

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET - SAN FRANCISCO, CALIFORNIA 94109

Approved Minutes: Advisory Council Regular Meeting – May 14, 2003

Call To Order

Opening Comments: Chairperson Hanna called the meeting to order at 10:05 a.m.

Roll Call: Present: William Hanna, Chair, Sam Altshuler, P.E., Elinor Blake, Harold M. Brazil, Irvin Dawid, Fred Glueck, Stan Hayes, John Holtzclaw, Ph.D., Norman A. Lopera, Jr., Robert F. Sawyer, Ph.D., P.E., Kevin Shanahan, Victor Torreano, Linda Weiner (10:15 a.m.).

Absent: Pamela O'Malley Chang, Patrick Congdon, P.E., Ignatius Ding, Rob Harley, Ph.D., Jane Kelly, Kraig Kurucz, Brian Zamora.

Public Comment Period: There were none.

Welcoming of New Advisory Council Members:

William A. Nack, former Advisory Council member, introduced and welcomed Victor Torreano in the Organized Labor Category, and Robert F. Sawyer, Ph.D., P.E., introduced and welcomed Louis Wells Bedsworth in the Public-At-Large Category. In her absence, the Council also welcomed Pamela O'Malley Chang in the Architect Category.

Chairperson Hanna requested each of the Council members to introduce themselves to the new members.

1. Approval of Minutes of March 12, 2003: Mr. Lopera requested that the numbering on Page # 3 be made sequential. Mr. Altshuler moved approval of the minutes; seconded by Ms. Blake; carried unanimously.

Committee Reports

2. Report of the Air Quality Planning Committee Meeting of March 25, 2003

In the absence of Chairperson Kurucz, Mr. Dawid reported that the Committee continues to work on the issues related to Inspection and Maintenance (I&M) and received a review of pending legislation matters by the District's legislative analyst. The Committee members noted that they would like to receive legislative updates from Staff at future meetings.

3. Report of the Public Health Committee Meeting of April 14, 2003

In the absence of Chairperson Zamora, Ms. Blake reported that at the April 14, 2003, meeting, the Committee began working on the Maritime Emission Sources and Controls

issue. The Committee heard a presentation from Jim McGrath, Environmental Planning Manager, Port of Oakland, on maritime emissions. Victor Douglas, Air Quality Specialist, Compliance & Enforcement Division, presented information to the Committee on AB 2650 (Lowenthal) that limits truck idling to 30 minutes.

Ms. Blake invited Advisory Council members to attend the Committee's next meeting on Monday, May 19, 2003, at 1:30 p.m., which is being held at the Senior Center in Rodeo. She explained that this meeting is being convened in Rodeo at the request of members of the community who are interested in providing input to the Committee on fence line monitoring at the refineries. Ms. Weiner emphasized that it would be particularly helpful if any Council members with technical and scientific expertise could attend the meeting since fence line monitoring not only has public health implications but there are also issues in those two areas that will need to be addressed.

Ms. Blake also reported that at the Advisory Council's Executive Committee this morning, Mr. Peter Hess, Deputy APCO, had reported on the May 13, 2003 Toxic Tour in the West Contra Costa County area. A number of people who went on the Toxic Tour will also be attending the Public Health Committee's meeting in Rodeo on Monday, May 19.

4. Report of the Technical Committee Meeting of April 1, 2003

In the absence of Chairperson Harley, Mr. Altshuler reported that there is a considerable amount of discussion and debate on flares at refineries. The Committee received and discussed presentations from the District Staff and industry representatives. He stated that there seems to be a lot of debate as to how much the flares put out. The Committee discussed the technical aspects of how the flares work and when they flare. He noted that ultimately it is important to know the potential impact of these emissions on ozone attainment and the importance of being able to plug the emissions data into the modeling that ENVIRON International Corporation is conducting for the District. Mr. Altshuler stated that the VOC emissions from refineries is a very important issue at this time. Houston, Texas, discovered that this was a very important factor affecting their ability to attain the ozone standard. Mr. Hayes added that this is a very actively followed issue by a number of groups in the Bay Area and that this particular measure would get a lot of scrutiny. Mr. Altshuler pointed out that the Technical Committee's focus is more on the ozone issues but there are also toxic implications that the residents in the area are concerned about. Chairperson Hanna stated that the monitoring that is being considered, has resulted in a couple of refineries already having made improvements to their processes.

Council members and Staff discussed the implications of recalibration of emissions inventory from the flares from two tons/day to 22 tons/day on the overall emissions inventory contributions by the refineries.

5. Report of the Executive Committee Meeting of May 14, 2003

Chairperson Hanna stated that the Committee met earlier today and received a summary of the Committee reports. In addition, Mr. Hess stated that maritime emissions are being discussed and that the focus of the discussions is to determine whether "cold ironing" (turning off boilers in the ships while they are in port) will reduce emissions. Mr. Hess informed the Committee that the Advisory Council would be among the first to receive the

final results of the ozone modeling that is being conducted by ENVIRON; this matter will be scheduled for the September 2003 meeting of the Advisory Council Regular Meeting.

Presentations:

6. Staff Presentation: Update on the 2001 Ozone Attainment Plan

Adan Schwartz, Senior Assistant Counsel, provided the Council with a briefing regarding the recent court developments on the 2001 Ozone Attainment Plan. He stated that the District received a recent tentative result from the Superior Court in San Francisco on this case. The plan is still before the Environmental Protection Agency (EPA), awaiting their action. There are three elements that EPA disapproved in the previous 1999 Ozone Attainment Plan and also made a finding that the Bay Area did not attain the standard by November 2000. The 2001 Plan that is now before them attempts to correct those disapproved elements. Mr. Schwartz explained that when EPA disapproves a portion of a plan, the clock begins ticking and at a certain point in time, sanctions kick in. The first of those sanctions is an increase in the offsets required for New Source Review, and this has, in fact, been triggered because 18 months have passed since EPA's disapproval action. Six months hence the Federal Highway Funds sanction – withholding federal transportation funding – goes into effect, as well as a requirement for EPA to propose a Federal Implementation Plan for the region. The District is working to resolve the outstanding issues before the second sanction goes into effect. EPA is very close to taking action on the 2001 Plan. However, it remains to be seen as to when EPA will actually do that. We do not know what effect the recent Superior Court decision will have on the EPA process.

Petitioners, Communities for a Better Environment (CBE) and Transportation Solutions Defense and Education Fund (TRANSDEF) challenged the 2001 Plan in the San Francisco Superior Court, on a number of grounds. Some of their claims were dropped in the course of the litigation, but the ones that remained were on the California Environmental Quality Act (CEQA) and Section 40233 of the Health and Safety Code. Under Section 40233 of the Health and Safety Code, they challenged the adequacy of the Plan. This Section applies specifically to the Bay Area District and it sets forth certain procedures that the District must follow in conjunction with the Metropolitan Transit Commission (MTC) in developing an ozone plan. The petitioners claim that the District did not follow some of those procedures. They also challenged some actions that the Air Resources Board took in conveying the District's Plan to EPA. Those issues were minor and the Court dispensed with them. With regard to the CEQA challenge, the Court case proceeded in stages. The District appeared before the Court three times and at each of the first two times the Court requested additional information and continued the matter to a later date. When the District appeared before the Court the second time a tentative ruling on the CEQA portion of the case was given. The petitioners raised a number of issues, the most significant being that the 2001 Plan did not provide for measures that attain the Federal ozone standard and, therefore, it was deficient under CEQA. Petitioners argued that this meant that there was a significant impact to the environment. The District, in its response, described to the Court how it fundamentally disagreed with that interpretation of CEQA and felt that this was a Federal matter and that EPA must determine whether the District's Plan provides for attainment. The Court sustained the District on this point and this was the most important part of the petitioner's challenge. However, the Court did rule against the District on two significant points. The first was on measures that the District was describing as Future Study Measures to be

enacted; these are labeled as SS13 and 14, and both relate to solvent clean-up. The District's Board of Directors, pursuant to what the Plan described, has adopted regulations on both these measures; they were evaluated under CEQA and the District chose to do a Negative Declaration. Nobody challenged that Negative Declaration decision. The Court tentatively ruled and ordered the District to do impact reports on two Rules that the District already adopted, evaluated under CEQA and were not challenged on those procedures. The District is still awaiting a written order from the Court on this issue.

The second point is regarding Section 40233 of the Health and Safety Code in which the Court was of the opinion that the District had failed to properly estimate reductions needed from transportation sources in order to attain the Federal standard. The Court's reasoning was as follows: the 2001 Plan notes that EPA had commented on the draft of the Plan stating that the Plan required 26 more tons of reductions in order to attain the Federal standard. The Superior Court reviewed EPA's statement and determined that this is the best evidence of the numbers of reductions that are needed. The Court then looked at what the District had done in following the provisions of Section 40233 of the Health and Safety Code. The District had made an estimate, much earlier in the process, of what reductions would be needed from transportation sources, on the order of one ton per day. The Court reviewed this and came to the conclusion that 26 tons is more than one ton per day and, therefore, the District's estimate must have been in error. Therefore, the Court ordered the District to prepare a new plan, within 60 days, that provides an additional 26 tons of reductions. It is unclear as to whether the 60 days starts from the time when the Court made its ruling from the bench, or when it signs the written order. Mr. Schwartz stated that when the Court signs its order, this matter would be clarified.

At this point the District is considering all of its options, including the possibility of an appeal. The District's Counsel Office is thinking about ways to anticipate against these kinds of procedural pitfalls in future planning cycles, including the 2004 Plan process.

There were questions, concerns and discussions among several Council members and District Staff on the 2001 Plan update. Mr. Hess explained that the District is aggressively pursuing all available control measures and mitigation strategies in all the air quality ambient standards.

Dr. Sawyer opined that the District is probably delaying, as much as possible, on the 2001 Plan, hoping that it will become moot as the 2004 Plan becomes the focus. He stated that technically this strategy makes a lot of sense because the 2004 Plan should have a better understanding of what is required to reach the ozone attainment level and a better definition of exactly what reduction is required, if any. The 26 tons per day number is questionable and is a moving target at this point. More action needs to be taken to reduce the hydrocarbons because in doing this, things will be better rather than worse. Dr. Sawyer was concerned that the 2004 Plan will be based on an inventory using the new EMFAC model, which is very optimistic in future years in terms of hydrocarbon reduction and it may turn out that the District does not have to do anything. He is of the opinion that the model seems to be wrong. The numbers seem to be too optimistic in terms of the hydrocarbon reductions from the mobile fleet. Dr. Sawyer felt that, in the meantime, the District should be more aggressive in pursuing reductions because it is the right thing to do rather than pursuing legal dodges in the Court or in dealing with the EPA in trying to get its 2001 Plan approved.

Chairperson Hanna emphasized the fact that the 26 tons per day number is very much questionable, as Dr. Sawyer had stated earlier. It is a very undefined number, and the Central California Ozone Study results in modeling that the District has hired ENVIRON to do is specifically to help define that number so that it is a non-moving target.

7. Looking Back and Ahead: Personal Perspectives on Air Quality Regulation

Robert F. Sawyer, Ph.D., P.E., presented historical and prospective perspectives on air quality issues. His presentation included topics on:

- Heavy Duty Diesel NOx
- Bay Area Ozone Improvements
- BAAQMD Ozone Trends
- Issues Worth Considering for the Future

Other Business:

8. Report of the Executive Officer/APCO

In the absence of Mr. Norton, Mr. Hess reported on the following:

- The Air Resources Board will release designations for the Federal 8-hour Ozone standard very soon.
- There is a meeting of the 2004 Ozone Plan Working Group on May 14, 2003 at 2 p.m., at the MTC Offices in Oakland. He invited all Advisory Council members to attend.
- The District is gearing up for the Spare the Air (SPA) Program this summer. He requested that the Advisory Council members share information about the SPA Program with the groups they represented.
- The Board of Directors will consider the Flare Monitoring Rule on May 21, 2003, and the final action will be taken on June 4, 2003. He thanked the Advisory Council members for their support and input on the Rule.

9. Report of the Chairperson

Chairperson Hanna reported on the following:

- He had attended a couple of the Board of Directors and Executive Committee meetings.
- The recommendations of the Applicant Selection Working Group on the three new appointments of Advisory Council members and the reassignment of one category were accepted by the full Board.

- The resolutions of the Advisory Council on the Improvements to Enhanced Inspection and Maintenance Program, Particulate Matter Abatement and the Sonoma County Climate Protection Campaign were presented and accepted by the Board of Directors at its meeting on May 7, 2003. The Board accepted the Enhanced Inspection and Maintenance Program resolution and wanted to discuss funding of the Sonoma County Climate Protection Campaign. Chairperson Hanna stated that he did not get an opportunity to present details to the Board of Directors as to why the Advisory Council did not support this matter, but he hoped that Staff would provide the Council's input and reasoning on this issue.

Commendations/Proclamations:

The Advisory Council recognized Robert Sawyer, Ph.D., P.E., who has served on the Advisory Council for seven years and will resign at the conclusion of this meeting. Chairperson Hanna presented Dr. Sawyer with a Proclamation and thanked him for his astute wisdom and the exemplary performance standards he has set for other Council members.

Dr. Sawyer thanked the Advisory Council members and the staff for their support and hard work during the years that he was involved on the Council. In addition, Dr. Sawyer thanked and appreciated James Corazza, Deputy Clerk of the Boards, for everything he has done for the Advisory Council, and requested that this recognition be incorporated into the minutes of this meeting.

10. Council Member Comments/Other Business

Individual Council members and Staff expressed their appreciation and thanks to Dr. Sawyer.

Mr. Lapera indicated that he would not be able to attend the Technical Committee meeting on May 29, 2003.

11. Time and Place of Next Meeting: - 10:00 a.m., Wednesday, July 9, 2003, 939 Ellis Street, San Francisco, California

12. Adjournment: The meeting was adjourned at 12:15 p.m.

Neel Advani
Deputy Clerk of the Boards