



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

BOARD OF DIRECTORS' REGULAR MEETING

October 1, 2003

A meeting of the Bay Area Air Quality Management District Board of Directors will be held at 9:45 a.m. in the 7th floor Board room at the Air District headquarters, 939 Ellis Street, San Francisco, California.

Questions About an Agenda Item

The name, telephone number and e-mail of the appropriate staff person to contact for additional information or to resolve concerns is listed for each agenda item.

Meeting Procedures

The public meeting of the Air District Board of Directors begins at 9:45 a.m. The Board of Directors generally will consider items in the order listed on the agenda. However, any item may be considered in any order.

After action on any agenda item not requiring a public hearing, the Board may reconsider or amend the item at any time during the meeting.

BOARD OF DIRECTORS' REGULAR MEETING A G E N D A

WEDNESDAY
OCTOBER 1, 2003
9:45 A.M.

BOARD ROOM
7TH FLOOR

CALL TO ORDER

Opening Comments
Roll Call
Pledge of Allegiance
Commendations/Proclamations

Scott Haggerty, Chairperson
Clerk of the Boards

PUBLIC COMMENT PERIOD

Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3
Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Board's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.

CONSENT CALENDAR (ITEMS 1 – 5)

Staff/Phone (415) 749-

1. Minutes of September 17, 2003
M. Romaidis/4965
mromaidis@baaqmd.gov
2. Communications
Information only
W. Norton/5052
exec@baaqmd.gov
3. Report of the Advisory Council
B. Hanna/4962
bchanna@napanet.net
4. Approval of Proposed Amendments to the Administrative Code Division I, Operating Policies and Procedures, Section 6.2: Standing Committees
W. Norton/5022
exec@baaqmd.gov
Approve proposed amendments to the Administrative Code clarifying Standing Committee procedure and protocol, as noticed at the Board of Directors meeting of September 17, 2003.
5. Approval of Employment Agreement Amendment/Extension for William C. Norton, Executive Officer/APCO
Brian Bunger/4797
bbunger@baaqmd.gov

Approve contract extension for the Executive Officer/APCO from November 30, 2003 to December 29, 2003.

COMMITTEE REPORTS AND RECOMMENDATIONS

6. Report of the **Regional Agency Coordinating Committee** Meeting of September 19, 2003

CHAIR: M. DESAULNIER

W. Norton/5052
exec@baaqmd.gov

7. Report of the **Budget and Finance Committee** Meeting of September 24, 2003

CHAIR: J. MILLER

W. Norton/5052
exec@baaqmd.gov

Action(s): The Committee recommends notification of proposed revisions to the Administrative Code Division II: Fiscal Policies and Procedures for approval at the October 15, 2003, regular Board of Directors meeting.

OTHER BUSINESS

8. Report of the Executive Officer/APCO
9. Chairperson's Report

CLOSED SESSION

10. Consideration of Terms and Condition of Employment for Jack Broadbent, Executive Officer /Air Pollution Control Officer

The Board will consider terms and conditions of employment for Jack Broadbent, Executive Officer/Air Pollution Control Officer.

OPEN SESSION

11. Consideration and Approval of Terms and Conditions of Employment for the Executive Officer/Air Pollution Control Officer Position

The Board will consider approval of an employment agreement with Jack Broadbent, Executive Officer/Air Pollution Control Officer.

12. Board Members' Comments

Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

13. Place of Next Meeting - 9:45 a.m., Wednesday, October 15, 2003 -939 Ellis Street, San Francisco, CA 94109

14. Adjournment

WCN:mag

CONTACT CLERK OF THE BOARD - 939 ELLIS STREET SF, CA 94109

(415) 749-4965
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BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities notification to the Clerk's Office should be given at least 3 working days prior to the date of the meeting, so that arrangements can be made accordingly.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 24, 2003

Re: Board of Directors' Draft Meeting Minutes

RECOMMENDED ACTION:

Approve attached draft minutes of the Board of Directors meeting of September 17, 2003.

DISCUSSION

Attached for your review and approval are the draft minutes of the Board of Directors' meeting of September 17, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
939 ELLIS STREET - SAN FRANCISCO, CALIFORNIA 94109

Draft Minutes: Board of Directors Regular Meeting – September 17, 2003

Call To Order

Opening Comments: Chairperson Haggerty called the meeting to order at 9:54 a.m.

Pledge of Allegiance: Director Hill led the Board in the Pledge of Allegiance.

Roll Call: Present: Scott Haggerty, Chair, Harold Brown, Maria Ayerdi, Roberta Cooper (10:03 a.m.), Chris Daly, Mark DeSaulnier (10:25 a.m.), Jerry Hill, Liz Kniss (10:25 a.m.), Patrick Kwok, Nate Miley, Dena Mossar (9:56 a.m.), Mark Ross, John Silva, Pam Torliatt, Marland Townsend, Gayle Uilkema (10:25 a.m.), Brad Wagenknecht, Shelia Young.

Absent: Jake McGoldrick, Julia Miller, Tim Smith.

Commendations/Proclamations: There were none.

Public Comment Period: There were none.

Consent Calendar (Items 1 – 9)

1. Minutes of September 13, 2003
2. Communications. Correspondence addressed to the Board of Directors
3. Report of the Advisory Council
4. Monthly Activity Reports – *Division Activities for the month of August 2003.*
5. Report of District Personnel on Out of State Business Travel

6. *Adoption of Health Reimbursement Arrangement Plan*

Considered adoption of a Health Reimbursement Arrangement Plan.

7. Consider Approval of the following Personnel Actions

- A) *Retitle the Existing Classification of Director of Permit Services to Director of Engineering;*
- B) *Modify Existing Classification of Air Quality Program Manager to include Compliance and Enforcement Division or the Planning and Research Division; and*
- C) *Establish a New Classification of Air Quality Engineering Intern with an Hourly Pay Rate Equivalent to the “A” Step of the Air Quality Permit Technician I (currently \$23.25).*

8. Resolution in Support of Proposals for State and Federal Contributions to the Mobile Source Control Plan

Considered a resolution in support of proposals for more stringent control of sources under the jurisdiction of the California Air Resources Board and the United States Environmental Protection Agency.

9. Notice of October 1, 2003 Consideration of Proposed Amendments to the Administrative Code Division I, Operating Policies and Procedures, Section 6.2 Standing Committees

Proposed amendments to the Administrative Code clarified committee procedure and protocol.

Board Action: Director Townsend moved approval of Consent Calendar Items 1 through 9; seconded by Director H. Brown; carried without objection with the following Board members voting:

AYES: H. Brown, Ayerdi, Daly, Hill, Kwok, Miley, Mossar, Ross, Silva, Torliatt, Townsend, Wagenknecht, Haggerty.

NOES: None.

ABSENT: Cooper, DeSaulnier, Kniss, McGoldrick, Miller, Smith, Uilkema, Young.

Adopted Resolution No. 2003-08: A Resolution Supporting South Coast Air Quality Management District Proposals for State and Federal Contributions to the Mobile Source Control Plan

Committee Reports and Recommendations

10. Report of the Public Outreach Committee Meeting of September 8, 2003

Director Ross presented the report and stated that the Committee, lacking a quorum, met on Monday, September 8, 2003 and that Staff presented an update on the Air District's summertime Spare the Air program. Staff reviewed the significant activities and noted that the Spare the Air summertime program will end on October 17, 2003. The Committee requested staff conduct research to see if there are any additional incentives being offered by employers on Spare the Air days.

Staff and the consultant, Communications West, updated the Committee on outreach to schoolchildren including the National Children's Theater, the curriculum-based science and ongoing partnerships with museums. The Committee viewed a portion of a video showing the National Children's Theater in action. Staff noted that the Air District funded 30 performances this year. The consultant provided information on corporate and public sponsors. The Committee discussed ways to expand the program and the possibility of earmarking some Supplemental Environmental Projects (SEP) monies for this education

program. There was brief discussion on a Clean Air Foundation to approach refineries and other businesses to contribute funds to support this type of activity.

Staff received input from the Committee on the following: 1) The process of re-bidding contracts and selecting contractors to assist with public outreach activities. The consensus of the Committee is to have one-year contracts, with the possibility of two annual extensions, for a total not to exceed three years. 2) The Committee concurred with the staff recommendation that RIDES for Bay Area Commuters be a sole source contract. 3) The Committee also agreed with the staff recommendation that the Air District reserve \$150,000 to continue the youth programs. 4) The role the Committee should play in the selection of contractors.

Staff reviewed the referrals from the last meeting. The next meeting of the Committee is scheduled for 9:45 a.m., Monday, November 3, 2003.

Board Action: Director Ross moved the Board accept the report; seconded by Director Townsend; carried without objection.

11. Report of the Mobile Source Committee Meeting of September 11, 2003

Action(s): The Committee may recommend Board of Director approval of the following:

- A) Proposed Revisions to the Vehicle Incentive Program Guidelines for FY 2003/04 to provide eligibility for used vehicles;*
- B) Additional allocation of \$200,000 in FY 2003/04 Transportation Fund for Clean Air Regional Funds to ensure sufficient funds are available for both new and used vehicles incentives;*
- C) Transportation Fund for Clean Air Regional Fund grant awards for FY 2003/04, including \$8.2 million to 40 public agency projects, \$1 million to the Regional Rideshare Program, and an increase of \$1 million to the District's Vehicle Buy Back Program.*

Director Hill presented the report and stated that the Committee met on Thursday, September 11, 2003 and Staff presented a report on the audit of projects funded by the Transportation Fund for Clean Air (TFCA) Regional Fund, which included the auditor's findings and staff's recommendations for Air District actions to address four minor administrative issues. The four auditor recommendations are listed in the Board packet. Staff recommends that all but one of the auditor suggestions be implemented. Because of the amount of paperwork involved, staff recommended that the fourth auditor suggestion be modified so that project sponsors of third party shuttle operations submit a certification of compliance letter to the Air District instead of a copy of the third party agreement. This letter would identify all third party contractors and the date and duration of their contracts. The Committee recommends Board acceptance of the results of TFCA Audit Report #6, including the auditor's findings and staff's recommendations for Air District actions to address four minor administrative issues.

Staff presented a report on incentives for used vehicles for the Vehicle Incentive Program for FY 2003/04. Two requirements proposed by staff are:

- Incentives should be provided only for used vehicles that have not received any previous funding via the Air District's TFCA and VIP programs, and
- The used vehicle must have been registered outside the boundaries of the Air District for at least the last 180 days.

Incentives for used vehicles would be prorated based on the model year of the vehicle. To ensure that sufficient funds are available for both new and used vehicles, staff recommended an allocation of an additional \$200,000 in TFCA Regional Funds for the FY 2003/04 VIP program. The Committee recommends Board approval of the following:

1. Revisions to TFCA Policy #23 to provide eligibility for used vehicles to receive incentives;
2. Allocation of an additional \$200,000 in TFCA Regional Funds for the FY 2003/04 VIP program to ensure that sufficient funds are available for both new and used vehicle incentives; and
3. Staff is requested to come back with a proposal that this would also apply to private individuals.

Staff presented its recommendations for FY 2003/04 TFCA Regional Fund grant awards. Staff reviewed those projects that were not eligible and those that were not recommended for funding. Staff noted that Project #03R54 should be listed in the first table on Attachment 1. Staff requested that CARB's NO2 slip standard be waived to allow projects 03R51 and 03R55 requesting funds for retrofit filters to proceed. No filters meet the CARB standard at this time and staff explained that the benefit of PM reductions from the filters outweighs the modest potential risks associated with an increase in NO2. Staff explained the new proposal for funding the Regional Rideshare Program (RRP). MTC and the Air District will enter into a multi-year contract and the Air District will fund the RRP with up to \$1 million off the top of the Regional Fund as long as the project meets annual goals. The Committee recommends the Board approve the following:

1. Staff recommendations for FY 2003/04 TFCA Regional Fund grant awards listed on Attachment 1, with the exception of 03R14 Shuttle Bus Service-Dumbarton Bridge. This project will be re-evaluated for eligibility and brought to the Committee at a future meeting.
2. Allowing an extension to further clarify and evaluate the City of Berkeley's Dynamic Ridesharing Program and City of Sunnyvale's Battery Back-up System. These projects will be presented to the Committee at a future meeting.
3. Allocation of \$1 million to the Regional Rideshare Program.
4. Allocation of \$1 million in additional TFCA Regional Funds for the Vehicle Buy Back (VBB) Program. This would increase the FY 2003/04 funds allocated for the scrappage of old vehicles from \$2.5 million to \$3.5 million.
5. Reconsideration of the Alameda County Project #03R26 regarding Class 2 bicycle lanes on Tesla Road.
6. Requested staff look at a change in the criteria that would be favorable toward funding bicycle and pedestrian bridges in the future.

Director Mossar commented on the lack of signage when taking BART to the San Francisco Airport. The next meeting of the Committee is scheduled for 9:30 a.m., Thursday, October 9, 2003.

Board Action: Director Hill moved the Board approve the recommendations of the Mobile Source Committee; seconded by Director Young; carried unanimously without objection.

12. Report of the Inter-Regional Coordinating Committee Meeting of September 5, 2003.

William C. Norton, Executive Officer/APCO presented the report and stated that on September 5, 2003, elected officials and staff of the Air Resource Board, Sacramento AQMD, San Joaquin AQMD and the Bay Area Air District met for the second time to discuss matters surrounding the possible designation of the Bay Area as attainment of the eight-hour federal ozone ambient air quality standard. The paramount issue addressed by this group revolves around the mitigation of the transport of ozone from the Bay Area to the downwind regions. Work that is being done by the ARB and our staff to quantify the relative contribution of the transport will bring a scientific focus to this political issue. As reported to the Executive Committee at their last meeting, the ozone modeling results will start to unfurl later in the year.

In the mean time, the various agencies staff has been reviewing the stringency of rules, enforcement practices and transportation control measures in order to ascertain the possible emission reduction potential in each region. Concurrently, the staff is exploring the mechanisms for the downwind regions to obtain credit from EPA for emission reductions that may occur in the Bay Area.

Soon to be addressed is the problem in the downwind areas of unbridled growth, the lack of mass transit and the role of downwind districts in the management of its own congestion as the cause of its ozone problem. The next meeting of the group is scheduled for November 6, 2003.

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

Other Business

13. Report of the Executive Officer/APCO. Mr. Norton reported on the following items: 1) there was a Spare the Air day last Thursday and Friday and there were no federal or state exceedances; and 2) the Ozone Plan Update community meetings and encouraged the Board members to attend. Mr. Norton noted that Director Young attended the September 16th meeting in Oakland.

14. Chairperson's Report. Chairperson Haggerty stated that on September 10, 2003, he, along with Terry Lee and Peter Hess met with Jennifer Barton aide to Congressperson Tauscher and Kath Hoffman aide to Congressman Miller. Each meeting lasted about one hour and focused on issues affecting the Air District.

During the meetings, positive developments at the District were stressed, such as: the clean air, how TFCA grants are funding projects in their areas, new refinery rules, increased community involvement and greater penalties.

Both aides were very interested as to why the Sacramento and San Joaquin Valley's are blaming the Bay Area for its poor air quality. It was stressed that the Valley's lack of mass transit, exemption of agriculture from regulations (which comprise 25% of their emissions), poor land use planning and over reliance on motor vehicles are the real issues.

They were asked for their support in:

- Getting EPA's approval to make the Bay Area an attainment area. Congressman Cardoza and others in the valley are opposing this designation. Based on the science and air quality, the Bay Area deserves to become an attainment area;
- Continuing the flow of Congestion Mitigation Air Quality (CMAQ) funding into the Bay Area; and
- An increase in Federal Highway or other transportation funding to reduce emissions from motor vehicles and improve mobility.

The aide to Congressman Miller offered to work with the District to organize a letter from the Bay Area congressional delegation to EPA urging their action to designate the Bay Area as attainment of the eight-hour federal ozone standard. Meetings are being arranged with other Congressional delegate offices.

Closed Session (The Board adjourned to Closed Session at 10:08 a.m.)

15. Consider Recommendation and Appointment of Candidate for Executive Officer/Air Pollution Control Officer Position

The Board considered candidate for appointment to Executive Officer/Air Pollution Control Officer position as recommended by the Executive Recruitment Ad Hoc Committee.

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 case:

Communities for a Better Environment and Transportation Defense and Education Fund v. Bay Area AQMD, Metropolitan Transportation Commission, Association of Bay Area Governments, and California Air Resources Board, San Francisco Superior Court, Case No. 323849

Alvin J. Greenberg, Ph.D. v. Bay Area AQMD, et al., United States District Court, N.D. Cal., Case No. C 02 1501 VRW

Open Session (The Board reconvened to Open Session at 11:09 a.m.)

17. Report of the Executive Recruitment Ad Hoc Committee – Consideration of Terms and Conditions of Employment for the Executive Officer/Air Pollution Control Officer Position

The Board considered approval of the Executive Recruitment Ad Hoc Committee recommendation for an employment agreement for the Executive Officer/Air Pollution Control Officer.

Mr. Norton stated that the Board, in Closed Session, voted to approve making an offer to Jack Broadbent as Chief Executive Officer for the District. The terms and conditions are in the agreement. In addition to that, the Board agreed to pursue reciprocity for the retirement

systems between PERS and the San Bernardino retirement system and contribute up to a maximum of \$20,000 on a 50/50 sharing basis.

Brian Bunger, Counsel, reported on Item 16 and stated that the Board met in Closed Session with Counsel and the Board received a status report on the litigation and gave direction for continuing.

Mr. Broadbent expressed his appreciation for the offer.

18. Board Members' Comments: There were none.
19. Time and Place of Next Meeting - 9:45 a.m., Wednesday, October 1, 2003, 939 Ellis Street, San Francisco, California.
20. Adjournment: The meeting was adjourned at 11:12 a.m.

**Mary Romaidis
Clerk of the Boards**

mr

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 22, 2003

Re: Report of the Advisory Council

RECOMMENDED ACTION:

Receive and file.

DISCUSSION

Attached for your review are draft minutes of the Advisory Council Public Health Committee meeting of August 28, 2003 and of the Advisory Technical Committee meeting of August 7, 2003.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: James Corraza

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

DRAFT MINUTES

Advisory Council Public Health Committee
9:30 a.m., Thursday, August 28, 2003

- 1. Call to Order – Roll Call.** 9:36 a.m. Quorum present: Brian Zamora, Chairperson, Elinor Blake, Victor Torreano (10:07 a.m.). Absent: Ignatius Ding, Linda Weiner.
- 2. Public Presentation.** There were no public comments.
- 3. Approval of Minutes of the June 30, 2003 Joint Meeting of the Public Health and Technical Committees.** Due to a lack of a quorum, this item was deferred.
- 4. Discussion with District Staff on Optical Remote Sensing at Refinery Fence Lines.** Peter Hess, Deputy Air Pollution Control Officer, stated the public's comments on the District's 2001 Ozone Plan revealed an interest to know more about refinery emissions in real-time. This provided the basis for referring to the Council the question as to whether the optical fence line monitoring technology at the ConocoPhillips refinery should be applied to other refineries.

At the May 19, 2003 meeting of this Committee, Rodeo and Crockett residents commented on the optical monitoring system and the data it generates. Residents of North Richmond, Clyde and Benicia are also becoming increasingly interested in air monitoring data. The November issue of "Environmental Manager" will be devoted entirely to optical sensing technology.

Gary Kendall, Technical Division Director, stated that he had reviewed refinery reports for 13 incidents at the ConocoPhillips refinery since 1996. The District issued 11 odor nuisance Violation Notices (VNs) and two visible emission VNs for these events, which involved:

- the flaring of process gas with hydrogen sulfide (H₂S)
- the flaring of sulfur plant feed gas, which is 90% H₂S
- the venting of gases to the flare with high sulfur content from product storage tanks
- the venting from tanks that contained "sour" material
- the steam flushing of process vessels that vented oil droplets into the atmosphere
- a fire in a fixed bed coker
- a spill of high strength sulfuric acid, which generated buoyant droplets of acidic mist

Some of the optical data from 1997 to 2000 have been archived and are unavailable. In four of the six events where optical data were available, the monitors registered nothing unusual. During the remaining two events they were shut down for maintenance. During the July 10, 2002 flaring incident the optical monitors did not detect anything unusual. However, the rise of a buoyant plume from a flare stack tip at an elevation of 240 feet would render fence line detection unlikely. The public observed smoke and flames issuing from the flare and smelled foul odors. One refinery Ground Level Monitor (GLM) detected higher H₂S levels. Air

monitors in Bethel Island, Martinez and Pittsburg detected elevated sulfur dioxide (SO₂) at staggered points in time. This is consistent with a large release of a buoyant plume. An incident occurred on April 16, 1997 involving excess flaring of sulfur plant feed gas. The District issued VNs for odor impacts and public nuisance. While nothing was measured at the fence line, a District monitor at the refinery registered 15 parts per billion (ppb) of H₂S; an east refinery GLM measured 170 ppb of SO₂, and a monitor at Crockett Park registered 15 ppb SO₂. Staff will follow-up on the archived optical data to complete its incident assessment and report back to the Committee.

Ms. Blake noted that major refinery incidents are not reflected in the fence line data, probably due to flare stack height and ultraviolet (UV) monitors that are now widely believed to be faulty. Mr. Kendall observed that emissions from leaks of liquid hydrocarbons (HCs) from the top of 30-foot holding tanks would more likely pass through the fence line monitors. However, on June 11, 2003, the optical monitors did not detect the hydrocarbon (HC) and sulfur compounds released from a tank due to a pressure spike. The District issued a public odor nuisance VN.

Ms. Blake opined that while the citizens near the refinery feel empowered by the optical monitoring system, it appears that these data give a false impression that air quality is safe near a refinery during an incident when, in fact, it is not. This raises public health and cost-benefit issues. Newer and better technology now makes possible the measurement even of refinery flares. A regulation that focuses on installing state-of-the-art optical equipment would provide higher quality data that might lead to the long-term improvement of air quality.

Kelly Wee, Director of Enforcement, replied that the establishment of a monitoring scheme requires specific objectives and an equipment distribution aimed at achieving them. The community near the refinery is concerned with acute exposure to emissions during an incident and chronic health risk from exposure to routine emissions. A single monitoring scheme may not be able to address both concerns. Emergency response requires mobility because meteorology often dictates how monitors are deployed. Fixed monitors of any type are generally less effective in emergencies. A robust, fixed monitoring network using canister samplers that conform to the state's toxics data collection protocols could collect data for the long-term. The District posts an incident report within a day, and often within half a day, of an event. The Contra Costa County Health Department issues an incident report within 72 hours of an event and a second report after 30 days. These reports concern the number of complaints, the time of the incident, what occurred, and the preliminary sampling and monitoring data.

Ms. Blake noted that community members in Rodeo and Crockett have asked the Committee to intervene and make a number of specific recommendations. Additional issues before the Committee concern (a) educating the community about further data requirements beyond what are provided by the optical system, and (b) ascertaining how more data can be provided with the monitoring tools the District already has or could develop through grants. For example, a program to install optical monitors in downtown areas other than Benicia would be influenced by the diversity of terrain in the Bay Area. Mr. Hess responded that Benicia installed optical monitors in the downtown area because almost all of its residences are east of the refinery. The purpose of the monitors is to provide Benicia citizens with real-time, speciated data on what emissions cross the refinery fence line into the downtown area. The City of Portland, Oregon has also installed open path optical monitors in its downtown area.

Chairperson Zamora suggested that the District consider conducting a cost-benefit study that evaluates the relationship between existing and cutting edge monitoring technology, so as to develop a hybrid approach to air monitoring. Mr. Hess responded that while more monitoring data is always desirable, the challenge is how to provide this data to the community on a continuing basis. At present, the District is not allowed to use optical monitoring data for purposes of demonstrating attainment or maintenance of ambient air quality standards.

Ken Kuneniac, Air Quality Permit Manager, suggested that the refinery GLM requirement be reviewed. Some GLMs are 25 years old, and when they were originally cited, the nearby population was small. Air quality rules must by law be reasonable, necessary and enforceable. However, the interpretation and enforcement of optical data has not yet been formalized, nor has an entity been established to referee disputes on the data. New ambient-extracted VOC monitors can measure non-methane and methane organics in real-time. Xontech samplers start sampling only after an analyzer detects a specific threshold. The Committee might consider holding a discussion with industry on the current state-of-the-art in air monitoring and the costs of supporting computer software and hardware for data evaluation and posting on the Internet. The extent to which good neighbor obligations would support such an approach might also be discussed. Improvement of the excellent continuous emissions monitoring (CEM) network in the District would provide even greater public protection. The use of predictive software could also be evaluated for improving the current monitoring capability.

Chairperson Zamora inquired if industry uses monitoring techniques more stringent than the District's. Mr. Wee noted that Chevron sends monitoring staff into the community with H2S samplers and Tedlar bags when there is an incident. Mr. Kuneniac added that the District monitors air quality from a van, which tracks current data read-outs to identify areas of impact. Each refinery could be required to equip and operate a state-of-the-art air monitoring van.

Jim Karas, Engineering Manager, stated that, in Europe, optical differential absorption analysis is conducted from mobile monitoring vans. It would cost \$30,000 per day to run such a system in this country. Mr. Hess added that Lawrence Livermore Laboratory sought to conduct infrared optical monitoring of refineries from aircraft but requested \$2 million in District funds for this purpose. Staff considered the cost for this type of special study to be prohibitive.

Chairperson Zamora inquired if the installation of monitoring technology has been required as a condition in District litigation settlements. Mr. Hess replied affirmatively. Mr. Wee added that the District uses the Supplemental Environmental Program (SEP) approach in which part of a penalty can be designated to community-based projects in either monitoring or additional mobile source controls. Federal policy requires that there be a nexus with the original excess emission. This involves community buy-in, and staff engages in considerable public outreach in this process. Mr. Kuneniac noted that, as a citizen, he expects the District to adopt and enforce reasonable and necessary regulations and to inform him what the air quality is where he lives.

Mr. Karas added that, at present, the main task before the District is to improve its feedback to the community. Mr. Hess added that in connection with such improvement, the first of three update phases to the District's website is scheduled for completion next month. The website will be linked to real-time, continuous monitoring data for criteria pollutants. The posting of toxics data on the District's website will be included in a future update to the website.

3. **Approval of Minutes of the June 30, 2003 Joint Meeting of the Public Health and Technical Committees.** There being a quorum present, Mr. Torreano moved approval of the minutes; seconded by Ms. Blake; carried unanimously.
5. **Committee Member Comments/Other Business.** There was none.
6. **Time and Place of Next Meeting.** 1:30 p.m., Monday, October 20, 2003, 939 Ellis Street, San Francisco, CA 94109.
7. **Adjournment.** 10:58 a.m.

James N. Corazza
Deputy Clerk of the Boards

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

DRAFT MINUTES

Advisory Council Technical Committee Meeting
9:30 a.m., Thursday, August 7, 2003

- 1. Call to Order – Roll Call.** 9:35 a.m. Quorum Present: Robert Harley, Ph.D., Sam Altshuler, P.E., Louise Bedsworth, Ph.D., Stan Hayes, John Holtzclaw, Ph.D., Norman Lapera. Absent: William Hanna.
- 2. Public Comment Period.** There were no public comments.
- 3. Approval of Minutes of Joint Public Health & Technical Committee Meeting of June 30, 2003.** Dr. Holtzclaw moved approval of the minutes; seconded by Mr. Hayes; carried. Mr. Lapera abstained.
- 4. Presentation Refinery Flare Emissions Distribution Frequency.** Kevin Buchan, Western States Petroleum Association, presented a slide entitled “Refinery Flare Emissions (tons/day),” noting that aggregate flare emissions from Bay Area refineries have decreased from 7 tons per day (tpd) in February of 2002 to 0.2 tpd in March of 2003. Voluntary monitoring began in June of 2002.

Allan Savage, Environmental Manager, Tesoro Refinery, Martinez, presented “Refinery Flaring Statistical Analysis: June 2002 – May 2003,” which addresses flaring extent and frequency, as well as the special and common causes of flaring. He noted that average emissions of non-methane hydrocarbon (NMHC) emissions from all Bay Area refineries from June 1, 2002 to May 31, 2003 have decreased by 50% from 5 tpd to 2.5 tpd. Tesoro was emitting an average of 2 tpd of NMHCs in June of 2002 and by May of 2003 had reduced this to 0.5 tpd. Following the installation of gas recovery compressors at Tesoro in February of 2003, emissions of NMHCs were reduced from about one ton to one-tenth of a tpd. This comprises approximately one-fifth of the total quantity of current emissions from refinery flaring.

Special causes of flaring events were distinguished from common causes for all five refineries and plotted over time to discern any pattern. Fewer events occur in the winter than in the summer. Analysis of emissions from flaring events in tons per month reveals that for all five refineries there were greater levels in the summer than in the winter of 2002. No relationship was found between tonnage and the extent or size of the events: (a) 180 events were each from zero to one-half tpd; (b) six events were greater than 3.5 tpd; and (c) one was 6.5 tpd. The size of an event can be related to both the rate at which emissions occurred and the duration of the event. A destruction efficiency rate of 98% was used in the calculations, although refineries believe it is 99.5%. Refinery flares have high BTU levels and steam and/or air mixing at the flare tip to improve combustion. On Spare the Air Days, ambient wind flow is usually stagnant and would not affect combustion efficiency. A baseline was established from June to September of 2002 for special causes of flaring and flare NMHC emissions from the five refineries, after which a

downward trend in emissions appears. Prior to February of 2003, the Tesoro refinery emitted one-half of the aggregate flare emissions.

Results from the statistical analysis on the number of special and common events are as follows:

- start up, turnaround and shut downs – 90
- emergency upset/emergency shutdowns – 68
- flare equipment problems – 68
- normal operating/ maintenance procedure – 23
- flare equipment maintenance – 12
- unit equipment problem – 3
- other – 2
- human factors – 1

The order of priority changes when tpd are assigned to each of the foregoing events:

- unit upset/emergency shutdown - 0.25tpd
- unit startup/shutdown/turnaround 0.16tpd
- flare equipment problems - 0.85tpd
- flare equipment maintenance - 0.2tpd
- normal operating/maintenance procedures - 0.2tpd
- other - 0.1
- human factors - .05

The analysis of event causal factors prior to February 8, 2003 show the following priority:

- unit upset/emergency shutdown - 0.32tpd
- unit startup/shutdown/turnaround - 0.85tpd
- flare equipment problems - 0.45tpd
- flare equipment maintenance - 0.2tpd
- normal operating/maintenance procedure - 0.2tpd
- other - 0.1tpd
- unit equipment problem - 0.1tpd
- human factors - 0.05tpd

The order of priority for event causal factors after February 8, 2003 changes as follows:

- flare equipment problems – 0.175tpd
- unit upset/emergency shutdown – 0.14tpd
- unit startup/shutdown/turnaround - 0.1tpd
- flare equipment maintenance - 0.2tpd
- normal operating maintenance procedure - 0.2tpd
- other - 0.1tpd
- unit equipment problem - 0.1tpd
- human factors - 0.05tpd

Regarding causal factors after February 8, 2003 for all five refineries, Tesoro contributed 75% of the total problem related to flare equipment. This derived from the installation of, and adjustments to, the flare compressors. Their reliability has recently been greatly improved.

Tesoro contributed to 20% of the .13 tpd from unit upset/emergency shutdowns, and approximately 30% to unit startup/shutdown/turnaround. Data gathered today would probably show flare equipment problems ranked in third rather than first place. Each refinery has a specific area in which it can improve.

The management of a release takes into account the quantity of gas and the design specifications per unit, and controls the release to the flare accordingly. However, some units may not allow for a totally systematic throttling of fuel gas. Heating factors and the capacity of the recovery compressor must also be accounted for in depressurizing a vessel. Tesoro is further conducting a review of the startup and shutdown procedures in relation to recovery compressor capacity.

Of the five refineries, Tesoro was the major contributor of common causes of NMHC emissions from June 2002 to September 2002 and from October 2002 to February of 2003. After the installation of the recovery compressors in February 2003 at Tesoro, common cause flaring emissions were reduced from 2 tpd to a few pounds a day. In reply to a question from Messrs. Hayes and Lopera about the difference between the District's 22 tpd and the refineries' 2 tpd estimates, Mr. Savage noted that Tesoro typically runs an NMHC content of 11%. The District's assumption of a 75% NMHC content did not adjust for each refinery. The District included methane in its calculations, which is only 20% of the fuel content at Tesoro. The District audited Tesoro's flow rates and analyzed half of the refinery samples. The flare-monitoring rule will provide more accurate data on which to base public policy. Overall, the statistical analysis indicates that flaring has been significantly reduced to levels well below the levels published in the District's Technical Assessment Document (TAD).

In reply to Chairperson Harley, Mr. Savage agreed that increased summer driving increases summer refinery work, which may cause shutdowns to occur disproportionately in the winter. Recovered gases and their sources increase in the summer, thereby reducing the ability of the system to reject heat and condense those gases and retain them in the system. Further analysis is needed regarding seasonal common cause effects associated with heat rejection. In reply to Mr. Altshuler, Mr. Savage noted that the recovery compressors recycle the HCs and CO₂ emissions into the refinery fuel gas system where they are combusted at a very high destruction efficiency.

Gary Kendall, District Technical Division Director, inquired as to how hydrogen levels vary in a flaring event and if there were flow data for the year 2000. Mr. Savage replied that further analysis of assigned causes is necessary. Some data for the year 2000 is available from Tesoro but not for all five refineries. Mr. Hayes inquired as to worst-case events on high ozone days, and how these interface with emissions forecasting for purposes of ozone attainment planning. Mr. Savage replied that probability forecasts would have to be extrapolated to assess the impact on ozone.

Mr. Hayes inquired if the difference between the District and refineries' estimates of HC tonnage is due primarily to different assumptions or to tracking to emissions at different points in time. Mr. Savage replied that the refineries would willingly join the District in analyzing the components that lead to that discrepancy. Mr. Altshuler observed that in some air districts data from an extra-ordinary release event that leads to an exceedance is thrown out as being atypical. Mr. Kendall clarified that such data is not discarded but flagged and classified as an exceptional event.

Mr. Buchan stated that flares are safety devices. Flaring emissions in 2003 are about one-half of a ton per day. The South Coast AQMD has implemented a flare-monitoring rule and is gathering data from it before it moves ahead with a flare control rule. The District has only very recently passed a flare-monitoring rule and yet is discussing a flare control rule. This appears premature.

5. **Presentation on Refinery Flaring Impacts, Monitoring and Emissions Reduction.** Due to a schedule conflict that was experienced by the guest speaker, this presentation was canceled.
6. **Discussion of South Coast AQMD Refinery Rule 1118.** Kelly Wee, Director of Enforcement, stated that the South Coast AQMD's proposed refinery flare control rule is in internal staff review. Alex Ezersky, Air Quality Specialist, stated that in estimating HC emissions, the District and the refineries used two different data sets, with the District using some historical data. Staff had some concerns over the validity of the data provided by the refineries. One refinery submitted several sets of adjusted data, and another refinery data arrived a week prior to publishing the TAD. Due to the lack of actual data in some cases engineering judgments and assumptions were also made. HC content could reach 100% or be lower. The purpose of the TAD was to address the broad picture, and so it addressed methane and sulfur. It is a living document and will be revised with new data.

The purpose of the South Coast Rule 1118 is to monitor and gather data on refinery and related flaring operations for analysis to determine if there is a need for, or level of, any controls required to minimize flare emissions. It seeks data on fuel flow rates, heating values, composition and sulfur content. It requests facilities to present a plan describing the flare system, classifying the flaring service and identifying alternatives as to how to arrive at the composition and flow data. The District's flare monitoring rule seeks to identify what flows to the flare and has detailed reporting requirements on fuel composition changes, whereas Rule 1118 uses federal emission factors for criteria pollutants and heating values for sulfur. The District's rule contains an option to install continuous analyzers to improve understanding of fuel composition, and requires flow verification every six months. It also has a provision for video monitoring based on public demand. The South Coast AQMD is still analyzing its flare monitoring data, and it will move forward with its flare control measure after it completes its internal review. The District is proceeding forward today with preliminary discussions with the refineries on a flare control rule.

Mr. Ezersky reviewed the timeline for the District's flare monitoring rule, and noted that the District and the refineries are in agreement as to the need for flare monitoring. They differ on the matter of confidence in the historical data, the assumptions used in making estimates of HC content, and on whether the destruction efficiency estimate should be 99.5% or 98%. The latter is supported by the majorities of studies. The District is closely following flare efficiency studies in Texas and Alberta, Canada. Staff has not yet had the opportunity to closely examine the data presented by Mr. Savage today. Refineries have provided the District with relevant data on rates and hydrocarbon content of flows to their flare stacks, and District staff have audited the measurement methods that were used at each refinery to determine this information. This has been accomplished despite disagreements surrounding the District's initial estimate of 22 tons/day of HC emissions from flare systems at Bay Area refineries.

Wayne Kino, Supervising Air Quality Specialist, stated that the District is looking preliminarily at flare emission controls regarding startup/shutdown emission reduction potential, casual flow that reduces compressor capacity to handle episodic emissions, and episodic prevention measures. At this time there is no timeline for a flare control rule. Mr. Hayes stated that the flare monitoring rule timeline would not ensure the creation of a database for use in the April 2004 Ozone Attainment Plan. Therefore, engineering judgments will be required. Mr. Ezersky noted that the emissions reductions from the flare recovery compressors could be included in the ozone plan.

Mr. Savage stated that the staff concerns about refinery data accuracy are problematic when staff asked for refinery data but never identified such concerns. None of Tesoro's 400 samples confirm the 75% composition assumption in the TAD. District use of historical data by definition excludes the reductions from the recovery compressors. The TAD specifically focuses on reducing ozone precursors for ozone attainment. Mr. Lopera stated that he read the staff presentation differently. Mr. Savage replied that public policy will be based on the published estimate of 22 tons, and that the TAD was published without any refinery review.

Dennis Bolt, Western States Petroleum Association, stated that the South Coast AQMD collected objective data through its flare-monitoring rule for three years, and this data is not disputed. It has since been deliberating over flare controls and has not yet committed to a rule. In the Bay Area, it appears that the politics of ozone planning have overtaken good science. The District's increased estimate of 13 tons up from 200 pounds in the 2001 emission inventory was guesswork. The TAD was also based on assumptions that are refuted by six months of lab samples. Staff did not confer with the refineries on the TAD until it was published. District staff now claims that it has conducted a reasonableness analysis of flare controls for a rule. This was recently published on the District's website, affirming that it (a) has an inventory, (b) has assessed controls to reduce that inventory, (c) measured the amount of those reductions and (d) has determined that the controls that are available and cost-effective. None of these rules are in place anywhere. The process used in the South Coast AQMD works with real information rather than assumptions leading to emission estimates. The Advisory Council may be in a unique position as an objective body to assess the disconnect between the ozone planning process and the technical work. The latter must be done properly. The Committee has spent much time on this issue and will hopefully devote more time to it.

Mr. Kendall noted that staff is analyzing episodic periods in 2000 and looked for unusual refinery events. The refineries provided data on flaring events and marine loading. Staff made emission estimates for these and included them in the 2000 inventory to assess their impact on ozone formation. When the District published the TAD it did not have Tesoro's 400 samples, and the results of their analysis became available later. Also, one facility modified its flow rates several times. Another facility submitted emission estimates that were driven by flow rate and composition data and revised those two or three times. This invariably raises questions about the data quality. The District does intend to revise the TAD, which contains estimates made up to December 2002 and does not have the benefit of referring to data from the subsequent six months.

Regarding a draft set of comments for discussion at the next meeting, District Counsel Brian Bunger explained that a group of less than a quorum of the Committee could compose, circulate

and discuss it. Chairperson Harley assigned Mr. Hayes, Dr. Bedsworth and himself to this group.

7. **Committee Member Comments.** Mr. Altshuler noted that manufacturers of particulate traps for diesel engines will likely not be able to meet the 20% nitric oxide limit in 2004, and the District is considering funding the installation of these high emitting traps after the state deadline. Chairperson Harley stated that, time permitting, District plans for PM trap retrofits in light of the state of the art in manufacturing will be agendized for brief discussion at the next meeting.
8. **Time and Place of Next Meeting.** 9:30 a.m., Monday, October 20, 2003, 939 Ellis Street, San Francisco, CA 94109. Board Room.
9. **Adjournment.** 12:06 p.m.

James N. Corazza
Deputy Clerk of the Boards

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 9, 2003

Re: Approval of Proposed Amendments to the Administrative Code
Division I, Operating Policies and Procedures, Section 6.2
Standing Committees

RECOMMENDED ACTION

Approve Proposed Amendments to the Administrative Code Division I, Operating Policies and Procedures, Section 6.2 Standing Committees. The proposed revisions are attached for your review.

BACKGROUND

In accordance with provisions of the Administrative Code Division I Section 14, governing amendments to the Code, notice was given of proposed amendments to the Administrative Code at the Board of Directors meeting of September 17, 2003..

DISCUSSION

The proposed amendments will clarify committee procedure and protocol by reordering the paragraphs of section 6.2 and specifying that the Chairperson of the Board of Directors is an ex-officio member of all Standing Committees of the Board of Directors.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Mary Ann Goodley
Reviewed by: Brian Bunger

Proposed Amendments to Division I, Section 6.2: Board of Directors, Standing Committees

SECTION 6.2 STANDING COMMITTEES

6.2 STANDING COMMITTEES. (Proposed Revisions 10/01/03)

Standing Committees of the Board of Directors shall be the following:

- (a) Executive Committee, consisting of the Chairperson of the Board, who shall be Chairperson of the Committee, the Vice-Chairperson of the Board, the Board Secretary, the last past Chairperson and five (5) other Directors appointed by the Chairperson.
- (b) Budget and Finance Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (c) Personnel Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (d) Legislative Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (e) Mobile Source Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (f) Public Outreach Committee, consisting of (9) Directors appointed by the Chairperson.
- (g) Stationary Source Committee, consisting of nine (9) Directors appointed by the Chairperson.
- (h) The Chairperson shall be an ex-officio member of ~~the Budget and Finance, Personnel, Legislative, Stationary Source, Mobile Source, and Committees all Standing Committees of the Board of Directors.~~ (Proposed 10/01/03)
- (i) Each Standing Committee shall have authority to make recommendations to the Board of Directors for action regarding matters within the scope of the Committee's jurisdiction. A standing committee may discuss but may not make recommendations to the Board of Directors regarding issues outside of its jurisdiction and shall refer such matters to the appropriate committee. Except as specified in this Division or as otherwise specified by the Board of Directors, Standing Committees are not delegated decision-making authority.

BAY AREA AIR QUALITY MANGEMENT DISTRICT
Memorandum

To: Chairperson Haggerty and Members
Of the Board of Directors

From: Brian C. Bunger
District Counsel

Date: September 24, 2003

Re: Amendment/Extension of Employment Agreement with Interim
CEO/Executive Secretary William C. Norton

RECOMMENDED ACTION:

Approve attached Employment Agreement Amendment/Extension with Interim Executive Officer/Executive Secretary William C. Norton.

DISCUSSION

The District appointed, and has employed, William C. Norton as its Interim Executive Secretary/Chief Executive Officer subject to the terms of an Employment Agreement between the District and Mr. Norton dated September 4, 2002 (effective December 1, 2002 through and including November 30, 2003). The District conducted its planned recruitment for a new Executive Officer, and in this regard, the Board of Directors extended an offer of employment to Jack Broadbent at its September 17, 2003 Regular Meeting. The District anticipates that the new Executive Officer will start employment with the District in the early part of November 2003. In order to ensure an orderly transition of responsibility from Mr. Norton to Mr. Broadbent, an extension of the term of the September 4, 2002 Employment Agreement with Mr. Norton for one additional month (through December 29, 2003) is necessary. The attached Employment Agreement Amendment/Extension would extend the term of Mr. Norton's employment through December 29, 2003, to ensure that sufficient time is available for an orderly transition of responsibility. The terms of the September 4, 2002 Employment Agreement with Mr. Norton would otherwise remain unchanged.

Respectfully submitted,

Brian C. Bunger
District Counsel

EMPLOYMENT AGREEMENT AMENDMENT/EXTENSION
BETWEEN
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
WILLIAM C. NORTON

This EMPLOYMENT AGREEMENT AMENDMENT/EXTENSION consisting of 2 pages is made and entered into the 1st day of October, 2003, by and between the Bay Area Air Quality Management District, herein referred to as "District" and William C. Norton, herein referred to as "Employee."

WHEREAS, the District is a governmental agency organized and formed pursuant to the laws of the State of California;

WHEREAS, the District appointed and has employed Employee as its Interim Executive Secretary/Chief Executive Officer subject to the terms of that certain EMPLOYMENT AGREEMENT between the District and Employee dated September 4, 2002, effective December 1, 2002 through and including November 30, 2003;

WHEREAS, the District conducted its planned recruitment for a new Executive Officer and expects the new Executive Officer to start employment with the District in the early part of November 2003; and

WHEREAS, the District and Employee agree that to ensure an orderly transition of responsibility from Employee to the new Executive Officer, an extension of the term of the September 4, 2002 EMPLOYMENT AGREEMENT is necessary;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the District and Employee agree as follows:

1. Pursuant to Section IX of the EMPLOYMENT AGREEMENT, the District and Employee hereby agree to extend the term of the EMPLOYMENT AGREEMENT for one month, through and including December 29, 2003.

2. The District and Employee hereby agree that except as set forth in Paragraph 1, above, all other provisions, promises, conditions and recitals contained in

the September 4, 2003 EMPLOYMENT AGREEMENT remain in full force and effect.

IN WITNESS WHEREOF, this Employment Agreement Amendment/Extension has been executed as of the date first set forth above.

**BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

**EXECUTIVE SECRETARY/ CHIEF
EXECUTIVE OFFICER**

By _____
Scott Haggerty, Chairperson
Board of Directors

By _____
William C. Norton

APPROVED AS TO FORM:

By _____
Brian C. Bungler
District Counsel,
Bay Area Air Quality
Management District

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 24, 2003

Re: Report of Regional Agency Coordinating Committee Meeting of September 19, 2003

RECOMMENDATION

Receive and file. No action requested.

BACKGROUND

The Regional Agency Coordinating Committee met on September 19, 2003. Chairperson, Mark deSaulnier will give an oral report of the meeting.

DISCUSSION

The Committee met and received reports on the attached information:

- Update on 2004 Ozone Attainment Strategy;
- Transportation 2030 Update; and
- Smart Growth Update

BUDGET CONSIDERATION/FINANCIAL IMPACT

No impact financial impact.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 24, 2003

Re: Budget & Finance Committee Meeting of September 24, 2003

RECOMMENDATION

The Committee recommends notification of proposed amendments to Division II, Fiscal Policies and Procedures of the Administrative Code. Final action on the attached amendments may be taken at the October 15, 2003 meeting.

BACKGROUND

The Budget & Finance Committee met on September 24, 2003. Chairperson, Julia Miller will give an oral report of the meeting.

DISCUSSION

The Committee met and received reports on the following:

- Un-audited Fourth Quarter Financial Report for FY 2002/2003.
- Proposed Amendments to Division II, Fiscal Policies and Procedures of the Administrative Code.

BUDGET CONSIDERATION/FINANCIAL IMPACT

No impact on current year budget.

Respectfully submitted,

William C. Norton
Executive Officer/APCO

Prepared by: Wayne Tanaka

Division II

Fiscal Policies & Procedures

SECTION 1 **TREASURER**

1.1 **SAN MATEO COUNTY TREASURER.**

The Treasurer of the County of San Mateo shall be ex-officio Treasurer of the Bay Area Air Quality Management District and shall have the duties imposed by law.

SECTION 2 **DISTRICT AUDIT**

2.1 **ANNUAL AUDIT.**

The Board of Directors shall contract with either a certified public accountant or the county auditor of one of the counties of the District to make an annual audit of the accounts and records of the District. The minimum requirements of the audit shall be as prescribed by the State Controller and Comptroller General of the United States according to the Single Audit Act [Amendments of 1996, Budget Circular 133, Statement on Auditing Standards No. 63 of 1984, Government Accounting Standards Board and Statement 34, and](#) shall conform to generally accepted auditing standards. A report thereof shall be filed with the County Auditor of each of the counties within the District's jurisdiction, the State Controller's Office, the U. S. Environmental Protection Agency, and a copy of the report shall be filed with the Board of Directors, within twelve months of the end of the fiscal year under examination.

SECTION 3 **FISCAL PROCEDURES**

3.1 **BUDGET PROCEDURE.**

Not later than the 15th day of January of each calendar year, the APCO shall start the preparation of a tentative budget for submission to the Board of Directors.

3.2 **COMPLIANCE WITH GOVERNMENT CODE.**

Pursuant to Health and Safety Code Section 40276, the Budgetary procedures for the Bay Area Air Quality Management District shall comply as nearly as possible with the provisions of Chapter 1, Division 3, Title 3, of the Government Code (County Budget Act). On or before the first regular meeting in May, the APCO shall deliver a proposed budget to the Board of Directors pursuant to Section 29064 of the Government Code. The Board shall refer the proposed budget to the Budget and Finance Committee and, when applicable, to the Personnel Committee. The Committees shall consider the proposed budget and report to the Board of Directors at the Public Hearing held pursuant to Section 29080 of the Government Code.

3.3 **ACCOUNT TRANSFERS.**

(a) The APCO may ~~make~~ **make budget** transfers ~~not to exceed twenty five thousand dollars (\$25,000)~~ between any accounts by notifying the Director of

Administrative Services in writing of each such change. ~~Each such change shall be reported by the APCO to the Board of Directors at the next regular Board meeting.~~ This transfer provision does not apply to the transfer of personnel from one program to another or from one expenditure class to another, which will require Board notification.

- (b) Whenever the APCO transfers a position from one program to another, the APCO may also transfer the pertinent funds from permanent salary accounts (and accounts for related benefits). Each such transfer shall be reported by the APCO to the Board of Directors at the next regular Board meeting.
- (c) A Division Director may transfer funds from any account in one program managed by that Director's Division to any account, except permanent salaries, in another program within the same Division, by notifying the Director of Administrative Services in writing of such a transfer, subject to the following restrictions:
 - (1) Total cumulative transfers made pursuant to this subsection to or from either account have not exceeded ~~\$25,000~~ \$50,000 within the fiscal year.
 - (2) The funds being transferred have not been encumbered.
 - (3) Prior written approval has been granted by the APCO.
- (d) A Program Manager may make transfers between any accounts within that program except permanent salaries by notifying the Director of Administrative Services in writing of such a change, subject to the following restrictions:
 - (1) Total transfers made pursuant to this subsection to or from each account have not exceeded ~~\$10,000~~ \$20,000 within the fiscal year.
 - (2) The funds being transferred have not been encumbered.
 - (3) The change shall be reported to the Division Director.
 - (4) Prior written approval has been granted by the APCO.
- (e) All other transfers of funds require advance Board approval.

3.4 PAYMENT OF CLAIMS.

Claims for items for which funds have been budgeted, or for which authorized adjustments in the budget have been made, shall be made by demand for a check approved by the APCO and directed to the Director of Administrative Services. Such claims shall be supported by such vouchers or other supporting material as may be required by the Director of Administrative Services to establish and identify the claim, the budget item, the delivery of the goods or services, and the justification according to good accounting practices of the payment of the claim. Claims for other items, which have not been budgeted or for which authorized budget adjustments have not been made, shall be presented by the APCO to the Board of Directors at the next succeeding meeting of the Board. Claims involving tort liability of the District, its officers or employees, or un-liquidated claims shall be referred to the District Counsel for recommendation to the APCO and submitted to the District's insurance carrier.

3.5 REFUND OF MONEY.

Any monies paid to the District may be refunded as hereinafter set forth, provided that such payment was made by reason of:

- (a) Duplicate payment.
- (b) Payment made in excess of the actual amount due.
- (c) Payment erroneously collected by reason of a clerical error of the District.
- (d) Payment made less than that required by law and for which no performance may, of a consequence, be had.
- (e) Refund of payment made when request for refund is made prior to any official act and is for an amount justly due.

Claims for refund shall be presented and filed with the District within one year after the claim accrued.

Claims for refund shall be itemized, shall be presented by the claimant or a person acting on behalf of the claimant, and shall show the matters required in Section 711 of the Government Code.

Such claim shall be made under penalty of perjury as provided in the Code of Civil Procedure Section 2015.5 and shall be made by the person or authorized agent or guardian or the person who paid the money, or in case of death, by the executor, executrix, administrator, or administratrix of that person's estate.

3.6 APPROVAL OF REFUND CLAIM.

The APCO shall act on the claim in one of the following ways:

- (a) If it is found that the claim is a proper charge against the District for any of the reasons cited in Section II-3.5(a) through (e), the APCO shall allow the claim. Otherwise, the claim shall be denied.
- (b) If it is found that the claim is a proper claim against the District but is for an amount greater than is justly due, it shall be rejected as to the balance. If the claim is allowed in part and rejected in part, the claimant may be required to accept the amount allowed in settlement of the entire claim.
- (c) Claims in excess of ten thousand dollars (\$10,000), or that are rejected, shall be submitted to the Board of Directors with a recommendation from the APCO for final disposition.
- (d) Refund deposits when the purpose for which such deposit was made has been achieved and there is no financial loss to the District.

The APCO shall execute such forms as are prescribed by the Director of Administrative Services, attach thereto the verified claim for refund, with the action endorsed thereon, and transmit same to the Director of Administrative Services.

3.7 REFUND PAYMENT.

The Director of Administrative Services is hereby authorized and directed to draw a check on the Treasurer in the amount of such refund as is allowed.

SECTION 4 PURCHASING PROCEDURES

4.1 DISTRICT PURCHASING AGENT.

The APCO shall be ex-officio Purchasing Agent for the Bay Area Air Quality Management District. The APCO shall negotiate to obtain the best price obtainable on all goods and services required by the District.

4.2 SPECIFICATIONS.

In all cases where written specifications are prepared and submitted for public bidding, wherever a trade name is specified the specifications shall contain the phrase "or equal" and a bidder shall be allowed to bid upon a specified trade name product or its equivalent in quality and performance. Specifications must include all criteria to be considered by the District in selecting a successful bidder. Wherever possible ~~to effect economies~~, purchasing of items of supply shall be through member counties or businesses in the nine (9) county District Area.

4.3 CONTRACT LIMITATIONS.

The APCO or designee shall execute, on behalf of the Bay Area Air Quality Management District, contracts for purchase of supplies and materials and services costing not more than ~~thirty five thousand dollars (\$35,000); seventy thousand dollars (\$70,000).~~ Contracts for more than thirty five thousand dollars (\$35,000), seventy thousand dollars (\$70,000) shall be signed by either the Chairperson of the Board of Directors, or the APCO after being directed to execute such a contract by resolution of the Board of Directors. ~~Contracts for more than twenty thousand dollars (\$20,000) but less than thirty five thousand dollars (\$35,000) forty thousand dollars (\$40,000 but less than seventy thousand dollars (\$70,000) shall be reported to the Board as a consent item except for annual renewals on contracts for 3 years or less.~~

4.4 CONTRACTS WITH MINORITY BUSINESS ENTERPRISES AND WOMEN'S BUSINESS ENTERPRISES.

- ~~(a)~~ It is the policy of the Board of Directors of the Bay Area Air Quality Management District ~~that affirmative action be taken as necessary to ensure that Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) are provided the maximum practicable opportunity to compete for and participate in all contracts for purchases of services, materials or supplies. This policy is based on the following findings: the District comply with its DBE Program where appropriate and encourage minority, veteran, and women owned businesses bid on contracts with the District.~~
- ~~(1) That historic discrimination against minorities and women in the United States has had a negative impact on their ability to participate fully and equitably in our society; and~~
 - ~~(2) That because of limited access to the marketplace women and minorities have suffered economic harm; and~~
 - ~~(3) That the District has not previously had a policy of keeping records about the status of the businesses with which it has contracts as MBEs and WBEs; and~~
 - ~~(4) That several of the counties which comprise the District have adopted policies to encourage contracts with MBEs and WBEs based on their findings that the policies promote the public interest; and~~
 - ~~(5) That adoption of this policy will enhance the opportunities for MBEs and WBEs to become contractors in the provision of goods and services to the District; and~~
 - ~~(6) That the public interest will be promoted by adoption of this policy.~~
- ~~(b)~~ For purposes of this policy, MBE shall mean any business certified as a minority business or disadvantaged business (excluding those so certified based on the ownership or participation of women) by the District, or the

~~counties which comprise the District, by Caltrans, or by the San Francisco Redevelopment Agency. WBE shall mean any business certified as a minority business, disadvantaged business, or women's business enterprise, based on the ownership or participation of women in the business, by the District, by the counties which comprise the District, by Caltrans, or by the San Francisco Redevelopment Agency.~~

~~(c) It is the District's goal that every contract be awarded without racial or gender bias; and that special effort be made to inform MBEs and WBEs of opportunities to become contractors in the provision of goods and services to the District.~~

~~In meeting this goal the District shall make a good faith effort to do each of the following:~~

~~(1) A statement shall be included in all invitation to bid notices and related documents encouraging bids from MBEs and WBEs.~~

~~(2) Advertisements shall be placed, as appropriate, in general circulation media, trade association publications and appropriate minority publications.~~

~~(3) The District staff shall determine which of the District's counties has a functioning program encouraging the participation of minorities and women in county contracts. The District staff shall contact the San Francisco Redevelopment Agency, Caltrans and each District member county with a functioning program to request a list of MBEs and WBEs which provide the products or services needed by the District and also to obtain a list of organizations which promote MBE/WBE participation in contracts with government agencies. A copy of the invitation to bid notice shall be sent to each MBE, WBE and organization identified.~~

~~(4) Interested MBEs and WBEs shall be provided with adequate information about the plans, specifications, and requirements of the contract.~~

~~(5) A copy of each invitation to bid notice shall be sent to each county in the District and to Caltrans and the San Francisco Redevelopment Agency with a request that the notice be posted and/or distributed to ensure wide circulation among MBEs and WBEs.~~

~~(d) The District staff shall maintain documentation showing the efforts made to ensure that MBEs and WBEs were provided with the maximum practicable opportunity to participate in the contracts covered by this policy.~~

~~(e) All contractors and potential contractors, consultants and suppliers will continue to be considered for contracting only if they agree to comply fully with all Federal, State, and local government issuances or legislation regarding equal employment opportunity and affirmative action.~~

~~(f) In the event of a contractor's non-compliance with the non-discrimination clause of the contract, the subject contract may be canceled, terminated, or suspended in whole or in part.~~

4.5 PURCHASE REQUESTS.

Purchase requests for supplies, equipment and/or services must be completed and submitted to the Business Manager in the Administrative Services Division prior to any order being given to a vendor. The name of the suggested vendor should be included in the request, as well as the cost, tax and estimated shipping charges.

Any deviation from this procedure must have prior written approval of the Business Manager, ~~or the Finance Manager~~ or Director of Administrative Services.

Purchases requests exceeding the remaining balance of unexpended funds within the budget for each line item for a section must be accompanied by an approval for a transfer of funds as described in Section II-3.3. The approval document must indicate the line item for the source and destination of the transfer of funds.

4.6

CONTRACTS.

(a) PURCHASING POLICY.

- (1) Methods of Purchasing:
 - (A) FORMAL BID - A bid obtained under sealed bid procedures and which is publicly opened and read.
 - (B) INFORMAL BID - A written bid solicited from a vendor when the cost of the equipment or services/supplies is so low as to not justify the costs of the formal bidding procedures. ~~or~~
~~(ii) The vendor has been pre-qualified pursuant to Section II-4.6 (b)(1)(F) Pre-Qualification of Vendors.~~
 - (C) TELEPHONE BID - Telephone bids may be utilized by the Business Manager/designee when, in the judgment of the APCO or Director of Administrative Services, the best interest of the District may be served due to the need for immediate delivery or for other valid reasons.
 - (D) MONOPOLY/SINGLE SOURCE BID - An award may be made without a formal bid when the item to be purchased can be obtained from only one source and the item/service is one which does not lend itself to substitution. Said bids must be confirmed in writing.
 - (E) PRIOR BID/LAST PRICE - An award may be made on the basis of a prior bid or on the basis of a last price, if the conditions of a previous purchase are the same.
 - (F) LETTER QUOTATION - Letter quotation is an informal, written offer made to the District by a vendor.
- (2) Formal bidding shall be used by the District when economies of scale can be achieved or when there are equal or competitive products and also when discounts are applicable
- (3) Where federal money will fund all or part of the goods/services that will be purchased the proposals, bids or other documents prepared, shall include the following information: 1) the percentage of the total costs of the goods or services which will be financed with federal funds; 2) the dollar amount of federal funds for the goods or services; and 3) the percentage and dollar amount of the total costs of the goods or services that will be financed by non-governmental sources (per Public Notification Requirement Appropriation Laws).
- (4) In all cases in which written specifications are prepared and submitted for public bid and a trade name is specified, the specifications shall contain the phrase "or equivalent" and the bidder shall be allowed to bid upon such. The Director of Administrative Services shall determine whether the proposed alternative is equivalent.

- (5) The District reserves the right to accept one part of a bid and reject another, and to waive technical defects, if to do so best serves the interests of the District.
- (6) Subject to other provisions of District policy, a bid will be awarded to the bidders offering the best value for quality goods and services. The following may be considered in determining the bid that provides the best value: bid price, proven cost-effectiveness, extended warranty, extended quality discount, esthetic value, expedient delivery of goods or services or other features of sufficient value.
- (7) The preparation of detail specifications may be waived by the APCO if any of the following circumstances are present:
 - (A) Public health or property may be endangered by delay.
 - (B) Cost of labor will exceed savings.
 - (C) Required dates cannot be met.
 - (D) Monopoly/single source items are required.
 - (E) Prior experience has proven that a particular material, type of equipment, supplies or service is more economical to the District.
 - (F) The cost to prepare detailed plans/specifications or bids will exceed possible savings that could be derived from such plans/specifications or bids.
 - (G) Emergency purchases.
 - (H) Value of contract is less than ~~\$10,000~~ \$25,000.

(b) SERVICES OF CONSULTANTS.

- (1) Consultant Selection Policy
 - (A) Due to the nature of the work to be performed or the level of staffing required, it may, from time to time, be necessary to utilize the services of outside consultants who are not employees of the District.
 - (B) It is the policy of the District in the selection of any required outside consultants to encourage participation of minority, women and/or disadvantaged business enterprises in the bidding process in accordance with Section II-4.4.
 - (C) Prior to release of a request for consulting services, the following shall be prepared:
 - (i) A statement of the work to be performed,
 - (ii) A statement of the qualifications of persons necessary to perform the requested work, which can include a specification of experience/education/training in general or specific fields; and
 - (iii) An assessment of the resources needed to carry out the project, i.e. capital equipment or supplies.
 - (D) Determination of Provider Services

Based on an evaluation of the information prepared according to Section II-4.6 (b)(1)(C), and any other information gathered, the

APCO or designee shall evaluate the ability of staff to perform all or part of the work. If it is determined that all or part of the work should be performed by an outside consultant, the APCO shall determine if the work should be performed by sole source or whether it should be performed after a bid solicitation and award.

- (E) Contracts for temporary employment services or consultant services shall meet the requirement of the District Purchasing Policy.
 - ~~(i) Obtain a bid as described in Section II 4.6 (a).~~
 - ~~(ii) The APCO may pre-qualify vendors of temporary employment services resulting in time and materials contracts, as described in Section II 4.6 (b)(1)(F), and then solicit quotations in accordance with District Purchasing Policy as described in Section II 4.6 (a)(1)(F).~~
 - ~~(iii) The APCO may pre-qualify vendors of consultant services, as described in Section II 4.6 (b)(1)(F), and then solicit written, fixed-price bids in accordance with District Purchasing Policy as described in Section II 4.6 (a)(1)(B).~~

~~(F) Pre-Qualification of Vendors (Revised 5/6/98)~~

~~The APCO may pre-qualify vendors of temporary employment services or consultant services in order to provide the best value to the District in a timely manner. The APCO shall not pre-qualify vendors for a period longer than one year, expiring each June 30 or the end of the fiscal year.~~

- ~~(i) Solicitation of applicants for the pre-qualified vendors of temporary employment services or consultant services shall conform to (1) the notification and advertising requirements specified in Section II 4.4 (e) through (f): Contracts with Minority Business Enterprises and Women's Enterprises, and (2) Section II 4.6 (e) (2), and shall serve in place of repeating these notification and advertising requirements at the time of contract bid solicitation.~~
- ~~(ii) Pre-qualification criteria may include, but is not limited to, a demonstration by the vendor that (1) it has ability and experience providing cost-effective temporary employment services or consultant services for other organizations similar to the District; it is authorized to do business in the State of California and is in good tax standing with the California Franchise Tax Board; it holds all necessary and required licenses and permits to provide these services; and (2) its employees performing services under contract with the District, possess the qualifications and experience necessary to the District, and if its employees are performing work at the District's offices, its employees must meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-~~

~~603); are covered by the worker's compensation insurance in accordance with either California or other applicable statutory requirements; are covered by liability insurance with a combined single limit (general and automotive) satisfactory to the District and that the District can be named as an additional insured on any such policy.~~

~~(iii) Once pre-qualified vendors of temporary employment services or consultant services has been established, a one-time approval of the entire list by the Board of Directors will be required, along with the maximum budgeted dollar amount to be contracted in total to vendors on that list during the current fiscal year.~~

(c) BID SOLICITATION.

(1) For all contracts for goods or services with a value of ~~\$35,000~~ \$70,000 or greater, the following documents shall be prepared as required by the person(s) designated by the APCO. ~~Contracts which would result in more than \$35,000 worth of purchase orders being issued to a single contractor within a ninety (90) day period shall also be subject to this section.~~

- (A) Instructions to Bidders (for written bids)
- (B) Proposal Submittal Requirements
- (C) Draft contract, including all terms and conditions of the work to be performed, and
- (D) A list of potential bidders

(2) The following steps will be followed to identify potential bidders for all contracts for goods or services with a value of ~~\$20,000~~ \$40,000 or more, but less than ~~\$35,000~~ \$70,000. ~~Contracts which would result in more than \$20,000 but less than \$35,000 worth of purchase orders being issued to a single contractor within a ninety (90) day period shall also be subject to this section.~~

- (A) All qualified suppliers of the required goods or services with outlets in the Bay Area shall be contacted (in the case of informal or telephone bids); or
- (B) At least one supplier of the required goods or services in each of the Bay Area counties shall be contacted (in the case of informal or telephone bids); or
- (C) The steps listed in Section (3) shall be followed.

(3) The following steps will be followed to identify potential bidders for all contracts for goods or services with a value of ~~\$35,000~~ \$70,000 or more. ~~Contracts which would result in more than \$35,000 worth of purchase orders being issued to a single contractor within a ninety (90) day period shall also be subject to this section.~~

~~(i) The steps listed in Section II-4.4 e) through f) shall be followed (in the case of formal bids)~~

~~(ii)~~ (i) Unless expressly directed otherwise by the Board of Directors, bids shall be solicited by any method as allowed in Section 4.6 (a) advertisement on purchases of services, materials or supplies excluding scientific

and technical equipment and services uniquely available from a sole source. Where all sources of such services, materials or supplies in the Bay Area are known, bids may be requested from such sources by all means-when it is deemed by the APCO or designee to be in the best interest of the District.

- (4) The APCO may waive the provisions of this section or award a sole-source bid if:
 - (A) The cost of labor for preparation of the documents exceeds the possible savings that could be derived from such detailed documents; or
 - (B) Public health or property may be endangered by delay; or
 - (C) Prior experience has shown that the desired services are only available from the sole-source; or
 - (D) Other circumstances exist which require such waiver in the satisfactory interests of the District.
- (d) BID AWARD.
 - (1) Prior to accepting a bid that is not the lowest of three qualified and responsive bids, other qualified and responsive bidders will be provided with an opportunity to match the additional features provided in the bid of highest value. These bidders will be provided with a list of the features, but not the price.
 - (2) The requesting staff person shall present to the APCO their evaluation of the bids and a recommendation for the award. Upon approval of the recommendation, staff shall negotiate an agreement and prepare it for the APCO's signature.
 - (3) If the APCO determines that no bidder could satisfactorily serve the interests of the District, the APCO may decline to make an award.
 - (4) The District reserves the right to have an Evaluation Panel comprised of District employees to review and analyze the bids and offer a recommendation of acceptance of a bid to the Director of Administrative Services. Upon review of the recommendation of the panel, the Director may accept or reject the recommendation of the panel. If accepted, the Director will recommend award of the bid to the APCO for his review/approval. If the recommendation of the panel is rejected by the Director of Administrative Services, the panel will reconvene to review the bids further.
 - (5) Further renewal of any contract that has been awarded for two consecutive years without competitive bid shall require APCO or Board approval depending upon authorization of the contract to be extended. Service contracts with the original manufacturer of equipment or software are exempt from this requirement.
 - (6) The District shall rebid not award a contract for financial auditing services every three years. to the same contractor for more than three consecutive years.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Scott Haggerty and Members
of the Board of Directors

From: William C. Norton
Executive Officer/APCO

Date: September 24, 2003

Re: Consideration of Terms and Conditions of Employment for the Executive
Officer/Air Pollution Control Officer Position

RECOMMENDED ACTION

The Board of Directors will consider approval of the attached employment agreement for Jack Broadbent, Executive Officer/Air Pollution Control Officer.

BACKGROUND

The Board of Directors at its regular meeting of September 17, 2003, extended an offer of employment to Jack Broadbent for the position of Executive Officer/APCO. The Board of Directors at that time also directed staff to investigate the issue of reciprocity for the retirement systems of PERS and the San Bernardino retirement system and to bring back alternatives.

DISCUSSION

The revised employment agreement is attached for your consideration.

Respectfully submitted,

William C. Norton
Executive Officer/APCO