

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET – SAN FRANCISCO, CA 94109

Approved Minutes: Board of Directors Regular Meeting – April 7, 2004

Call To Order

Opening Comments: Chairperson Haggerty called the meeting to order at 9:47 a.m.

Pledge of Allegiance: Dan Phelan led the Board in the Pledge of Allegiance.

Roll Call: Present: Scott Haggerty, Chair, Chris Daly, Mark DeSaulnier, Jerry Hill, Liz Kniss (9:52 a.m.), Patrick Kwok, Nate Miley, Julia Miller, John Silva, Tim Smith, Pam Torliatt, Marland Townsend (9:57 a.m.), Gayle Uilkema, Brad Wagenknecht, Shelia Young.

Absent: Harold Brown, Roberta Cooper, Jake McGoldrick, Mark Ross.

Swearing in of New Board Member: Monte Sereno Mayor Erin Garner, representing Santa Clara County, was sworn in as a Board Member.

Public Comment Period: There were no speakers.

Commendations/Proclamations:

The Board of Directors recognized employees who have completed the milestone levels of twenty-five (25) and thirty (30) years of service to the District.

The Board of Directors recognized the following employee who has completed 25 years of service with the District: Janet Simon. The Board of Directors recognized the following employees who have completed 30 years of service with the District: Lina Arcenal, Michael Basso, Naomi Bernardo, Howard Lancer, Clifford Sennello, Nancy Balberan, Kenneth Jensen, Thomas Perardi, and Mike Raccette.

Consent Calendar (Items 1 – 7)

1. Minutes of March 3, 2004
2. Communications. Correspondence addressed to the Board of Directors
3. Report of the Advisory Council – There was no report.
4. Monthly Activity Report – *Activities for the month of February 2004*
5. Report of District Personnel on Out of State Business Travel

6. Approval of Expenditure of \$162,500 from the Contingencies Account to fund Settlement

Considered approval of \$162,500 expenditure from Contingency account to fund the settlement in the lawsuit of Communities for a Better Environment (CBE) and Transportation Defense and Education Fund (TRANSDEF) v. Bay Area AQMD, et al., San Francisco Superior Court, Case No. 323849, First District Court of Appeals Case No. A103991 as approved at the March 3, 2004 Board of Directors meeting.

7. Approval of Budget increase to Reflect Amounts Previously Allocated by Board of Directors to Transportation Fund for Clean Air Budget Program 612 (Vehicle Buy-Back and Scrapping) and Planning and Research Division Budget Program 603 (Central California Ozone Studies)

Considered approval of Increases to the current FY '03/04 approved TFCA Budget for Program 612 and to the FY '03/04 Budget for Planning and Research Division Program 603 to formally and properly reflect increases in the amounts allocated to these programs by prior Board actions.

Board Action: Director Young moved approval of Consent Calendar Items 1 through 7; seconded by Director Wagenknecht; carried unanimously with Director Garner abstaining from Agenda Item 1 (Approval of the Minutes of March 3, 2004). The following Board members voted:

AYES: Daly, DeSaulnier, Garner, Hill, Kniss, Kwok, Miley, Miller, Silva, Smith, Torliatt, Townsend, Uilkema, Wagenknecht, Young, Haggerty.

NOES: None.

ABSENT: Brown, Cooper, McGoldrick, Ross.

Adopted Resolution No. 2004-06: A Resolution to Increase the Approved Transportation Fund for Clean Air Budget Program 612 (Vehicle Buy-Back and Scrapping) and Approved Planning and Research Division Budget Program 603 (Central California Ozone Studies) for Fiscal Year 2003-2004

Committee Reports and Recommendations

8. Report of the Personnel Committee Meeting of March 4, 2004

Director Kwok presented the report and stated that the Committee met on March 4, 2004 to conduct interviews of candidates to fill the alternate Medical Profession position on the District's Hearing Board. Five candidates were interviewed for the Board-appointed position:

1. Ronit Benabraham-Katz
2. Sabir Kahn
3. Steven Kmucha
4. Becky Bell
5. Edward Swenson

The Committee voted unanimously to recommend the appointment of Steven Kmucha for a three-year term of office effective April 15, 2004.

The Committee also directed staff to forward the applications and resumes of Becky Bell and Edward Swenson to the Advisory Council Applicant Selection Working Group to be included in their pool of applicants for positions on the Advisory Council. The next meeting of the Committee will be at 9:30 a.m., Wednesday, April 14, 2004.

Board Action: Director Kwok moved the Board approve the Committee recommendation to appoint Steven Kmucha as the alternate member in the Medical Profession category on the District's Hearing Board; seconded by Director Miller; carried unanimously without objection.

9. Report of the Legislative Committee Meeting of March 17, 2004

Director Wagenknecht presented the report and stated that the Committee met Wednesday, March 17, 2004 and reviewed eleven bills and, after discussion, is recommending the positions indicated in your packet.

Staff provided an update on the Smog Check legislative proposal (AB 2683- Lieber) and noted that there is considerable opposition to this bill by the Specialty Equipment Manufacturers Association (SEMA). The next Committee meeting will be at the Call of the Chair.

Board Action: Director Wagenknecht moved the Board approve the recommendations of the Legislative Committee; seconded by Director Torliatt; carried unanimously without objection.

10. Report of the Regional Agency Coordinating Committee Meeting of March 19, 2004

Director DeSaulnier presented the report and stated that the Regional Agency Coordinating Committee met on Friday, March 19, 2004 at MetroCenter in Oakland.

Air District staff presented an update regarding development of the Bay Area 2004 Ozone Strategy. The Ozone Strategy will include a redesignation request and maintenance plan for the national 1-hour ozone standard and a revision to the attainment strategy for the California 1-hour ozone standard. Air District staff is currently preparing draft control measure descriptions for 17 stationary and area source measures. MTC and Air District staff are updating and enhancing 19 transportation control measures.

MTC staff presented updates regarding Regional Measure 2 and legislative efforts at the state and federal levels focused on transportation funding.

ABAG and MTC staff presented information regarding Smart Growth implementation programs and activities currently underway.

The RACC members discussed the MTC-ABAG Task Force recommendation for a joint policy committee and concluded that the Regional Agency Coordinating Committee has a

continuing interest in promoting and tracking Smart Growth implementation strategies. The next meeting will be at the call of the Chair.

Board Action: None. This report provided for information only.

11. Report of the Stationary Source Committee Meeting of March 22, 2004

Director DeSaulnier presented the report and stated that the Committee met on Monday, March 22, 2004. The Committee received staff reports on the renewal of Title V Permits to Pacific Gas & Electric Company (PG&E) and considered a recommendation to support PG&E's proposed shut down of the Hunters Point Power Plant. Staff presented information on the Title V Permit Program and the Mirant Potrero and PG&E Hunters Point Power Plants, and discussed the following:

- Background information on the Mirant Potrero and PG&E Hunters Point Power Plants.
- Proposed permit renewals to be issued by the end of March 2004.
- Information meetings scheduled for April 6 and April 8, 2004; and Public Hearings scheduled for May 4 and May 6, 2004, respectively.
- BAAQMD Regulation 9, Rule 11 – NOx Emission Limits for Utility Boilers.
- NOx Emissions from Hunters Point S-7 and Potrero S-1 Utility Boilers.

The consensus of the Committee was to support PG&E's proposed shut down of the Hunters Point Power Plant.

Staff provided a report on the proposed amendments to District Regulation 3: Fees and discussed the following:

- Various fee categories and the proposed amendments to the various fee structures.
- Projected revenue for fiscal year 2003/2004.
- Fee increases over the last five years.
- Fiscal Year 2004/2005 Fee Proposal.
- Title V Permit Fees
- Fiscal Year 2004/2005 Projected Fee Revenue and Program Costs
- Rule Development Schedule

Several Committee members expressed concerns regarding the large gap in Revenue vs. Costs for the Title V Fees and the Operating/New & Modified Permit Fees and were of the opinion that the revenues should be increased to cover the operational costs of mandated programs such as the Title V program.

The consensus of the Committee was that staff should review the Committee members' recommendations and concerns and consider adjusting the Title V Permit fees for fiscal year 2004/2005 for purposes of recovering the costs of the program. Staff reported that it would consider the Committee's input and incorporate its suggestions into the final recommendation that would be made to the full Board of Directors for its approval. The next meeting of the Committee is scheduled for Monday, May 24, 2004.

Board Action: Director DeSaulnier moved the Board approve the report of the Stationary Source Committee; seconded by Director Townsend.

In response to questions from Director Daly, Brian Bunger, Counsel, stated that the District has looked at the Title V permits for the PG&E plant and noted that in the abstract the District does have the legal authority to deny a Title V Permit. The District can deny or grant permits based on the criteria that are applicable. Mr. Bunger stated that in the case of Hunters Point and Potrero, the facilities currently comply with all applicable standards. Mr. Bunger noted that a third party could bring legal action on the Title V Permit. If PG&E wishes not to have a Title V Permit for Hunters Point, the proper process would be for PG&E to request that their application for the permit be cancelled and the District would then act on that request. The motion then carried unanimously without objection.

12. Report of the Executive Committee Meeting of March 29, 2004

Chairperson Haggerty presented the report and stated that the Committee met on Monday, March 29, 2004, and received and filed the Reports of the Hearing Board and Advisory Council. Stan Hayes, Chairperson of the Advisory Council Applicant Selection Working Group, recommended the Committee recommend Board approval of the appointment of Sanjiv Bhandari to the "Architect" category on the Advisory Council effective immediately and ending December 31, 2004. The Committee approved the recommendation.

The Committee discussed the Air District's role in the creation of a joint policy committee as proposed by the Metropolitan Transportation Committee (MTC) and the Association of Bay Area Governments (ABAG). There was discussion on the overlap of responsibility between the three agencies on public transportation and land use issues; and that the Air District should be a part of any joint policy committee because it has a statutory role in these areas. There was also discussion on the role of the Regional Agency Coordinating Committee (RACC). The consensus of the Committee was that Chairperson Haggerty would send a letter to Senator Torlakson indicating the Air District should be a member of the proposed Joint Policy Committee based on statutory requirements.

The Committee held a Closed Session to consider a salary survey and potential adjustments for management employees for fiscal year 2004-2005. General direction was given to the Executive Officer on the matter. The next meeting of the Executive Committee is scheduled for 9:30 a.m., Friday, April 30, 2004.

Board Action: Chairperson Haggerty moved that the Board accept the report and recommendations of the Executive Committee; seconded by Director Townsend; carried unanimously without objection.

Presentation

13. Clean Air Plan for the Tri-Valley Area

Ellen Garvey presented the Clean Air Plan for the Tri-Valley Area, the Plan includes voluntary measures to help achieve clean air in the Tri-Valley area.

Chairperson Haggerty stated that the Clean Air Plan for the Tri-Valley Area was commissioned out of his office. The Plan has been presented to Dublin and Pleasanton, and Pleasanton intends to incorporate the Plan into their General Plan. The Plan will be

presented to Livermore at a later date. The Plan outlines some voluntary measures developed for the Tri-Valley Area that can reduce harmful levels of air pollution. Chairperson Haggerty stated that he would like the Board to consider using this Clean Air Plan as a model for their communities. Chairperson Haggerty introduced Ellen Garvey.

Ms. Garvey presented the Plan and reviewed the following:

- The Clean Air Plan goals and that it can serve as a model for the region.
- Comparison of population growth in the Tri-Valley area and the vehicle miles traveled (VMT) per day from 2000 through 2010.
- The Tri-Valley is unique and most violations of the ozone standards in the Bay Area occur at the Livermore monitoring station.
- The regional consequences.
- The breakdown of ozone and particulate matter for Alameda County.
- The four areas of voluntary measures:
 - Transportation
 - Technology
 - Land Use
 - Public Outreach

Ms. Garvey noted the Plan could serve as a model for the rest of the nine Bay Area counties. There was discussion on taxing vehicles traveling through the area and Peter Hess, Deputy APCO, stated that there has been a legislative proposal to have a tax based on the emission rate from vehicles and the VMT's, but it did not make it through Committee. Brian Bunker, Counsel, added that there are incentives now for lower emitting vehicles and lower VMT's.

Board Action: None. This item presented for information only.

Other Business

14. Report of the Executive Officer/APCO – Jack Broadbent, Executive Officer/APCO reported on the following items:
 1. The Environmental Protection Agency (EPA) has made a finding of Attainment for the one-hour ozone standard in the Bay Area and it is expected the finding will be published in the *Federal Register* within the next few weeks. As part of this action, EPA is approving several elements of the District's 2001 Air Quality Maintenance Plan.
 2. A recent decision by the Ninth Circuit Court of Appeals in the TCM II case held that MTC does not have to increase the transit ridership over the 1982 levels. This is important for the District as it puts together its Maintenance Plan and it is brought before EPA. The District needs to make a demonstration that it has implemented all the Measures in past Plans, one of which was TCM II.
 3. A list of Community Events/Meets for April through June 2004 at each Board member's place.
 4. The photograph on the wall that was put together by a District staff member, Victor Morales.

15. Chairperson's Report - Chairperson Haggerty requested any Board member who would like to attend the Air & Waste Management Annual Conference in Indianapolis, Indiana to contact Mr. Broadbent, the Clerk, or himself.

Closed Session (The Board adjourned to Closed Session at 10:30 a.m.)

16. Conference with Legal Counsel

Existing Litigation:

Pursuant to Government Code Section 54956.9(a), a need existed to meet in Closed Session with legal counsel to consider the following cases:

1. **Paul Mauriello v. Bay Area AQMD** (*Public Employment Relations Board, Unfair Practice Charge No. SF-CE-175-M*)
2. **Stonelight Title, Inc. and David Anson v. Bay Area AQMD**, *United States Court of Appeals for the Ninth Circuit, Case No. 03-15402 and 03-15530 (Appeal from Judgment following Jury Trial in United States District Court, N.D. Cal., San Jose Division, Case No. CV 98-21060-JW/HRL)*

Open Session (The Board reconvened to Open Session at 10:39 a.m.)

Mr. Bungler reported that the Board met in Closed Session to discuss the two cases under Item 16 on the agenda. The Board received a status report on each item and provided general direction to Counsel.

17. Board Members' Comments – Director Young commended Chairperson Haggerty for producing the Clean Air Plan for the Tri-Valley area. Director Young stated that this is an opportunity to improve upon this in all of the Bay Area counties, and that it might be best done over the county lines and the cities within those counties/districts could apply it to their General Plans.
18. Time and Place of Next Meeting - 9:45 a.m., Wednesday, April 21, 2004, 939 Ellis Street, San Francisco, California.
19. Adjournment: The meeting was adjourned at 10:41 a.m.

Mary Romaidis
Mary Romaidis
Clerk of the Boards

mr