



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

**ADVISORY COUNCIL
REGULAR MEETING & RETREAT
AND
MEETING OF THE PUBLIC HEALTH COMMITTEE
MEETING OF THE AIR QUALITY PLANNING COMMITTEE
MEETING OF THE TECHNICAL COMMITTEE**

**WEDNESDAY
JANUARY 12, 2005
10:00 A.M.**

**SEVENTH FLOOR BOARD ROOM
939 ELLIS STREET
SAN FRANCISCO, CA. 94109**

AGENDA

CALL TO ORDER

Opening Comments
Roll Call
Introduction of New Advisory Council Member

Brian Zamora, Chairperson
Clerk
Brian Zamora, Chairperson

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3. The public has the opportunity to speak on any agenda item. All agendas for Advisory Council meetings and Committee meetings are posted at the District, 939 Ellis Street, San Francisco, at least 72 hours before a meeting. At the beginning of the meeting, an opportunity is also provided for the public to speak on any subject within the Council's or Committee's purview. Speakers are limited to five minutes each.

CONSENT CALENDAR

1. Approval of Minutes of November 10, 2004

RETREAT FORMAT

2. Mission of the Advisory Council

A. Role of the Advisory Council

Brian Zamora

1. California Health & Safety Code
2. Bay Area AQMD Administrative Code
3. The Council and the Public Working Together

- Joint Paper by Deputy APCO Peter Hess and former Advisory Council Chair and California Air Resources Board Chair John Lagarias

B. Expectations for the Advisory Council

Jack Broadbent

C. Brown Act Refresher

Brian Bunger

3. Round Table Discussion with District's Management on Key Issues Facing the District, and Assignments Proposed by District Staff

4. Convene to Working Lunch for Meetings and Discussion Sessions of the Public Health Committee, Air Quality Planning Committee and Technical Committee

The Council will participate in a working lunch/Standing Committee format in which each Committee will separately meet to discuss and give priority to the study topics discussed by the Executive Committee, District staff and the Council members. The Committees will also establish a meeting schedule for the year.

5. Reconvene to Full Council Format for Follow-up on Committee Discussion Sessions

The Advisory Council will reconvene to receive the reports of the Standing Committees on their study topic priorities and meeting schedule, and to conduct any further round table discussion concerning them.

COMMENDATION/PROCLAMATION

6. Recognition of Outgoing Chairperson Elinor Blake

Brian Zamora

OTHER BUSINESS

7. Council Member Comments/Other Business

Council or staff members on their own initiative, or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on their own activities, provide a reference to staff about factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda.

8. Time and Place of Next Meeting

10:00 a.m., Wednesday, March 9, 2005, 939 Ellis Street, San Francisco, California 94109.

9. Adjournment

BZ:jc

CONTACT CLERK OF THE BOARDS - 939 ELLIS STREET SF, CA 94109

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BAAQMD homepage:

www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities notification to the Clerk's Office should be given in a timely manner, so that arrangements can be made accordingly.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109
(415) 771-6000

CLERK OF THE BOARDS OFFICE:
MONTHLY CALENDAR OF DISTRICT MEETINGS

JANUARY 2005

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Public Outreach Committee <i>(Meets 2nd Monday every other Month)</i>	Monday	10	9:45 a.m.	4 th Floor Conf. Room
Advisory Council Regular Meeting/Retreat	Wednesday	12	10:00 a.m.	Board Room
Board of Directors Mobile Source Committee <i>(Meets 2nd Thursday each Month)</i> - CANCELLED	Thursday	13	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	19	9:45 a.m.	Board Room
Regional Agency Coordinating Committee (RACC)	Friday	21	1:30 p.m.	MTC 101 8 th Street Oakland, CA 94607
Board of Directors Stationary Source Committee <i>(Meets 4th Monday every other Month)</i>	Monday	24	9:30 a.m.	Board Room
Board of Directors Budget & Finance Committee <i>(Meets 4th Wednesday each Month)</i>	Wednesday	26	9:45 a.m.	4 th Floor Conf. Room
Joint Policy Committee	Friday	28	1:00 – 3:00 p.m.	MetroCenter Auditorium 101 8 th Street Oakland, CA 94607

FEBRUARY 2005

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	2	9:45 a.m.	Board Room
Board of Directors Mobile Source Committee <i>(Meets 2nd Thursday each Month)</i>	Thursday	10	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	16	9:45 a.m.	Board Room
Joint Policy Committee	Friday	18	10:00 a.m. – Noon	MetroCenter Auditorium 101 8 th Street Oakland, CA 94607
Board of Directors Budget & Finance Committee <i>(Meets 4th Wednesday each Month)</i>	Wednesday	23	9:45 a.m.	4 th Floor Conf. Room

MARCH 2005

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	2	9:45 a.m.	Board Room
Advisory Council Executive Committee	Wednesday	9	9:00 a.m.	Room 716
Advisory Council Regular Meeting	Wednesday	9	10:00 a.m.	Board Room
Board of Directors Mobile Source Committee <i>(Meets 2nd Thursday each Month)</i>	Thursday	10	9:30 a.m.	4 th Floor Conf. Room
Board of Directors Public Outreach Committee <i>(Meets 2nd Monday every other Month)</i>	Monday	14	9:45 a.m.	4 th Floor Conf. Room
Board of Directors Regular Meeting <i>(Meets 1st & 3rd Wednesday of each Month)</i>	Wednesday	16	9:45 a.m.	Board Room
Board of Directors Budget & Finance Committee <i>(Meets 4th Wednesday each Month)</i>	Wednesday	23	9:45 a.m.	4 th Floor Conf. Room
Joint Policy Committee	Friday	25	10:00 a.m. – Noon	MetroCenter Auditorium 101 8 th Street Oakland, CA 94607
Board of Directors Stationary Source Committee <i>(Meets 4th Monday every other Month)</i>	Monday	28	9:30 a.m.	Board Room
Board of Directors Executive Committee <i>(Meet 5th Wednesday of Months that have 5 Wednesdays)</i>	Wednesday	30	9:45 a.m.	4 th Floor Conf. Room

MR:hl
1/5/05 (10:10 a.m.)
P/Library/Calendar/Moncal

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

DRAFT MINUTES

Advisory Council Regular Meeting
10:00 a.m., Wednesday, November 10, 2004

CALL TO ORDER 10:05 a.m.

Opening Comments Chairperson Blake noted that as the guest speaker may arrive later in today's meeting she would be adjusting the order of agenda items as necessary.

Roll Call Present: Elinor Blake, Chairperson, Sam Altshuler, P.E., Diane Bailey, Sanjiv Bhandari, Robert Bornstein, Ph.D., Louise Bedsworth, Ph.D., Jeffrey Bramlett, Harold Brazil, Irvin Dawid, Fred Glueck, William Hanna, Stan Hayes, John Holtzclaw, Ph.D., Kraig Kurucz, Victor Torreano, Linda Weiner, Brian Zamora.

Absent: Emily Drennen, Norman A. Lopera, Jr., Kevin Shanahan,

PUBLIC COMMENT PERIOD There were no public comments.

CONSENT CALENDAR

1. Approval of Minutes of September 8, 2004. Dr. Holtzclaw moved approval of the minutes as submitted; seconded by Mr. Hayes; carried, with Mr. Hanna abstaining.

COMMITTEE REPORTS

3. Report of the Joint Air Quality Planning Committee (AQPC) & Technical Committee Meeting of October 12, 2004. Dr. Bedsworth stated that two guest speakers provided presentations on alternative fuels and alternative fuel vehicle technology to the two Committees, which will meet again jointly on December 16 to continue the discussion of alternative fuels. Mr. Dawid stated that he discovered, in the course of follow up with CalStart regarding an environmentally friendly fuel called bio-gas, that the Sierra Club has some objections to the fuel digesters. Chairperson Blake stated that this topic can be incorporated into the Council's 2005 work plan.

5. Report of the Executive Committee Meeting of November 10, 2004. Chairperson Blake stated that the Committee met this morning and recommends a slate of Officers for the Council in 2005 and would like to nominate Brian Zamora as Chair, Kraig Kurucz as Vice-Chair and Fred Glueck as incoming Secretary. The floor is open to any additional nominations. She explained that historically the Vice-Chair becomes Chair, the Secretary becomes Vice-Chair and the Secretary is nominated from the Council membership. There being no questions or additional nominations, Chairperson Blake called for a vote on the recommendation and it carried unanimously by acclamation. Mr. Hanna moved; Mr. Torreano seconded; carried unanimously.

OTHER BUSINESS

- 7. Discussion of Feedback Regarding Advisory Council Activities in 2004.** Chairperson Blake stated that very positive feedback has been received in a survey of Council members on processes and activities. About half of the Council members responded and rated highly their various learning experiences. Opinion varied on either the excess or insufficiency of the discussion of work plan issues, and the time frame over which topics are assessed before recommendations are issued. A common thread throughout the responses was that members want to know that their time was well spent, and that a recommendation had some impact either on the District or some other agency. One member commented that topics should not be taken on in which recommendations are not likely to effectuate change. Mr. Hanna observed that the Council has had to opine on some issues—particularly those that concern scientific conclusions—strictly for the record, even if neither the Board nor the staff agree, and regardless of whether the issue entails any action.
- 6. Reports From Council Members Who Attended the District’s Ozone Strategy Community Meetings.** Chairperson Blake directed that members who attended a community meeting should send an e-mail to the Deputy Clerk with comments on how various presentations went.
- 8. Report of the Executive Officer/APCO.** Deputy APCO Peter Hess stated:

 - a) Executive Officer/APCO Jack Broadbent is part of the Governor’s delegation from California that is traveling to Japan to discuss economic and trade issues affecting the Bay Area.
 - b) Vallejo resident Stephen Dampier contacted the Council by e-mail, and expressed concern over foul odors and a Level III shelter-in-place at the ConocoPhillips Refinery that occurred last Sunday. District staff has contacted him regarding the odors from biodegradation in water slews that he experienced prior to the refinery release incident. The District’s website has posted the refinery release incident report data and is further investigation the matter. A community meeting will be held tonight in Crockett, with District, health department and refinery staff present. Dr. Bornstein suggested staff encourage the press to publish an article on the outcome of the refinery meetings and pending investigation in order to provide follow-up. Mr. Hess noted that it is rare that the Advisory Council is contacted rather than the Board. When the latter receives a communication it is forwarded to the Public Outreach Division staff that in turn responds and sends a copy of it to the receiving Board member. Chairperson Blake indicated she had written a short note to Mr. Dampier and then referred him to the staff of the District’s Public Information & Outreach Division.
 - c) Staff is reviewing Council and public comments on the District’s Ozone Strategy and will incorporate them into the environmental review documents, after which another round of public meetings will be held to discuss the plan that will be developed. Following these public hearings on the Plan’s adoption will be held first by the District, Metropolitan Transportation Commission and Association of Bay Area Governments; and then by the California Air Resources Board, which will then forward it to the federal Environmental Protection Agency.
 - d) Next year the District will sponsor a “Spare the Fare” program, based on the success of the free BART transit during the recent “Spare the Air” days. Using Congestion Management Air Quality (CMAQ) funds disbursed by MTC, this program will expand the free transit to other authorities in the Bay Area, such as AC Transit, Golden Gate Transit, MUNI, BART, etc. The District is stepping out as a leader in the country in sponsoring such programs.

- e) District staff appreciates the participation of Council members Holtzclaw and Glueck in the District's Cost Recovery Study. A contractor has now been hired, and a Cost Recovery Study will be issued next year to provide guidance and recommendations for setting permit fee levels.
- f) A new Community Outreach Manager, Sharon Jackson, has been hired from the Enforcement Division, and will have direct interface with community groups throughout the Bay Area in all aspects of the District's work. She will be invited to meet the Council at a future meeting.
- g) With regard to recent legislation, the 30-year rolling exemption has been eliminated from the Smog Check program. The recommendation to eliminate the exemption was made by the Council in 2003. District staff then sought a legislative sponsor for the bill, which has passed.
- h) The Governing Board has approved the collection of a \$2 increase in Smog Check fees along with a tire renewal fee. This will net additional funding for the Carl Moyer program and the Transportation Fund for Clean Air and obtain additional emission reductions from non-traditional sources. Oddly enough, the Board of the San Joaquin Valley APCD, which has the worst air quality in the state, did not adopt the necessary rule to seek that extra fee. Dr. Bedsworth noted that this issue would again be before that Board in December of this year.

PRESENTATION:

2. Update on the Smog Check II Program for the Bay Area: David Amlin, Manager, Engineering Section, Bureau of Automotive Repair (BAR).

Mr. Kurucz stated that the Council reviewed Smog Check issues in 2002 and 2003. Mr. Amlin was instrumental in acquainting the Air Quality Planning Committee (AQPC) with the Smog Check program and associated buy-back and scrappage programs. The AQPC held 13 meetings with a wide array of guest speakers before it adopted the nine recommendations on Smog Check that are enclosed in today's agenda packet. These concerned improving the robustness of vehicle repairs, participating in a vehicle remote sensing program, conducting vehicle buy-back programs and targeting cars for them, eliminating the two-year repair waiver, increasing vehicle registration fees to increase funding for buy-back and repair, eliminating the 30-year rolling exemption, annually inspecting high use and government vehicle fleets (this led to a pilot remote sensing program for taxi cabs fleets) identifying time frames to replace oxygen sensor and catalytic converters replacement, and reviewing the state's mobile source emission models.

Mr. Amlin stated that AB 2637 required the Bay Area to become a fully Enhanced Smog Check Program area with separate stations for vehicle test and repair and a phase-in of NO_x cutpoints. The estimated emission reductions achieved beyond the Basic Smog Check program are 10 tons per day (tpd) of ROG, 16 tpd of NO_x and 640 pounds per day (ppd) of benzene. Areas in the state that are not covered by the Enhanced program now comprise only 2% of the vehicle population. The Air Districts in those regions can voluntarily request to be included in the Enhanced program. Approximately 88% of the entire state hosts the Enhanced program with loaded mode testing; 10% has the Basic/Change of Ownership program, and 3% of the state has a Change of Ownership program. Other areas that have adopted the Enhanced program include El Dorado County, Placer County, Yolo-Solano, South Coast AQMD, Sacramento Metro AQMD, Ventura County APCD and the San Joaquin Unified APCD, covering approximately seven million additional vehicles.

Bay Area stations have had to upgrade their testing equipment and this process began in July of 2003, along with the training of technicians for loaded-mode testing procedures in the fall of 2003.

The transition to the Enhanced program in the Bay Area is almost complete. BAR public outreach included 26 electronic transmission notices to affected stations along with a mailing of a special edition of BAR's Smog Check advisory notice; direct mail to affected motorists; notices to technicians for training in the new modes of testing, and four workshops. The largest change from the Basic Smog Check program has been the increase in vehicle failure rates, from 9.05% during the period July – September 2003 to 13.56% during the period October 2003 – September 2004.

Program Changes and Improvements include a joint BAR/Air Resources Board (ARB) pilot remote sensing device (RDS) program, concerning which a draft report is due in mid 2005. This Advisory Council made recommendations on this type of program. Vehicles were tested last year and also this year in order to amass a considerable number of RSD tests. This will enhance BAR ability to identify directed vehicles and also to improve feasibility and public acceptability of off-cycle testing and also to identify vehicles for buy-back and scrappage. Clean screening is another goal that BAR will pursue. To increase participation in scrappage programs, BAR will use price points and incentives.

BAR will recommend legislation to end repair waivers based on indigence and will present repair subsidies as the alternative. Repair waivers in the state are comparatively few at this time, with perhaps not more than 10,000 annually. Lastly, the 30-year rolling exemption has been repealed. This was recommended by this Council and later introduced into legislation. The Legislature has provided that after five years such vehicles are exempt from being inspected under the hood. However, the evaporative and tailpipe emissions tests will remain in effect on such cars.

With regard to the Consumer Assistance Program, after a couple of years of cessation due to lack of funding, the vehicle buy-back program resumed in September of 2004. It now offers \$500 for vehicles that failed the Smog Check test. Repair assistance funding is also available, because registration fees for new vehicles were increased to \$12 to provide additional funding for repair assistance, vehicle retirement and the Carl Moyer program.

BAR and the ARB have jointly submitted a draft program evaluation to the Inspection & Maintenance Review Committee (I&MRC), which is now accepting public comments. Recommendations include the annual testing of high mileage vehicles and older vehicles in order to catch cars between testing cycles, clean screening of five- and six-year old vehicles, more stringent cut-points for failed vehicles, a smoke inspection test, the exemption of newer vehicles from Change of Ownership requirements for Smog Check, and improved enforcement of the Smog Check program.

Major legislation adopted in 2004 includes SB 1107 and AB 2683. These bills exempted vehicles from Smog Check testing during the first six model years, increased the fee for those exemptions with \$6 for the Carl Moyer Program, \$4 for the Consumer Assistance Program, \$2 for BAR. As of April 1, 2005 the 30-year rolling exemption, to 1976 model-year vehicles, was eliminated.

In response to Council member questions, Mr. Amlin noted:

- the cost of vehicle repairs is higher in Enhanced than in Basic Smog Check areas.
- for vehicles that failed a random roadside RSD check but passed their biennial inspection, policy recommendations will emerge from the I&MRC based on the results from the pilot study. The emphasis will be on voluntary compliance in the context of off-cycle tests.

- Regarding concerns on whether exemptions from Smog Check for hybrid vehicles increase their market desirability over natural gas vehicles, as of January of next year, all new vehicles will have the six-year exemption from Smog Check with no exception for vehicle type.
- With regard to life cycles of oxygen or catalytic converters, the ARB is conducting a study on catalytic converter and sensor replacement, and while it is not yet complete, there has been some discussion that some findings were made that certain after-market catalysts were not durable. Mr. Hess added that the Metropolitan Transportation Commission (MTC) and the District are discussing pilot program with the ARB on this matter, and will start the program next year under the auspices of Congestion Management Air Quality (CMAQ) funding.
- regarding such high mileage vehicles as retired police cars that are discarded and recycled into the passenger fleet, these are generally well-maintained up to 100,000 miles. It is the taxi drivers that buy these vehicles and drive them up to 500,000 miles and more.
- BAR does quantify fleet emissions, and provides the data to the ARB that considers these data in the modeling. BAR also calculates emissions by model year and uses a conversion formula for grams per mile. Mileage data is available from the Smog Check program, and these data can be converted into estimates of tpd. This data is available to this Air District.

Mr. Kurucz identified the connections between the Advisory Council's recommendations and the updates to the Enhanced Smog Check program, as follows:

- Recommendation No. 1 on making sure that repairs are robust, BAR has used that as part of its mission. (Mr. Amlin added that repairs will be further addressed through off-cycle RSD tests, and more stringent cut-points on failed vehicles to enforce more effective repair efforts.)
- Recommendation No. 2 on District participation in an ARB remote sensing program, that is under way, but exclusively under the aegis of the ARB.
- Recommendation No. 3 on continuation of vehicle buy-back programs, that has now resumed with the advent of additional funding
- Recommendation No. 4, the elimination of the two-year waiver program is under consideration but is buttressed with funding for repair subsidy from the Consumer Assistance Program.
- Recommendation No. 5 on increasing vehicle registration fees was supplanted by BAR with increasing the Smog Check fee increase, with the funding going to the same programs identified by the Council to improve repair assistance and make buy-back more attractive.
- Recommendation No. 6 on eliminating the 30-year rolling exemption as of vehicles manufactured 1974 and earlier is supplanted by the 1976 model year.
- Recommendation No. 7 on the annual inspection and maintenance of high-use government and private fleet vehicles, BAR supports the concept but the language in the bill requires follow-up.
- Recommendation No. 8, on the time frame for replacing oxygen sensor devices and catalytic converters, there are pilot programs for this in which the Air District is participating, and there is oversight on the longevity of after-market equipment.
- Recommendation No. 9 on collection of data from roadside tests, BAR is sharing this with ARB for incorporation into fleet emission models. BAR has data on the re-entry of high mileage vehicles into the fleet, and notes continued use is a key factor in evaluating this issue.

- 4. Report of the Public Health Committee Meeting of October 25, 2004.** Ms. Weiner reviewed the Committee’s recommendations on whether the type of real-time optical sensing monitoring equipment in operation at the ConocoPhillips refinery should be applied to other Bay Area refineries. Over several meetings, speakers from industry, District staff, affected communities, the refineries and optical monitoring technology addressed the Committee on this issue. The Committee found no correlation between monitoring data and the episodic events and therefore does not recommend extending this technology to other refineries. However, residents in communities near the Rodeo refinery felt reassured by the data and proposed some refinements in the current refinery monitoring systems, some of which are included in the Committee’s seven recommendations. District staff present at the meeting concurred with the recommendations, with a few minor adjustments, with the goal of improving public access to refinery emissions data. In Council member discussion of the recommendations, the following points were made:

This monitoring program should be applied to all major industries within the Bay Area (Glueck).

Expanding these recommendations beyond refineries should be taken up next year (Torreano).

Real-time data posted on the website must be accurate. While the monitoring program recommended can potentially have great longevity, it can obtain major public involvement. (Altshuler)

Data from The Continuous Emission Monitors (CEMs) inside stacks and other instrumentation will not necessarily reflect ambient concentrations. If the community is going to review this data in the context of working through its concerns, the data need to be reliable. (Hayes)

The posting of real-time data may help reduce the number of telephone calls to the District on the subject of emissions, especially if the data are made understandable to the public. (Bhandari)

While fence line monitors did not *per se* detect potential releases they did improve the relations between neighboring communities and the refineries. This is to be encouraged not merely for refineries but for any industrial plant in the Bay Area and downwind neighbors. (Hanna)

Chairperson Blake called for public comment, and the following individual spoke:

Dennis Bolt
Western States Petroleum Association

stated that the Committee originally started working on a referral that concerned on whether or not to provide the community with real-time information from optical fence line monitors during accidental release incidents. The recommendations offered do not do that, but instead address Ground Level Monitors (GLMs), which cannot be used for episodic events. Such releases are vented high into the atmosphere above the facility. While the refineries are not opposed to increased transparency, they do oppose being monitored out of context with emissions generated elsewhere in community and region: if the recommendations applied to all GLMs in similarly situated facilities, the refineries would not be in opposition. Mr. Bolt proposed several edits to the recommendations, in which references to refineries would be replaced with “major sources” or “facility” as appropriate, in order to apply the recommendations in a uniform and equal manner to all major facilities and place the emissions data in context.

Chairperson Blake inquired if there were issues implicit in an expanded recommendation to cover all major facilities. District Counsel, Brian Bunger, observed that there are about 10,000 total CEMs in the Bay Area. Mr. Hess added that the task of prioritizing them would be considerable.

Mr. Hayes observed that the CARE program will determine where the areas are with the major concerns over air toxics and prioritization will occur as a consequence. Dr. Bornstein suggested the Council review this issue next year and consider in the possibility of including a screening model. Mr. Altshuler added that the Committee's recommendations do not concern fence line but rather District monitors, and these are located at sites most located in areas of public concern.

Mr. Torreano moved adoption of the recommendations; seconded by Dr. Holtzclaw; carried by acclamation, with Messrs. Hayes, Bornstein, Glueck and Hanna abstaining.

Chairperson Blake stated she would like to present the report as information to the Board, with the sense that the issues may be expanded next year. Mr. Bunger added that all Advisory Council recommendations are presented to the Board, and the ten affirmative votes just cast will forward this as an action item to the Board. When these recommendations are presented to the Board Executive Committee, it could be explained at that time that there were several abstentions.

9. **Report of Advisory Council Chair.** Chairperson Blake stated that on September 29, 2004 she presented several Council recommendations to the Board Executive Committee. Mr. Bunger noted that the Executive Committee received the recommendations and forwarded them in its report to the full Board at the November 3 Regular meeting. Chairperson Blake added that the California Performance Review commission recommendation to eliminate the ARB has apparently now been given low priority. While the District sent a letter to the Governor opposing the proposed abolition, the review process has not ceased, and a final answer on the recommendation is pending.

Chairperson Blake thanked the Councilmembers for their excellent attendance at Committee and Regular meetings, and the District staff for its support of Council activities throughout the year.

10. **Council Member Comments/Other Business.** Mr. Bhandari stated that due to increased work in his architectural firm he would have to resign from the "Architect" category at the end of this year, which also completes the term that he filled when he was appointed to the Council last March.

Mr. Bramlett stated that it is confusing to see that the problem statement on refinery fence line monitoring that was adopted in January for the recommendations addressed by the Public Health Committee now being questioned or challenged. Notwithstanding that there are concerns on the issues of the breadth of the recommendations, the scope of the referral was defined in the original problem statement. At the January Retreat, the Council will need to establish clearer ground rules so as to clarify the process by which it reviews staff referrals and Committee recommendations.

Mr. Dawid distributed a letter to him from the Executive Officer of the ARB on AB 2683.

11. **Time and Place of Next Meeting.** 10:00 a.m., Wednesday, January 12, 2005, location to be announced.

12. **Adjournment.** The meeting was adjourned at 12:45 p.m.

James N. Corazza
Deputy Clerk of the Boards

HEALTH AND SAFETY CODE

Article 4 – Advisory Council
(Article 4 added by Stats. 1975, Ch. 957)

H&S 40260 Definition of Council

40260 ~ As used in this article, “council” means the Bay Area Air Quality Management Advisory Council. *(Amended by Stats. 1978, Ch. 1025)*

H&S 40261 Council to Consult with Board

40261 ~ There is continued in existence the Bay Area Air Quality Management Council, which was formerly known as the Bay Area Air Pollution Control Advisory Council, Which council is appointed by the bay district board, to advise and consult with the bay district board and the bay district air pollution control officer in effectuating the purposes of this division. Any reference to the Bay Area Air Pollution Control Advisory Council shall be deemed to be a reference to the Bay Area Air Quality Management Council. *(Amended by Stats. 1978, Ch. 1025)*

H&S 40262 Council Membership

40262 ~ The council shall consist of the chairman of the bay district board, who shall serve as an ex officio member, and 20 members who preferably are skilled and experienced in the field of air pollution, including at least three representatives of public health agencies, at least four representatives of private organizations active in conservation or protection of the environment within the bay district, and at least one representative of colleges or universities in the state and at least one representative of each of the following groups within the bay district: regional park district, park and recreation commissions or equivalent agencies of any city, public mass transportation system, agriculture, industry, community planning, transportation, registered professional engineers, general contractors, architects, and organized labor.

To the extent that suitable persons cannot be found for each of the specified categories, council members may be appointed from the general public. *(Added by Stats. 1975, Ch. 957)*

H&S 40263 Term of Office

40263 ~ Each council member shall hold office for a term of two years and until the appointment and qualification of his successor. *(Added by Stats. 1975, Ch. 957)*

H&S 40264 Removal of Council Member

40264 ~ Any member of the council may be removed at any time by the majority vote of the bay district board. *(Added by Stats. 1975, Ch. 957)*

H&S 40265 Vacancies

Any vacancy on the council shall be filled by appointment in the same manner as the vacating member was appointed, except that the member appointed to fill the vacancy shall only serve the unexpired term of the vacating member.

H&S 40266 Compensation and expenses

Council members shall serve without compensation, but may be allowed actual expenses in the discharge of their duties.

H&S 40267 Officers

The council shall select a chairman and vice-chairman and such other officers as it deems necessary.

H&S 40268 Meetings

The council shall meet as frequently as the bay district board or the council deem necessary, but not less than four times a year.

ADMINISTRATIVE CODE

Division I: Operating Policies & Procedures

SECTION 7 ADVISORY COUNCIL

7.1 ACTIVITIES OF COUNCIL

The Advisory Council shall meet at such times and occasions as the Advisory Council, itself, shall determine. The Advisory Council shall make recommendations and reports to the Board of Directors on such matters as the Council determines to be advisable and in such manner and form as the Council determines advisable. The Advisory Council shall consider and report to the Board on specific matters which may be referred to the Council by the Board of Directors or by the Executive Committee. The members of the Advisory Council are selected because of their eminence in their professions and fields of endeavor and as representatives of interest groups in the community. The Advisory Council shall consider for the Board of Directors matters which come before the Council to arrive at the best advice upon which the Council may agree, which advice may include the technical, social, economic, environmental and fiscal aspects of such issues.

7.2 TERM OF OFFICE

The terms of office for members of the Advisory council are fixed by Health and Safety Code Section 40263.

7.3 LIMITS ON TERM OF OFFICE

Effective with appointments for terms on the Advisory Council commencing on January 1, 1992, and thereafter, it is the policy of the Board of Directors that members with twelve (12) consecutive years of membership on the council not be re-appointed to the Council, except that such members who were serving on the Council on the date of adoption of this policy may be appointed to one additional term. A member not re-appointed because of having served twelve (12) consecutive years on the Council shall again be eligible for appointment after an absence of two years from the Council.

7.4 EXPENSE REIMBURSEMENT

Members of the Advisory Council shall be reimbursed for actual and necessary expenses incurred by them in attending meetings of the Advisory Council and meetings and public hearings conducted by the Board of Directors. Mileage, tolls, parking fees, meals and other incidental expenses will be allowed at the same rate as is allowed to Directors provided that receipts are presented pursuant to Section II-5.6.

7.5 OTHER EXPENSES

Other expenses may be allowed after prior specific approval of a majority of the Executive Committee or the Board.

7.6 CLERK CERTIFICATION OF ATTENDANCE AND EXPENSES

The Clerk of the Boards shall certify to the Director of Administrative Services the attendance and the expense reports of members of the Advisory Council.

THE PUBLIC ADVISORY COUNCIL AND THE REGULATORY AGENCY WORKING TOGETHER

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SUMMARY

THE ROLE OF THE ADVISORY COUNCIL TO THE SAN FRANCISCO-BAY AREA AIR POLLUTION CONTROL AGENCY HAS CHANGED OVER THE YEARS. THIS PAPER EXPLORES THE EVOLVING ROLE OF THE ADVISORY COUNCIL FROM 1955 TO THE PRESENT. THE PAPER ALSO DESCRIBES THE WORKSHOP PROCESS FOR DEVELOPING REGULATIONS IN CALIFORNIA.

INTRODUCTION

In 1955, the State of California created regional air pollution control districts around local political boundaries and natural air shed basins. The San Francisco Bay Area Air Quality Management District (BAAQMD) covers nine counties having a population of roughly 6 million people. To direct its activities, the district established a Board of Directors composed of 20 elected officials, including county supervisors, city mayors, and other council members. The State also established a Citizens' Advisory Council to advise each Board and agency staff. The Bay Area District's 20-member Advisory Council was to be drawn from community interest groups including medical, transportation, industry, environmental conservation and labor. It was directed to address issues that affect the objectives of the air pollution control district.

One of the first tasks which the Advisory Council addressed was to develop and write regulations for the District. This action was particularly appropriate as the agency staff was small and somewhat inexperienced. A typical result was the first regulation to control odor sources where enforcement involved both subjective and/or analytical analysis of the odors. This ordinance, developed over fifteen years ago, has worked effectively and was recently identified as the most practical survey of odor regulations in the United States.

With the 1970 passage of the Clean Air Act in the United States, a new regulatory agency, the Environmental Protection Agency (EPA), having extraordinary powers, was created to control what was originally perceived to be an urban air pollution problem. While roughly 100 million automobiles and trucks were known to be major sources of gaseous emissions, stationary sources with tall stacks were the visible signs of man-made pollution, and received the most attention. Regulatory agencies at the federal, state and local levels all were charged with bringing these sources of pollution under control.

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With the zeal of evangelists charged with a mission to save the world, agency staffs rushed pell-mell into their jobs using such innovative concepts as "technology forcing" (requiring new controls to be created where none existed) and "command and control" (where the regulatory agency unilaterally decided on the appropriate pollution solution) regardless of the consequences to the regulated.

The 1970 U.S. federal legislation mandated that each of the 50 states was to meet air quality standards by 1982 for five criteria pollutants, particulate, sulfur dioxide, nitrogen oxides, carbon monoxide and ozone (hydrocarbons). Where needed, new and technology forcing regulations were to be utilized to enable the states to achieve the standards under State Implementation Plans (SIPs). Each state was also subsequently required to prepare programs to prevent significant deterioration (PSD) of air quality already better than the federal standards, particularly in rural areas. Still later, PSD regulations to prevent deterioration of air quality were also adopted for urban areas.

As the Clean Air Act required each state develop its own plan to meet the air quality standards set by the Federal Government, the state of California began to develop a number of "model" regulations both on an industry by industry basis and also on a pollutant by pollutant basis. This "model regulation" approach did not work too well because the state attempted to develop the regulations essentially through unilateral action without receiving real input from the affected organizations.

California, recognizing that the goals of a single purpose agency could be in conflict with other public and agency goals, such as those involving the rights of ownership, social and health issues and economic considerations, attempted to balance the goals of a regulatory agency and the needs of other segments of the economy through the public involvement process.

While the Advisory Council represented a broad spectrum of the public, other special interest groups such as trade associations, environmental groups, and public interest organizations also have had extensive involvement in regulatory actions, especially in lobbying efforts. This paper discusses some of the experiences in California, particularly in the Bay Area Air Quality Management District in establishing how the interests of the public and those of an agency have been addressed and changed over the years.

From 1956 until 1980, the Advisory Council began writing regulations using a scissors and paste method. That is, regulations that had been adopted in other areas, like, say, Florida or New York State were copied, modified slightly to give them a West Coast flavor and then proposed for the District. Where there were no regulations in existence to copy, the Council created new ones. In the late 1970's, the federal government also began the development of New Source Performance Standards and to identify proposed regulations on an industry by industry basis.

In 1981 the Advisory Council, after reviewing the accumulation of several years of sometimes confusing and often conflicting regulations, began to recodify and upgrade the regulations and reporting requirements. This task proved to be extremely time consuming and reactive rather than proactive. It did allow an opportunity for groups or industries affected by the regulations to identify inequities, however, and often resulted in substantial simplifications or clarifications to the regulations.

The 1977 Clean Air Act Amendments Act set forth a mechanism which eventually moved the development of rules from an Advisory Council to the District Staff. Section 172 of the Act required that States which failed to meet federal Ambient Air Quality Standards to develop attainment plans including a commitment to adopt rules which identified, as a minimum, Reasonably Available Control Technology (RACT). The Act also dictated an expeditious rulemaking effort for attainment of the air

quality standards. To assist the States, the Environmental Protection Agency (EPA) developed a series of Control Technique Guideline (CTG) rules which reflected RACT. Some twenty-three CTG rules were to be adopted by each state within one year after they were promulgated.

The 1980 air quality goals were substantially but incompletely met in the Bay Area. To achieve the air quality criteria standards by 1987 (a new target year goal), the existing District program had to be expanded. Major pollutant sources in the District were identified. The degree of pollutant reduction which would be required, as well as the control technology strategies available and the potential that new regulations would have to meet the federal standards was assessed. The staff prepared a District Plan and then reviewed its proposed strategy with the Advisory Council and the District Board of Directors for practicality and cost effectiveness.

WORKSHOPS

The District Plan required the staff develop a process which expedited the adoption of 23 proposed rules. This process for developing rules was centered around using workshops. Prior to having the workshop process the Advisory Council had assumed the responsibility for rule development because its diverse membership provided a sounding board for the appropriateness of new rules. With the requirement for more restrictive federal regulation requirements, however, the Advisory Council, with its volunteer membership organization, could not meet the mandated rule development and adoption schedule. When it became evident that the Advisory Council was not able to develop and review the great number of rules necessary to reach attainment, the District implemented the workshop process.

WORKSHOP PROCESS

The workshop process is essentially a communicative tool between the District Staff and those affected by the proposed rule.

The workshop process involved:

- 1) Development of a draft rule,
- 2) Explanation of the rule requirements to affected organizations, and
- 3) Public input and review to consider the impact of the proposed rules.

Background technical documents were typically provided by the federal regulatory agency, by independent private contractor/consultants, or by the district staff. The technical documents contained suggested control strategies, cost-effectiveness criteria, associated environmental benefits/detriments and suggested regulatory language. Based on this information, the district staff drafted a proposed rule. The proposed rule was first reviewed within the agency to ascertain if there were problems or ambiguities prior to discussions with those parties likely to be affected by the rule.

Following the preparation of a proposed rule, the difficult part of the workshop process took place involving the explanation of the rule's requirements. It was critical that all affected parties be given an opportunity to participate in the workshop. All known affected parties were contacted and invited to the workshop meetings. The District staff tried to present a uniform, consistent interpretation of the requirements of the rule including how compliance to the proposed rule would be demonstrated, testing procedures to be used and administrative requirements. At the workshop, the staff would explain the requirements of the rule to the affected industry. Questions regarding requirements were addressed immediately and if any of the requirements of the rule were found to be unclear, they were resolved prior to ending the workshop process.

The workshop process format required receiving input from affected persons and addressing the specific localized concerns. The regulatory agency tried to make rules non-burdensome without relaxing the effectiveness of the control requirements. This approach sometimes result in proposing a rule with an extended schedule for achieving compliance and in some instances, with limited exemptions for a hardship cases. The regulatory agency worked with industry and public special interest group concerns in order to have an effective rule. If an industry, for example, was unable to attain the required emission reductions in the stipulated time period, to ignore this issue prior to the promulgation of the rule was to hide one's head in the sand. An exchange of ideas as to how and to what degree of control could be achieved required a fine balancing of stringency and reasonableness.

The workshops resulted in an exchange of ideas on how to best control stationary source emissions. The District staff had to develop a good working knowledge of the affected area and to weed out possible mischaracterizations. The District staff had to be able to listen and have consideration for the issues that would arise from adopting the proposed rule. Openness to accepting new ideas and approaches was a prerequisite to developing effective new rules. The staff tried to minimize the hardships of a rule while not compromising on the degree of emission reductions required.

The workshop process has been quite successful in strengthening rules and in identifying possible problem areas. Problems that could occur as a result of the proposed rules were identified in the workshop process and resolved prior to promulgation. For example, the District staff was able to lower the general exemption of industries to a rule for emissions from coating miscellaneous metal parts from 1000 to 20 gallons per year. During the workshops for this rule it was evident that a general 1000 gallon per year exemption was too broad. Industries identified certain specific coating operations which could not comply. The coating rule was amended to exempt specific operations for which no complying coating was available while simultaneously increasing rule stringency by making more operations subject to the rule. This strengthening of the rule could not have been accomplished without the exchange of ideas at the workshop.

The success of the workshop process can be shown by Bay Area District workshop experience. In the ten years since the inception of the workshop process, the district has adopted or amended more than eighty new rules and regulations. Workshop processed rules have ultimately shown total emission reductions of more than 300 tons per year.

FUTURE PLANS

This success of the workshop process has enabled the Advisory Council to move from developing regulations to identifying areas of concern in the regulatory, political and public arena. With its multi-discipline membership, the citizens' advisory group has considered the need for more or for fewer regulations and the elimination of redundant or out of date regulations. It has recognized that other single purpose agencies such as water quality, transportation, planning commissions, solid waste, etc. are charged with addressing their specific areas. Their charges often overlap or may be in conflict with the charges of the Air Pollution Control agency. The Advisory Council tries to determine how the functions and interests of the air pollution regulatory agency can be integrated with those of other agencies.

One project in the Bay Area District involved the development of an integrated environmental management plan (IEMP) wherein in one region all land, air and waterborne emissions and their interrelationships were considered together to determine whether one emission problem is being solved at the expense of creating another.

Existing data have been gathered and a report written. The project developed a database of possible toxic contaminants, existing emissions and the pathways that these emissions may take. The assessments identify the pathways that go beyond considering only air emissions but ultimately involve social impacts, possible land use planning legislative authority, and financial needs.

Regulatory agencies are currently charged only with identifying those factors that will meet their regulatory responsibilities. By working together, the public advisory groups and the regulatory agencies develop strategies for achieving identified air quality goals and effective implementation plans consistent with the desires of society.

Advisory Councils, reflecting public concerns, address increasingly more complex issues such as regional planning, toxic air contaminants and indoor air pollution issues. In the latter case, solutions may require changes in materials of construction, building practices or ventilation modifications. Jurisdictional responsibility for the control of indoor air pollution may turn out to be more difficult than controlling simple criteria air pollutants.

In summary, the role of the Advisory Councils has changed over the years, but in working together with the regulatory agency staffs, the common goal of achieving a cleaner air environment is being addressed effectively.