper expressed her support for the resolution, noted her thirty years of professional experience in the energy field and the understanding of the issues that comes with that, said the environmental impacts of the proposed pipeline are vast and the proposal is entirely driven by economics, suggested the next step for the Air District should be to monitor or restrict the use of this crude in the Bay Area, and said the Air District can help by sending a clear message to the President of the United States.

Director Piepho said she feels similar to Director Miley and this is an important political, not policy, issue that is not properly the Board's to address at this time, noted the lack of information presented regarding the economic impact and the focus of the presentation on the proposed pipeline as opposed to GHGs and the climate, and asked if the Air District submitted comments on the EIR, which question was answered by Mr. Broadbent.

Director Barrett said she is the newest member of the Board, whose role she sees as one of leadership, suggested it is human nature to dodge threats but this issue must be addressed as any work by the Air District will be mooted by the environmental impacts should the proposed pipeline be approved, and said the Air District must act by taking a stand in opposition.

Director Mar thanked the CPC and Director Avalos, urged the Air District to take a stronger position to preserve the environment for future generations, shared his optimism about the ground swell response and of the President's proper decision, and suggested the simple, non-binding resolution is the least the Air District can do, particularly in light of the recent arrests in Richmond over the weekend and other similar public actions.

Director Haggerty asked for procedure clarification regarding abstentions, which questions were answered by Mr. Bunger, and said Director Spring's comments resonated in light of the lack of information available today.

Director Avalos thanked everyone, said it is a political issue but an important, difficult and global one, and noted the real discourse developing in this country and in the Bay Area and the need for leadership as a component for educating the public.

Chairperson Kalra thanked all who participated and called for a roll call vote.

Board Action (continued):

The motion carried by the following vote of the Board:

- AYES: Directors Avalos, Barrett, Bates, Gioia, Groom, Kniss, Mar, Pepper, Ross and Zane; and Chairperson Kalra
- NOES: Directors Klatt, Piepho, Spring and Wagenknecht
- ABSTAIN: Directors Haggerty and Miley
- ABSENT: Directors Adams, Hudson, Lee, Sbranti and Yeager

12. Report of the PC Meeting of July 29, 2013
Committee Chairperson Wagenknecht

The PC met on Monday, July 29, 2013, and approved the minutes of May 6, 2013, and June 20, 2013.

The PC received the Advisory Council Interview summary material for the regional parks district category seat, conducted interviews of applicants, and recommends Board of Directors' approval of the appointment to the Air District's Advisory Council of Ana Alvarez to the regional parks district category seat, effective immediately, to complete a term ending December 31, 2013.

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

Public Comments: None.

Board Comments: None.

Board Action:

Director Wagenknecht made a motion to approve the report and recommendation of the PC; Director Haggerty seconded; and the motion carried unanimously.

13. Report of the Budget and Finance Committee (BFC) Meeting of August 5, 2013
Committee Chairperson Groom

The BFC met on Monday, August 5, 2013, and approved the minutes of April 24, 2013.

The BFC received the staff presentation unaudited Fourth Quarter Financial Report – Fiscal Year Ending (FYE) 2013, including overviews of general fund revenues and expenses and fund balances. There were no vendor payments in excess of \$70,000 without Board of Directors review.

The BFC received and discussed the staff presentation 375 Beale Street Acquisition Status and Financing, including overviews of the site location, floor plans and shared space, components for disposition of 939 Ellis, comparisons of the annual costs for each building, a detailed review of the financing team, principles and documents, and finally the next steps. The BFC recommends the Board of Directors authorize the Executive Officer/APCO to sign necessary documents to finance the purchase of the Bay Area Air Quality Management District portion of 375 Beale Street, San Francisco.

The next meeting of the BFC is Monday, September 9, 2013, at 11:00 a.m.

Public Comments: None.

Board Comments: None.

Board Action:

Director Groom made a motion to approve the report and recommendation of the BFC; Director Wagenknecht seconded; and the motion carried unanimously.

14. Report of the Executive Committee (EC) Meeting of August 5, 2013
Chairperson Kalra

The EC met on Monday, August 5, 2013, and approved the minutes of June 17, 2013.

The EC received from Terry Trumbull, Esq., Chairperson of the Hearing Board, the Quarterly Report of the Hearing Board for April through June 2013, including summaries of the cases and fees collected.

The EC received and discussed the staff presentation 375 Beale Street Acquisition Status and Financing, including overviews of the site location, floor plans and shared space, components for disposition of 939 Ellis, comparisons of the annual costs for each building, a detailed review of the financing team, principles and documents, and finally the next steps. The EC recommends the Board of Directors authorize the Executive Officer/APCO to sign necessary documents to finance the purchase of the Bay Area Air Quality Management District portion of 375 Beale Street, San Francisco.

The EC then received the staff presentation regarding the Bay Area Commuter Benefits Program (Program), which is being developed by the Air District and the Metropolitan Transportation Commission (MTC) in response to Senate Bill 1339 enacted in fall 2012. The Program would require employers with 50 or more full-time employees in the Bay Area to provide commuter benefits to their employees. The presentation described the purpose of the Program; potential Program requirements; the four commuter benefit options that employers could choose among; how the Program would be structured; the anticipated positive environmental and economic outcomes for Bay Area employers, employees, and residents; the roles and responsibilities of Air District and MTC staff in developing and implementing the Program; and next steps in the Program development process.

The next meeting of the EC is Monday, September 9, 2013, at 9:30 a.m.

Public Comments: None.

Board Comments: None.

Board Action:

Chairperson Kalra made a motion to approve the report and recommendation of the EC; Director Piepho seconded; and the motion carried unanimously.

PRESENTATIONS

15. Approval of Financing for Joint Regional Agency Co-location at 375 Beale Street

Jeff McKay, DAPCO, gave the staff presentation 375 Beale Street Acquisition Status and Financing, including overviews of the site location, floor plans and shared space, components for disposition of 939 Ellis, comparisons of the annual costs for each building, a detailed review of the financing team, principles and documents, and finally the next steps.

Board Comments:

Director Piepho asked if the address change from 390 Main Street to 375 Beale Street was for the entire building or only the Air District portion, which question was answered by Mr. McKay.

Public Comments: None.

Board Action:

Director Piepho made a motion, seconded by Director Spring, to authorize the Executive Officer/APCO to sign necessary documents to finance the purchase of the Bay Area Air Quality Management District portion of 375 Beale Street, San Francisco; and the motion carried unanimously.

16. Work Plan for Action Items Related to Accidental Releases from Industrial Facilities

Mr. Broadbent introduced the topic, Update on Work Plan for Action Items Related to Accidental Releases from Industrial Facilities, including seven key actions relating to investigation, procedures, air quality monitoring, rule development, community outreach, resources and legislation. Ms. Roggenkamp gave the initial staff presentation, focusing on progress on air monitoring, rule development, and legislation. Ms. Roggenkamp then introduced Mr. Bunger, who gave the conclusion of the staff presentation, focusing on recent action by the Contra Costa County District Attorney.

Board Comments:

Director Zane asked, regarding slide 6, Federal/State Agency Actions, whether the Air District issued a press release in follow up to the claim that the Chevron Richmond refinery incident of August 2012 had no air quality impact, which question was answered by Messrs. Broadbent and Bunger.

Chairperson Kalra asked if the recent conviction regarding Chevron was under the provisions of the Health and Safety Code, which question was answered by Mr. Bunger.

Mr. Broadbent noted that the Air District took the strongest stance possible in response to this incident and staff is pleased with the outcome.

Director Bates asked the fate of the monies in payment of the fine imposed upon Chevron, which question was answered by Mr. Bunger. Director Bates asked staff to create and distribute a detailed list of to whom the fine monies are distributed.

Director Zane said staff needs to issue a press release countering those by Chevron that claim they received a clean bill of health from the Air District. Chairperson Kalra said a statement in support of the conviction of Chevron makes sense.

Director Ross asked about the outcome of the various violation claims made against Chevron, which question was answered by Messrs. Bunger and Broadbent.

Director Gioia suggested staff work with Mark Peterson, District Attorney, Contra Costa County, to prepare a detail of the distribution of funds received in payment of the Chevron fine, the authority of the various involved agencies, the facts of the matter, and other information deemed pertinent. Director Gioia also suggested staff issue a press release stating that the result of this action is in lieu of Air District action, which suggestion Mr. Bunger provided clarification upon. Director Gioia noted the cooperative efforts of the City of Richmond and Contra Costa County to amend their respective industrial safety resolutions in light of the report of the Chemical Safety Board. Director Gioia asked about the date of the California State Assembly Committee on Natural Resources hearing, which question was answered by Ms. Roggenkamp.

Chairperson Kalra said a one-page summary of the information requested by Directors Bates and Gioia is adequate.

Director Wagenknecht noted this emotional event was only one year ago, the Work Plan is a good one and the results thus far are equally good.

Public Comments:

Ms. Kerridge addressed the Board to commend community efforts and the establishment of fence-line monitoring and to urge for public access to the results of the monitoring efforts.

Board Comments (continued):

Director Ross restated the importance of this matter and joined in the request for the detail requested by Directors Bates and Gioia.

Chairperson Kalra thanked staff.

Mr. Broadbent said the matter is ongoing, today's presentation was only intended as an update, there is a continued question regarding the adequacy and effectiveness of community monitoring and thanked the Board for their fruitful efforts related to this matter.

Board Action: None; informational only.

17. Status Report on 939 Ellis Street Disposition

Mr. McKay gave the staff presentation Status Report on 939 Ellis Street Disposition, including considerations relative to 939 Ellis tenancy after sale, confidentiality, and timeline for disposition.

Public Comments: None.

Board Comments:

Director Bates asked if the short disposition timeline is typical, which question was answered by Messrs. Broadbent and McKay.

Director Sperring commended the timing of both the disposition and acquisition.

Board Action: None; informational only.

CLOSED SESSION

The Board adjourned to Closed Session at 12:15 p.m.

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

Pursuant to Government Code Section 54956.9(a), the Board met in closed session to discuss with legal counsel the following cases:

- A) **Lehigh Southwest Cement Company v. Bay Area AQMD**, Santa Clara County Superior Court, Case No. 112CV236602.
- B) **California Building Industry Association v. Bay Area AQMD**, Alameda County Superior Court, Case No. RG-10548693; California Court of Appeal, First Appellate District, Case No. A135335.

OPEN SESSION

The Board resumed Open Session at 12:26 p.m. with no reportable action.

PUBLIC COMMENT ON NON-AGENDA MATTERS: None.

BOARD MEMBERS' COMMENTS:

Directors Piepho, Wagenknecht and Ross reported on their experiences at the Air & Waste Management Association (AWMA) Annual Conference. Director Piepho suggested that future AWMA plans include informal side panels comprised of Air District staff and Board attendees, wherein staff can help decipher for Board members some of the more technical material.

Director Zane reported on her experience at the National Association of Counties conference.

OTHER BUSINESS

19. Report of the Executive Officer/APCO:

Mr. Broadbent presented a summary of the Summer Ozone Season.

20. Chairperson's Report:

Chairperson Kalra reported on his experience at the AWMA Annual Conference and announced the cancellation of the Board of Directors Regular Meeting on September 4, 2013.

21. Time and Place of Next Meeting: Wednesday, September 18, 2013, Bay Area Air Quality Management District Headquarters, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

22. Adjournment: The Board meeting adjourned at 12:34 p.m.

151 Sean Gallagher
Sean Gallagher
Clerk of the Boards