

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

Board of Directors Regular Meeting
Wednesday, September 3, 2014

APPROVED MINUTES

- CALL TO ORDER:** Vice-Chairperson Carole Groom called the meeting to order at 9:46 a.m.

Opening Comments: None.

Pledge of Allegiance: Vice-Chairperson Groom led the Pledge of Allegiance.

Roll Call:

Present: Chairperson Nate Miley; Vice-Chairperson Carole Groom; and Directors Susan Adams, John Avalos, Teresa Barrett, Tom Bates, Cindy Chavez, John Gioia, Scott Haggerty, Roger Kim (on behalf of Edwin Lee), Carol L. Klatt, Liz Kniss, Jan Pepper, Mark Ross and Shirlee Zane.

Absent: Secretary Eric Mar; and Directors Margaret Fujioka, David Hudson, Ash Kalra, Mary Piepho, Jim Spering and Brad Wagenknecht.

- PUBLIC COMMENT ON NON-AGENDA MATTERS:**

Sylvia Gray-White, Communities for a Better Environment (CBE), addressed the Board of Directors (Board) to ask why the Chevron Richmond refinery is allowed to operate on Spare the Air Days and why a Spare the Air Day was not announced the day in August 2012 when the Chevron Richmond Refinery event occurred.

Andrés Soto, CBE and Benicians for a Safe and Healthy Community (BSHC), addressed the Board to suggest that the recent discovery regarding the collusion of leadership at Pacific Gas & Electric and the California Public Utilities Commission could be a story retold about Chevron and the Air District and to ask the Board to act to prevent this from happening.

Bill Pinkham, 350 Bay Area and Sunflower Alliance, addressed the Board regarding the absence of time remaining to avoid hitting a climate point-of-no-return and asked for an immediate limit on pollutants.

NOTED PRESENT: Director Chavez was noted present at 9:53 a.m.

Greg Karras, CBE, addressed the Board regarding negotiations between the City of Richmond, Chevron and community groups to resolve the outstanding issues relative to the recent approval of the Chevron Richmond Refinery project.

NOTED PRESENT: Director Haggerty was noted present at 9:55 a.m.

CONSENT CALENDAR (ITEMS 3 – 13)

- 3. Minutes of the Special Board Meeting of July 31, 2014;**
- 4. Board Communications Received from July 31, 2014 through September 2, 2014;**
- 5. Quarterly Report of the Executive Office and Division Activities;**
- 6. Quarterly Report of California Air Resources Board (ARB) Representative – Honorable John Gioia;**
- 7. Air District Personnel on Out-of-State Business Travel;**
- 8. Notice of Violations Issued and Settlements in Excess of \$10,000 in July 2014;**
- 9. Consider Authorizing the Executive Officer/Air Pollution Control Officer (APCO) to Execute a Contract Extension to Technical and Business Systems and Execute a Purchase Order in Excess of \$70,000 Pursuant to Administrative Code Division II Fiscal Policies and Procedures, Section 4.3 Contract Limitations, for Continued Operation of the BioWatch Monitoring Network;**
- 10. Consider Authorizing the Executive Officer/APCO to Execute a Contract Amendment with Peelle Technologies;**
- 11. California Air Monitoring Network Assessment: Consider Acceptance of Environmental Protection Agency Grant Money and Extension of Contract;**
- 12. Consider Approval of Employee Contract Amendments for the Executive Officer/APCO and District Counsel; and**
- 13. Set Public Hearing for November 5, 2014, to Consider Adoption of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking; and Approval of a California Environmental Quality Act (CEQA) Negative Declaration.**

Board Comments:

Agenda Items #12, Consider Approval of Employee Contract Amendments for the Executive Officer/APCO and District Counsel, and #13, Set Public Hearing for November 5, 2014, to Consider Adoption of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking; and Approval of a CEQA Negative Declaration, were removed from the consent calendar for consideration.

Public Comments: No requests received.

Board Action:

Director Haggerty made a motion, seconded by Director Klatt, to approve Consent Calendar Items 3 through 11, inclusive; and the motion carried by the following vote of the Board:

AYES: Adams, Avalos, Barrett, Bates, Chavez, Gioia, Groom, Haggerty, Kim, Klatt, Ross and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Fujioka, Hudson, Kalra, Kniss, Mar, Miley, Pepper, Piepho, Spering and Wagenknecht.

12. Consider Approval of Employee Contract Amendments for the Executive Officer/APCO and District Counsel

Board Comments: None.

Public Comments:

Mr. Soto addressed the Board in opposition to approval of the employee contract amendments based on staff testimony on the Chevron permit at the Richmond City Council hearing.

NOTED PRESENT: Director Pepper was noted present at 9:59 a.m.

Board Action:

Director Chavez made a motion, seconded by Director Haggerty, to approve employee contract amendments for the Executive Officer/APCO and District Counsel; and the motion carried by the following vote of the Board:

AYES: Adams, Avalos, Barrett, Bates, Chavez, Gioia, Groom, Haggerty, Kim, Klatt, Ross and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Fujioka, Hudson, Kalra, Kniss, Mar, Miley, Pepper, Piepho, Spering and Wagenknecht.

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

13. Set Public Hearing for November 5, 2014, to Consider Adoption of Proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking; and Approval of a CEQA Negative Declaration

Jack Broadbent, Executive Officer/APCO, introduced the topic and Jean Roggenkamp, Deputy APCO, who gave the staff presentation *Set Public Hearing: Petroleum Refining Emissions Tracking Rule*, including a map of Bay Area refineries, stationary source emission trends 1980 – 2010, factors affecting Bay Area refineries, proposed rule elements, next steps and recommendation.

Mr. Broadbent provided additional comments regarding staff commitments, the goal of the rule, the state of operations at the refineries, community interest in rulemaking, staff's commitment to work with all parties to see what elements make sense for incorporation, and the possibility of the public hearing being reset for a later date.

Board Comments:

The Board and staff discussed the difficult history of this rule making; the possibility of including provisions addressing emission decreases; the likelihood of this item being discussed further at the Stationary Source Committee (SSC) meeting in October; the ongoing outreach plan before the public hearing to consider adoption; expectations regarding the rulemaking as being proposed comprehensively or sequentially; the benefits of resetting the public hearing for a later than anticipated date in order to hear all comments and consider all proposals; which groups were involved in the rule development process to date; the adequacy of health risk assessments (HRAs); whether HRAs have led to any refinery emissions mitigations and the details of the same; and the importance of sharing with the Board any additional information available to staff when they are asked to consider the proposed rule.

Director Adams requested a copy of the proposed rule as soon as possible after it is available to allow an opportunity for its comprehensive review.

NOTED PRESENT: Chairperson Miley was noted present at 10:14 a.m.

Director Zane requested that a comprehensive list of all those groups involved in the rulemaking to date be provided at the next Board meeting.

Public Comments:

David McCoard, Sierra Club, addressed the Board to advocate for strong regulations that protect the community.

Jeff Kilbreth addressed the Board regarding the seeming abandonment of the concept of continual emissions improvement to be replaced by a concept of avoiding worsening of emissions and to suggest that industry has no incentive for improvement other than regulation.

Director Gioia noted that slide 7, *Next Steps*, includes "Seek Additional Emission Reductions" as a stated goal of the Air District and staff.

Ethan Bucker, Forest Ethics, addressed the Board to suggest that residents of Contra Costa County endure emissions like no other region in the U.S. and that a rule that does not include emissions reductions is unacceptable.

John Ribeiro-Broomhead, Sierra Club, addressed the Board in gratitude for the urgency expressed in Air District messaging and by the parties in their engagement of climate-related matters.

Jess-Dervin Ackerman, Sierra Club San Francisco Bay Chapter, addressed the Board in follow up to the 800 pieces of correspondence provided directly to the individual members of the Board and to request Board action instead of endless studies.

Reverend Earl W. Koteen, Sunflower Alliance, addressed the Board to request that this matter be considered within, and with an understanding of how critical this is to, the larger context.

Diane Bailey, Natural Resources Defense Council (NRDC), addressed the Board regarding the existence of deaths attributed to air quality in the U.S. each year and to support a rule that includes emissions reductions and is presented as a single, comprehensive proposal instead of a sequential one.

Ben Keller, Sunflower Alliance, addressed the Board in support of a strong rule.

Greg Karras addressed the Board to request the inclusion in the proposed rule of a provision requiring all refineries either achieve a 20% reduction in pollutants known to cause harm or utilize best available control technology; in support of a postponed rule adoption hearing if necessary for the inclusion of reductions provisions; to suggest that it is economically feasible for all of the refineries to modify operations to reduce emissions with current technology; and to propose that recent permitting applications provide an opportunity for the Air District to impose stricter emissions standards or, to the extent there is disagreement on that point, to suggest the Board become involved in the discussion.

Claire Broome addressed the Board to state that studies are important but when a situation is dire, an interim action must be taken to avoid the public health consequences of inaction, and in support of a rule with an emissions reduction provision.

Ann Puntch addressed the Board to read correspondence to the Board from Marilyn Bardet regarding a Board vote to protect the air and public health, a copy of which was purportedly provided via email directly to the individual members of the Board.

Tom Griffith, Martinez Environmental Group (MEG), addressed the Board to commend the comments made by Director Zane, to encourage the other members of the Board to follow suit and to suggest that the comments by Chairperson Miley tend to end, instead of encourage, discussion.

Chairperson Miley stated that his comments were made to clarify what is on the agenda today and the resulting limitations imposed on the discussion under the Brown Act.

Denny Larson, Global Community Monitor (GCM), addressed the Board to suggest that the event at the Chevron Richmond Refinery in August 2012 is an example of the result of inadequate regulations and any limitations imposed on the dialogue today will control the outcome of the rulemaking process.

Chairperson Miley clarified that the SSC will meet in October to allow for public input on the substance of the rulemaking; said staff has been directed to consider input received; and explained the rulemaking process again.

Director Gioia noted that the Board is hearing the public comments regarding the need for the provisions requiring reductions as well as staff and Board comments that support the same.

Jed Holtzman, 350 Bay Area, addressed the Board to commend the comments by those before him , as well as the monitoring work and data provided, and in support of a stronger rule.

Alejandro Soto-Vigil, Rent Stabilization Board Berkeley, addressed the Board regarding the lack of diversity among Air District staff; to suggest staff do not reside near the refineries; and in support of an emissions reductions provision in the rule.

Siengther Lathanasouk, Asian Pacific Environmental Network (APEN), (with translation service provided by an unnamed individual) addressed the Board regarding the long-term personal health impact of the Chevron Richmond Refinery event in August 2012; the disproportionate burden the refinery places on the residents of the neighboring community; and to express his concern about continued contact with the refinery.

Lipo Chanthanasuk, APEN, addressed the Board regarding his personal history and the various refinery events he and his family have endured since moving to the Bay Area in 1991, along with the long-term health consequences of the same.

Torm Uompraseurt, APEN, addressed the Board regarding his air quality experiences during his 39-year residency in the Richmond area and to encourage strong and swift action to avoid further unnecessary deaths and illnesses in his community.

Megan Zapanta, APEN, addressed the Board to suggest that refugees deserve better from the U.S. and to call upon the Air District to impose rigorous environmental protections.

Nile Malloy, CBE, addressed the Board regarding the troubling absence of “emissions reductions” in the meeting agenda; to ask if “emissions reductions” should be included in the agenda if it is an Air District priority; to suggest that HRAs regarding refineries involve a number of grandfathering provisions; and to say that local communities are being successfully intimidated and bought off by industry.

Marie Harrison, Greenaction, addressed the Board regarding her support for the communities neighboring the refineries who are expressing their concerns; to demand action to stop the pollution of the air; and to suggest it is the same message you will receive from the public anywhere in the Bay Area on any air quality topic.

Guy Bjerke, Western States Petroleum Association, addressed the Board regarding the absence of many interested constituencies at today’s meeting because of the narrow subject of the item, not a lack of interest; to suggest that a number of other rules are in place that regulate refinery emissions; and to propose that more refinery emissions-related rules are likely in the future as a result of other planning efforts already in motion.

Nancy Rieser, Crockett-Rodeo United to Defend the Environment (CRUDE), addressed the Board regarding industry’s ability to reduce emissions but decision not to do so; the Board’s duty to protect the public; the inability of HRAs to clean up anything; the Board’s accountability to the public and their only job as cleaning up pollution.

Chairperson Miley stated that the Board is aware of and understands its responsibilities.

Board Action:

Director Gioia made a motion, seconded by Director Adams, to set a public hearing for November 5, 2014 to consider adoption of proposed Regulation 12, Rule 15: Petroleum Refining Emissions Tracking; and approval of a CEQA Negative Declaration.

Board Comments (continued):

The Board and staff discussed the seeming alignment of the staff recommendation, Board commitment and public comments; Chairperson Miley's record of and the Board's commitment to defending public health in the face of strong opposition; interest in emissions reductions proposals; the lack of clarity regarding the agenda item today; the proposed rulemaking as a cause for concern in its currently proposed form; the Board and staff's gratitude for the public's input; and the possibility that the public hearing will be after November 5 to provide adequate time to review and consider various concepts and mechanisms to achieve reductions.

Director Pepper requested an informational presentation regarding HRAs.

Director Zane requested that clear enforcement timeline provisions be included in the rule and material that goes to the SSC and Board, along with information that explains why refineries have been asked to perform their own HRAs instead of utilizing independent assessments.

Board Action (continued):

The motion carried by the following vote of the Board:

AYES: Adams, Barrett, Bates, Chavez, Gioia, Groom, Kim, Klatt, Kniss, Miley, Pepper, Ross and Zane.

NOES: None.

ABSTAIN: None.

ABSENT: Avalos, Fujioka, Haggerty, Hudson, Kalra, Mar, Piepho, Spring and Wagenknecht.

PRESENTATIONS

14. Health Risk Assessment (HRA) Guidelines Revisions (Out of Order Agenda Item #15)

The Board postponed this item to a future meeting date.

15. Report on CalEnviroScreen, California Environmental Protection Agency's (CalEPA) Method for Identifying Disadvantaged Communities (Agenda Item #14)

Mr. Broadbent introduced the topic and Phil Martien, Air Quality Engineering Manager of Planning, Rules and Research, who gave the staff presentation *Report on CalEnviroScreen: CalEPA's Method for Identifying Disadvantaged Communities*, including cap-and-trade auction proceeds; Senate Bill

(SB) 535 requirements and definition of disadvantaged communities; examples of projects; State agency roles to implement SB 535; CalEnviroScreen explanation; Air District example; CalEnviroScreen scoring method and impact for Bay Area; ARB interim guidance; concerns about scoring method, indicator weighting and missing data; recommended changes to CalEnviroScreen and potential impact; outreach by Air District staff; and opportunities to comment.

Board Comments:

The Board and staff discussed the importance of this issue for the Bay Area; the possible divergence between the presumed legislative intent and implementation; others who agree with the Air District's objection to the current implementation plan; the absence of population density as a variable and the questionable math given the actual variables; staff discussions with the author of SB 535 regarding the alignment of legislative intent and implementation; the support of the City and County of San Francisco for the intent of SB 535 but with a concern about its implementation and its offer of support to the Air District; the percentage of funds allocated in various project categories; cost of living as an important, but unrecognized, factor in allocations; the history of Air District support for SB 535; the number of disadvantaged communities in Contra Costa County as a clear example that the current CalEPA method is inadequate; the importance of a real nexus relative to satisfying the provision "benefit disadvantaged communities"; whether high speed rail is an eligible project for this category of funding; and the actual existence of disadvantaged communities in the San Joaquin Valley that should not be deprived a source of funding.

Director Gioia asked that an altered version of slide 15, *CalEnviroScreen Method / Air District Recommended Method*, that highlights those communities that fit the description in slide 11, *ARB Interim Guidance*, bullet 2, be provided to the Board.

Director Adams requested a chart that breaks down the various project categories and revenue commitments under SB 535.

Public Comments:

Dennis Dalton addressed the Board to suggest the agenda be improved for future meetings and the Chairperson provide an overview of proceedings at the beginning of each meeting.

Mr. Soto addressed the Board in support of Air District efforts to amend the method used to identify disadvantaged communities.

Shasa Curl, City of Richmond, addressed the Board to read a prepared statement regarding the support of the City of Richmond for Air District efforts to modify the method used to identify disadvantaged communities and to suggest additional amendments.

Ms. Harrison addressed the Board regarding of her community, Bayview-Hunters Point, being ignored as a disadvantaged community based on the current CalEnviroScreen methodology; to warn that implementation based on this current methodology will create a deep divide between the community and its leaders; and in support of Air District efforts to modify the method used to identify disadvantaged communities.

Leotis Martin, Huntersview Mothers Fathers Committee, addressed the Board in support of Air District efforts to modify the method used to identify disadvantaged communities and to suggest that community representatives will continue to attend meetings until this is fixed.

Board Comments (continued):

The Board and staff discussed the erroneous exclusion of population density from the calculations; the possibility for improvements to the map through advocacy; and the need to work to change the definitions in SB 535 and the CalEnviroScreen itself.

Board Action: None; receive and file.

16. Testing Evaluation Methodology for Fluid Catalytic Cracking Units (FCCUs)

Ms. Roggenkamp introduced Eric Stevenson, Director of Technical Services, who gave the staff presentation *Testing Method Evaluations for FCCUs*, including background, particulate matter (PM) components, source testing issues for condensable PM (CPM), PM component emission limits, current actions and next steps.

Board Comments:

The Board and staff discussed the applicability of testing standards for CPM and the extent of CPM testing done outside of regulatory standards; information relative to Method 202 issues in other regions; whether externalities are affecting PM outside the stack and making monitoring methodology challenging to establish; if monitoring methodologies utilized for ozone could be applied to CPM; the end point on this topic and the likely timeline for a rulemaking if and when an effective test method is established; how South Coast Air Quality Management District (SCAQMD) deals with this issue, if the Air District is following suit and whether SCAQMD's method has been challenged in the courts.

Public Comments:

Greg Karras, on behalf of representatives of CBE, Sunflower Alliance, 350 Bay Area, Sierra Club, Greenaction, BSHC, APEN, GCM and NRDC who yielded their time, addressed the Board regarding the policy nature of this decision and the admission by Chevron of the presence of harmful pollutants that can be mitigated with the proper technology and processes.

Board Action: None; receive and file. The Board directed staff to take all reasonable measures to reduce and prevent harmful air pollution, including fine PM, which should be implemented without unnecessary delay and that there be a report back to the Board on what actions may be appropriate to achieve that objective.

PUBLIC COMMENT ON NON-AGENDA MATTERS:

Jed Holtzman addressed the Board regarding the seemingly mixed position taken by the Air District on Assembly Bill 2145 (Bradford) and to encourage the launch of community choice aggregates by Bay Area communities as soon as possible before the bill likely returns during the next legislative session.

BOARD MEMBERS' COMMENTS: None.

OTHER BUSINESS

17. Report of the Executive Officer/APCO:

Mr. Broadbent gave the staff presentation *Summary of Ozone Seasons*.

18. Chairperson's Report: None.

19. Time and Place of Next Meeting:

Wednesday, September 17, 2014, Bay Area Air Quality Management District Headquarters, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

20. Adjournment: The Board meeting adjourned at 12:56 p.m.

/s/ Sean Gallagher

Sean Gallagher
Clerk of the Boards