

Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
(415) 749-5073

Board of Directors Regular Meeting  
Wednesday, July 20, 2016

## **APPROVED MINUTES**

*Note: Audio recordings of the meeting are available on the website of the Bay Area Air Quality Management District at <http://www.baaqmd.gov/about-the-air-district/board-of-directors/resolutionsagendasminutes>*

### **CALL TO ORDER:**

1. **Opening Comments:** Chairperson Eric Mar called the meeting to order at 9:51 a.m.
2. **Roll Call:**

Present: Chairperson Eric Mar; Vice-Chairperson Liz Kniss; Secretary David Hudson; and Directors John Avalos, David J. Canepa, Cindy Chavez, Osby Davis, John Gioia, Carole Groom, Scott Haggerty, Rebecca Kaplan, Nate Miley, Karen Mitchoff, Jan Pepper, Deborah Raphael, Katie Rice, Mark Ross, Rod Sinks, Warren Slocum, Jim Spring, and Shirlee Zane.

Absent: Directors Teresa Barrett, Tom Bates, and Brad Wagenknecht.

### **CLOSED SESSION (commenced at 9:54 a.m.)**

Jack Broadbent, Executive Officer/Air Pollution Control Officer, explained that the Board was to be briefed on both existing and anticipated litigation, which he believed will be relevant to the District's regulatory efforts moving forward.

### **3. CONFERENCE WITH LEGAL COUNSEL**

#### **A) EXISTING LITIGATION (Government Code Section 54956.9(a))**

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

**Western States Petroleum Association, Valero Refining Company – California, Tesoro Refining and Marketing Company, LLC, and Phillips 66 Company v. Bay Area AQMD, Contra Costa County Superior Court, Case No. N16-0963**

**Valero Refining Company – California, and Tesoro Refining & Marketing Company, LLC, and Phillip 66 v. Bay Area AQMD, Contra Costa County Superior Court, Case No. N16-0095.**

**B) ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2))**

*Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: one potential case.*

**OPEN SESSION (commenced at 10:55 a.m.)**

Mr. Broadbent had nothing to report out following Closed Session. Chair Mar was alerted of three speakers who wished to give public comment on Item 3 after the Board went into Closed Session, and Chair Mar agreed to let them speak following Closed Session.

**Public Comment on Closed Session:**

Larry Chaset, 350 Bay Area, surmised that Brian Bunger, District Counsel, advised the Board that it is not legally defensible to impose a refinery-wide emissions cap, which Mr. Chaset disputed as incorrect. Mr. Chaset said that the District has unlimited legal ability to impose a refinery-wide emissions cap.

Roger Lin, Communities for a Better Environment (CBE), echoed Mr. Chaset's comments on behalf of the environmental organization that is spearheading the united advocacy of environmental organizations that support the emissions cap.

Kevin Buchan, Western States Petroleum Association (WSPA), addressed the Board regarding a legal analysis prepared by WSPA, concluding that a rulemaking which would set refinery-wide enforceable greenhouse gas (GHG) and criteria pollutant caps using an emissions baseline year of 2011-2013 would have serious legal shortcomings.

**CONSENT CALENDAR (ITEMS 4 - 9)**

- 4. Minutes of the Board of Directors Regular Meeting of June 15, 2016**
- 5. Board Communications Received from June 15, 2016 through July 19, 2016**
- 6. Notices of Violations Issued and Settlements in Excess of \$10,000 in the months of May and June 2016**
- 7. Air District Personnel on Out-of-State Business Travel**
- 8. Notification of Proposed Future Adoption of Amendments to the Air District's Administrative Code, Division II: Fiscal Policies and Procedures, Section 4.3: Contract Limitations**
- 9. Consider Authorization to Issue a Purchase Order in Excess of \$70,000, Pursuant to Administrative Code, Division II: Fiscal Policies and Procedures, Section 4.3: Contract Limitations, to Technical and Business Systems for Continued Operation of the BioWatch Monitoring Network**

Secretary Hudson made a motion, seconded by Vice Chair Kniss, to **approve** the Consent Calendar Items 4 through 9, inclusive; and the motion **carried** by the following vote of the Board:

AYES: Avalos, Canepa, Chavez, Davis, Gioia, Groom, Haggerty, Hudson, Kaplan, Kniss, Mar, Miley, Mitchoff, Pepper, Raphael, Rice, Ross, Sinks, Slocum, Sperring, and Zane.

NOES: None.  
ABSTAIN: None.  
ABSENT: Barrett, Bates, and Wagenknecht.

## **COMMITTEE REPORTS/COUNCIL REPORT**

In anticipation of a large number of speakers for Item 14, Chair Mar requested that the reading of the Chair Reports be waived and only action items be read.

### **10. Report of the Legislative Committee Meeting of June 27, 2016**

The Legislative Committee Chair Report read:

The Legislative Committee met on Monday, June 27, 2016, and postponed the approval of the minutes of March 30, 2015, October 26, 2015, and March 21, 2016, for lack of quorum.

The Committee discussed the consideration of new bills and a consensus of the members present supported the following positions for the Air District:

AB 1965 (Cooper): Support

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

This concludes the Chair's report of the Legislative Committee.

#### **Public Comments:**

No requests received.

#### **Board Comments:**

None.

#### **Board Action:**

Director Mitchoff made a motion, seconded by Vice Chair Kniss, to **approve** the recommendation of the Legislative Committee; and the motion **carried** by the following vote of the Board:

AYES: Avalos, Canepa, Chavez, Davis, Gioia, Groom, Haggerty, Hudson, Kaplan, Kniss, Mar, Miley, Mitchoff, Pepper, Raphael, Rice, Ross, Sinks, Slocum, Spering, and Zane.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Barrett, Bates, and Wagenknecht.

## **11. Report of the Mobile Source Committee Meeting of June 30, 2016**

The Mobile Source Committee Chair Report read:

The Committee met on Thursday, June 30, 2016 and approved the minutes of February 25, 2016 and May 5, 2016.

The Committee reviewed and discussed the staff presentation, *Projects with Proposed Awards over \$100,000*. The Committee recommends the Board approve:

1. Carl Moyer Program and Transportation Fund for Clean Air projects with proposed grant awards over \$100,000 as shown in Attachment 1; and
2. Allocation up to \$1,151,430 in Transportation Fund for Clean Air funding as match for California Air Resources Board (ARB) Low Carbon Transportation Greenhouse Gas Emission Reduction Funds for zero-emission truck and bus pilot commercial deployment projects using a project cost-effectiveness of \$500,000 per ton of emissions reduced;
3. Adoption of a resolution that authorizes the Air District's acceptance, obligation, and expenditure of Greenhouse Gas Emission Reduction Funds;
4. Authorization of the Executive Officer/Air Pollution Control Officer to enter into agreements for the recommended Carly Moyer Program and Transportation Fund for Clean Air projects and with the ARB and partners for the acceptance and expenditure of Greenhouse Gas Emission Reduction Funds.

The Committee then reviewed and discussed the staff presentation *Accept, Obligate, and Expend Funding from the Bay Area Clean Air Foundation and from the United States Environmental Protection Agency*. The Committee recommends the Board approve:

1. Adoption of a Resolution authorizing the Air District to accept, oblige, and expend up to \$972,262.70 from the Bay Area Clean Air Foundation for electric vehicle and vehicle buyback projects; and
2. Adoption of a Resolution authorizing the Air District to accept, oblige, and expend up to \$1,420,263 in funds from the U.S. Environmental Protection Agency to replace three locomotives;
3. Authorization of the Executive Officer/Air Pollution Control Officer to enter into all agreements necessary to accept and expend this funding.

The Committee then reviewed and discussed the staff presentation *Emissions Reduction from Air District Grant Programs*.

The Committee finally reviewed and discussed the staff presentation *Fiscal Year Ending 2017 Transportation Fund for Clean Air Regional Fund Policies*. The Committee recommends the Board approve:

1. The proposed Fiscal Year Ending 2017 Transportation Fund for Clean Air Regional Fund Policies and Evaluation Criteria presented in Attachment A.

The next meeting of the Committee is on Thursday, September 22, 2016, at 9:30 a.m., at 375 Beale Street, San Francisco, CA 94105.

I move that the Board approve the Mobile Source Committee recommendations.

This concludes the Chair Report of the Mobile Source Committee.

Public Comments:

No requests received.

Board Comments:

None.

Board Action:

Director Haggerty made a motion, seconded by Secretary Hudson, to **approve** the recommendation of the Mobile Source Committee; and the motion **carried** by the following vote of the Board:

- AYES: Avalos, Canepa, Chavez, Davis, Gioia, Groom, Haggerty, Hudson, Kaplan, Kniss, Mar, Miley, Mitchoff, Pepper, Raphael, Rice, Ross, Sinks, Slocum, Spering, and Zane.
- NOES: None.
- ABSTAIN: None.
- ABSENT: Barrett, Bates, and Wagenknecht.

**12. Report of the Public Engagement Committee Meeting of July 18, 2016**

The Public Engagement Committee Chair Report read:

The Committee met on Monday, July 18, 2016, and approved the minutes of May 2, 2016.

The Committee reviewed and discussed the staff presentation, *Opportunity for Spare the Air Advertising on the Oakland Broadway Shuttle*, including: background; the opportunity; and recommendations. The Committee recommends the Board:

1. Approve \$235,000 to be allocated to the Transportation Fund for Clean Air - Spare the Air Program budget for Fiscal Year Ending 2017 for the purposes of:
  - a. Securing an advertising contract with the City of Oakland at a cost of \$185,000 per year for up to two years, and
  - b. Wrapping four AC transit operated shuttle buses at a cost of approximately \$50,000 on the Broadway route in the City of Oakland with the Spare the Air messaging.
2. Authorize the Executive Officer/Air Pollution Control Officer to execute all contracts and agreements with the City of Oakland related to the wrapping and advertising rights; and

3. Authorize the Executive Officer/ Air Pollution Control Officer to extend the advertising service at a cost not to exceed \$185,000 for an additional year, at the Air District's discretion, based on contractor performance.

The Committee then reviewed and discussed the staff presentation *Public Participation Plan (PPP) Status and Update Process*, including: background: what is PPP?; a living guiding document; overview of implementation actions; status of implementation action items; examples of completed actions and those in progress; next steps and need for update; and draft timeline for PPP update.

The Committee finally reviewed and discussed the staff presentation *Approval of Contract for Graphic Design*, including: background; overview; and staff recommendation. The Committee recommends the Board:

1. Authorize the Executive Officer/Air Pollution Control Officer to execute a one-year contract with Envall Design for a total amount not to exceed \$200,000 for graphic design services.

The next meeting is at the call of the Chair.

I move that the Board approve the Committee recommendations.

This concludes the Chair Report of the Public Engagement Committee.

Public Comments:

No requests received.

Board Comments:

None.

Board Action:

Director Ross made a motion, seconded by Secretary Hudson, to **approve** the recommendation of the Public Engagement Committee; and the motion **carried** by the following vote of the Board:

AYES: Avalos, Canepa, Chavez, Davis, Gioia, Groom, Haggerty, Hudson, Kaplan, Kniss, Mar, Miley, Mitchoff, Pepper, Raphael, Rice, Ross, Sinks, Slocum, Spering, and Zane.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Barrett, Bates, and Wagenknecht.

**13. Report of the Advisory Council Meeting of July 19, 2016**

The Advisory Council Ex-Officio Member Report read:

The Council met on Tuesday, July 19, 2016.

The Council discussed an Update on Refinery Rulemaking.

The Council members then continued deliberation over the efficacy of greenhouse gas caps for local refineries, considering information provided to date.

Finally, the Council received the staff presentation *2016 Clean Air Plan/Regional Climate Protection Strategy Update*, including: planning context; overview of climate action; climate protection resolution; Bay Area greenhouse gas emissions and projection to 2050 with key state programs; economic sector analysis; tools and objectives; transportation; stationary sources; energy; buildings; waste and water; agriculture, natural, and working lands; short-lived climate pollutants; and key questions. The Council is considering the Clean Air Plan as the focus of their next key question.

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

This concludes the Chair Report of the Advisory Council.

Public Comments:

No requests received.

Board Comments:

None.

Board Action:

None; receive and file.

**PRESENTATION**

**14. UPDATE ON REFINERY RULEMAKING**

Mr. Broadbent said that this item is following up direction that was provided by the Board on June 15, 2016 regarding the extensive testimony given by the public supporting the imposition of mass emission caps on refineries and concerns about the potential for negative health impacts from refinery operations. Mr. Broadbent introduced Gregory Nudd, Rule Development Manager, who gave the staff presentation *Update on Refinery Rulemaking*, including: Board direction; actions taken; proposed approach; cancer risk drivers for and top sources of GHG emissions at typical large refineries; why focus on toxic risk; staff proposed toxic risks cap; CBE proposed emissions caps; deliverables; and schedule. Mr. Broadbent reiterated that staff plans to develop two rules simultaneously; staff-proposed Rule 11-18 regarding a toxic risk cap at all Bay Area facilities, and CBE-proposed Rule 12-16 regarding a numeric emissions cap for refineries alone. Both proposed rules are to be evaluated under the same Environmental Impact Report (EIR), which is anticipated to be ready for adoption by May 2017. Mr. Broadbent added that he would like the Board to oversee the staff and hold staff accountable for this schedule by way of the Stationary Source Committee.

### Board Comments Prior to Public Comments:

The Board and staff discussed: the projected amount of time it would take to conduct separate EIRs for proposed Rules 11-18 and 12-16 individually, as opposed to conducting one EIR for both rules together, as staff recommends; the Board's ability to adopt both rules or just one of them; the air contaminants pertaining to each of the proposed rules; the need for transparent community and stakeholder oversight when and if conducting Health Risk Assessments (HRA); the frustration of further delays to an already overdue schedule by some Board members; whether or not the options being evaluated would consider the health impacts of peak emission levels, versus average levels; the amount of time it takes to conduct an HRA and the criteria used to prioritize facilities that are to be evaluated; the concern from some of the Board members that the refinery industry should not monitor or conduct HRAs on their own facilities; the cap and reduce risk standards imposed by the South Coast Air Quality Management District, and the Bay Area's plan to first set a risk threshold at 25 in a million, and then 10 in a million, which the Board acknowledged will send a clear message to the facilities but increase the workload of engineering staff; why energy intensity limits, which were once considered alternatives to the caps, will now be considered in the context of the Clean Air Plan; the Air District's collaboration with other agencies and partners to address leaks from natural gas distribution systems (methane), which may be included in the Clean Air Plan; the timeline for the Clean Air Plan; the Air District's goals, versus the ARB's goals, for renewing the Cap and Trade program beyond 2020; models for and opportunities to reduce carbon and transform the electricity sector; and how the newly-proposed toxic risk cap is separate from and does not affect Air District Resolution No. 2014-07, *Addressing Emissions from Bay Area Petroleum Refineries*, which first mentions proposed Rule 12-16 (setting emissions thresholds and mitigating potential emissions increases).

### Public Comments:

Lynn McGuire, Environmental Resources Management, addressed the Board regarding her support for the Advisory Council's deliberations on the development of Rule 12-16. Ms. McGuire said that she hopes that the Board considers the facts and opinions of the Advisory Council.

Rebecca Auerbach, Richmond resident, addressed the Board regarding her disappointment that staff recommended combining the emission cap option with the staff-proposed toxic risk cap and reduction rule (Rule 11-18) option under one Environmental Impact Report (EIR.) She urged the Board to move forward with the emissions cap option, bypassing the recommendations from the Advisory Council and staff.

Luci Rielly, California Nurses Association, addressed the Board regarding the high number of asthma patients that she has treated over twenty-four years and said that childhood asthma is only increasing. She urged the Board to cap emissions at refineries and take a stand against the oil industry.

Carolyn Bowden, California Nurses Association, emphasized the Air District's mission statement and said that each year that goes by is more irreversible damage to the environment and public health. She urged the Board to cap refinery emissions.

Steven Yang, Chevron, addressed the Board regarding the curtailing of refinery operations that may result from capping emissions at current levels. He said that refinery emissions are often significantly below the limits of existing regulations because refineries do not need full use of their plants to meet market demands and they also want to ensure that their compliance margins are being met.

Walt Gill, Chevron, requested that the Board not impose numeric emission caps on refineries because it is the wrong approach to reducing emissions and would undermine the ARB's program designed to do the same thing.

Steven Nadel, Sunflower Alliance, addressed the Board regarding the need to implement the emissions cap immediately because the implementation timeframe of the other proposed approaches remain undetermined.

Richard Treadwell, Communities for a Better Environment, urged the Board to take full advantage of the opportunity presented by the emissions cap proposal, utilize the community organization and involvement that is consistently demonstrated in the Bay Area, and give the emission cap its own separate EIR to expedite its adoption.

Daniel Lopez, Communities for a Better Environment, urged the Board to adopt the emissions cap on refineries, which he says is within the District's legal authority and should have its own EIR that should be completed by the end of 2016.

Marilyn Reynolds, 350 Bay Area, requested that the Board adopt and immediately implement the emissions cap on refineries and advocated for one of her former students that suffers from chronic asthma.

Laurie Mintzer, Chevron, addressed the Board regarding the time needed for refineries to comply with implementation deadlines and new rules. She requested that refineries be allowed three years to install new equipment and ensure the safety of refinery employees when complying with new regulations.

Mike Beck, Shell, addressed the Board regarding Shell's concern for the safety of the community and environment. He urged the Board to rely on scientific facts, rather than on emotions, when deciding whether or not to pass the emissions cap option, as the adoption of the cap may pose a threat to refinery job security. Mr. Beck also encouraged the Board to engage with refinery staff when developing regulation.

Shawn Lee, Chevron, addressed the Board regarding the increase of imported gasoline that he projects will result from the capping of emissions at Bay Area refineries. Mr. Lee referenced a study which indicates that pollution from China is being exported to the American west coast by winds, and urged the Board to consider the full impact of the proposed options.

Laura Galligan, Berkeley resident, addressed the Board regarding the immediate need for the emission cap option to be considered as a stand-alone project with its own EIR. She urged the Board to not be threatened by litigation and to remember the people whose health has been compromised by refinery emissions.

Claire Broome, Berkeley resident, addressed the Board regarding the increasing GHG emission levels that continue to increase because no action is being taken to stop them from increasing. She supported the immediate implementation of the emissions cap as a protective barrier to stop GHG emissions from increasing.

Ashley DeBlender, Shell, said that the proposed regulation presented by staff is not based upon sound science, will not reduce emissions at refineries, and compromises the job security of refinery workers. She requested that the Board support regulations that would reduce emissions and keep the economy strong.

Pam Ramirez, Richmond resident, addressed the Board regarding the need for the emissions cap at refineries to protect public health. Ms. Ramirez emphasized the urgency for the cap, referencing the 2012 Chevron refinery explosion and increasing global temperatures.

Tom Lewis, United Steel Workers Local 5, addressed the Board regarding the justice he feels is being denied to the community as long as it is delayed, regarding the protection of public health. Mr. Lewis also submitted his full comments in writing to the Board.

Jed Holtzman, 350 Bay Area, said that staff's proposed Rule 11-18 applies to facilities outside of the refinery industry, and also lacks a satisfactory implementation timeline, and therefore, is not the most expeditious solution to capping emissions at refineries. He urged the Board to adopt the emissions cap option as a stand-alone project and EIR, in order to prevent the emissions baseline from shifting any further due to the influx of approved refinery permits.

Bettina Hughes, 350 Marin, addressed the Board regarding the urgency of capping refinery emissions and making Option #3 a stand-alone project and EIR.

Nancy Navarro, Shell, requested that the District engage with the refineries in the development for this regulation and emphasized the longevity of refinery employees' careers in order to indicate that refinery workers do not seem to have the same health issues as those who live in fence line communities.

Shari Mejia, Shell, addressed the Board regarding the potential consequences of shutting down Bay Area refinery operations, and urged the Board to consider the full impacts of the proposed regulation.

Dan Sabalesky, Shell, addressed the Board regarding the ARB's Cap and Trade program, which is intended to lower GHG emissions, and which he said will be deterred by an imposed emissions cap at refineries. He requested that the Board engage with refinery staff in order to reach a reasonable solution to a joint concern.

Natalie Braden, Shell, stated that imposing emission caps on the refineries is illegal, will not result in the reduction of emissions, and will affect the jobs of refinery workers. She urged the Board to adopt a legal regulation that will reduce emissions and not compromise the livelihood of refinery workers.

Nan Parks McCarthy, 350 Bay Area, addressed the Board regarding the need to protect the health of those living in fence line communities, and urged the Board to cap emissions at refineries as soon as possible.

Michael Eisenscher, Oakland resident, addressed the Board regarding the regulations made or not made by the current Board that will affect the lives of future generations. He also asked the Board to image what implications could result from a three-foot sea-level increase, which he said is predicted by 2100, due to global warming.

Sara Greenwald, San Francisco resident, addressed the Board regarding increasing temperatures that persist as long as no action is being taken. She urged the Board to cap emissions at refineries and not delay by negotiating with the refinery industry.

Misao Brown, Alameda resident, advocated for those suffering from effects of refinery pollution that do not have health insurance and cannot afford health care and urged the District to put public health before the profit of the oil industry.

Lawrence Abbott, San Leandro resident, addressed the Board regarding the stable climate that is needed for life to sustain and said that the environment has already reached an irreparable state. He urged the District to stop catering to the refineries and to cap refinery emissions.

Yian Saechao, Asian Pacific Environmental Network, addressed the Board regarding the compromised health of those who have emigrated from third world countries in pursuit of a better quality of life, due to refinery emissions. She urged the Board to consider those suffering from poor respiratory health as facts, rather than as emotions, and to prioritize their health instead of foster relations with refineries.

Mark Roest, 350 Bay Area, addressed the Board regarding the intent of the refineries to process crude oil and tar sands for the purpose of exportation. Mr. Roest also submitted his full comments in writing to the Board.

Tyra Callen, Shell, spoke of her mother's death resulting from asthma, and urged the Board to make its decisions based on facts, rather than on opinions.

Michael Avila, Phillips 66, stated that an emissions cap at refineries will not reduce emissions, but instead will move carbon from one place to another, potentially causing leakage, and affecting refinery jobs. Mr. Avila also said that caps are already built into permits, Bay Area fuel is among the cleanest in the world, and refinery emissions levels are already below current regulation thresholds.

Katelynn Mudgett, Sierra Club, addressed the Board regarding the unrealistic expectation of everyone coming to a united decision on this rule because of the time such a thing would take. Ms. Mudgett urged the Board to move forward immediately with the emission caps, despite the fact that not everyone will be appeased.

Ratha Lai, Sierra Club, addressed the Board regarding the need to separate the emission cap into a stand-alone project with its own EIR, so that it can be implemented prior to the other options that staff proposes, which will take longer to implement.

Sherry Liang, Asian Pacific Environmental Network, addressed the Board regarding the profit of the oil industry, which, Ms. Liang said, seems to be more important than protecting public health, especially of those who cannot afford to move out of fence line communities. Ms. Liang urged the Board to cap emissions at refineries.

Roger Lin, Communities for a Better Environment, addressed the Board regarding the need for a specific and stable project objective within an EIR, as opposed to confusing the project objective when bundling two options within the same EIR. He urged the Board to separate the emissions cap EIR from the staff-proposed toxic risk cap in order to expedite the EIR for the emissions cap, which he claimed is ready to implement.

Bill Quinn, California Council for Environmental and Economic Balance, addressed the Board regarding his organization's long-standing opposition to numeric emission caps on refineries. Mr. Quinn said that such a cap would result in many unintended consequences, including leakage, and is counterproductive to the State's Cap and Trade program.

Gordon Johnson, Shell, addressed the Board regarding Shell's reduction of SOx and NOx emissions, flaring occurrences, hazardous waste generation, and community complaints over the last 26 years. He attributed these accomplishments to the regulations adopted by the Air District, which he said were achieved by using factual data, science, and collaboration between the refineries and the District. Mr. Johnson said he hopes that this practice continues moving forward.

Nancy Rieser, Crockett Rodeo United to Defend the Environment, addressed the Board regarding her support of the emissions cap proposal. She urged the Board to stand up to the pressure from the oil industry in the interest of protecting public health.

Janet Pygeorge, Rodeo Citizen Association, displayed District Board meeting agendas from previous years to demonstrate unresolved regulations and requested that the District study the health of residents in the Rodeo area to validate public health impacts from refinery emissions.

Rebecca Milliken, Berkeley Climate Action Coalition and Ecology Center, addressed the Board regarding her support of the emissions cap as a stand-alone EIR, which she believes is the most feasible solution to prevent worsening air quality.

Puja Dahal, Asian Pacific Environmental Network, addressed the Board regarding the immediate need to cap refinery emissions as she believes there is a definite correlation between pollution and health.

Andres Soto, Communities for a Better Environment, urged the Board to adopt the emissions cap proposal as soon as possible. Mr. Soto also listed several cities that have unanimously adopted a resolution to support the Community-Worker Alternative (emissions cap) in Rule 12-16, including: Richmond, Oakland, El Cerrito, Emeryville, and San Francisco.

Kathy Wheeler, Shell, urged the Board to listen to the recommendations of the Advisory Committee, staff, and refinery workers who have made public comments on this proposed regulation. She cautioned the Board against letting political motivation drive this rule and requested that the Board base its decision on facts, rather than emotion.

Charles Davidson, Sunflower Alliance, addressed the Board regarding the need to make the emissions cap EIR separate from the toxic risk cap EIR in order to expedite the prevention of emissions from increasing at refineries.

Debi Mazor, Richmond resident, urged the Board to cap emissions at refineries, and referenced the \$90 million dollar Environmental and Community Investment Agreement between Chevron and the City of Richmond that was signed in 2015 to allow Chevron's Modernization project at the Richmond refinery to commence.

Marcelo Ognian, Shell, urged the District to develop rules on scientific data and have a mutual understanding with the refineries.

Richard Gray, 350 Bay Area, said that the Board need to adopt the emissions cap proposal (solely) so that the District will have a baseline from which the other proposals may be judged. He requested that the Board restrict staff's present authority to grant permits for new projects. Mr. Gray also suggested moving items regarding rule development to the beginning of Board agendas in order to allow as many Board members as possible to hear public comment.

Nick Despota, Richmond resident, discouraged the Board from bundling the two proposals under one EIR as he believes that the benefits of implanting the emissions cap will be postponed while the District analyzes the toxic risk cap.

Cayli St. Gemme, Phillips 66, urged the Board to consider the past efforts of the refineries to comply with regulations, sometimes with difficulty. She said that an emissions cap would only complicate and delay refinery operations.

Daniela Muñoz, Phillips 66, addressed the Board regarding the need for sound engineering and judgement when deciding on new regulations. She urged the Board to focus on refinery workers as people, as opposed to profit-driven oil companies, and said that capping emissions at Bay Area refineries would require imported sources.

Aimee Lohr, Phillips 66, explained that Air District operating permits already contain criteria pollutant caps and mandate specific limits for each operating unit, and said that those who think that refineries do not have effective limits on combustion emissions are misinformed. Ms. Lohr also said that if the Board wishes to address climate change, an emissions cap is the incorrect way to go about it, as leakage issues persist.

Sawinder Singh, Phillips 66, said that he cannot support the emissions cap proposal because it will cause leakage and only shift the demand for gasoline upon other areas who will have to process and import it instead of help to improve climate change. He urged the Board to consider recommendations from the ARB, Advisory Council, and staff regarding this regulation.

Marc Ventura, Phillips 66, said that the emissions produced outside the country to process gasoline that will need to be imported to California, if emissions are capped at Bay Area refineries, will be at higher levels than those at Bay Area refineries, not including the emissions required to transport the imported fuel to California.

Greg Karras, Communities for a Better Environment, addressed the Board regarding the urgent need to prevent a tar sands disaster, which he says can be achieved by implementing the emissions cap at refineries.

Kathy Kerridge, Benicians for a Safe and Healthy Community, requested that the Board direct staff to agendize a separate EIR for the emissions cap proposal for the Board's consideration by December 2016.

Ella Marie Kallios, Roberts Companies, addressed the Board regarding her support for the emission cap at refineries. Ms. Kallios said that Roberts Companies provides technical and engineering support services to refineries and that none of the 120 employees that daily report to refineries have any ailments due to refinery emissions. She requested that the Board consider scientific facts when deciding on the proposed regulation.

Katie Jones said that the oil industry touches the community in many ways and that as an environmental engineer, she would like to positively affect people both as an environmentalist and representing the energy sector.

Kelly Jones, 350 Marin, addressed the Board regarding the increase of global temperatures over the years, and urged the Board to take action by giving the emissions cap option its own EIR and adopting it.

Mike Miller, United Steelworkers Local 326, urged the Board not to pursue the emissions cap proposal and said that the cap will not achieve its intended purpose, but will undermine statewide efforts to reduce emissions.

Richard Black, United Steelworkers Local 326, informed the Board that Bay Area refineries are among the cleanest in the world and urged the Board to consider the recommendations of the ARB, Advisory Council, and staff by not pursuing the emissions cap at refineries.

Janet Johnson, Sunflower Alliance, read an excerpt of a letter to the District from United Steelworkers Local 5, resubmitting USW Local 5's support of an enforceable, numeric cap on emissions.

#### Board Comments Following Public Comment:

The Board and staff discussed: the difficulties with the state's Cap and Trade program; the need for the EIR process, in order to make use of the scientific facts that public commentators spoke of; whether or not excess regulation hinders the economy; the projected three-month difference between the completion of the proposed toxic risk cap EIR and numeric emissions cap EIR, if conducted separately, and whether or not it would be possible to impose the same due date of completion for both, if separated; suggested dates of EIR completion prior to May 2017; the impact that the adoption of a numeric emissions cap will have on feedstock; whether or not the staff-recommended approach of having one EIR for both proposals is more legally defensible than two separate EIRs; the projected cost-benefit analysis of conducting two separate EIRs; the presence of political backdoor maneuvering which distracts staff from being able to do its job in a timely manner; the intent of using the HRA process as the primary mechanism by which staff would quantify risks, and then compare them to the standard 25 in a million, and eventually 10 in a million; the increasing complexity and volume of public comments that may result from keeping the two proposed options within one EIR; staff's anticipation of separate hearings to address Rule 11-18 and 12-16; the possibility of a lack of representation from the City/County of San Francisco on the Board and Stationary Source Committee, depending on how long it takes to complete the EIR process (for one or both); the projected implementation dates for the risk thresholds at 25 in a million, and then 10 in a million; the projected schedule for conducting HRAs; whether or not undifferentiated Particulate Matter (PM) (also known as criteria pollutants) is included in the toxic analysis of the HRA process; and the Board's request for a monthly update on the development of Rules 11-18 and 12-16.

#### Board Action:

*Motion:* Director Kaplan had made a motion, seconded by Director Canepa, to authorize the conducting of two EIRs; one for the staff-recommended toxic risk cap, and another for the numeric emissions cap for refineries, the latter to be expedited.

*Substitute Motion:* Director Spering made a substitute motion, seconded by Director Mitchoff, to support staff's recommendation, with the condition that staff presents the Board with an independent review and development approach and further-developed oversight process for conducting HRAs, and includes undifferentiated PM in the proposal. There was a friendly amendment made by Director Kaplan to add a definitive December 2016 check-in, upon which the ability to separate the EIRs would be possible, if deemed beneficial; the amended substitute motion carried by the following vote of the Board:

AYES: Canepa, Chavez, Davis, Gioia, Groom, Hagerty, Hudson, Kaplan, Mar, Miley, Mitchoff, Pepper, Raphael, Rice, Ross, Sinks, Slocum, Spering, and Zane.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Avalos, Barrett, Bates, Kniss, and Wagenknecht.

Because the substitute motion was approved, the main motion was no longer needed and was not voted upon.

#### **15. Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3**

Andres Soto, Communities for a Better Environment, reported that the Appellate District Court decided on behalf of the Air District and Kinder Morgan Material Services, Inc. against the Communities for a Better Environment lawsuit that was filed in 2013, regarding the permitting of crude-by-rail in Richmond. Mr. Soto stated that the merits of the case were never discussed and that the opinion of the Court indicated that CBE's arguments about the proper balance between the interests of public participation and of timely litigation are better directed to the Legislature. Jaime Williams responded by stating that staff plans to make all permit applications accessible to the public on the District's website and that the District has adopted an internal policy allowing for a ten-day public comment period from when an application is deemed complete, which will be rolled out by the end of 2016.

#### **16. Board Members' Comments**

Director Ross reported out about the Air & Waste Management Association's 109th Annual Conference & Exhibition that was held in New Orleans from June 20 to 23, at which he learned about hydraulic fracturing (fracking) and resulting methane leakage.

Secretary Hudson's report out from the same conference included discussions about mercury, manure, the transition from PM 2.5 to ultrafine PM, and the future of autonomous vehicles. He said that he predicts that Michigan and California will be in competition for this market.

Chair Mar encouraged other Board members and staff to attend in the future and praised staff for being revered by other nationwide agencies.

Director Sinks acknowledged the Advisory Council members for its secondary deliberations on the efficacy of numeric caps on GHG from Bay Area refineries, as well as for the Council's discussion of maximizing the impact of Bay Area leadership regarding climate strategy and determining progress of emission reductions at the Advisory Council meeting held on July 19.

## **OTHER BUSINESS**

### **17. Report of the Executive Officer/APCO**

Mr. Broadbent reported that the summer smog season is currently underway and that this is the hottest summer on record.

### **18. Chairperson's Report**

Chair Mar announced that the Board will be dark throughout the month of August.

### **19. Time and Place of Next Meeting**

*Wednesday, September 7, 2016, 1<sup>st</sup> Floor Board Room, 375 Beale Street, San Francisco, California 94105 at 9:45 a.m.*

### **20. Adjournment**

The Board meeting adjourned at 2:05 p.m.

*15/1 Marcy Hiratzka*

Marcy Hiratzka  
Clerk of the Boards