

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-5000

Board of Directors Regular Meeting
March 21, 2012

APPROVED MINUTES

CALL TO ORDER – ROLL CALL

Chairperson John Gioia called the meeting to order at 9:57 a.m.

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; Secretary Nate Miley; and Directors John Avalos, Tom Bates, Susan Garner, Susan Gorin, Carole Groom, Scott Haggerty, Jennifer Hosterman, David E. Hudson, Carol L. Klatt, Liz Kniss, Eric Mar, Katie Rice, Mark Ross, Jim Spering and Brad Wagenknecht.

Absent: Directors Mary Piepho, Ken Yeager and Shirlee Zane.

PLEDGE OF ALLEGIANCE

Director Wagenknecht led the Pledge of Allegiance.

PUBLIC COMMENT ON NON-AGENDA MATTERS

Carl Friberg addressed the Board regarding the seeming lack of Air District involvement in the high speed rail project.

CONSENT CALENDAR (Items 1 – 5)

- 1. Minutes of the Board of Directors Regular Meeting of March 7, 2012;**
- 2. Board Communications Received from March 7, 2012, through March 20, 2012;**
- 3. Consideration of Authorization for Execution of Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures Section 4.3 Contract Limitations;**
- 4. Referral of Proposed Budget for Fiscal Year Ending (FYE) 2013 to the Budget and Finance Committee; and**
- 5. Consider Reclassifying Positions.**

Board Comments: None.

Public Comments: None.

Board Action: Director Wagenknecht made a motion to approve Consent Calendar Items 1, 2, 3, 4 and 5; Director Spring seconded; unanimously approved without objection.

COMMITTEE REPORTS AND RECOMMENDATIONS

6. Report of the Public Outreach Committee Meeting of March 15, 2012

Chairperson M. Ross

The Committee met on Thursday, March 15, 2012, and upon establishing a quorum, approved the minutes of February 16, 2012.

The Committee reviewed the staff report regarding Contract Award for Spare the Air Campaigns, including background information on the organization of past contracting structure, organizational changes proposed to increase the efficiency of the consultant's collaborative efforts, a detail of the Air District's request for proposal process, and staff recommendations. The Committee recommended Board of Directors approval of staff recommendations. The Committee moved to approve Spare the Air contract award to O'Rorke Inc. with subcontractors, True North Research, Community Focus, M-Line Creative Strategies, Synapse Strategies and Interethnica Marketing Solutions.

The Committee received an Update on the Plug-In Electric Vehicle Website, including background information on the plug-in electric vehicle program, an overview of the Air District's new website dedicated to this program, and information regarding the Plug-In Electric Vehicle website launch.

The Committee received the Smoking Vehicle Campaign Update, including background information on the program, an analysis of the aim and approach of the program, a preview of a new campaign to further outreach efforts to target audiences, and a summary of the next steps.

The next meeting of the Committee is Thursday, May 31, 2012, at 9:30 a.m.

Board Comments: None.

Public Comments: None.

Board Action: Director Ross made a motion to approve the report and recommendation of the Public Outreach Committee; Director Garner seconded; carried unanimously without opposition.

7. Report of the Executive Committee Meeting of March 19, 2012

Chairperson J. Gioia

NOTED PRESENT: Director Kniss was noted present at 10:04 a.m.

The Committee met on Monday, March 19, 2012, and approved the minutes of February 15, 2012.

The Committee received the Quarterly Report of the Hearing Board: October through December 2011, including a detail summary reflecting three hearings held, eight orders issued, approximately \$15,000 received in fees, and four matters withdrawn and/or dismissed.

The Committee received an Update on the Production System Replacement of Databank and IRIS by Jaime Williams, Information Systems Manager, and staff from the Engineering and Compliance &

Enforcement Divisions. The update included an overview of the District's legacy systems; background on the development process; a status update after the first phase, regarding gasoline dispensing facilities, which went live earlier this month; a project plan for its continued roll out in 2012; and live demonstrations by both the permitting and inspection teams. Staff expects to have approximately 70% of permitted facilities live in the new system by the end of the 2012 calendar year. The Committee expressed its support in moving the production system solution to other air quality management districts.

The next meeting of the Committee is Monday, April 16, 2012, at 9:30 a.m.

Chairperson Gioia noted the re-appointment of Director Garner to the Board of Directors of the Air District by the Cities Association of Santa Clara County.

Chairperson Gioia introduced staff's presentation New BAAQMD Permitting and Compliance Systems Production System Project Update.

Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO), made introductory comments. Jeffrey McKay, Deputy APCO, introduced Jaime Williams, Interim Director of Information Systems Services, who gave the staff presentation New BAAQMD Permitting and Compliance Systems Production System Project Update, including an overview of the District's legacy systems; background on the development process; a status update after the first phase, regarding gasoline dispensing facilities, which went live earlier this month; and a project plan for its continued roll out in 2012.

NOTED PRESENT: Director Mar was noted present at 10:11 a.m.

Mr. Williams introduced Pamela Leong, Senior Air Quality Engineer, and Mark Tang, Air Quality Technician, both of Engineering, who gave a live demonstration of the permit submission, review and approval process using the Production System.

Mr. Williams introduced Magen Holloway, Supervising Air Quality Specialist, and Chris Berglund, Senior Air Quality Inspector, both of Compliance and Enforcement, who gave a live demonstration of the inspector-side use of the Production System.

Board Comments: None.

Public Comments: None.

Board Action: Director Gioia made a motion to approve the report of the Executive Committee; Director Ross seconded; carried unanimously without opposition.

8. Report of the Stationary Source Committee Meeting of March 19, 2012
Chairperson J. Avalos

The Committee met on Monday, March 19, 2012, and approved the minutes of January 9, 2012.

The Committee received a report on Proposed Amendments to Regulation 9, Rule 10: NO_x and CO from Boilers, Steam Generators and Process Heaters in Petroleum Refineries, including regulatory background; nitrogen oxide limits; requirements before and after the adoption of the 1994 regulation; information regarding the development of an alternative nitrogen oxide limit and the rule development process; and a look at the next steps.

The Committee received an Update on the Lehigh Southwest Cement Plant, including background information; Title V permit status; a look at the amended U.S. Environmental Protection Agency Air Toxics Rule and other upcoming regulatory requirements; new and upcoming emission controls and monitors; an updated air toxics emissions inventory and health risk assessment; the history of compliance and air monitoring results; a look at the amendment of the quarry reclamation plan; and the next steps.

The next meeting of the Committee is May 21, 2012, tentatively at City Hall, City of Cupertino, at 10:30 a.m., followed immediately thereafter by a tentative tour of the Lehigh Southwest Cement Plant.

Board Comments: None.

Public Comments: None.

Board Action: Director Avalos made a motion to approve the report of the Stationary Source Committee; Director Spering seconded; carried unanimously without opposition.

9. Report of the Legislative Committee Meeting of March 21, 2012
Chairperson T. Bates

The Committee met on Wednesday, March 21, 2012, and approved the minutes of January 30, 2012.

The Committee discussed a number of new bills, and is recommending positions on some of them to the Board of Directors. The recommendations are:

Oppose AB 1537 Cook, AB 1613 Donnelly, AB 1721 Donnelly, AB 1922 Lara, AB 2024 Mendoza, and AB 2091 Berryhill

Watch AB 2173 Skinner.

Support AB 2234 Hill.

Oppose AB 2605 Cedillo, unless amended.

Support AB 2644 Butler.

Oppose SB 1127 Vargas, SB 1224 La Malfa, SB 1230 Runner, and SB 1545 DeSaulnier.

Additionally the Committee recommends the Board of Directors oppose efforts to increase vehicles, including kit cars, exempted from smog check.

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

Board Comments:

Director Haggerty explained his absence at the Legislative Committee meeting, noting the difficulty of attending same as scheduled, and expressed his dismay regarding the format of the report in so much as neither the explanations for the recommended positions nor the positions taken by other multi-county agencies in the Bay Area are provided.

Chairperson Gioia requested that the full set of documents provided to the Legislative Committee be provided to the Board of Directors in the future and suggested that the timing of the Committee immediately prior to the Board meeting was an unfortunate exception to the norm that will be avoided whenever possible.

Director Bates noted that there was a thorough and healthy debate among the members of the Legislative Committee.

Director Hosterman said that some Directors have long commutes to attend Air District meetings so she appreciates being able to attend more than one meeting when present.

Director Haggerty recalled that the Legislative Committee meetings used to be held immediately after Board of Directors meetings to which Chairperson Gioia responded that a schedule of that sort is ideal but for when timing is critical.

Public Comments: None.

Board Action: Director Bates made a motion to approve the report and recommendations of the Legislative Committee; Director Hosterman seconded; carried unanimously with Director Haggerty abstaining.

PUBLIC HEARING(S)

10. Public Hearing to consider adoption of Regulation 8, Rule 53: Vacuum Truck Operations, amendments to Regulation 2, Rule 1: Permits, General Requirements and adoption of a CEQA Negative Declaration

Chairperson Gioia made introductory comments and asked when the second of two public hearings is scheduled to occur. Mr. Broadbent suggested the second public hearing on this topic will likely occur at the Board of Directors meeting on April 18, 2012.

William Saltz, Air Quality Specialist, gave the staff presentation Proposed Amendments to Regulation 8, Rule 53 Vacuum Truck Operations and Proposed Amendments to Regulation 2, Rule 2: General Requirements, including the uses of vacuum trucks, their functioning parts and photo examples of

vacuum trucks in use; a detail of the regulatory proposal, regulated materials, proposed emission limits, various requirements; an emission reductions and cost comparison; a detail of the rule development process; and recommendations.

Board Comments:

Director Haggerty indicated that he had understood vacuum trucks to be the equipment used to empty portable toilets and asked if the proposed regulation includes this equipment or, if not, if the Air District intends to regulate them in the future. Mr. Broadbent admitted that although the equipment mentioned does deal with a source of emissions, this regulation does not cover them and that staff will look into it and return to the Board with an update.

Director Ross asked how the external pumps reduce the volatilization of the emissions. Mr. Saltz responded that they pump at such a slow rate that no mass emissions come out of the vacuum truck barrel. Director Ross asked if the pumps themselves are emissions sources to which Mr. Saltz responded in the negative. Director Ross asked if the longer operation time is part of the cost to which Mr. Saltz replied in the affirmative. Director Ross asked who would be monitoring compliance to which Mr. Saltz responded that it will vary on a case-to-case basis between staff of the operator and the Air District. Director Ross asked if the cost of monitoring was factored into the cost projection to which Mr. Saltz replied in the affirmative.

Director Bates inquired about the general scope of the proposed regulation. Mr. Saltz responded that there are five different types of facilities, totaling approximately 40 actual facilities in the Bay Area, and clarified that vacuum trucks used for storm debris clean up and the like are not significant sources of emissions and are therefore not included in the proposed regulation.

Director Spring, in reference to the letter from Guy Bjerke, Manager, Bay Area Region & State Safety Issues, Western States Petroleum Association (WSPA), dated March 9, 2012, inquired about the lack of an exception for small quantities of emissions. Mr. Saltz responded that the lack of an exception is because material often builds up in the barrel despite individual pick-ups being small quantities. Director Spring asked about WSPA's claims that the regulation will impose unnecessarily high operating costs to which Mr. Saltz replied that the use of the top of the line monitoring equipment could prove prohibitively expensive for some operations but they aren't necessary because much less expensive equipment, that requires less upkeep, may be utilized by operators. Director Spring asked if staff had mitigated or addressed all of WSPA's concerns to which Mr. Saltz replied in the affirmative.

Director Garner asked how the Air District currently regulates vacuum trucks used in conjunction with gas dispensing facilities and remediation facilities. Mr. Saltz responded that there are different regulations already in place which provide controls for uses relative to gas dispensing facilities and remediation activities and, as a result, the proposed regulation would not apply in either case.

Public Comments:

Mr. Bjerke addressed the Board, partially in support and partially neutral, explaining that the initial regulatory proposal was to cover all vacuum trucks and that staff have narrowed the focus to those

sources deemed high emitters. Mr. Bjerke explained that the WSPA continues to harbor a concern regarding the staffing cost associated with complying with the monitoring requirements, particularly for small draws, noting that discussions with staff continue.

Melissa Lenhart, Vapor Control Business Unit Manager, PSC Environmental Services, addressed the Board neutrally, noting the exemption for the positive displacement pump and asked for clarification from staff.

Mr. Broadbent indicated that the matter would be continued to the next meeting of the Board of Directors, at which time staff will provide clarification to address the concerns expressed today.

Board action: None; informational only.

PRESENTATION(S)

11. Overview of the 2011/2012 Wood Smoke Reduction Program

Mr. Broadbent introduced Eric Stevenson, Director of Technical Services, who gave the initial staff presentation Overview of the 2011-12 Winter Spare the Air Season, including the potential health impacts, reduction benefits, meteorology and progress, forecasting accuracy and localized impacts.

Chairperson Gioia and Mr. Stevenson discussed the constitution of the categories “On-road vehicles” and “Off-road machinery” as referred to in slide 3, PM_{2.5} Reduction Benefits.

Barbara Coler, Air Quality Program Manager of Compliance & Enforcement, gave the continued staff presentation, including a review of the wood smoke enforcement statistics and a number of enforcement highlights, a look at West Marin County’s San Geronimo Valley, and shared a proposed model ordinance as a foundation for local partnerships.

Chairperson Gioia asked how the violation rates are measured. Ms. Coler replied that the number of no-burn days was counted and the result was divided into the number of notices of violation. Ms. Coler then provided some final figures from various regions.

Lisa Fasano, Director of Communications & Outreach, gave the continued staff presentation, including a summary of outreach media efforts, an example of public service messaging, a geographical analysis of public engagement events, and statistics regarding outreach results.

Ms. Fasano noted, regarding slide 12, the recent op-ed piece in the San Jose Mercury-News, authored by Mr. Broadbent, and the supportive responses that have been received by the Air District.

Mr. Stevenson concluded the staff presentation with a look to enforcement partnerships going forward and future policy considerations, noting that furthering the reach of the Air District and better enabling it to address localized concerns are the primary factors behind the push for local government partnerships. Mr. Stevenson said that if any future policy considerations are taken up, the changes would require an opening of the rule and thus would not likely take effect until Spare the Air Season in 2013-14.

Chairperson Gioia asked, regarding slide 15, Enforcement Going Forward, if the warning letter would be eliminated entirely for first-time violations and replaced with the imposition of either a fine or the option to attend wood smoke awareness school, to which Mr. Stevenson replied in the affirmative. Chairperson Gioia said that some people have reported a lack of awareness that a no-burn day was imposed and then expressed his concern as to what the legal issues may be regarding penalizing someone who is unaware of the rule and, if challenged in a court of law, what the consequences for the program may be. Mr. Broadbent responded that this very issue was contemplated by staff, suggested that some of the public comments today will be voiced in support of enhancing the penalties, and reported that increased outreach efforts are planned. Chairperson Gioia suggested the Air District needs to explore how to increase enforcement efforts while at the same time ensuring it is being applied in an equitable manner and asked Brian Bunger, District Counsel, for his input. Mr. Bunger explained that concerns of this nature were the genesis of the warning letters and that challenges may arise in the absence of warning letters but the outcome is unknown. Chairperson Gioia agreed, noting that not all constituents are aware of the no-burn days as the Air District relies on various forms of media to disseminate the information. Mr. Broadbent suggested the option to attend wood smoke awareness school may serve in a fairly benign way to both defuse the challenges and increase public awareness. Chairperson Gioia asked what the wood smoke awareness school would entail and Mr. Broadbent and Mr. Stevenson provided an overview of the same.

Mr. Broadbent added that the Air District is working to further develop coordination efforts with neighboring air districts in an effort to engage the issue of transport emissions, most notably from the Central Valley.

Board Comments:

Chairperson Gioia asked, regarding Wood Smoke Model Ordinance Adoption by Bay Area Cities and Counties included in the Supplemental Materials, how the cities with mandatory burn prohibitions at the local level (4M) deal with enforcement. Ms. Coler responded that staff has not discovered any enforcement of 4M at the local level. Chairperson Gioia asked, in follow up, about the meaning of voluntary burn prohibitions at the local level (4V). Ms. Coler indicated that the information was not immediately available to her and she would provide it in follow up.

Chairperson Gioia stated that elimination of the warning letter would represent a significant change in how the Air District does business, noting the social justice/equity aspect of the change and asked for Board comments. Director Ross responded that the program appears to be functional and that he will discuss his concerns with staff, including how first violations are handled.

Director Hudson asked, regarding slide 3, PM_{2.5} Reduction Benefits, whether secondhand smoke is part of the "Other 3%" to which Mr. Stevenson responded in the affirmative. Director Hudson suggested that secondhand smoke is a publicly accepted health risk that the Air District would be wise to highlight and correlate more closely with these efforts.

Director Garner expressed her gratitude for the region specific enforcement information provided by staff, shared her concern about the economic hardship that would be imposed upon constituents that aren't familiar with the regulations and proposed that the warning letter continue but penalties thereafter be increased. Chairperson Gioia stated that this is not a matter of individuals who lack

regulatory information and claim immunity as a result, but those who lack the means to obtain the information on a daily basis. Mr. Broadbent noted that the Air District is the only air district utilizing a warning letter. Chairperson Gioia asked for a list of large air districts with programs that lack a warning letter. Mr. Broadbent said San Joaquin Valley, Sacramento Valley and South Coast and that a comprehensive list would be provided.

Director Hosterman shared in Chairperson Gioia's concern, relayed a personal story regarding her effort to seek out the alert, and asked if there is information specific to her region that details the correlation between how many trips there are to emergency rooms for respiratory problems and the number of Spare the Air Days. Mr. Broadbent said he would provide that information.

Director Rice expressed her gratitude to staff for the work in the San Leandro Valley and Marin County and for their efforts to tailor the Air District response to the unique situation found there; suggested that some compliance issues there may stem from citizen trepidation about exposing non-permitted activities in the course of working with government entities; proposed the concept of allowing fines to be applied towards the cost of retrofitting; suggested repeat offenders are the lingering problem category; and urged staff to continue work on the already successful education campaign before increasing penalties for non-compliance as the goal is compliance, not penalization.

Director Kalra stated that he agrees with taking a more aggressive approach and with most of what has been said by the Board of Directors; suggested that staff contact those air districts that do not issue warning letters to learn from them; and encouraged the Air District remain focused on the goal of improving air quality.

Public Comments:

Mr. Friberg again addressed the Board, regarding his public comment at the Board of Directors meeting on February 1, 2012, where he requested a financial hardship exemption from the wood smoke ban. Mr. Broadbent clarified the history and nature of the request, suggesting that implementing a policy of this sort will require significant work and discussion and is something that staff has a degree of trepidation about. Director Bates suggested staff look to utilities for examples. Mr. Broadbent said that staff will do the work over the next several months so addressing it before the next Spare the Air season will be difficult, noting the important aspects, both practically and in terms of policy, that the Board will need to grapple with in considering a policy change of this nature.

Director Gorin thanked staff for their presentation and asked if they would forward similar material to the Directors so they each may pass it along to staff in their respective regions.

Director Hosterman asked if a dysfunctional heater would substantiate an exemption. Mr. Bunger responded that it would for one season.

Beverly Wood, Families for Clean Air, addressed the Board regarding the disparity shown between the numbers of first and second violations, suggesting the difference to be evidence of some impropriety between the time of the first and second notices, and asked that the Air District do whatever is necessary to increase its enforcement in this regard. Ms. Wood asked the Board to consider the health-impact study provided regarding the cardiovascular and cognitive impacts of air quality.

Tracy Gant, Families for Clean Air, commended the concept of correlating secondhand smoke with the Air District's efforts in this regard and noted that while enforcement is inarguably difficult, contending with the consequences of non-enforcement is much more difficult to address. Ms. Gant provided calculations of enforcement probability and urged an increase in enforcement. Chairperson Gioia clarified that his earlier comments were not in support of decreased enforcement, only balanced and fair enforcement that takes into account the financial limitations and the challenges that poses in terms of being informed.

Ina Gottlieb, Families for Clean Air, and on behalf of Patti Wesselberg of the same, expressed her support of increased enforcement measures generally; suggested the refund of already paid fines after attending wood smoke awareness school in emulation of the process in place at the Department of Motor Vehicles; suggested that the issues of financial hardship and community health must be balanced appropriately, keeping in mind that there are heating assistance programs available from utility companies and governing bodies; and noted the winter program is mandatory, as opposed to the voluntary summer program, and this difference should inform the Air District's approach to enforcement.

Chairperson Gioia expressed his desire to get input from the Board of Directors regarding the proposal to eliminate the warning letter and the outstanding policy question of the proper burden of knowledge. Ms. Fasano suggested that the key message is, "check before you burn," and a significant portion of the population knows this to be the case, concluding that the burden is on residents of the Bay Area just as it is the responsibility of motor vehicle operators to pay attention to the speed limit. Ms. Fasano noted that over 73% of Bay Area residents are aware of the program and, therefore by extension, their responsibility to check before burning. Mr. Broadbent thanked the Board of Directors for their input, noting that it will inform staff work going forward, and suggested the matter will likely come back to the Executive and Public Outreach Committees.

Director Garner highlighted the disparity between the number of complaints received and warning letters issued in her region and suggested that receipt of a complaint automatically trigger a notice letter. Mr. Broadbent indicated a very complicated set of equations is involved in producing the final statistics provided and that further discussion in a committee setting would be productive. Director Garner requested that it be agendized.

Board action: None; informational only.

CLOSED SESSION

The Board of Directors adjourned to Closed Session at 12:21 p.m.

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

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

California Building Industry Association v. Bay Area AQMD, Alameda County Superior Court, Case No. RG-10548693

OPEN SESSION

The Board of Directors resumed Open Session at 12:31 p.m. with no reportable action from the Closed Session.

PUBLIC COMMENT ON NON-AGENDA MATTERS

None.

BOARD MEMBERS' COMMENTS

None

OTHER BUSINESS

13. **Report of the Executive Officer/APCO:** None.
14. **Chairperson's Report:** None.
15. **Time and Place of Next Meeting:** Wednesday, April 4, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, CA 94109 at 9:45 a.m.
16. **Adjournment:** The Board of Directors meeting adjourned at 12:32 p.m.

151 Sean Gallagher

Sean Gallagher
Clerk of the Boards