



Community Environmental Advisory Commission

DRAFT ACTION MINUTES - COMMUNITY ENVIRONMENTAL ADVISORY COMMISSION
Regular Meeting of March 4, 2010
2118 Milvia St, 1st Floor, Berkeley 94704

Call to Order and Roll Call: Meeting called to order at 7:07PM

Present: Greg Leventis (Chair), Janet Collins, Brooke Lee, Dennis Mulqueeney. Absent: None.

Secretary: Nabil Al-Hadithy, Clerical Aide: Abigail Chente.

[Excuse Absence: Anne Young Kim (Vice Chair), Richard Harris]

Public Comment: (2 members of the public)

Joy Brown – Berkeley Public Works Environmental Compliance Specialist.

Christopher Kroll – Concerned about the Pacific Steel Casting (PacSteel) Odor Management Plan (OMP). Has not received emails from CEAC.

Secretary Report:

- Delay on Decade software conversion. Currently on beta testing with four (4) facilities as pilot project for web submission of environmental program information.
- Enforcement: Corrective action ongoing at Marina.
- Council Meeting regarding Restaurant Smoke will be on the March 9th 2010.

Report from the Chair:

- When will Zoning Adjustments Board (ZAB) discuss PacSteel?
- Announced that Brooke Lee will be leaving the CEAC.

Commission Actions:

1. Minutes for Approval

Recommendation: Adopt Minutes of February 4, 2010 as amended.

Action: Motioned/Seconded/Carried (Collins / Mulqueeney).

Votes: Ayes: Collins, Leventis, Mulqueeney. Noes: None. Abstain: None. Absent: None.

2. PacSteel Odor Management Plan (OMP).

Recommendation: Recommend that Council communicate to BAAQMD and PacSteel reflecting concerns regarding the recently released Odor Management Plan:

- Self policing is not an acceptable policy.
- The AQMD should not rely on the PacSteel OMP to reduce its inspection, response capacity and enforcement of complaints, were verified.
 - The OMP, where it has to exist, must be readily available to the public to review how their complaints are being managed and relayed to the regulatory agency. The best placement of the OMP is tracking complaints in real time on the web.
- Request that AQMD investigate odors from Berkeley Forge & Tool.

- Request AQMD spell out the staffing levels for response outside of work hours, how long to respond to a complaint, and on what basis decisions are made to initiate an odor complaint response.

- Additionally, Chair to communicate directly to ZAB for its meeting on PacSteel.

Action: Motioned/Seconded/Carried (Mulqueeney/ Collins).

Votes: Ayes: Collins, Lee, Leventis, Mulqueeney. Noes: None. Abstain: None.

3. EPA CARE Grant.

Recommendation: Collins informed the Commission that the EPA Grant is not appropriate for the CEAC. Future grant applications must be in excess of \$80,000 with funds to cover staff costs. In all cases, the CEAC cannot act as a grant applicant.

4. Charges for Universal Waste at Community Conservation Centers (CCC).

Recommendation: Requested Chair to communicate with Sara MacKusick of CCC to reconsider charging residents for universal wastes.

Action: Motioned/Seconded/Carried (Mulqueeney/ Collins).

Votes: Ayes: Collins, Lee, Leventis, Mulqueeney. Noes: None. Abstain: None.

5. CEAC Goals:

Discussion of priorities:

- **Biodiesel** – Proposed by Lee, but cannot commit to it because she will be leaving.
- **Freeways** – Carcinogen smoke.
- **Houses & Soils in Berkeley** – Full of lead.
- **West Berkeley Plan** – Has been updated for comment.

Other Actions

- Obtain date of ZAB meeting on PacSteel.
- Provide Chair with draft communication to ZAB and draft Council motion on PacSteel's OMP.
- Provide Chair with draft background information on Universal Waste charges at CCC for public.

Meeting adjourned at 08:50PM.

Draft Letter

March 15, 2010

Zoning Adjustments Board
City of Berkeley

Dear ZAB Members,

Due to a recent development in the lawsuit involving Pacific Steel Casting (PSC), the Bay Area Air Quality Management District (AQMD), the City of Berkeley (City) and the Healthy Air Coalition, I am writing to you on behalf for the Community Environmental Advisory Commission (CEAC).

In 2005, the AQMD and PSC settled a lawsuit based upon odor nuisance complaints from Berkeley. The agreement required PSC to pay \$17,500 penalty, conduct air monitoring, a health risk analysis and various improvements to the emissions abatement equipment on the three warehouses. In addition, an Odor Management Plan (OMP) was required by AQMD. PSC issued an injunction to stop the release of the OMP to the City Toxics Management Division, citing trade secrets contained in the plan. The redacted plan was just released. Below is CEAC analysis of the OMP. We urge you to support our findings.

Please note that the basis of the AQMD lawsuit and settlement is a body of concerned citizens who have filed complaints to the AQMD, using an onerous procedure that is reportedly neither user friendly or fully functional. Public complaints are the single most important tool in enforcement against nuisance odor violators. A violation only becomes official if a citizen's complaint is verified by AQMD trained staff. The greater the length of time for AQMD staff to reach the complainant home, the more likely it is that the odor will not be found.

We wish to acknowledge that the current AQMD administration's responsiveness to the Berkeley community. However, the community has had a disagreeable history with past AQMD administrations. This culminated with a public hearing in Berkeley in 2000 when the AQMD removed an unconditional order of abatement on PSC. In light of the subsequent level of odor complaints and the 2005 lawsuit against PSC, it is clear to us that the removal of the unconditional order was an illegitimate act by AQMD. We seek an evaluation of the removal of the unconditional order in 2000 by the new Air Pollution Control Officer.

It is CEAC's position that the complaint process at AQMD be fully functional, efficient and responsive to the community. As such, the CEAC is concerned that the OMP, as written, can be used as a self-policing document. The CEAC wishes to register the following concerns and recommendations to AQMD and others:

- PSC should not be allowed to initiate a self-policing program. AQMD staff must respond in parallel to any actions outlined in the OMP. AQMD staff should never allow PSC staff to conduct any investigation without being shadowed by AQMD staff. The PSC staff should not be allowed to interact directly with a complainant.
- The AQMD should not rely on the PSC OMP to reduce its own inspection and response capacity.
- The OMP puts PSC staff in a position of accepting complaint referrals from both the public and the AQMD.
- OMP requires PSC to record complaints that are made and action taken. This information must be readily available to the public to review how their complaints are being managed and relayed to the regulatory agency. The best placement of the OMP is tracking complaints in real time on the web.

Draft Letter

- Request that AQMD state the bases of decision-making that will lead to the initiation of an order to investigate an odor complaint response during work hours and off-work hours.

Furthermore, the CEAC believes the following actions, raised by the content of the OMP, are important:

- Request that AQMD investigate odors from Berkeley Forge & Tool, another likely source of odors in the neighborhood.
- Request AQMD spell out the staffing levels for response during and outside of work hours, and spell out how long staff takes to respond to a complaint during work hours and off work hours

The CEAC believes that, at minimum, PSC should be required to make information from their records on this OMP available to the public as it is produced, ideally online so that complainants can see what has become of their complaints. There should also be robust outside oversight to ensure that the measures outlined in the plan are properly undertaken.

Below, are some outtakes from the AQMD's Complaint Guide. If you have any questions, please feel free to contact me at greg.leventis@gmail.com or 415.420.0227 or contact the CEAC's staff liaison, Nabil Al-Hadithy at nalhadithy@ci.berkeley.ca.us.

Best regards,
Greg Leventis
Chair, Community Environmental Advisory Commission
City of Berkeley

Draft Letter

BAY AREA AIR QUALITY MANAGEMENT DISTRICT – COMPLAINT GUIDELINES

Community members are often the first to be aware of an emission release, and the community can be considered the “eyes and noses” of the District. In response to legitimate civic concerns, District staff will endeavor to investigate every complaint in order to achieve early intervention on potential problems and allow the District to be proactive in protecting public health. District staff will maintain the cooperative, but objective, attitude of an investigator. Informal complaints will also be investigated where the person may otherwise feel uncomfortable filing a formal complaint

PUBLIC NUISANCE – REGULATION 1

"No person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property.

For the purposes of this section, three or more notice of violations validly issued in a 30-day period to a facility for public nuisance shall give rise to a refutable presumption that the violations resulted from negligent conduct."

Regulation 1, Section 301

i. **Daily, Complaint-Based:** A minimum of five (5) confirmed complaints in a day and at least two of which are confirmed in the presence of the Inspector. NOTE: An inspector will not solicit complaints from community members. This means an inspector will not attempt to encourage or gather complaints in the field unilaterally or act in a prejudicial manner against any facility under investigation. However, this restriction does not apply to any organizing or soliciting that may take place between members of the public.

C. Further Enforcement Action

The Compliance and Enforcement Division staff will evaluate cases and confer with the District Counsel's Office to discuss options for further legal action on cases.

-----Original Message-----

From: West Berkeley Alliance [mailto:westberkeleyalliance@yahoo.com]

Sent: Tuesday, March 16, 2010 9:54 PM

To: Zoning Adjustments Board (ZAB); Buckley, Steven; jrbroadbent@baaqmd.gov;
bbateman@baaqmd.gov; Chente, Abigail; Al-Hadithy, Nabil; Berkeley Mayor's Office; Maio, Linda;
Worthington, Kriss

Cc: hkang@ggu.edu; kkloc@ggu.edu; psc-working-group@yahoogroups.com

Subject: Re: 1421 Second St., Pacific Steel Casting Company Odor Control Plan

Members of the ZAB, CEAC, Dr. Al-Hadithy, Mr. Buckley, Mr. Broadbent, Mr. Bateman, Mayor Bates, Councilmember Maio, Councilmember Worthington,

Please see the attached document from the West Berkeley Alliance for Clean Air and Safe Jobs (Alliance) regarding deficiencies in Pacific Steel Casting Company's recently released Odor Control Plan (OCP) as well as Alliance recommendations for the OCP. Please make this document available to ZAB and CEAC members. The Alliance urges the City of Berkeley and the BAAQMD not to approve this Odor Control Plan as it is currently written.

Sincerely,
Janice Schroeder
Volunteer
West Berkeley Alliance for Clean Air and Safe Jobs

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West Berkeley Alliance for Clean Air and Safe Jobs

Questions? Suggestions? Comments?
westberkeleyalliance.org
westberkeleyalliance@yahoo.com

Bay Area Air Quality Management District Complaint Hotline: 1.800.334.6367 Available days, nights, and weekends! 24/7 _____

The Alliance is a network of neighbors; businesses; and environmental, social justice, and children's organizations allied to preserve safe jobs in the East Bay while preventing noxious pollution.

Want to stay up-to-date about clean air and safe jobs? Send an E-mail to join the Alliance E-mail Update list. You can stop receiving updates at any time by asking the Alliance. Please forward our contact information to anyone who might be interested!



Odor Control Plan Deficiencies

The West Berkeley Alliance for Clean Air and Safe Jobs recommends that the Bay Area Air Quality Management District (BAAQMD), the City of Berkeley, and the general public reject the current Odor Control Plan (OCP) for Pacific Steel Casting Company (PSC) as unacceptable. The OCP deficiencies that should be rectified, and the Alliance recommendations for the OCP include the following:

1. The document should be a public document, submitted as such to BAAQMD and the City of Berkeley. All parts of the plan should be universally available without "trade secret" redactions.
2. Odor reducing measures that are also air pollution control requirements pursuant to BAAQMD, other regulators, other regulations, or requirements of a settlement agreement should be designated as such throughout the document.
3. There is a general lack of independent monitoring and verification to ensure that the proposed odor reducing measures are effective and properly implemented. The OCP should include allowance for regular monitoring and verification by BAAQMD and City of Berkeley representatives.
4. The OCP contains several references to inappropriate time limitations on various plan elements (see OCP pages 10, 13, 14, and 17). The entire plan should remain in force until BAAQMD and the City of Berkeley determine that there are no remaining odor control issues, present and projected, to address. Annual reports of odor control measures taken (see OCP Section 8.0, Future Measures) should be provided to both BAAQMD and the City of Berkeley on an annual basis until all odor issues at the plant are satisfactorily resolved, as determined by both BAAQMD and the City of Berkeley.
5. Complaint log records compiled according to Section 7, "Complaint Response Procedures," should be automatically provided to both BAAQMD and the City of Berkeley every year.
6. Under the direction of BAAQMD and City of Berkeley representatives, PSC should hire an industrial odor consultant to identify the odorous chemicals present in its facility and emissions and determine the concentrations at which these chemicals become odiferous (using the odor standards developed in BAAQMD Regulation 7). The OCP should define odor threshold concentrations for these chemicals and develop a sampling and analysis program as part of its complaint response procedures.
7. The OCP should include procedures to demonstrate compliance with all the elements of BAAQMD Regulation 7, utilizing data obtained via the sampling and analyzing suggested above.

From: Al-Hadithy, Nabil
Sent: Monday, March 15, 2010 10:10 AM
To: Anne Kim ; Brooke Lee ; Dennis Mulqueeny; Greg Leventis ; Harris, Richard ; Janet Collins
Cc: Chente, Abigail
Subject: FW: Wood Burning Regulation Update

From the Healthy Air Coalition on the wood smoke issue. The coalition asks for support at the next AQMD meeting this Wednesday.

From: Jenny Bard [mailto:jbard@alac.org]
Sent: Friday, March 12, 2010 6:40 PM
To: Al-Hadithy, Nabil
Subject: Wood Burning Regulation Update

Dear Clean Air Advocates,

The Bay Area Air Quality Management District staff will provide an update on the 2009-2010 wood burning season at their next board meeting, Wednesday, March 17. The meeting begins at 9:45 and the agenda item is #12 on the list. I have attached the two page summary. Of note:

- 7 Spare the Air alerts were issued
- Nine days exceeded the national PM 2.5 24-hour standard
- 10,270 wood smoke information packets were sent out
- 254 reminder letters were mailed to residences that received warnings the previous winter
- 2,355 wood smoke complaints were made
- More than 300 violations were documented and warning letters were issued for first violations
- For second violations, notices of violation were issued of which there were eight, and penalties of \$400 will be sought (seven for curtailment violations and one for excessive visible emissions).

This is an information item only, but if you would like to attend this meeting and let the board know that you support the regulation and increased enforcement, that would be helpful. As you know, the air district received a huge amount of criticism by the public and in the media for calling curtailments on Thanksgiving and Christmas. Your presence helps remind them why this regulation is so important. If you would like to email your representative, here is the link <http://www.baaqmd.gov/The-Air-District/Board-of-Directors/Members.aspx>

Thank you for your support, as always. Let me know if you would like to attend the meeting. I hope you have a healthy and smoke-free weekend!

Jenny Bard

American Lung Association in California, 707-527-5864

Help us Fight for Clean Air! www.FightForAirClimb.org

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson, Brad Wagenknecht and Members
of the Board of Directors

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 5, 2010

Re: Overview of the 2009/2010 Wood Smoke Reduction Program

RECOMMENDED ACTION:

Informational Report. Receive and file.

BACKGROUND

On July 9, 2008 the Board of Directors adopted Regulation 6, Rule 3: Wood-burning Devices to protect Bay Area residents from the public health impacts of fine particulate matter (PM) and to reduce harmful emissions from wood smoke pollution. The winter of 2009/2010 was the second *Winter Spare the Air* season which included a mandatory curtailment of wood burning. Along with banning burning of wood and solid fuels during *Winter Spare the Air Alerts*, the rule limits visible emissions, prohibits burning inappropriate materials, restricts the sale and installation of non-EPA certified wood burning devices within the District, and requires labeling on firewood and solid fuels sold within the District. In order to be consistent with the rule's mandatory curtailment requirement, outdoor recreational burning, agricultural burning, and other open burning were also banned on those days. The *Winter Spare the Air* season commenced on November 1, 2009 and ended on February 28, 2010.

DISCUSSION

For the 2009/2010 season, the District made several changes to improve the effectiveness of the program. Continued education of the public about the health effects of particulate matter air pollution and how to comply with the rule was a primary focus. In order to provide the public with more advance warning of *Winter Spare the Air Alerts*, the District announced the day before an alert took effect. The *Winter Spare the Air Alert* was declared in the early afternoon (by 2 PM) for the alert that took effect at midnight and ran the entire next day to midnight. The earlier notification gave Bay Area residents more advance notice in order to comply and provided an opportunity to have the alert covered by the evening news and the next morning news cycles.

For the 2009/2010 season, seven *Winter Spare the Air Alerts* were issued and nine days exceeded the national PM_{2.5} 24-hour ambient air quality standard. There were two curtailments on major holidays, Thanksgiving and Christmas Day. Preliminary information indicates that the *Alert* declared on Christmas Day helped the region avoid an air quality exceedance that day, historically one of the dirtiest days of the winter season.

Over 10,270 wood smoke information packets were sent out to Bay Area residents to provide information about the Wood Burning Regulation and 254 reminder letters were sent to residences that received violation warning letters from the previous winter. The public could enter wood smoke complaints either online through the website or by phone, and the District recorded 2,355 wood smoke complaints. The 2009/2010 season enforcement program included inspection patrols covering all Bay Area counties for curtailment or visible emissions (opacity) violations. Over 300 violations were documented; warning letters were issued for the first violations. For the second violations, Notices of Violation were issued for which penalties of \$400 will be sought. Eight Notices of Violation were issued, seven for curtailment violations and one for excessive visible emissions.

The *Winter Spare the Air Alert* advertising and outreach campaign utilized TV, radio, print, web, billboard, grassroots and in-theater spots achieving 963 total news stories and 136.2 million media impressions. Educational materials were developed and distributed to the public via direct mail, public events, door-to-door canvassing and through the Air District website. The public could be notified of *Winter Spare the Air Alerts* by signing up for AirAlerts emails and/or phone calls which had 117,000 subscribers. Additionally, 2,000 employers and 500 schools receive Alert notifications. Based on survey data, 63% of the respondents were aware that the District prohibits wood burning on certain nights, and support for the Wood Burning Regulation remains strong at 71%.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Barbara Coler
Reviewed by: Kelly Wee

From: U.S. EPA [mailto:usaepa@govdelivery.com]

Sent: Tuesday, March 09, 2010 8:09 AM

To: Al-Hadithy, Nabil

Subject: Air News Brief (HQ): EPA Seeks Public Comment on the 15th Annual U.S. Greenhouse Gas Inventory

CONTACTS:

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FOR IMMEDIATE RELEASE

March 9, 2010

EPA Seeks Public Comment on the 15th Annual U.S. Greenhouse Gas Inventory

WASHINGTON – The U.S. Environmental Protection Agency (EPA) is seeking public comment on the annual Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2008 draft report. This report will be open for public comment for 30 days after the Federal Register notice is published.

The draft report shows that in 2008, overall greenhouse gas (GHGs) emissions have decreased by 2.9 percent. This downward trend was attributed to a decrease in carbon dioxide emissions associated with fuel and electricity consumption. Total emissions from GHGs were about 6,946 million metric tons of carbon dioxide (CO₂) equivalent. Overall, emissions have grown by 13.6 percent from 1990 to 2008.

The inventory tracks annual greenhouse gas emissions from 1990 to 2008 at the national level. The gases covered by this inventory include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The inventory also calculates carbon dioxide emissions that are removed from the atmosphere by "sinks," e.g., through the uptake of carbon by forests, vegetation, and soils.

This annual report is prepared by EPA in collaboration with experts from other federal agencies. After responding to public comments, the U.S. government will submit the final inventory report to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC). The report will fulfill the annual requirement of the UNFCCC international treaty, ratified by the United States in 1992, which sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change.

More information on the draft report and how to submit public comments:

<http://www.epa.gov/climatechange/emissions/usinventoryreport.html>

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