

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

Board of Directors Regular Meeting  
September 19, 2012

## **APPROVED MINUTES**

### **CALL TO ORDER**

Chairperson John Gioia called the meeting to order at 9:50 a.m.

### **ROLL CALL**

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; 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, Brad Wagenknecht, Ken Yeager and Shirlee Zane.

Absent: Secretary Nate Miley; and Directors Edwin M. Lee, Mary Piepho and Jim Spering.

### **PLEDGE OF ALLEGIANCE**

Chairperson Gioia led the Pledge of Allegiance.

### **OPENING COMMENTS**

None.

### **PUBLIC COMMENT ON NON-AGENDA MATTERS**

None.

### **CONSENT CALENDAR (ITEMS 1 – 7)**

- 1. Minutes of the Board of Directors Special Meeting of July 30, 2012;**
- 2. Board Communications Received from July 30, 2012, through September 18, 2012;**
- 3. Air District Personnel on Out-of-State Business Travel;**
- 4. Quarterly Report of Executive Office and Division Activities;**
- 5. Approval of Contract for Janitorial Services;**

6. **Consider Adopting Resolution No. 2012-05, Delegating Administrative Authority to the Executive Officer/Air Pollution Control Officer (APCO) on Matters Related to the California State Association of Counties Excess Insurance Authority; and**
7. **Set Public Hearing for November 7, 2012, to Consider Adoption of Proposed Air District Regulation 2: Permits, Rule 1: General Requirements, Rule 2: New Source Review, Rule 4: Emissions Banking, and Rule 6: Major Facility Review and Adoption of an Environmental Impact Report Pursuant to the California Environmental Quality Act.**

Board Comments: None.

Public Comments: None.

Board Action: Director Haggerty made a motion to approve Consent Calendar Items 1, 2, 3, 4, 5, 6 and 7; Director Hudson seconded; the motion was unanimously approved without objection.

### **COMMITTEE REPORTS AND RECOMMENDATIONS**

8. **Report of the Personnel Committee Meeting of July 23, 2012**  
Chairperson B. Wagenknecht

The Committee met on Monday, July 23, 2012, and reviewed, discussed and considered adjustments to the Deputy Air Pollution Control Officer (DAPCO) benefits based on salary reviews conducted by the Executive Officer/Air Pollution Control Officer (APCO). The Committee was precluded, under the Brown Act, from making a recommendation for approval on this item at the Board of Directors Special Meetings on July 30, 2012, or September 10, 2012. The Committee recommends the Board of Directors approve adjustments to the DAPCO benefits to annually provide an additional week of Management Leave.

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

Board Action: Director Wagenknecht made a motion to approve the report and recommendation of the Personnel Committee; Director Hosterman seconded.

Public Comments:

Will Saltz, BAAQMD Employees' Association (EA), addressed the Board in opposition to the proposed adjustment.

Board Comments:

Chairperson Gioia asked how many employees the adjustment applies to, what their current management leave is, and the estimated total cost of the benefit. Jack Broadbent, Executive Officer/APCO, responded that the proposal was brought before the Personnel Committee in late July and would affect two employees, the DAPCOs, and is the latest of a number of proposals over the years based on a concern that the DAPCO salaries fall behind those in similar positions in similar

agencies. Mr. Broadbent recollected that the current management leave is 64 hours each and clarified that only an increase in management leave is recommended today, no increases in salary or retirement. Chairperson Gioia clarified that the proposal would result in an additional 40 hours leave per year for each employee and asked the total cost. Mr. Broadbent said the total cost is approximately \$7,300 and that it is his responsibility to ensure the Board periodically reviews salaries and makes necessary adjustments and believes this proposal falls considerably short of amending an increasingly disparate situation but is in keeping with the comments received from the Personnel Committee. Mr. Broadbent noted that reviews and adjustments of the salaries of various positions have been conducted during his years here and suggested the EA can affirm that these reviews have included represented employees.

NOTED PRESENT: Director Yeager was noted present at 10:01 a.m.

Director Wagenknecht said the matter has been brought to and deferred by the Personnel Committee a number of times and the current solution was approved by the same in July.

Director Avalos asked if the leaves are traditionally used each year and what are they used for. Mr. Broadbent said it is an additional benefit provided to management whose use depends on the individual, a portion of which can be cashed out. Director Avalos likened it to a floating holiday. Mr. Broadbent agreed, adding that it expires at the end of each year. Director Avalos asked if they are taken year after year. Mr. Broadbent said it depends on the individual as a number have let their leave expire.

Chairperson Gioia asked how much is eligible for cash out. Mr. Broadbent said that what is not used can be cashed out.

Director Haggerty said the two affected individuals work very hard and he has a tremendous amount of respect for them but asked how much vacation time each of them currently enjoy. Mr. Bunger responded that it varies by tenure. Director Haggerty asked if we can be specific since there are only two employees. Mr. Bunger said he does not know how long each has been employed. Director Haggerty asked if it safe to assume they are at four or five weeks per year. Chairperson Gioia asked if it would be useful to have the full range of benefits and leave. Director Haggerty said yes and to have comparisons as well, noting that staff at Alameda County have gone without a salary adjustment for four years and asked if he recalled correctly that EA-represented staff recently received an increase. Mr. Broadbent said yes, each employee is beginning to pay a portion of their retirement, stretched over a three-year period, which was balanced by a cost of living adjustment of 2% per year.

NOTED PRESENT: Director Mar was noted present at 10:06 a.m. and Directors Garner and Kniss was noted present at 10:07 a.m.

Chairperson Gioia suggested the matter go back to the Personnel Committee with a request for staff to provide salary information and a total list of benefits in order to provide full context. Director Rice recalled the Personnel Committee's work on this matter, which included review of a great number of facts and figures, followed by a lengthy discussion, and suggested that today's recommendation represents a compromise. Director Rice added that although additional information is good, today's proposal only brings the affected employees part-way to a commensurate level of pay with their peers,

that they had not enjoyed a raise for several years and today's proposal seems fair in regards to the EA, and doubted the value of sending additional information to the Personnel Committee as opposed to the full Board.

Chairperson Gioia suggested that the information instead be provided to the Board.

Director Bates suggested the matter be continued to the next Board meeting.

Director Hudson said the Personnel Committee had the relevant information and some members thought it best to begin incremental increases now while some disagreed, so today's recommendation is the result of that compromise. Director Hudson agreed with continuing the matter for further Board consideration if that is the Board's preference.

Director Kalra said he would agree to continue the matter or approve the adjustment today, noting that this is the very reason for committees, so they can do the vetting, but if there are questions then members have every right to have them answered first and recalled that the terms of the recent EA agreement were a draw for staff and urged a full review of salaries and benefits on an agency-wide basis as the economic forecast begins to brighten.

Board Action: The motion was postponed to the next meeting by Chairperson Gioia.

## **9. Report of the Stationary Source Committee Meeting of September 17, 2012**

Chairperson J. Avalos

The Committee met on Monday, September 17, 2012, and approved the minutes of March 19, 2012.

The Committee received an update on Proposed Regulation 9, Rule 13: Nitrogen Oxides, Particulate Matter and Toxic Air Contaminants from Portland Cement Manufacturing, including background on the cement manufacturing industry and recent regulatory developments, a description of the elements of the proposed rule, a summary of estimated emission reductions and costs, and review of the rule-making and public participation processes. Adoption of this proposed rule is included as item number 11 for consideration by the Board of Directors at today's meeting.

The Committee received a status report on the Hunters View Redevelopment Project, including background, an overview of naturally occurring asbestos regulatory requirements, a summary of inspection and enforcement efforts by the Air District, work done with residents and other involved agencies, and lastly, the next steps. Members of the Hunters View community attended the meeting and addressed the Committee, expressing their concerns and requests for help with dust and health-related issues. The Committee directed staff to explore further dust mitigation at the site and to ensure that the contact information for the involved agencies is made available to interested residents.

The Committee received a report on Proposed Amendments to Regulation 2, Rules 1, 2, 4 and 6: New Source Review and Title V Permitting Programs, including a summary of New Source Review and Title V Permitting Programs, recent regulatory developments, proposed amendments, the public participation process and significant issues raised in public comments, and next steps.

The next meeting of the Committee is Monday, November 19, 2012, at 10:30 a.m.

Board Comments: None.

Public Comments: None.

Board Action: Director Avalos made a motion to approve the report of the Stationary Source Committee; Director Garner seconded; the motion was unanimously approved without objection.

## **PUBLIC HEARING**

### **10. Public Hearing to Consider Adoption of Proposed Regulation 9: Inorganic Gaseous Pollutants, Rule 13: Nitrogen Oxides, Particulate Matter and Toxic Air Contaminants from Portland Cement Manufacturing; and Adoption of a Negative Declaration Pursuant to the California Environmental Quality Act**

Mr. Broadbent made introductory remarks regarding the subject matter and introduced Robert Cave, Senior Air Quality Specialist, Planning, Rules & Research, who gave the staff presentation Proposed Regulation 9, Rule 13: Nitrogen Oxides, Particulate Matter, and Toxic Air Contaminants from Portland Cement Manufacturing, including background on the cement manufacturing industry and recent regulatory developments, a description of the elements of the proposed rule, a summary of estimated emission reductions and costs, a review of the rule-making and public participation processes, and staff recommendations.

Director Bates asked, regarding slide 5, Comparison of Standards, which standard applies to the Lehigh facility. Mr. Cave said the Existing Facilities standard. Chairperson Gioia asked what happens if there are modifications in the future. Mr. Cave said that if they have modifications in the future that exceed half the cost of a new facility then it would be deemed a modified facility and be subject to the stricter standards.

Director Zane said she would like to hear more about the health risk assessment and asked why the Air District is applying the Existing Facilities standards when those for New/Modified Facilities are stricter. Mr. Cave responded that the standards for New/Modified Facilities are for new, ground-up construction or those undergoing a significant modification and the costs of applying the mitigation measures in these instances is much lower than for existing facilities and if today's proposal were not approved the Federal Standard would apply. The Board and staff discussed the columns in slide 5, Comparison of Standards. Director Zane said she understood but that she sees her responsibility as making sure these facilities pollute less and it remains unclear why the Air District is granting them the Existing Facilities standards rather than those for New/Modified Facilities. Mr. Cave clarified that today's proposal is represented by the column entitled District Proposed Standard. Chairperson Gioia clarified that the Air District standard is stricter than the federal standards for existing facilities. Director Zane asked if the Air District is letting Lehigh off the hook. Jean Roggenkamp, Deputy APCO, said that Lehigh is an Existing Facility that is not being designed but exists as we speak, so compliance will require making changes to the facility that is already there. Chairperson Gioia clarified that the proposed Air District standard meets or improves upon the federal standard. Director

Zane asked when it was built. Mr. Cave said it goes back to the 1930s and the most recent modifications were in the 1980s. Director Zane asked if there have been any modifications since the 1980s. Mr. Bunger said the basic structures of the existing kilns were built in the 1980s. Director Zane asked whether the Air District existed in the 1980s. Chairperson Gioia responded that the Air District as an institution has existed much longer than that.

Mr. Cave continued the presentation.

Director Zane asked, regarding slide 7, Control Costs, for the meaning of “dollars per ton of nitrous oxides (NO<sub>x</sub>) reduced.” Mr. Cave said that is industry’s cost for controlling a ton of NO<sub>x</sub>, in this case \$1,800. Director Zane asked the annual impact of the cost. Mr. Cave said it far exceeds the normally acceptable 10% of profits but he would have to look in the staff report to provide the exact figure and noted it is a significant impact to the facility. Director Zane cited the \$1.7 million annual compliance cost and asked what the \$1,800 per ton equates to annually in terms of offsetting that compliance cost. Mr. Cave said the numbers represent two different ways of measuring cost, with the dollars per ton figure representing the cost of all of the control equipment divided by the tons of emissions that are reduced, and the socio-economic impact figure is found by comparing costs against profitability of the facility, and that latter figure is the one that is well over 10%.

Director Hosterman noted, regarding slide 6, Emissions and Emissions Reductions, there does not appear to be a significant improvement and asked if staff have a forecast in regards to changes in concern about public health relative to the anticipated reduction in emissions. Mr. Cave said that would be addressed later in the presentation and noted that the middle column is current emissions and the right column is the amount of emissions reduction, not the anticipated emissions after reduction. Director Hosterman said she understood but cited the particulate matter (PM) reduction as de minimis. Mr. Cave said PM emissions at the Lehigh facility are already significantly controlled and the control equipment in place is of the highest level.

Director Rice asked for the meaning of “fugitive dust.” Mr. Cave responded that it is dust coming from equipment that is not a recognized emission point, such as from vehicle travel or stock piling of materials. Director Rice asked if staff’s presentation will address the measures put in place to address fugitive dust. Mr. Cave said it was not covered extensively but the mitigation methods were drawn from the Title V permit and elements of that plan were inserted into the rule to increase the enforceability of those provisions. Director Rice asked if fugitive dust is captured in the PM figures. Mr. Cave responded that it is not as it is very difficult to quantify fugitive dust emissions, so all of the stated reductions are only in reference to the main processing kiln, clinker cooler and preheating tower. Director Rice asked if the rule addresses the movement of equipment that will generate fugitive dust. Mr. Cave said it does and it sets a stricter standard of a 10% opacity limit from those operations, down from 20%, a change modeled after a facility in the South Coast Air Quality Management District that was dealing with hexavalent chromium issues.

Director Garner clarified, regarding slide 5, Comparison of Standards, that the federal standard for mercury at New/Modified Facilities is roughly half the amount of emissions allowed for an Existing Facility. Mr. Cave said yes, but the federal standard for Existing Facilities, 55 pounds per million tons of clinker, is a significant reduction from what Lehigh was emitting previously. Mr. Cave added that 21 pounds per million tons of clinker for a New/Modified Facility is extremely low, measuring that

standard with a continuous emissions monitor may pose technical problems, and it is an unattainable level unless a facility is located on a source of limestone with low enough mercury content to meet the standard. Director Garner asked if staff is saying that the New/Modified Facilities standard is unachievable by Lehigh. Mr. Cave speculated that it probably is not achievable, at least not without even more significant cost, but it has not been explored by staff. Director Garner said the Lehigh facility is located in a very densely populated area and mercury is a constituent of concern which accumulates in the body, and suggested the Air District needs to explore whether the lower standard is a level that can be achieved and at what cost, and suggested the U.S. Environmental Protection Agency (EPA) would be aware of and sensitive to measurement issues before setting standards. Mr. Cave said the siting of a new facility makes all the difference. Mr. Broadbent said this is a very important issue and the Air District has heard inquiries as to why it is not applying this more stringent standard, and having reviewed it at length, staff believe today's proposal is what is practical, cost effective, and possible in this circumstance and suggested the Air District should continue to look at this matter but it is important for the Board to lock in the improved standards today so that significant reductions are put in place and there is no reason not to revisit the matter later for future modifications. Director Garner asked what the timeframe would be on the review. Mr. Broadbent said an in-depth review would be reported to the Stationary Source Committee in the first quarter of calendar year 2013.

Director Kalra noted that staff suggested the New/Modified Facility standards are scientifically unattainable without siting the facility elsewhere but suggested an additional column be added to slide 5, Comparison of Standards, that would contain what, if any, regulations exist in each category. Mr. Cave responded that all of the Air District standards are new and provided here with the exception of dioxin/furans because they are in the National Emission Standards for Hazardous Air Pollutants (NESHAP) currently and have not changed with the recent amendments. Director Kalra asked for confirmation that the mercury level after reduction is expected to be 0.05 pounds per day. Mr. Cave confirmed. Director Kalra said the Air District will continue to look at possible reductions that are feasible, economically and in terms of monitoring, as well as good for the public health. Mr. Cave said the federal regulations are not finalized and there may be significant comment that relaxes the mercury standard for New Facilities so it may not be an appropriate benchmark despite being all there is at this time. Mr. Broadbent agreed, said the EPA continues to move back the proposed standard based on discussions in Washington, D.C., and staff feel today's proposal represents a good standard that will significantly reduce mercury, and agreed that while it is not the same as the New Facility standard, building from the ground up means you are dealing with a very different creature, and clarified the existence of two standards is not unique to this regulation as it is difficult to go back and retrofit existing facilities. Director Zane said she understands and respects pragmatism but gets nervous when the conversation includes statements about what is cost effective for this company and suggested the Board is charged with looking at what is cost effective for their constituents in terms of health risk and that the Air District may not be asking for enough because it is not the Board's job to protect the cost-effectiveness of the company.

Mr. Cave concluded the presentation.

#### Board Comments:

Director Hosterman said she has yet to hear information regarding an anticipated difference in the health forecast for the surrounding population as a result of the proposed regulations, echoed Director

Zane's comments, and suggested it may be time for the Board to tell Lehigh to figure out how to operate without harming the surrounding community.

Director Bates asked, regarding slide 6, Emissions and Emissions Reductions, if readers are supposed to subtract the right column from the middle to determine the estimated emissions. Mr. Cave said yes. Director Bates asked for confirmation that mercury is substantially eliminated. Mr. Cave agreed. Director Bates asked for confirmation that benzene is substantially eliminated and asked if those are the source of the major health problems. Mr. Cave said yes. Mr. Bates suggested these are major steps forward and the Board should take that into account, and asked when the facility and homes were built. Mr. Cave said the facility was built in the 1930s and the homes were surely built sometime after that. Director Bates said since the facility was there first and the homes second, residents must have known and accept a certain health risk, just as they would moving in near a freeway. Director Bates said the proposal is a substantial improvement that should not be lost because it is seen as imperfect and as technology improves so too will the regulations. Director Bates likened the Lehigh facility to the Pacific Steel Casting plant in his community and said it is unreasonable to close a facility that is meeting the health standards, as they have a right to be there as well.

Chairperson Gioia asked if the pounds of mercury per day will be reduced from 0.72 to 0.05. Mr. Broadbent said yes. Chairperson Gioia asked when this change would be achieved. Mr. Broadbent said some of the equipment is installed already. Mr. Cave said it would be achieved by 2013. Chairperson Gioia confirmed the same equation for benzene and suggested the reductions are substantial.

Director Ross echoed Chairperson Gioia's comment and asked, regarding slide 5, Comparison of Standards, if the 55 pounds of mercury emissions per million tons of clinker is what is remaining or will be the starting figure that will decrease. Mr. Cave said 55 pounds is a standard but the actual emissions are tied into the production rate of the facility and the total will represent a 90% reduction. Director Ross asked how many pounds per day of mercury is likely after the standards are in place. Mr. Cave said 0.05 pounds per day after controls. Discussion ensued regarding the total annual figure and Mr. Cave clarified in the end that it would be 18 pounds per year.

Director Kniss said she is anxious to hear public comments and speculated that a representative from Lehigh is among them. Mr. Broadbent said they are not present but staff worked closely with Lehigh representatives on this proposal. Director Kniss suggested that staff say a little more about that work as this issue has been a long-standing issue involving a great number of private and public meetings, many hours of work, with the involvement of various local governments, agencies and groups, and has resulted in what seems like a well vetted process.

#### Public Comments:

Cynthia Hayes-Rupp, Bay Area for Clean Environment (BACE), addressed the Board in opposition with a request for stricter standards.

Gary Latshaw, Sierra Club, Loma Prieta Chapter Air Quality Chair, submitted written material and addressed the Board in opposition with a request for stricter standards.

Terri Hoornstra, BACE, submitted written material and addressed the Board in opposition with a request for stricter standards.



Tim Brand, BACE, submitted written material and addressed the Board in opposition with a request for stricter standards.

Gary Waldeck, Vice Mayor of Los Altos Hills (City), addressed the Board in opposition with a request for stricter standards. Director Kniss recalled the City hired an independent consultant and asked about the outcome. Vice Mayor Waldeck said they concluded there was no health risk beyond that being reported by the Air District but added that the City continues to receive public reports of pollution that is fallout from the facility, there is no way to measure it and suggested alternative air monitor locations. Director Kniss said staff needs to address issues regarding monitor placement and thanked him for his report from the independent consultant. Director Bates asked Vice Mayor Waldeck to clarify. Vice Mayor Waldeck repeated himself regarding alternative air monitor locations. Director Bates asked for the identity of the consultant and the outcome of their evaluation. Vice Mayor Waldeck said they hired Iris Engineering who sampled water and soil but air quality data came from the Air District, and found nothing of substance in the two water samples or air samples that indicated a health risk in relation to the standards currently in place.

Rod Sinks, City of Cupertino Council Member and personally, submitted written material and addressed the Board in opposition with a request for stricter standards, particularly in light of the Lehigh facility's location in the Silicon Valley. Chairperson Gioia said all regions deserve equal treatment regardless of the economic status of the residents. Council Member Sinks clarified that he is referring to Silicon Valley in terms of its economic contribution and the sizable population.

Paula Wallis addressed the Board in opposition with a request for stricter standards under the New/Modified Facility classification. Chairperson Gioia suggested the point Mr. Broadbent was making in his characterization of New/Modified Facilities as being built from the ground up was in reference to the federal standards that would be applied if the Air District regulations did not exist. Chairperson Gioia clarified that these are federal laws, not Air District laws, as is the classification of facilities as existing, new or modified. Mr. Broadbent agreed. Director Garner asked the difference between Lehigh and a Modified Facility. Mr. Bunger said there are a set of federal guidelines that apply to determining what constitutes a modification, fundamental among them is a rebuild has to cost at least 50% of the cost of a new facility of that type. Mr. Broadbent clarified that the work done in the 1980s does not fit the classification. Mr. Cave said that regardless of the classification, the facility met the standards of the day and today's standards cannot be retroactively applied to previously modified facilities. Mr. Bunger clarified that the modified standards are not actually in effect but remain a proposal only.

Bill Almon, Quarry No, submitted written material and addressed the Board in opposition with a request for stricter standards.

Karen Del Compare addressed the Board in opposition with a request for stricter standards.

Andy Katz, Breathe California, addressed the Board in support with a request for further review of the standards for additional improvements in the near term.

Cathy Helgerson, Citizens Against Pollution, submitted written material and samples and addressed the Board in opposition with a request for stricter standards or that the Lehigh facility be closed.

Barry Chang, BACE, addressed the Board in opposition with a request for stricter standards.

Director Kalra said the reality is that who arrived in the community first and who lives there now is not relevant, air quality technology has improved so much that no one can deny, not even Lehigh, that the use of modern add-on controls is appropriate; suggested the federal guidelines in terms of monitoring has not caught up to technology and the Air District is trying to implement the best available and will continue to do so in the future to the extent federal law allows it; clarified that the standards proposed today go beyond those for Existing Facilities and they need to be given the location of the facility in a population center; said the fact is that the Lehigh stack configuration will have to change from its current form in order for the facility to comply with the standards the Air District is setting, thereby almost guaranteeing a single stack will be installed; noted that the PM standards provide for lower emissions than federal standards despite not reaching the proposed New/Modified Facility standards and are an improvement nonetheless; said mercury will see a dramatic reduction and an effective date of next year, not 2015, so these standards will be in place by the time the Board comes back to this matter; shared his appreciation for Mr. Katz's comment because the Air District cannot stop looking at the issue but today will represent a missed opportunity if the standards are not approved as they are a drastic improvement, even if they are not enough; noted the resolution includes a provision regarding the Air District's return to this issue; suggested that today's progress is because of the contributions of the public, local officials, and various organizations and those contributions are the very reason the District will continue to apply the most stringent possible standards; and asked staff to review and report back on Dr. Latshaw's recommendations.

Board Action: Director Kalra made a motion to approve staff's proposed amendments to District Regulation 9: Inorganic Gaseous Pollutants, Rule 13: Nitrogen Oxides, Particulate Matter and Toxic Air Contaminants from Portland Cement Manufacturing; and to adopt a Negative Declaration Pursuant to the California Environmental Quality Act; Director Hudson seconded.

Director Yeager expressed his support for the motion and asked what the legal timeframe is for the rule to take effect and why time is lost if the proposal is not approved today. Mr. Broadbent said some public comments suggested Air District staff should start over with more stringent standards and staff disagree, that starting over the technical work would take a year, and staff feels this is a good proposal that locks in the NESHAP standard and goes further in bringing down a variety of emissions. Director Yeager expressed his agreement with Mr. Broadbent, explained his desire to put today's proposal in place and continue moving forward, and explained his curiosity about possible legal reasons for time lost, if any. Mr. Broadbent said staff built in the rule a future-effective compliance date, partly because the facility will require modification and that takes time, reported that staff and Lehigh have developed a schedule for improvements and Lehigh continues to request more time and staff continue to refuse. Mr. Bunger said the rule is effective immediately with a compliance date in 2013 and noted that federal changes generally have a two-year delay in effectiveness. Director Yeager asked if changes were made, would staff have to conduct the entire rule making process again. Mr. Broadbent said yes and today's proposal is significant such that Lehigh will have to spend somewhere between \$27 and 32 million to come into compliance with NESHAP, along with another \$8.5 million in capital costs and another \$4 million annually to meet the Air District's additional requirements.

Director Garner said this matter concerns her community, she feels a personal commitment so public comments are not lost on her, and she is concerned about the negative public perception about the Air District not going far enough. Director Garner added that she is pleased with the expected reductions of

serious pollutants but asked why sulfur dioxide (SO<sub>2</sub>) is not in the balance. Mr. Broadbent responded that the ambient air quality of the region is in compliance with the SO<sub>2</sub> standard by a significant margin and staff must tailor its work to where needs exist. Director Garner asked if staff can include figures instead of hyphens for SO<sub>2</sub> in future presentations. Mr. Broadbent said yes. Director Garner expressed her appreciation for Mr. Katz's comments regarding reducing now and revisiting for additional improvements and asked if staff is evaluating its monitoring efforts as it seems the proper level is not being achieved. Mr. Broadbent said staff does not agree with that characterization but regardless, will be looking at other possible locations for additional monitoring as the facility implements these controls. Mr. Stevenson said it is important to recognize that meteorological conditions are also being measured at the site and those data suggest the wind blows just as often from the north as from the south, the location seems to be a good one that provides for the effective capture of emissions from the plant, and cutting edge methods are being utilized in the analysis. Director Garner asked staff to consider moving the monitor to one or more locations to put Board and public concerns to rest. Mr. Broadbent said staff would likely be moving this monitor to address other needs in the Bay Area and then put in place additional monitors to address the concerns raised, a topic that will be included in the report after further review. Director Garner asked if the movement of the monitor is a decision that will come before the Board. Mr. Broadbent said he has directed staff to leave it in place for the time being but equipment is limited. Director Garner asked when staff is planning to move it. Mr. Broadbent said the thought was to move it in about six months, so anticipated that it can be included in the review.

Chairperson Gioia conducted a time check.

Director Garner asked staff to evaluate the cost for the Lehigh facility to comply with New/Modified Standards instead of those for Existing Facilities, for the benefit of both the Stationary Source Committee and the public, and expressed her support for the motion.

Director Wagenknecht expressed his support for the motion, said this issue is about monitoring and said it would be helpful to have a full overview of the Air District monitoring program.

Director Groom said she is not clear why the Air District cannot wait a couple months in order to achieve stricter standards and asked for an explanation. Mr. Broadbent said that today's proposal includes very stringent standards and staff strongly recommends that the Board approve it today, staff looked at the New Source Pollution Standards (NSPS) and believes there are elements to draw from to create additional requirements but that it does not make sense to recommend those today because a very stringent proposal, that goes extremely far, is before the Board. Mr. Broadbent added that he is concerned the NSPS requirements may not be put into place by the EPA. Director Groom said she did not see anything in the proposal about the imposition of penalties on Lehigh for failure to perform. Mr. Broadbent said all Air District penalties are established by state law so there is a \$25,000 per day ceiling. Mr. Bunker said the penalties will depend on the facts relating to the violation. Director Groom asked if the Air District will have strict enforcement because what the public seems to be saying is that the Air District does good work but Lehigh continues to disobey the rules and regulations. Mr. Broadbent reluctantly likened the Lehigh facility to a petroleum refinery, as it is also a Title V major source in the Bay Area, so there is an inspector on site practically every day and staff has written tickets on this facility in the course of its rigorous enforcement relative to this facility. Mr. Bunker said the requirements on stack monitoring will make enforcement much more direct, so the

current monitoring difficulties will be alleviated. Mr. Broadbent said there are 32 stacks currently and there will be one or two in the future, according to Lehigh. Mr. Broadbent added that the Air District is not explicitly requiring a certain number of stacks but is imposing requirements that will make it easier for the Air District to monitor emissions.

Director Zane said it is important to defer to representatives in the facility's community and echoed Director Wagenknecht's request for a full report to the Board regarding an overview of the Air District monitoring system, as monitoring and enforcement are the critical issues.

Director Gorin agreed with Director Zane and asked if the costs of Lehigh's significant improvements in order to comply with the standards proposed today could be used as a later argument by Lehigh against the imposition of future modifications because of their cost-prohibitive nature. Mr. Broadbent said Lehigh may very well make that point to staff but if the rule is approved today, Lehigh will be on a path with a future-effective date and must start putting the resources together to come into compliance and he would prefer a conversation with Lehigh about future modifications to occur separately. Director Gorin clarified that they will be investing over \$30 million and could conceivably understand their coming back with that argument. Mr. Broadbent said he believes there may be additional modifications possible to augment what they are already putting in place.

Director Kniss expressed her support of the motion, said the Air District is not the only agency monitoring the Lehigh facility, disagreed with assessments that the air monitoring is antiquated, recalled that this matter has been in process for five years with abundant review and scrutiny, and suggested that although it may not be a perfect solution, it is a very good one.

Board Action: The motion was unanimously approved without objection.

## **PRESENTATION**

### **11. Bureau of State Audits Report on the Metropolitan Transportation Commission (MTC) Acquisition of 390 Main Street**

Mr. Broadbent introduced Jeffrey McKay, DAPCO, who gave the staff presentation Bureau of State Audits Report on Metropolitan Transportation Commission Use of Toll Funds for Purchase of 390 Main Street, including purchase background, a summary of the state audit and next steps.

Board Comments: None.

Public Comments: None.

Board Action: None; informational only.

## **CLOSED SESSION**

The Board of Directors adjourned to Closed Session at 12:18 p.m.

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

Pursuant to Government Code Section 54956.9(a), a need existed for the Board 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; California Court of Appeal, First Appellate District, Case No. A135335.

**OPEN SESSION**

The Board of Directors resumed Open Session at 12:24 p.m. with no reportable action.

**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:** The Board of Directors Regular Meeting on October 3, 2012, is cancelled.
15. **Time and Place of Next Meeting:** Wednesday, October 17, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.
16. **Adjournment:** The Board of Directors meeting adjourned at 12:24 p.m.

*151 Sean Gallagher*

Sean Gallagher  
Clerk of the Boards