

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-5073

Board of Directors Regular Meeting
Wednesday, October 16, 2013

APPROVED MINUTES

CALL TO ORDER: Vice-Chairperson Miley called the meeting to order at 9:47 a.m.

ROLL CALL

Present: Vice-Chairperson Nate Miley; Secretary Carole Groom; and Directors Susan Adams, John Avalos, Teresa Barrett, Tom Bates, Cindy Chavez, John Gioia, Scott Haggerty, David Hudson, Liz Kniss, Eric Mar, Jan Pepper, Mary Piepho, Mark Ross and Jim Spering.

Absent: Chairperson Ash Kalra; and Directors Carol L. Klatt, Edwin Lee, Tim Sbranti, Brad Wagenknecht and Shirlee Zane.

PLEDGE OF ALLEGIANCE: Vice-Chairperson Miley led the Pledge of Allegiance.

OPENING COMMENTS:

Vice-Chairperson Miley welcomed Director Chavez to the Board of Directors. Director Chavez expressed her gratitude for the opportunity.

NOTED PRESENT: Director Piepho was noted present at 9:49 a.m.

PUBLIC COMMENT ON NON-AGENDA MATTERS: None.

CONSENT CALENDAR (ITEMS 1 – 5)

- 1. Minutes of the Board of Directors Special Meeting of September 9, 2013;**
- 2. Board Communications Received from September 9, 2013, through October 15, 2013;**
- 3. Quarterly Report of California Air Resources Board Representative – Honorable John Gioia;**
- 4. Notice of Violations Issued and Settlements in Excess of \$10,000 in August and September 2013; and**
- 5. Air District Personnel on Out-of-State Business Travel.**

Public Comments: None.

Board Comments: None.

Board Action: Director Haggerty made a motion to approve Consent Calendar Items 1, 2, 3, 4 and 5; and Director Piepho seconded.

Director Piepho amended the minutes of Board of Directors Special Meeting of September 9, 2013, page 2, second to last paragraph, to replace, “the provision” with “negative economic impact” and “nongovernmental entities” with “local businesses.”

Director Haggerty made an amended motion to approve Consent Calendar Items 1, 2, 3, 4 and 5, with the Minutes of September 9, 2013, amended as stated; Director Piepho seconded; and the motion carried unanimously.

COMMITTEE REPORTS AND RECOMMENDATIONS

6. Report of the Stationary Source Committee (SSC) Meeting of September 16, 2013 Committee Chairperson Gioia

The SSC met on Monday, September 16, 2013, and approved the minutes of May 20, 2013.

The SSC received the staff presentation Regulation 9, Rule 10: Nitrogen Oxides (NOx) and Carbon Monoxide (CO) from Boilers, Steam Generators and Process Heaters in Petroleum Refineries, including background on refinery heaters and Regulation 9, Rule 10, objectives of the proposed amendments, a detailed review of the proposed amendments relative to an alternative NOx standard for pre-1994 heaters, a proposed continuous emissions monitoring system (CEMS) requirement and refinery heater reporting requirement, followed by an overview of the rule development process and next steps.

The SSC then received the staff presentation Overview of Energy Issues, including fuel types used, end-use sectors, and trends and projections in the use and production of energy and energy-related carbon dioxide emissions at the global, national, state and regional perspectives.

After calling for public comment, the SSC postponed the staff presentation regarding the Rule Effectiveness Study until the next meeting of the SSC.

The next meeting of the SSC is Monday, October 21, 2013, at 10:30 a.m.

NOTED PRESENT: Directors Bates, Kniss and Pepper were noted present at 9:53 a.m.

Public Comments: None.

Board Comments: None.

Board Action:

Director Gioia made a motion to approve the report of the SSC; Director Piepho seconded; and the motion carried unanimously.

7. Report of the Mobile Source Committee (MSC) Meeting of September 26, 2013
Committee Chairperson Haggerty

The MSC met on Thursday, September 26, 2013, and approved the minutes of May 23, 2013.

The MSC reviewed Projects with Proposed Grant Awards Over \$100,000 and recommends Board approval of four projects for the replacement of off-road diesel engines, including three forklifts in Alameda County, four loaders in Santa Clara County, and one tractor each in Marin, Sonoma and Santa Clara Counties.

The MSC then received an informational Update on California Goods Movement Bond and Shorepower Programs, including a summary of Air District current solicitation for on-road trucks and an overview of shorepower, including incentives committed to Bay Area projects and the status of shorepower installation at the Port of Oakland.

The MSC also received an informational update on Truck and Bus Regulations, including summaries of regulations, upcoming deadlines, and Air District actions relative to port trucks and on-road trucks.

The MSC deferred the agenda item Fiscal Year Ending 2014 Transportation Fund for Clean Air Regional Fund Policies to the next meeting of the MSC.

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

Public Comments: None.

Board Comments: None.

Board Action:

Director Haggerty made a motion to approve the report and recommendation of the MSC; Director Hudson seconded; and the motion carried unanimously.

PUBLIC HEARING

8. Public Hearing to Consider Adoption of Proposed Amendments to Regulation 9, Rule 10: NO_x and CO from Boilers, Steam Generators and Process Heaters in Petroleum Refineries and Approval of a California Environmental Quality Act (CEQA) Negative Declaration

Jean Roggenkamp, Deputy Air Pollution Control Officer, introduced the topic and Julian Elliot, Senior Air Quality Engineer of Planning, Rules and Research, who gave the staff presentation Regulation 9 Rule 10 NO_x and CO from Boilers, Steam Generators and Process Heaters in Petroleum Refineries, including background on refinery heaters and Regulation 9, Rule 10, objectives of the proposed amendments, detailed reviews of the proposed amendments relative to an alternative NO_x standard for pre-1994 heaters, a proposed CEMS requirement and refinery heater reporting requirement, followed by an overview of the rule development process and recommendations.

NOTED PRESENT: Director Mar was noted present at 10:14 a.m.

Director Gioia asked, regarding slide 10, NO_x Coverage with CEMS, for clarification regarding the comparisons drawn with South Coast Air Quality Management District (SCAQMD), which clarification was provided by Mr. Elliot.

Director Avalos asked, regarding slide 10, NO_x Coverage with CEMS, about the other industry activities of the entities that own and operate the refineries, which question was partially answered by Mr. Elliot. Director Avalos asked about the varying economic impact of the rule making for each refinery depending on the diversification of industry activity by each entity involved, which question was answered by Mr. Elliot. Mr. Elliot provided clarification regarding the varied production work of the refineries involved and the monitoring designs developed by each in the past.

Director Kniss asked, regarding slide 10, NO_x Coverage with CEMS, why SCAQMD is at 99% coverage but the Air District is not, which question was answered by Mr. Elliot.

Director Hudson asked, regarding slide 10, NO_x Coverage with CEMS, how many pre-1994 heaters are being operated at each of the refineries, which question Mr. Elliot partially answered.

Vice-Chairperson Miley echoed Director Hudson's question and asked for the cost of the replacements that would be required under the proposed rulemaking.

Mr. Elliot continued the presentation.

Director Gioia asked, regarding slide 17, Public Comments, for clarification regarding the source and nature of public comments, which clarification was provided by Mr. Elliot.

Mr. Elliot concluded the presentation.

Board Comments:

Henry Hilken, Director of Planning, Rules and Research, provided the information requested by Director Hudson and Vice-Chairperson Miley relative to the number and cost of pre-1994 heaters.

Director Adams asked, regarding slide 14, Refinery Costs, if the estimated cost is calculated for each device or each site, which question was answered by Mr. Elliot.

Director Pepper asked, regarding slide 7, Alternative NO_x Standard, for clarification on the impact of a refinery accepting the Alternative NO_x Compliance Plan (ANCP), which clarification was provided by Mr. Elliot.

Director Miley asked for clarification on the cost of individual CEMS units, which clarification was provided by Mr. Elliot.

Director Piepho asked, regarding slide 13, CEMS and Parametric Monitoring, whether the information from parametric monitoring can be averaged to create a result similar to CEMS or, if not, how much the results would defer, if parametric monitoring yields information for individual or groups of

heaters, if staff responded to the letter from the Western States Petroleum Association (WSPA), dated October 1, 2013, and regarding slide 6, Goals for Proposed Amendment, for staff to reconcile their characterization of the refineries' contribution to total NOx emissions in the Bay Area with that of WSPA, which questions were answered and clarification provided by Mr. Elliot.

Director Avalos asked whether the Air District has any goal in place for encouraging or requiring the retirement of pre-1994 heaters and if Air District staff has any sense of the pace of voluntary retirement by the refineries, which questions were answered by Ms. Roggenkamp Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO). Director Avalos suggested the proposed rule is not strong enough.

Director Piepho stated her disagreement with Mr. Elliot's characterization of the rule's effect on the retirement plans for refineries and asked if NOx and CO are GHGs, which question was answered by Mr. Elliot.

Public Comments:

Guy Bjerke, WSPA, addressed the Board in opposition to the CEMS requirement.

Director Hudson asked about the cost of NOx controls, which question was answered by Messrs. Bjerke and Broadbent.

Director Gioia asked for further explanation about how CEMS will improve Air District enforcement efforts, which information was provided by Mr. Broadbent.

Mr. Bjerke addressed the Board again to further clarify the position of WSPA.

Director Bates asked which refineries are not opting into the ANCP, which question was answered by Mr. Bjerke.

Director Piepho asked for explanations of the process of opting into the ANCP and the effect of that choice, which information was provided by Mr. Bjerke.

Director Miley asked whether there is an option for refineries, which question was answered by Mr. Bjerke and Brian Bunger, District Counsel.

Matthew Buell, Tesoro, addressed the Board in opposition to CEMS requirement.

Chris McDowell, Tesoro, addressed the Board to provide information in response to the inquiry by Director Avalos about the retirement of pre-1994 heaters and capital improvements.

Jennifer Ahlskog, Phillips 66, addressed the Board in opposition to the proposed amendments and to request additional dialogue with staff.

Ron White, Rain for Rent, addressed the Board in support of the ANCP and in opposition to CEMS requirement.

Tom Smith addressed the Board to request clarification regarding the NOx emissions standards under the proposed amendment, which clarification was provided by Ms. Roggenkamp.

Don Bristol, Phillips 66, addressed the Board in opposition to the proposed amendment.

Lynn McGuire, Environmental Resources Management, addressed the Board regarding the incompatibility of the SCAQMD and Air District CEMS source coverage statistics and to request reconsideration of the equity of the proposed amendment.

John Hill, Valero, addressed the Board in support of the proposed amendment.

Anna Rikkelman addressed the Board in opposition to the CEMS requirement.

Board Comments (continued):

Director Gioia asked for more information regarding the proposal for different CEMS for different types of boilers, the cost per CEMS and the likely cost for each refinery, which information was provided by Mr. Elliot.

Director Pepper asked how much NOx is emitted from heaters and whether small units have higher relative NOx emissions, which questions were answered by Mr. Elliot. Director Pepper commended the presentation.

Director Ross asked whether the staff recommendation changed based on today's proceedings, which question was answered by Mr. Broadbent.

Director Hudson asked for confirmation that the proposed amendment would result in the installation of 23 CEMS and the effect on heater replacements, which information was provided by Messrs. Broadbent and Bunger and Ms. Roggenkamp.

Director Barrett asked about the accuracy and limitations of parametric monitoring, which question was answered by Mr. Broadbent.

Director Piepho asked if this is a compliance and enforcement issue or an emission problem, whether a mobile monitor is a possible solution and how often the refineries are out of compliance, which questions were answered by Ms. Roggenkamp and Wayne Kino, Director of Compliance and Enforcement. Director Piepho commended the presentation and noted the proposed amendment lacks stakeholder support, has cost elements that are a concern and presents the false appearance of an optional program.

Director Bates said the proposed amendment provides a necessary tool for staff and the cost is not exorbitant.

Board Action:

Director Bates made a motion, seconded by Avalos, to adopt proposed amendments to Regulation 9, Rule 10: NOx and CO from Boilers, Steam Generators and Process Heaters in Petroleum Refineries and adopt a Negative Declaration pursuant to the CEQA for the proposed amendments.

Director Spering requested the motion be amended into two motions, one for each recommendation from staff, which request was declined by Director Bates.

Director Gioia said this is a matter of enforcement capability and CEMS are the only way to ensure emissions do not increase, is only applicable to old heaters and Air District proposals do not always have the unanimous support of its stakeholders but this proposal provides flexibility to refineries while enabling necessary monitoring capability, making it a seemingly good compromise that has his support.

Director Haggerty asked staff to speak to a statement made during public comment that claimed the proposed rule changed after the stakeholder meeting, if any stakeholder meetings occurred after CEMS was included, and whether any changes were made to the proposed rule after the public meetings, which questions were answered by Mr. Broadbent and Ms. Roggenkamp.

Director Miley asked, regarding slide 7, Alternative NO_x Standard, for further clarification regarding the implication for a refinery opting to adopt the ANCP, which clarification was provided by Ms. Roggenkamp and Mr. Broadbent.

The motion carried by the following vote of the Board:

AYES: Vice-Chairperson Miley; and Directors Adams, Avalos, Barrett, Bates, Chavez, Gioia, Groom, Haggerty, Mar, Pepper and Ross.

NOES: Directors Hudson and Spering.

ABSTAIN: Director Piepho.

ABSENT: Chairperson Kalra; and Directors Klatt, Kniss, Lee, Sbranti, Wagenknecht and Zane.

Director Hudson suggested staff meet with refinery representatives to collaborate on an implementation process instead of imposing a hard deadline, to which Ms. Roggenkamp clarified the current process. Mr. Broadbent said staff will provide an update on implementation to the SSC.

Director Piepho clarified that her vote to abstain was the result of her partial support for the proposal and expressed her hope that the Air District is better able to address industry concerns in the future.

CLOSED SESSION

The Board adjourned to Closed Session at 12:00 p.m.

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

Pursuant to Government Code Section 54956.9(a), the Board met in closed session to discuss with legal counsel the following cases:

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

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 resumed Open Session at 12:06 p.m. with no reportable action.

PUBLIC COMMENT ON NON-AGENDA MATTERS: None.

BOARD MEMBERS' COMMENTS: None.

OTHER BUSINESS

10. Report of the Executive Officer/APCO:

Mr. Broadbent presented a summary of the Ozone Season.

11. Chairperson's Report: None.

12. Time and Place of Next Meeting:

Wednesday, November 6, 2013, Bay Area Air Quality Management District Headquarters, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

13. Adjournment: The Board meeting adjourned at 12:07 p.m.

151 Sean Gallagher

Sean Gallagher
Clerk of the Boards