

Regional Agency Headquarters  
390 Main Street  
San Francisco, CA 94105

Board of Directors Special Meeting  
December 5, 2012

## **APPROVED MINUTES**

### **CALL TO ORDER**

Chairperson John Gioia called the meeting to order at 10:07 a.m.

### **ROLL CALL**

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

Absent: Directors Tom Bates, Susan Garner, Jennifer Hosterman, Carol L. Klatt, Edwin M. Lee, Mary Piepho, Ken Yeager and Shirlee Zane.

### **PLEDGE OF ALLEGIANCE**

Chairperson Gioia led the Pledge of Allegiance.

NOTED PRESENT: Director Kalra was noted present at 10:09 a.m.

**OPENING COMMENTS:** None.

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

Barry Chang, Bay Area for Clean Environment, addressed the Board in support of the Air District in Lehigh Southwest Cement Company v. Bay Area AQMD, Santa Clara County Superior Court, Case No. 112CV236602.

Karen Del Compare addressed the Board to echo the comments of Mr. Chang.

Rhoda Fry addressed the Board regarding the poor record of Lehigh Southwest Cement Company in regards to matters related to the wellbeing of its labor force and public health.

NOTED PRESENT: Director Wagenknecht was noted present at 10:13 a.m.

Gary Latshaw, Sierra Club – Loma Prieta Chapter, addressed the Board regarding pollutants emitted by the operations of Lehigh Southwest Cement Company and to request the relocation of Air District air monitoring equipment.

Joel Masser, Bay Area for Clean Environment, addressed the Board regarding pollution control methods utilized by Lehigh Southwest Cement Company.

NOTED PRESENT: Director Kniss was noted present at 10:19 a.m.

## **PRESENTATIONS**

### **1. Advisory Council Report and Recommendations on Ultrafine Particles (UFP)**

Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO), introduced the item and Advisory Council Chairperson Stan Hayes, who made further introductory comments and introduced Advisory Council Members Robert Bornstein, Ph.D., Sam L. Altshuler, P.E., and Jessica Range.

NOTED PRESENT: Director Haggerty was noted present at 10:23 a.m.

Member Altshuler gave the initial presentation, UFP: A Cause for Concern, Part II, 2012, through slide 4, UFP: Characteristics.

NOTED PRESENT: Director Miley was noted present at 10:25 a.m.

Member Range gave the continued presentation through slide 10, UFP Exposure: Reduction Strategies.

NOTED PRESENT: Director Rice was noted present at 10:27 a.m., thereby establishing a quorum.

Advisory Council Chairperson Hayes concluded presentation.

#### **Board Comments:**

Chairperson Gioia thanked the Advisory Council and asked questions of staff regarding the jurisdiction of the Air District relative to indoor air quality, which Mr. Broadbent and Brian Bunger, District Counsel, answered.

Director Wagenknecht asked questions of staff about the deployment of air monitoring equipment relative to UFP, which Eric Stevenson, Director of Technical Services, answered.

Director Hudson, Chairperson Gioia and Mr. Broadbent discussed the relationship between UFP and community risk reduction plans.

Director Kalra thanked the Advisory Council and commented on the relevance of the information in regard to land use, construction regulations and increased public outreach.

Director Rice asked questions about the level of awareness by other agencies, the state of research and the incorporation of these findings in the planning efforts of Bay Area communities, which Advisory Council Chairperson Hayes answered.

NOTED PRESENT: Director Ross was noted present at 10:57 a.m.

Director Rice expressed the importance of the Air District's regulatory role.

Director Avalos asked a question about remediation methods, which Advisory Council Chairperson Hayes answered.

Director Haggerty asked a question about the state of responses by other air districts, which Member Altshuler answered.

NOTED PRESENT: Director Gorin was noted present at 11:00 a.m.

Director Gioia asked a question about the selection of future topics for inquiry by the Advisory Council, which Member Bornstein answered.

Public Comments: None.

Board Action: None; informational only.

#### **CONSENT CALENDAR (ITEMS 2 – 4)**

2. **Minutes of the Board of Directors Regular Meeting of November 7, 2012, and Special Meeting of November 19, 2012;**
3. **Board Communications Received from November 19, 2012, through December 4, 2012; and**
4. **Air District Personnel on Out-of-State Business Travel.**

Board Comments: None.

Public Comments: None.

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

#### **COMMITTEE REPORTS AND RECOMMENDATIONS**

5. **Report of the Mobile Source Committee Meeting of December 3, 2012**  
Chairperson S. Haggerty

The Committee met on Monday, December 3, 2012, and approved the minutes of October 25, 2012.

The Committee reviewed Projects with Proposed Grant Awards Over \$100,000 and recommends Board approval of three projects; one that will provide electrical power to eight locomotive engines to reduce idling emissions in the San Jose area, and two others that replace two pieces of off-road

equipment operating in Sonoma County and eight pieces of off-road equipment in Napa County. Additionally, the Committee recommends authorization for the Executive Officer/APCO to enter into agreements for those projects.

The Committee then reviewed a \$1 million United States Department of Energy (DOE): Clean Cities Advanced Alternative Fuel Grant and recommends the Board adopt a resolution to authorize the Executive Officer/APCO to accept this grant funding and enter into a contract with the DOE on behalf of the Air District and authorization for the Executive Officer/APCO to execute contracts to expend this funding.

The Committee also reviewed Current and Future Audits of the Transportation Fund for Clean Air (TFCA) and the Fiscal Year Ending (FYE) 2012 TFCA Air District and Regional Fund Program Report on Expenditures and Effectiveness. The Committee recommends the Board authorize the Executive Officer/APCO to execute a contract with Gilbert Associates, Inc., for Audit #14, in an amount that shall not exceed \$85,000, and Audit #15, in an amount that shall not exceed \$150,000, and recommends the Board receive and file both the results of TFCA Audit #13 and the FYE 2012 TFCA Report on Regional Fund Expenditures and Effectiveness.

The Committee also received an update on the Port Truck Program, including an overview of the current drayage truck population and status reports on the California Goods Movement Bond and Engine MY 2005/ 2006 Replacement Programs.

The next meeting of the Committee is on Thursday, January 24, 2013, at 9:30 a.m.

Board Comments: None.

Public Comments: None.

Board Action: Director Haggerty made a motion to approve the report and recommendations of the Mobile Source Committee; Director Wagenknecht seconded; and the motion was unanimously approved without objection.

**6. Report of the Legislative Committee Meeting of December 3, 2012**  
Chairperson T. Bates (read by Director A. Kalra)

The Committee met on Monday, December 3, 2012, without establishing a quorum.

The Committee reviewed the 2012 legislative year. Highlights were the achievement of the Air District's primary legislative goals of minimizing budgetary cuts from the State, and passage of Senate Bill 1339, regarding transit commute benefits. The Committee also reviewed the outcome of bills with air quality significance. No bills the Air District opposed became law.

The Committee discussed a potential two-part legislative agenda for 2013. One goal would be to pass legislative extensions to the Carl Moyer, the Assembly Bill (AB) 923, and the AB 118 programs. A second goal (triggered by the August 6, 2012, fire at the Chevron refinery) would be to sponsor legislation that would allow for the collection of more substantial penalties from short-duration

releases, particularly from large industrial facilities that affect large numbers of people. This legislative goal is articulated in the Work Plan for Action Items Related to Accidental Releases from Industrial Facilities, adopted by the Board in October 2012. A consensus of the members present recommended that the Board of Directors approve the staff legislative agenda for 2013.

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

Board Comments: None.

Public Comments: None.

Board Action: Director Kalra made a motion to approve the report and consensus recommendation of the Legislative Committee members; Director Hudson seconded; and the motion was unanimously approved without objection.

### **PRESENTATIONS (Continued)**

#### **7. Status Report on Implementation of Work Plan for Action Items Related to Accidental Releases from Industrial Facilities**

Mr. Broadbent gave the staff presentation, Update on Work Plan - Action Items Related to Accidental Releases from Industrial Facilities, including investigation, procedures, air quality monitoring, rule development, resource needs, community outreach, legislation and timeline.

Board Comments:

Director Spring asked questions about the difference in penalties and cost recovery fees, consideration of accidental versus negligent acts, and use of funds received through the penalty process, which Messrs. Bunger and Broadbent answered.

Chairperson Gioia commented on current penalty limits and the use of funds received through the penalty process.

Director Kalra echoed the comments of Chairperson Gioia relative to the use of funds.

Public Comments: None.

Board Action: None; informational only.

#### **8. 390 Main Street, Regional Agency Headquarters – Conceptual Design Presentation and Building Tour**

Mr. Broadbent made introductory comments regarding the status of the purchase, financing and design processes, and suggested the building tour occur at the conclusion of the Board meeting.

Board Comments:

Chairperson Gioia asked questions about the effect on the Air District of the increased cost of the project cost reported by the Metropolitan Transportation Commission (MTC), which Mr. Broadbent answered.

Director Haggerty asked questions about the editorial regarding the project, published in the Contra Costa Times on December 4, 2012, and the implications of the increased project cost, which Mr. Broadbent answered.

Director Spring asked questions about the involvement of the Air District in decisions relative to project improvements and how staff intends to address changes in estimated costs, which Mr. Broadbent answered.

Director Groom echoed the comments of Director Spring.

Public Comments: None.

Board Action: None; informational only.

**PUBLIC COMMENT ON NON-AGENDA MATTERS:** None.

**BOARD MEMBERS' COMMENTS:** None.

**OTHER BUSINESS**

**9. Chairperson's Report:**

Chairperson Gioia announced the reappointment of Director Kalra to the Board by the Santa Clara County City Selection Committee and that outgoing Directors Garner, Gorin, Hosterman, Kniss and Rice would be recognized for service at the Board meeting on December 19, 2012.

**10. Time and Place of Next Meeting:**

Wednesday, December 19, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

Director Haggerty asked for a moment of silence in memory of former Board Director Mike Nevin.

**11. Report of the Executive Officer/APCO:**

Mr. Broadbent commended Salvador Rueda, Senior Air Quality Inspector of Compliance & Enforcement, for receiving the 2012 Outstanding Inspector Award from the California Air Pollution Control Officer's Association.

**CLOSED SESSION**

The Board adjourned to Closed Session at 11:35 a.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:

Lehigh Southwest Cement Company v. Bay Area AQMD, Santa Clara County Superior Court, Case No. 112CV236602.

**OPEN SESSION**

The Board resumed Open Session at 11:42 a.m. with no reportable action.

**13. Adjournment:** The Board meeting adjourned at 11:43 a.m.

*151 Sean Gallagher*

Sean Gallagher  
Clerk of the Boards