

BOARD MEETING DATE: February 2, 2018

AGENDA NO. 1

MINUTES: Governing Board Monthly Meeting

SYNOPSIS: Attached are the Minutes of the January 5, 2018 meeting.

**RECOMMENDED ACTION:**

Approve Minutes of the January 5, 2018 Board Meeting.

Denise Garzaro  
Clerk of the Boards

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**FRIDAY, JANUARY 5, 2018**

Notice having been duly given, the regular meeting of the South Coast Air Quality Management District Board was held at District Headquarters, 21865 Copley Drive, Diamond Bar, California. Members present:

William A. Burke, Ed.D., Chairman  
Speaker of the Assembly Appointee

Dr. Clark E. Parker, Sr., Vice Chairman  
Senate Rules Committee Appointee

Mayor Ben Benoit (Left at 11:00 a.m.)  
Cities of Riverside County

Council Member Michael A. Cacciotti  
Cities of Los Angeles County – Eastern Region

Dr. Joseph K. Lyou  
Governor's Appointee

Mayor Pro Tem Judith Mitchell  
Cities of Los Angeles County – Western Region

Supervisor Shawn Nelson (Arrived at 9:50 a.m.)  
County of Orange

Council Member Dwight Robinson  
Cities of Orange County

Supervisor Janice Rutherford  
County of San Bernardino

Supervisor Hilda L. Solis  
County of Los Angeles

Members absent:

Supervisor Marion Ashley  
County of Riverside

Council Member Joe Buscaino  
City of Los Angeles

Mayor Larry McCallon  
Cities of San Bernardino County

**CALL TO ORDER:** Chairman Burke called the meeting to order at 9:00 a.m.

- Pledge of Allegiance: Led by Chairman Burke.
- Opening Comments

Dr. Lyou explained that he intended to introduce amendments to the 2018 Legislative Goals & Objectives being considered under Item No. 16 and propose clarifying language for the Resolution for Item No. 18.

Chairman Burke inquired about the District's outreach efforts to communities impacted by the recent wildfires and whether information about air filtration masks is provided to the public.

Wayne Nastri, Executive Officer, explained that the District works with first responders in communities impacted by wildfires and issues air alerts when air quality is poor. He acknowledged that improving community notification is an important priority for staff. He added that the District has distributed materials and masks in some of the impacted areas, but cautioned about the need for proper education regarding use of the masks.

Mayor Pro Tem Mitchell inquired how poor air quality resulting from wildfires impacts the District's ability to meet clean air requirements.

Dr. Philip Fine, DEO/Planning, Rule Development and Area Sources, confirmed that particulate measurements were high over several days due to the fires. He added that the Clean Air Act includes provisions that allow the District to exclude exceedances that can be attributed to exceptional events, such as wildfires.

- Swearing in of Chair and Vice Chair for Terms January 2018 - 2020

Mayor Pro Tem Mitchell administered the oath of office to Chairman William Burke, who was re-elected for a term ending January 15, 2020; and to Vice Chairman Clark Parker, who was elected for a term ending January 15, 2020.

- Swearing in of Reappointed Board Members Judith Mitchell and Swearing in of Newly Appointed Board Member Hilda Solis

Chairman Burke administered the oath of office to Mayor Pro Tem Judith Mitchell who was reappointed to the Board by the Los Angeles County Western Cities Representatives for a term ending January 15, 2022; and to Supervisor Hilda L. Solis who was appointed to the Board by the Los Angeles County Board of Supervisors for a term ending January 15, 2019. Supervisor Solis expressed appreciation for the opportunity to serve on the Board.

**CONSENT CALENDAR**

1. Approve Minutes of December 1, 2017 Board Meeting

**Budget/Fiscal Impact**

2. Recognize Revenue and Appropriate Funds, Approve Positions, Amend Contracts, Issue Solicitations and Purchase Orders for AB 617 Implementation and Transfer and Appropriate Funds and Approve Positions for AB 134 Implementation
3. Issue RFP for Emission Reduction Projects Using Incentive Funding from SCAQMD Special Funds, Allocate Funds, and Execute Contract
4. Transfer and Appropriate Funds, Issue Purchase Orders for Monitoring and Lab Equipment, Approve Surrender of Fixed Assets, and Execute or Amend Contract for Monitoring Services
5. Recognize Revenue and Appropriate Funds to Maintain, Improve and Expand Existing Low-Cost Sensor Network for Monitoring PM Emissions
6. Amend Contracts for Legislative Representation in Washington, D.C.
7. Amend Contract for Consultant Services for SCAQMD Environmental Justice Outreach and Initiatives

**Items 8 through 13 - Information Only/Receive and File**

8. Legislative, Public Affairs and Media Report
9. Hearing Board Report
10. Civil Filings and Civil Penalties Report
11. Lead Agency Projects and Environmental Documents Received by SCAQMD
12. Rule and Control Measure Forecast

13. Status Report on Major Ongoing and Upcoming Projects for Information Management

**BOARD CALENDAR**

15. Administrative Committee
16. Legislative Committee
17. California Air Resources Board Monthly Report

Mayor Pro Tem Mitchell noted that she is a CARB Board Member which is involved with Item No. 2.

Agenda Items 2, 3, 8 and 16 were withheld for comment and discussion.

MOVED BY LYOU, SECONDED BY CACCIOTTI, AGENDA ITEMS 1, 4 THROUGH 7, 9 THROUGH 15 AND 17 APPROVED AS RECOMMENDED AND RECEIVING AND FILING THE COMMITTEE AND CARB REPORTS, BY THE FOLLOWING VOTE:

AYES: Benoit, Burke, Cacciotti, Lyou, Mitchell, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Buscaino, McCallon and Nelson

14. Items Deferred from Consent Calendar

2. Recognize Revenue and Appropriate Funds, Approve Positions, Amend Contracts, Issue Solicitations and Purchase Orders for AB 617 Implementation and Transfer and Appropriate Funds and Approve Positions for AB 134 Implementation

Dr. Lyou asked staff to explain the types of monitoring and equipment that will be funded by AB 617 and AB 134. He expressed concern about the types of pollutants being monitored and asked staff to provide an overview of how monitoring criteria pollutants and methane would help disadvantaged communities.

Dr. Jason Low, Asst. DEO/Science and Technology Advancement, explained that the proposed monitoring trailer and mobile platform will complement the data that is collected with community sensors and will assist in identifying locations to deploy stationary platforms for air toxics equipment. He added that the data collected will help characterize the distribution of pollutants and assist in planning for future funding of additional monitoring equipment.

Mr. Nastri provided an overview of the current monitoring efforts that are underway within the District and the different technologies and networks that will result in improved data.

Dr. Parker expressed concern about potential vandalism of the expensive mobile monitoring equipment and inquired what security measures are taken for these units.

Mr. Nastri commented that staff works with local community officials to determine the best locations for the equipment and to increase community awareness of monitoring of air pollutants.

Dr. Low added that staff works with property owners and city officials to ensure security of equipment and may add enhanced security features such as fencing or elevating the equipment.

Harvey Eder, Public Solar Power Coalition, urged support for funding of solar powered technology for low- to middle-income individuals. He added that funding should be increased to address the public health effects of air pollution.

Council Member Cacciotti inquired about the availability of office space to accommodate the new staff and long-term funding of the new positions.

Jill Whynot, Chief Operating Officer, explained that while some redesign of office space may be required, there is sufficient space within District headquarters to accommodate the new staff. She added that it is anticipated that funding for these positions will continue, but in the event it does not, there is capacity to absorb staff into existing programs while maintaining a balanced budget.

Mr. Nastri noted the long-term commitment at the state level to fund programs that address air quality issues in communities that are most impacted by air pollution.

Supervisor Solis noted the importance of monitoring in unincorporated areas of Los Angeles and Environmental Justice (EJ) communities that are most impacted by air pollution and ensuring that community stakeholders provide input on the location of monitoring equipment. She added that employment opportunities resulting from this funding should be advertised in EJ areas.

Mr. Nastri stated that the Board has been in a position of leadership with regard to the development of programs and outreach in EJ communities. He explained how the determination of communities that will be the focus of community monitoring efforts will occur, working with communities. He confirmed the importance of diversity in the workforce and succession planning to ensure institutional knowledge is retained.

MOVED BY LYOU, SECONDED BY CACCIOTTI, AGENDA ITEM 2 APPROVED AS RECOMMENDED, BY THE FOLLOWING VOTE:

AYES: Benoit, Burke, Cacciotti, Lyou, Mitchell, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Buscaino, McCallon and Nelson

3. Issue RFP for Emission Reduction Projects Using Incentive Funding from SCAQMD Special Funds, Allocate Funds, and Execute Contract

Mr. Eder expressed concern with the lack of working group meetings that were promised to address solar and energy conservation. He stressed the importance of implementing programs that benefit Orange, San Bernardino, and Riverside Counties as well as Los Angeles, and stated that the portion of funding being awarded directly should go out for bid.

Dr. Fine explained that the AQMP established a working group to investigate residential energy efficiency, solar and appliances. He noted that the group has met twice and a calculator is under development which will aid in policy development in this area. He added that the project currently under consideration is a broad RFP to begin the process of undertaking a stationary source incentive program to obtain emission reductions to help meet goals set in the AQMP. He added that the regular public process for committee review and availability of agenda materials has been followed for this item.

(Supervisor Nelson arrived at 9:50 a.m.)

Chairman Burke commented that he understood that this project provided an opportunity to begin providing solar hot water heaters in low-income communities.

Mr. Nastri confirmed that this project was meant as a starting point, with the idea to expand into other areas in the future.

Rita Loof, RadTech International, expressed appreciation to staff for including stationary sources in this RFP and specifically energy curable projects. She commented on the potential to eliminate toxic emissions while not negatively impacting the business community.

MOVED BY CACCIOTTI, SECONDED BY BENOIT, AGENDA ITEM 3 APPROVED AS RECOMMENDED, BY THE FOLLOWING VOTE:

AYES: Benoit, Burke, Cacciotti, Lyou, Mitchell, Nelson, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Buscaino and McCallon

8. Legislative, Public Affairs and Media Report

Council Member Cacciotti inquired about the status of the update to "The Right to Breathe" film.

Derrick Alatorre, DEO/Legislative, Public Affairs and Media, explained that the updated film is in final production and should be completed within two weeks. He added that once the film is completed, the Google ad campaign will resume.

Council Member Cacciotti requested that the draft film be emailed to Chairman Burke and him before it is finalized and that the updated video be presented at a future Board meeting.

MOVED BY CACCIOTTI, SECONDED BY BENOIT, AGENDA ITEM 8 APPROVED AS RECOMMENDED, BY THE FOLLOWING VOTE:

AYES: Benoit, Burke, Cacciotti,  
Lyou, Mitchell, Nelson, Parker,  
Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Buscaino and McCallon

16. Legislative Committee

Dr. Lyou explained two amendments to the 2018 Legislative Goals and Objectives for the Board's consideration. The first proposed change would address problems that could be caused by financial policies that create an uneven playing field and put clean air technology manufacturers, retailers and users at a competitive disadvantage, and the second change adds clarification that is already in the energy policy that the District supports energy efficiency and demand reductions.

Chairman Burke and Supervisor Nelson questioned the basis for and application of the first proposed amendment.

Dr. Lyou explained that emerging clean air technologies have not been around long enough to gain the same types of financial benefits afforded to other companies; and the District should take a position of opposition against any legislation that would be counterproductive to promoting cleaner technologies.

In response to Supervisor Nelson's comments regarding his preference to have these matters brought before the Legislative Committee for consideration rather than have language in place that all such legislation will be opposed, Mr. Nastri explained that staff would continue to bring the individual legislative items to the Committee and ultimately the Board for consideration.

Chairman Burke suggested sending the Goals & Objectives back to the Legislative Committee so that they could consider Dr. Lyou's proposal.

Mr. Nastri suggested that the two specific provisions potentially affected by the amendments be sent back to the Committee, but that the Board proceed with a vote on the remainder of the Goals & Objectives.

MOVED BY LYOU, SECONDED BY SOLIS, AGENDA ITEM 16 APPROVED, RECEIVING AND FILING THE LEGISLATIVE COMMITTEE REPORT AND ADOPTING THE 2018 LEGISLATIVE GOALS AND OBJECTIVES WITH THE EXCEPTION OF THE STATE AND FEDERAL GOALS AND OBJECTIVES WHICH WILL BE SENT BACK TO THE LEGISLATIVE COMMITTEE FOR CONSIDERATION, BY THE FOLLOWING VOTE:

AYES: Benoit, Burke, Cacciotti, Lyou, Mitchell, Nelson, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Buscaino and McCallon

## **PUBLIC HEARINGS**

18. Determine that Proposed Amendments to Rule 2001 – Applicability and Rule 2002 – Allocations for Oxides of Nitrogen (NO<sub>x</sub>) and Oxides of Sulfur (SO<sub>x</sub>) Are Exempt from CEQA and Amend Rules 2001 and 2002

Tracy Goss, Planning and Rules Manager, gave the staff presentation on Item 18.

Mayor Pro Tem Mitchell inquired about how RTCs are handled when a facility exits the RECLAIM program.

Mr. Goss replied that during the year that facilities exit the program, they are able to use RTCs to reconcile their emissions, but they are not able to sell the credits and any unused credits are then retired.

Dr. Lyou noted that while he understands this rule is a necessary step toward sunseting the program, it does not result in any emission reductions. He asked staff when the Board might expect to see rulemaking that would yield NO<sub>x</sub> emission reductions.

Dr. Fine replied that the 2018 Rule Calendar adopted by the Board laid out all the RECLAIM-related rule amendments, and a very aggressive schedule. Staff is initially taking steps to remove some of the smaller emissions sources from the program, while the larger facilities like electrical-generating facilities, refineries, and large metal-working facilities will be addressed in separate command-and-control rules in the coming months. Meanwhile, working groups will begin to meet

for those very extensive rulemakings within the next month and the goal is to have some proposals to the Board by year-end.

Dr. Lyou stressed the importance of moving forward as quickly as possible.

In response to Dr. Parker's inquiry regarding the sale of credits and their consideration as property, Mr. Wiese explained that there is considerable authority that air pollution credits are not property and are not compensable.

Ms. Whynot added that Rule 2007 which deals specifically with the trading credits, specifies that that RTCs are not property rights.

Dr. Parker explained that he has seen companies benefit from shutting down, and provided the example of Exide Technologies selling credits.

Ms. Whynot noted that that particular issue was corrected in a subsequent amendment regarding facility shut downs and handling of credits. She added that staff will investigate if it would be prudent to further clarify the retirement of credits.

The public hearing was opened; and the following individuals addressed the Board on Item 18.

Ward Elliott expressed support for keeping the RECLAIM program which has proven more efficient, faster and less expensive than command-and-control. (Submitted Written Comments)

Curtis Coleman, Southern California Air Quality Alliance, noted his general support for the staff recommendation, but expressed concerns with the potential unavailability of ERCs for facilities that transition out of RECLAIM. He explained that members of the NOx RECLAIM working group have conveyed that there needs to be a way of allowing ERCs converted to RTCs at the start of the program, or a portion of them, to be converted back to ERCs. He expressed opposition to the proposed additions to the Resolution which, he believes, constitute rulemaking, and did not go through the appropriate public process for consideration today.

Adrian Martinez, EarthJustice, noted that this rule marks an important first step in shifting away from the RECLAIM program and thanked staff for their efforts in this regard. He raised an issue that was also outlined in their correspondence to the Board regarding the need for clarity on what happens to credits once they are taken away from facilities or surrendered. (Submitted Written Comments)

Susan Stark, Endeavor, asked that the two Resolution addendums be withdrawn because they are significant policy issues that should be part of the rulemaking process. She added that Endeavor looks forward to working with staff to update emission factors, as some of them currently overestimate emissions.

Mr. Eder noted that there should be a CEQA process for this matter and explained that solar is a cost-effective BARCT alternative for commercial, residential, utility, and industrial applications.

Michael Carroll, Regulatory Flexibility Group, expressed opposition to the adoption of the proposed Resolution language introduced by Dr. Lyou. He agreed with Mr. Coleman's comments that the proposed Resolution language is equivalent to rule language.

There being no further public testimony on this item, the public hearing was closed.

Chairman Burke asked staff to clarify the Board's policy regarding staff modifications of items in advance of the Board meeting.

Kurt Wiese, General Counsel, explained that Section 30.6 of the Governing Board Procedures states that "It is the Board's policy that no changes be made to the text of any item after the Friday of the week prior to the Board meeting unless the change corrects typographical errors, corrects draft meeting minutes or responds to an emergency." Mr. Wiese cautioned against a reading of that provision that would prohibit the Board from making changes to proposed rule language at the Governing Board meeting.

Mayor Pro Tem Mitchell inquired about when a facility meets BARCT, but does not close, what happens after their RTCs are retired.

Mr. Nastri replied that the decision is still part of ongoing deliberations between U.S. EPA, CARB, and the District because there are so many aspects involved.

Mr. Wiese explained that the primary impact of the proposed Resolution is to clarify an ambiguity in the proposed rule language to make clear that a facility that is exiting the RECLAIM program can continue to use RTCs for compliance purposes, but it cannot sell or trade those RTCS after it exits the program.

Dr. Lyou explained that he drafted the proposed Resolution amendments to clarify what happens to RTCs after a facility exits RECLAIM.

Council Member Robinson and Dr. Parker stressed the importance of not limiting the Board's ability to make changes when needed at a Board Meeting, and noted the challenge of gauging the significance of a particular item and addressing any changes in a manner that has followed the appropriate process.

(Mayor Benoit left the meeting at 11:00 a.m.)

Dr. Lyou explained that since the discussion regarding RECLAIM from the Stationary Source Committee November meeting, as reflected in the minutes, is part of the record, and that discussion between Board Members and staff today has further clarified the intent of the rule, he would not be introducing a motion to amend the Resolution language.

MOVED BY CACCIOTTI, SECONDED BY MITCHELL, AGENDA ITEM NO. 18 APPROVED, ADOPTING RESOLUTION NO. 18-1, DETERMINING THAT THE PROPOSED AMENDMENTS TO RULE 2001 – APPLICABILITY AND RULE 2002 – ALLOCATIONS FOR OXIDES OF NITROGEN (NO<sub>x</sub>) AND OXIDES OF SULFUR (SO<sub>x</sub>) ARE EXEMPT FROM THE REQUIREMENTS OF CEQA, AND AMENDING RULE 2001 – APPLICABILITY AND RULE 2002 – ALLOCATIONS FOR OXIDES OF NITROGEN (NO<sub>x</sub>) AND OXIDES OF SULFUR (SO<sub>x</sub>), BY THE FOLLOWING VOTE:

AYES: Burke, Cacciotti, Lyou, Mitchell, Nelson, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Benoit, Buscaino and McCallon

19. Determine that Proposed Amendments to Rule 301 – Permitting and Associated Fees Are Exempt from CEQA and Amend Rule 301

Staff waived the oral presentation on Item No. 19.

The public hearing was opened and there being no requests to speak, the public hearing was closed.

MOVED BY NELSON, SECONDED BY CACCIOTTI, AGENDA ITEM NO. 19 APPROVED, ADOPTING RESOLUTION NO. 18-2, DETERMINING THAT PROPOSED AMENDED RULE 301 – PERMITTING AND ASSOCIATED FEES IS EXEMPT FROM THE REQUIREMENTS OF CEQA, AND ADOPTING PROPOSED AMENDED RULE 301 — PERMITTING AND ASSOCIATED FEES, BY THE FOLLOWING VOTE:

AYES: Burke, Cacciotti, Lyou, Mitchell, Nelson, Parker, Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Benoit, Buscaino and McCallon

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**PUBLIC COMMENT PERIOD** – (Public Comment on Non-Agenda Items, Pursuant to Government Code Section 54954.3)

Mr. Eder noted the importance of addressing air quality concerns to protect future generations. He urged immediate, total solar conversion and stressed the need to support community choice aggregation programs.

**CLOSED SESSION**

The Board recessed to closed session at 11:15 a.m., pursuant to Government Code sections:

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

- 54956.9(a) and 54956.9(d)(1) to confer with its counsel regarding pending litigation which has been initiated formally and to which the SCAQMD is a party. The actions are:

Communities for a Better Environment v. SCAQMD, Los Angeles Superior Court Case No. BS161399 (RECLAIM);

People of the State of California, ex rel. SCAQMD v. Exide Technologies, Inc., Los Angeles Superior Court Case No. BC533528; and

In re: Exide Technologies, Inc., U.S. Bankruptcy Court, District of Delaware, Case No. 13-11482 (KJC) (Bankruptcy Case).

#### CONFERENCE WITH LEGAL COUNSEL – INITIATING LITIGATION

It is also necessary for the Board to recess to closed session pursuant to Government Code section 54956.9(a) and 54956.9(d)(4) to consider initiation of litigation (one case).

#### CONFERENCE WITH NEGOTIATORS

It is also necessary to recess to closed session pursuant to Government Code Section 54957.6 to confer regarding upcoming labor negotiations with:

designated representatives regarding represented employee salaries and benefits or other mandatory subjects within the scope of representation [Negotiator: A. John Olvera; Represented Employees: Teamsters Local 911 and SCAQMD Professional Employees Association].

Following closed session, the Board reconvened in open session at 12:05 p.m. and Mr. Wiese announced that a report of any reportable actions taken in closed session will be filed with the Clerk of the Board's office and made available to the public upon request.

(Chairman Burke and Supervisor Nelson did not return from Closed Session.)

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#### **OTHER BUSINESS**

20. Approve Three-Year Agreement with Teamsters Local 911

MOVED BY LYOU, SECONDED BY  
CACCIOTTI, AGENDA ITEM NO. 20  
APPROVED, AS RECOMMENDED, BY THE  
FOLLOWING VOTE:

AYES: Cacciotti, Lyou, Mitchell, Parker,  
Robinson, Rutherford and Solis

NOES: None

ABSENT: Ashley, Benoit, Burke, Buscaino  
McCallon and Nelson

**ADJOURNMENT**

There being no further business, the meeting was adjourned in memory of former San Bernardino County Supervisor and SCAQMD Board Member Robert Hammock by Vice Chairman Parker at 12:05 p.m.

The foregoing is a true statement of the proceedings held by the South Coast Air Quality Management District Board on January 5, 2018.

Respectfully Submitted,

Denise Garzaro  
Clerk of the Boards

Date Minutes Approved: \_\_\_\_\_

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Dr. William A. Burke, Chairman

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**ACRONYMS**

BARCT = Best Available Retrofit Control Technology  
CARB = California Air Resources Board  
CEQA = California Environmental Quality Act  
DEO = Deputy Executive Officer  
EJ = Environmental Justice  
FY = Fiscal Year  
NOx = Oxides of Nitrogen  
PM = Particulate Matter  
RFP = Request for Proposals  
RECLAIM = Regional Clean Air Incentives Market  
RTC= RECLAIM Trading Credit  
U.S. EPA = United States Environmental Protection Agency