

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

Board of Directors Regular Meeting  
Wednesday, September 21, 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:** Secretary Hudson called the meeting to order at 9:54 a.m.

#### **Roll Call:**

Present: Chairperson Eric Mar; Vice-Chairperson Liz Kniss; Secretary David Hudson; and Directors John Avalos, Teresa Barrett, Tom Bates, David J. Canepa, Cindy Chavez, Osby Davis, John Gioia, Carole Groom, Scott Haggerty, Rebecca Kaplan, Nate Miley, Karen Mitchoff, Katie Rice, Brad Wagenknecht, and Shirlee Zane.

Absent: Directors Jan Pepper, Mark Ross, Rod Sinks, Warren Slocum, and Jim Spring.

- 2. REPORT OF THE EXECUTIVE OFFICER/APCO (OUT OF ORDER, ITEM 22)**

*This item was split into two parts; the first part occurred just after the roll call, and the second part occurred after Board Members' Comments, at the end of the meeting. For the purpose of the minutes, both parts of this item have been combined into one section.*

#### **Part 1:**

Jack Broadbent, Executive Officer / Air Pollution Control Officer (APCO), requested to move this item to the top of the agenda, in order to provide the Board with the monthly status report that tracks staff's refinery rulemaking progress. (At the July 20, 2016 Board meeting, staff agreed to the Board's request to provide a monthly update on the refinery rulemaking schedule and progress.) Mr. Broadbent emphasized that during the months of June and July, the Board and staff discussed the development of a rule that incorporates the Community-Worker Proposal to cap emissions at refineries, as well as a rule that establishes a risk-management threshold. The District's committed schedule of milestones and deliverables for the development of the Environmental Impact Report (EIR) (encompassing both

proposals as equal options) was displayed. Mr. Broadbent said that on August 19, the project description was officially released, and staff plans to release the Notice of Preparation, the first step in the EIR process, on October 15.

Board Comments:

The Board and staff discussed how Mr. Broadbent will give monthly verbal and written updates on this topic as part of the Executive Officer/APCO's report at Board meetings, and how these updates will supplement more detailed updates that will be presented at the Stationary Source Committee meetings; and the odor detected in Vallejo on September 20 caused by an oil sheen and hospitalizing residents, and how the District has responded to complaints from the public.

Part 2:

Mr. Broadbent announced that the end of the ozone season is approaching and displayed a chart showing that there were 12 days in 2016 in which the federal ambient air standard for ozone was exceeded; more wildfires in CA are anticipated, which results in worsening air quality. He reminded the Board members that each were allotted free admission to the Climate Forward Bay Area: A Leadership Forum on October 13 and 14 hosted by the District. Mr. Broadbent also recognized Director of Engineering, Jim Karas, for 42 years of service, as Mr. Karas will be retiring in October.

**3. PUBLIC COMMENT ON NON-AGENDA MATTERS (ITEM 2)**

Steven Yang, Chevron, addressed the Board regarding his concern that the District wishes to regulate refineries out of existence, which he considers "unsound policy." Mr. Yang listed industries and end users that would be affected by the dissolution of refineries, and urged the Board to involve refineries in policy development that will not harm the economy.

San Francisco resident, Johnny Schenone, addressed the Board regarding frustration from his attempts to receive a phone call back from Mr. Broadbent after leaving multiple requests with staff to speak with Mr. Broadbent.

Mary Privitera, MWH Global, addressed the Board regarding her concern that a local cap on greenhouse gas (GHG) emissions at refineries will result in negative impacts, such as job security, for those working in the refinery industry.

Amy McTigue, MWH Global, encouraged the Board to follow the recommendation of District staff and the Advisory Council, and not pursue a cap on local GHG emissions at refineries.

Kevin Buchan, Western States Petroleum Association (WSPA), addressed the Board regarding WSPA's support of staff's recommendation to pursue a single EIR that analyzes both proposals for Rule 12-16 and Rule 11-18.

Fairfield resident, Mike Easter, urged the Board to consider *all* possible impacts on the community that may result from the passing of proposed regulation (Rules 12-16 and/or 11-18).

Tom Lewis, United Steelworkers Local 5, urged the Board to be wary of corporate, greed-based policies and not to let the threat of lawsuits from refiners intimidate the District into expanding the scope of Rule 12-16 in order to delay its implementation. Mr. Lewis acknowledged that he has been singled out by the refinery industry for opposing the industry's position on the development of this rule.

Berkeley resident, L.A. Wood, addressed the Board regarding Title V permitting practices between the District and Pacific Steel Casting. Mr. Wood had previously submitted a letter from the Golden Gate University's School of Law (Environmental Law and Justice Clinic) regarding the proposed Synthetic Minor Operating Permit (SMOP) for Pacific Steel Casting, which requested that economic benefits of non-compliance be recovered and designated to an emissions-reduction project in Berkeley. Chair Mar requested a District staff update on Pacific Steel Casting activities and Damian Breen, Deputy Air Pollution Control Officer, said that staff is scheduling a meeting with the Berkeley community to hear public concerns prior to making a recommendation on the SMOP permit.

Bill Pinkham, Sunflower Alliance, urged the Board to keep staff on schedule regarding the rulemaking progress of Rules 12-16 and 11-18. Mr. Pinkham also stated that no one wishes to close down refineries; only limit emissions at refineries.

Charles Davidson, Sunflower Alliance, addressed the Board regarding his concern that staff is already behind schedule with the EIR that encompasses proposed Rules 12-16 and 11-18. Mr. Davidson predicted the impending need to split the single EIR into two separate EIRs, due to the difference of time-sensitivity and complexity between the two rules.

Mark Brett, an engineering business development professional, stated that he observed that, regarding the discussions of Rule 12-16 and 11-18 development, refineries base their arguments on conclusive data, while community activists use exaggeration and repetition to instill fear in the Board members. Mr. Brett also stated that California refiners have the most stringent air permitting requirements in the world, and he urged the Board to act based on facts, not fear.

Janet Pygeorge, Rodeo Citizens Association (RCA), stated that the RCA is suing the Contra Costa County Board of Supervisors and Phillips 66 for their plan to increase propane and butane recovery at the Rodeo refinery, and threatened to litigate the District if the District does not intervene on the community's behalf. Mr. Pygeorge complained of Phillips 66's lack of consideration for the community adjacent to its Rodeo refinery, and emphasized that RCA is not "anti-refinery", but wants refineries to operate "right".

#### **CONSENT CALENDAR (ITEMS 3-14)**

- 4. Minutes of the Board of Directors Regular Meeting of July 20, 2016 (ITEM 3)**
- 5. Board Communications Received from July 20, 2016 to September 20, 2016 (ITEM 4)**
- 6. Air District Personnel on Out-of-State Business Travel (ITEM 5)**
- 7. Notices of Violations Issued and Settlements in Excess of \$10,000 in the months of July and August 2016 (ITEM 6)**
- 8. Quarterly Report of the Executive Office and Division Activities for the Months of April 2016 – June 2016 (ITEM 7)**
- 9. Consider Authorizing a 5-Year Computer Hardware Maintenance Contract (ITEM 8)**

10. Consider Authorizing the Executive Officer/APCO to Amend a Contract with Commercial Interior Builders, Inc. (CIB) in an Amount not to Exceed \$124,990 (ITEM 9)
11. Consider Authorizing the Executive Officer/APCO to Enter into a Contract with NOVO Construction (NOVO) in an Amount not to exceed \$300,000.00 for Design, Construction, and Installation of Equipment in the Air District Laboratory's Clean Room (ITEM 10)
12. Consider Adopting of Amendments to the Air District's Administrative Code, Division II: Fiscal Policies and Procedures, Section 4.3: Contract Limitations (ITEM 11)
13. Notification of Proposed Future Adoption to the Air District's Administrative Code, Division I: Operating Policies and Procedures, Section 15: Non-Discrimination Policy and Complaint Procedure (ITEM 12)
14. Set Public Hearing for October 19, 2016 to Consider Adoption of Proposed Amendments to Regulation 9, Rule 3: Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing (ITEM 13)
15. Extension of Contracts for My Air Online Development Services (ITEM 14)

Public Comments:

No requests received.

Board Comments:

Director Chavez requested that staff provide her with expanded explanations of background details relative to contracts and the District's selection process.

Board Action:

Director Haggerty made a motion, seconded by Director Wagenknecht, to **approve** the Consent Calendar Items 3 through 14, inclusive; and the motion **carried** by the following vote of the Board:

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

**COMMITTEE REPORTS**

**16. Report of the Climate Protection Committee Meeting of September 15, 2016 (ITEM 15)**

Legislative Committee Vice Chair Avalos read:

*The Climate Protection Committee met on Thursday, September 15, 2016, and approved the minutes of March 17, 2016.*

*The Committee received and discussed the staff presentation Climate Legislation Update, including background and climate bills.*

*The Committee then received and discussed the staff presentation Climate Forward Bay Area: A Leadership Forum - Update, including conference planning, date and location, speakers, agenda, registration, and sponsors.*

*The Committee then received and discussed the staff presentation State Cap and Trade Funding Update, including background, Fiscal Year 2016/2017 Cap and Trade Expenditure Plan: \$900 Million, recent awards to Bay Area, Future Opportunities for Air District in Fiscal Year Ending 2016/2017, and future for Cap and Trade funding.*

*Lastly, the Committee received and discussed the staff presentation 2016 Clean Air Plan/Regional Climate Protection Strategy Update, including Clean Air Plan/Regional Climate Protection Strategy, state and regional climate planning, recent work, Bay Area greenhouse gas emissions, Bay Area greenhouse gas projection to 2050 with key state programs, Bay Area in 2050, tools and objectives, transportation, stationary sources, energy, buildings, waste and water, agriculture and natural and working lands, short-lived climate pollutants, progress underway, and next steps.*

*The next meeting of the Committee is on Thursday, November 17, 2016, at 9:30 a.m., at 375 Beale Street, San Francisco, CA 94105.*

*This concludes the Chair report of the Climate Protection Committee.*

Public Comments:

Richmond resident, Nick Despota, addressed the Board regarding a collaborative university research brief entitled *The Preliminary Environmental Equity Assessment of California's Cap and Trade Program*. Mr. Despota said that the report confirms what the community has been fearing: highest-emitting facilities are disproportionately located in low-income communities; toxics and particulate matter that are emitted with GHG emissions cause immediate health problems; and while California is on track to meet its statewide emission targets under AB 32, local emission levels from refineries have increased since 2013. Mr. Despota said that the District is justified in not relying on Cap and Trade to improve local air quality, and that he hopes that the Board remains open to the possibility of separating the single EIR into two. Chair Mar requested that the aforementioned report be sent to the Board.

Rick Purser, Eichleay Engineers, addressed the Board regarding his opposition to the proposal to cap emissions at refineries. He requested that the Board consider the livelihood of refinery workers that may be impacted if this proposal is implemented.

Steve Grillo, Performance Contracting, Inc., urged the Board to consider the job security of refinery workers and contractors that may be affected if the caps on emissions is implemented.

Board Comments:

None.

Board Action:

None; receive and file.

**17. Report of the Executive Committee Meeting of September 19, 2016 (ITEM 16)**

Executive Committee Chair Mar read:

*The Committee met on Monday, September 19, 2016, and approved the minutes of May 6, 2016.*

*The Committee reviewed and discussed the Hearing Board Quarterly Report from April through June 2016, which included a summary of the cases and fees collected.*

*The Committee then reviewed and discussed the presentation Fiscal Year Ending 2017 Community Grant Program Guidelines including: Community Science Grant Program background, Fiscal Year Ending 2017 Community Science Grant Program elements, two-step process for grant selection, general grant eligibility, and recommendation. The Committee recommends the Board:*

*1) Approve the Fiscal Year Ending 2017 Community Grant Program Guidelines.*

*The Committee then reviewed and discussed the staff presentation Update on Climate Forward Bay Area: A Leadership Forum, including conference planning, date and location, speakers, agenda, registration, and sponsors.*

*Due to a shortage of time, Jack Broadbent, Executive Officer/Air Pollution Control Officer, requested that the staff presentation, Update on My Air Online Permitting and Compliance System Progress, be postponed until the next meeting. Chair Mar approved this request.*

*The next meeting of the Committee is on Monday, November 21, 2016, at 9:30 a.m., at the Bay Area Air Quality Management District Office, 375 Beale Street, San Francisco, California 94105.*

*I move that the Board approve the Executive Committee's recommendations.*

*This concludes the Chair report of the Executive Committee.*

Public Comments:

No requests received.

Board Comments:

None.

Chair Mar made a motion, seconded by Secretary Hudson, to **approve** the Executive Committee's recommendations; and the motion **carried** by the following vote of the Board:

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

**18. Report of the Stationary Source Committee Meeting of September 19, 2016 (ITEM 17)**

Stationary Source Committee Chair Gioia read:

*The Committee met on Monday, September 19, 2016, and approved the minutes of June 1, 2016.*

*The Committee reviewed and discussed the staff presentation Upcoming Changes to Regulation 9, Rule 13: Cement Kilns, including overview, regulatory background and purpose, results of rule adoption, technical issues of ammonia standard, ammonia standard solution, proposed rule amendments, and continuing issues of concern.*

*The Committee then reviewed and discussed the staff presentation Amendments to Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, including outline, effectiveness of control programs, stationary source programs, Regulation 2-5 New Source Review for Toxic Air Contaminants, summary of Regulation 2-5, proposed Rule 2-5 changes, impacts of Rule 2-5 revisions, California Environmental Quality Act analysis, socioeconomic analysis, public outreach, comments and responses, and next steps.*

*The Committee finally reviewed and discussed the staff presentation Update on Wood Smoke Reduction Incentive Program, including background, Air District's Wood Smoke Reduction Incentive Program, program funding, outreach, launch, timeline, and statistics, and next steps.*

*The next meeting of the Committee is on Monday, November 21, 2016, at 10:30 a.m., at the Bay Area Air Quality Management District Office, 375 Beale Street, San Francisco, California 94105.*

*This concludes the Chair report of the Stationary Source Committee.*

Public Comments:

No requests received.

Board Comments:

The Board and staff discussed the tentative date of the next Stationary Source Committee meeting, which is October 17, 2016.

Board Action:

None; receive and file.

At this time, Mr. Broadbent segued into a staff update on the recent successful launch of the District's Wood Smoke Reduction Incentive Program. He introduced Karen Schkolnick, Air Quality Program Manager, who presented Wood Smoke Reduction Incentive program statistics, including: the number of applications received, including those that are waitlisted; (of the areas that were identified as "highly-impacted") the number of applications that request low-income assistance, the number of applications that qualify for high wood smoke area funding, and the number of applications that request additional funding for sole source of heat exemption; and applications by project type and received by County. Ms. Schkolnick concluded by stating that staff anticipates that the numbers will change by the time the project ends (after the wood smoke season ends) and that staff will provide a second presentation to the Board at that time. The full Wood Smoke Reduction Incentive Program presentation was given to the Stationary Source Committee on September 19, 2016.

Board Comments on Wood Smoke Presentation:

The Board and staff discussed the need to add more funds to the program, based on the public's interest; specific outreach efforts directed at highly-impacted areas; considerations made for applicants with sole source of heat exemptions; Marin County's collaboration with the District to provide supplemental local outreach of this program; staff's interpretation of the program's success based on geographic location of applicants; the Board's acknowledgement of the Spare the Air Program prompting the public to respond so positively to the Wood Smoke program; and the Board's concern of the 72-hour delay in posting the District meeting webcasts on the website after a meeting adjourns.

**CLOSED SESSION (commenced at 10:52 a.m.)**

**19. EXISTING LITIGATION (Government Code Section 54956.9(a)) (ITEM 18)**

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

- A. **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; California Supreme Court, Case No. S213478
- B. **Communities for a Better Environment, et al. v. Bay Area AQMD, Kinder Morgan Material Services, LLC, et al., Real Parties in Interest**, San Francisco County Superior Court, Case No. CPF-14-513557; First District Court of Appeal, Case No. A143634
- C. **Valero Refining Company – California, Tesoro Refining & Marketing Company, LLC, and Phillips 66 Company v. Bay Area AQMD**, Contra Costa County Superior Court, Case No. N16-0095.
- D. **Western States Petroleum Association, Valero Refining Company – California, Tesoro Refining & Marketing Company, LLC, and Phillips 66 Company v. Bay Area AQMD**, Contra Costa County Superior Court, Case No. N16-0963

Public Comments:

Laurie Minzter, Chevron, emphasized Chevron’s appreciation for the District’s past practice of collaborating with refineries during the rulemaking process *and* before proposed Rules are voted upon, and urged the Board to revert back to this practice, as she said that, for refinery rules adopted in 2015, the District did not engage with refinery staff until after the new rules had been adopted

Board Comments:

None.

Board Action:

Brian Bunger, District Counsel, stated that there was no reportable action for this item.

**20. INITIATING LITIGATION (ITEM 19)**

*Pursuant to Government Code Section 54956.9(c), a need exists to meet in closed session to decide whether to initiate litigation with respect to one case.*

Public Comments:

No requests received.

Board Comments:

None.



Board Action:

Mr. Bunger stated that the Board authorized staff to proceed with the recommended action for this item.

**OPEN SESSION (commenced at 11:50 a.m.)**

**21. PUBLIC COMMENT ON NON-AGENDA MATTERS (ITEM 20)**

None.

**22. BOARD MEMBERS' COMMENTS (ITEM 21)**

Director Wagenknecht reported on his experience at the Air and Waste Management Association's 109th Annual Conference that was held in New Orleans in June 2016; he highlighted the topic of trends and implications of citizens measuring air quality.

Director Gioia reported on his experience at the Air and Waste Management Association's 109th Annual Conference that was held in New Orleans in June 2016. He remarked that California is progressive in climate change initiatives, and highlighted Emissions from Oil and Gas Operations in the United States and their Air Quality Implications, A Comprehensive Regional Approach to Addressing GHG Emissions, and Future Proofing Cities Through Local Climate Action Planning.

Secretary Hudson said that at the 2016 American Public Transportation Association Annual Meeting held between September 11-14, California's role as a leader was indisputable, especially regarding new technology. He added that California may be in competition with other states for new technology soon.

Director Zane reported that Sonoma County's Regional Climate Protection Authority released a Draft Climate Protection Report of all 9 cities (and unincorporated county), and she also encouraged the other Bay Area counties to organize such an authority in their own jurisdictions.

Director Bates said that he looked forward to the District's upcoming conference, Climate Forward Bay Area: A Leadership Forum, which will be held on October 13-14 at the Mission Bay Conference Center at UCSF. He encouraged all Board members to attend, and also commended staff on the success of the Wood Smoke Reduction Incentive program.

Director Kaplan reported that she sat on the Goods Movements and Infrastructure panel at the East Bay Manufacturing and Logistics Summit on September 16, where she spoke about the large backlog of trucks regularly trying to enter the Port of Oakland, due of limited hours of operation at the Port. She and others helped mitigate this problem by extending Port hours into evenings and weekends.

**OTHER BUSINESS**

**23. Chairperson's Report**

Chair Mar encouraged the Board members to attend the Climate Forward Bay Area Leadership Forum, noting several of the speakers.

**24. Time and Place of Next Meeting**

*Wednesday, October 19, 2016, 1<sup>st</sup> Floor Board Room, 375 Beale Street, San Francisco, California  
94105 at 9:45 a.m.*

**25. Adjournment**

The Board meeting adjourned at 12:03 p.m.

*Marcy Hiratzka*

Marcy Hiratzka  
Clerk of the Boards