

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY  
BOARD MEETING MINUTES  
August 20, 2003

Note: Copies of orders and resolutions and information on obtaining tapes or transcripts may be obtained from the Executive Assistant, Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, California 94612 or by calling (510) 622-2399. Copies of orders, resolutions, and minutes also are posted on the Board's web site ([www.swrcb.ca.gov/rwqcb2](http://www.swrcb.ca.gov/rwqcb2)).

Item 1 - Roll Call and Introductions

The meeting was called to order on August 20, 2003 at approximately 9:04 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Clifford Waldeck, Vice-Chair; Josephine De Luca; Shalom Eliahu; John Reininga; and Mary Warren.

Board members absent: Kristen Addicks; Doreen Chiu; and William Schumacher.

Item 2 - Public Forum

Doug Eberhardt, U.S. EPA, told the Board he had assumed new responsibilities in EPA's NPDES office. He said he is in charge of water quality standards.

Item 3 - Minutes of the July 16, 2003 Board Meeting

Motion: It was moved by Mr. Reininga, seconded by Mrs. Warren, and it was unanimously voted to adopt the minutes.

Mrs. De Luca recused herself because she did not attend the July Board meeting.

Item 4 - Chairman's, Board Members' and Executive Officer's Reports

Nancy Sutley, State Board member, said the State Board would adopt emergency regulations setting out updated fee requirements for dischargers.

Item 5 - Uncontested Calendar

Ms. Barsamian recommended adoption of the uncontested calendar with the following changes: (1) supplemental material for Item 5B be received; (2) Items 5D and 5E be removed because speakers were present to comment; and (3) Item 5F be removed because no Board action was necessary.

Motion: It was moved by Mrs. Warren, seconded by Mrs. De Luca, and it was unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer.

Item 5A – Fairfield-Suisun Sewer District, Solano County – Reissuance of NPDES Permit

Larry Bahr, Fairfield-Suisun Sewer District, thanked Tong Yin, Gina Kathuria, and Shin-Roei Lee for their work on the tentative order.

Item 5E – United States Department of Defense, Department of the Army; United States Department of Defense, U.S. Army Corps of Engineers, San Francisco District; and the California State Lands Commission for the Inboard Area and Coastal Salt Marsh at Hamilton Army Airfield, Novato, Marin County – Adoption of Site Cleanup Requirements

Naomi Feger said about 630 acres at the former Hamilton Army Airfield would be converted to tidal and seasonal wetlands. She said there are contaminants on the property that need remediation before wetland restoration begins. Upon completion of the remediation, she said dredged sediment would be deposited on the property in order to bring the property to a level necessary to establish wetlands. She noted most of the property, protected by levees, has subsided over the years.

Ms. Feger said the project involves an “early property transfer” because military property would be transferred to the State Coastal Conservancy before completion of site cleanup activities. She said due to funding constraints it is important the property transfer occur by September 30, 2003, the end of this federal fiscal year. She noted the Governor must approve an early transfer.

Ms. Feger said the Regional Board would oversee remediation of the property after adoption of the tentative order. She said the State Coastal Conservancy and the Army would apply to the Regional Board sometime in the future for waste discharge requirements in order to deposit dredged sediment on the property.

Ms. Feger described steps the Army and State agencies have taken to ensure the early transfer occurs in a timely manner. She said a Record of Decision and a Remedial Action Plan have been prepared and would provide direction for site cleanup activities.

Ms. Feger said the transfer of the former Hamilton Army Airfield to the State must be approved by the State Public Works Board. She said the Public Works Board includes directors from Department of Finance, Department of General Services and Caltrans.

Ms. Barsamian said many public agencies have worked together to ensure the State will receive property that will be remediated adequately.

Edward Keller, U. S. Army, BRAC Environmental Coordinator, spoke in support of the tentative order.

Elena Belsky, representative of Friends of Novato Creek and Environmental Investigator, spoke in support of the wetlands restoration project. However, she asked that inadequacies in the Record of Decision and Remedial Action Plan be addressed before the Board adopts the tentative order. She said the ROD/RAP lacks specificity and discretionary language used in the ROD/RAP leaves program alternatives undefined.

Ms. Feger noted the U.S. Army established a Restoration Advisory Board to encourage public participation in early transfer of the property, site cleanup activities, and wetlands restoration. She said the RAB includes 13 public members that meet quarterly. She said Friends of Novato Creek is a member. She said a RAB technical committee reviews remediation documents.

In response to a question, Ms. Barsamian said staff believe the ROD-RAP contain sufficient information to ensure contamination on the property will be remediated. She said staff also believe site cleanup activities should move forward.

Ms. Barsamian recommended adoption of the tentative order.

Motion: It was moved by Mrs. De Luca, seconded by Mr. Eliahu, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren, and Mr. Muller.

No: None.

Motion passed 6 – 0.

Item 5D – Carneros River Ranch North West and North Central Fields Dredged Material and Fill Placement Project, Petaluma, Sonoma County – Adoption of (1) CEQA Negative Declaration and Initial Study and (2) Waste Discharge Requirements, Water Quality Certification, and Rescission of Order 98-012

Beth Christian said Carneros River Ranch proposes to place up to 663,000 cubic yards of dredged sediment onto 180 acres of ranch property. She said the land is former baylands that has been protected by levees since the 1800's. She said the land is subject to an agricultural easement held by the Sonoma Land Trust. She said the easement limits land use to activities that produce food and fiber.

In 1998, Ms. Christian said 320,000 cubic yards of dredged sediment were deposited on part of the 180 acres, the North Central field. She said agricultural crops grown on the North Central field have been successful.

Barbara Salzman, Marin Audubon Society, recommended the tentative order include a condition that some ponds be developed on the property. She said the 180 acres could provide valuable unvegetated shallow water habitat for shore birds. She said the birds need upland sites when tides come in.

John Zentner, representing Carneros River Ranch, said dredged sediment placed on the North Central field in 1998 improved agricultural production by raising crop roots above shallow groundwater levels. He said currently there are no ponds on the property. However, he said hay and wheat fields provide bird habitat.

Ms. Barsamian noted the Board could request that she work with the landowner and Ms. Salzman to see if the sediment disposal project could be designed to include ponds. She said such a request would not require amendment of the tentative order.

Mr. Zentner said it might be possible to develop seasonal ponds in some parts of the property. He said there are usually low spots when dredged sediment is deposited in fields.

Mr. Muller said if some land is used for ponds, there must be enough remaining land to make the farmer's operation economically viable.

Yuri Won said ponds developed on the property must be consistent with the agricultural easement.

Ms. Barsamian recommended the Board adopt the tentative order, and as a separate matter, direct her to negotiate development of ponds if feasible.

Mr. Eliahu moved to adopt the tentative order as written. He noted agricultural crops have been grown successfully on the North Central field where dredged sediments were deposited earlier. He said there are other wetlands in the area.

Ms. Barsamian noted there are not many freshwater seasonal ponds in the area.

Mr. Reininga said Ms. Barsamian might be able to work with the parties to see if low-lying land could be used for seasonal flooding.

Mrs. Warren seconded the motion made by Mr. Eliahu.

Ms. Salzman said shorebirds feed in tidal mudflats. She said when tides come in the birds like to go to unvegetated shallow ponds located in nearby uplands.

Mr. Waldeck asked whether the Audubon Society was requesting that a certain percentage of the property be used for ponding.

Ms. Salzman said the Audubon Society was not requesting a specific percentage. She concurred with staff's recommendation that the parties try to negotiate development of ponds.

Mr. Zentner said the parties might be able to allow some ponds without endangering farm activities.

There was discussion among Board members of ways to amend the motion made by Mr. Eliahu in order to allow for the development of ponds.

Mr. Eliahu said agricultural land is being lost to various developments. He said it was important the tenant farmer and landowner agree to the development of ponds.

Ms. Barsamian recommended the Board adopt two motions: (1) she recommended adoption of the tentative order as written; and (2) she recommended the Board direct her

to negotiate with Audubon Society, the landowner, the tenant farmer, and the Sonoma Land Trust about the pond issue.

Mr. Eliahu reiterated his concern that the farmer must agree to pond development.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. Warren, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren and Mr. Muller.

No: None.

Motion passed 6 – 0.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Reininga, and it was voted to direct the Executive Officer to negotiate the development of ponds on a portion of Carneros River Ranch property if pond development would be feasible with on going agricultural use of the property. Parties to the negotiations are to include the tenant farmer, the Carneros River Ranch Corporation, the Sonoma Land Trust, the Marin Audubon Society, and the Regional Board.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren and Mr. Muller.

No: None.

Motion passed 6 – 0.

Item 6 – City of Benicia, Wastewater Treatment Plant, Benicia, Solano County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Ms. Barsamian said the City of Benicia signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$21,000. She noted \$18,000 would be used for a supplemental environmental project.

Item 7 – City of Petaluma, Wastewater Treatment Plant, Petaluma, Sonoma County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Ms. Barsamian said the City of Petaluma signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$9,000. She noted \$9,000 would be used for a supplemental environmental project.

Item 8 – Central Marin Sanitation Agency, San Rafael, Marin County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Ms. Barsamian said Central Marin Sanitation Agency signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000. She noted \$6,000 would be used for a supplemental environmental project.

Item 9 – Conoco Phillips – San Francisco Refinery, Rodeo, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Ms. Barsamian said Conoco Phillips - San Francisco Refinery signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000. She noted \$6,000 would be used for a supplemental environmental project.

Item 10 – City of Sunnyvale, Wastewater Treatment Plant, Santa Clara County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Ms. Barsamian said the City of Sunnyvale signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$21,000. She noted \$18,000 would be used for a supplemental environmental project.

Item 11 – Cities of San Jose and Santa Clara, Water Pollution Control Plant, Santa Clara County – Reissuance of NPDES Permit and Authorization of the Executive Officer to Enter into an Agreement with Interested Parties for Habitat Mitigation

Linda Rao said a tentative order to reissue the discharger's NPDES permit is under consideration. She recommended: (1) the public comment period on the operational part of the tentative order close at the completion of today's public hearing; (2) the comment period on the marsh mitigation portion of the tentative order remain open; and (3) the Board vote on the entire tentative order at the September Board meeting.

Ms. Rao said the discharger's effluent converted salt marsh to fresh water marsh. As a result, she said the State Board required San Jose to restore 389 acres of salt marsh habitat. She said San Jose purchased two parcels, the Baumberg Tract and the Moseley Tract, in order to comply. She said mitigation on the Moseley Tract could not be completed due to seasonal drainage problems.

Ms. Rao said the City of San Jose, U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Regional Board have agreed to enter into a Memorandum of Agreement in order to complete an alternative to the Moseley Tract project. She said the MOA would include 8 conditions. She noted one condition would require that San Jose provide \$650,000 for project acquisition and restoration.

Ms. Rao said staff would recommend the Board approve today a resolution authorizing the Executive Officer to enter into the MOA when negotiations are completed. She said staff expect the MOA will be finalized within 6 months after the discharger's NPDES permit is adopted.

Carl Mosher, Director of Environmental Services, City of San Jose, said the City would not oppose limits in the tentative order for copper, nickel, and mercury. He said San Jose had drafted the proposed Memorandum of Agreement to which Ms. Rao referred, and it was being reviewed by participating agencies. He said City staff would recommend the City Council approve the MOA. He noted the Council must approve disbursement of funds for salt marsh acquisition and restoration.

Mr. Mosher spoke in support of the stakeholder process used in preparation of the tentative order and the proposed MOA.

In response to a question, Mr. Mosher said San Jose had budgeted funds for purchase and restoration of a salt marsh site.

Ms. Barsamian recommended the Board adopt a motion to close the public hearing on the operational portion of the tentative order; to keep the public hearing on the mitigation portion of the tentative order open; and to continue the entire tentative order be to the September Board meeting.

Motion: It was moved by Mrs. De Luca, seconded by Mr. Eliahu, and it was voted to adopt the motion as stated by the Executive Officer.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren, and Mr. Muller

No: None.

Motion passed 6 – 0.

Ms. Barsamian recommended adoption of a Resolution Authorizing the Executive Officer on Behalf of the San Francisco Bay Regional Board to Enter into the Alternate Salt Marsh Mitigation Memorandum of Agreement with the City of San Jose, U.S. Fish & Wildlife Service, and California Department of Fish and Game, and the Peninsula Open Space Trust, for the Purposes of Protection Endangered Species.

Motion: It was moved by Mrs. De Luca, seconded by Mr. Reininga, and it was voted to adopt the resolution.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren, and Mr. Muller

No: None.

Motion passed 6 – 0.

Item 12 – City of Palo Alto, Regional Water Quality Control Plant, Santa Clara County –  
Reissuance of NPDES Permit

Linda Rao said the discharger did not contest the tentative order.

In response to a question, staff said estuarine water must meet limits for either fresh water or salt water, whichever is lower.

Phil Bobel, City of Palo Alto, thanked Linda Rao, Gina Kathuria, Shin-Roei Lee, Larry Kolb, and Loretta Barsamian for their work on the tentative order. He said the City did not have major unresolved issues and said the stakeholder process had provided a helpful forum for issue resolution. He hoped the stakeholder process would be used in the future. He expressed concern about increases in permit fees.

Ms. Barsamian concurred with Mr. Bobel about the stakeholder process. She spoke positively about the Board workshops that had been held because the Board had provided helpful direction to staff.

Ms. Barsamian recommended adoption of the tentative order as supplemented.

Motion: It was moved by Mr. Waldeck, seconded by Mr. Reininga, and it was voted to adopt the tentative order as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs., Warren and Mr. Muller

No: None.

Motion passed 6 – 0.

[The Board took a break at 10:58 a.m. and resumed the meeting at 11:10 a.m.]

Item 13 – City of Sunnyvale, Water Pollution Control Plant, Santa Clara County –  
Reissuance of NPDES Permit

Shin-Roei Lee said the mercury concentration limit in the tentative order is 12 nanograms per liter. She said this limit is the same as the limit in Sunnyvale's existing permit, and the City should be able to comply based on past performance. However, she said Sunnyvale requests the concentration limit be increased to 23 nanograms per liter.

Ms. Lee said the concentration limit in the mercury TMDL would supercede the limit in the tentative order. She said the Board is scheduled to consider the mercury TMDL in the fall.

Adam Olivieri, representing the City of Sunnyvale, said the City had complied with the concentration limit in its existing permit. However, he noted the water pollution control plant had been operating at one-half of design capacity. He said if Sunnyvale grows and



flow increases, the City might exceed the 12 nanograms per liter limit, and the limit could curtail growth.

Dr. Olivieri showed a slide illustrating mercury concentrations in daily data collected over the past 5 years. He said there are 6 data points at or above 9 nanograms per liter, including one data point at 12 nanograms.

Bob Thompson, attorney representing the City of Sunnyvale, replied to staffs' objections to the City's request to increase the concentration limit.

In response to a question, Mr. Thompson said his comment letter details mistakes he believes the Board made when the existing permit was adopted.

Marvin Rose, Public Works Director, City of Sunnyvale, said if the concentration limit remains at 12 nanograms per liter the City might have to curtail growth in order not to be in violation of the limit.

Ms. Barsamian said 12 nanograms is an average monthly concentration limit. She said daily values were compared to the average monthly limit on Sunnyvale's slide.

Shin-Roei Lee showed a slide that compared average monthly concentration values to the average monthly limit. She reiterated that Sunnyvale should be able to meet the 12 nanograms per liter concentration limit based on past performance. She said daily values should be compared to the daily maximum limit, which is about 200 times higher than the monthly average limit.

Ms. Lee also showed a slide showing there was little correlation between mercury concentration levels and flow levels in Sunnyvale during the past four years. She said as flow levels increased, concentration levels did not necessarily increase.

Mr. Muller asked about growth that might occur in Sunnyvale.

Ms. Barsamian said the water pollution control plant treats an average dry weather flow of 13 million gallons a day. She said the plant capacity is about 30 million gallons a day. She estimated the City would have to grow by about 160,000 people to meet plant capacity.

In response to a question, Ms. Barsamian said after a certain number of permit violations, cities are given mandatory minimum penalties of \$3,000 per violation.

Mrs. Warren asked if a way could be found to give cities relief from being required to pay fines.

Ms. Barsamian said when concentration values start to get close to limit levels, staff might work with cities to consider programs like reclamation and offsets.

Mr. Reininga said he shared Mrs. Warren's concern about fines. He asked if the Board could delay acting on the tentative order until the mercury TMDL is adopted.

Ms. Barsamian said Sunnyvale's permit had expired and was administratively extended until adoption of a new permit. She said a number of new limits in the tentative order have been negotiated. She advised against relying on an outdated permit.

Ms. Barsamian said staff and the discharger have negotiated the mercury mass limit. She said the mass limit would increase if the concentration limit were increased.

Mr. Rose expressed concern that mercury concentration levels in the City's effluent are so close to the limit that increased flows might cause violations. He said taking stormwater into the water pollution control plant during large storms could increase flow.

Mr. Reininga asked whether the City's mercury concentration levels would be close to the average monthly limit if average monthly values were used instead of daily values.

Mr. Rose said use of average monthly concentration values would help.

Ms. Lee said Sunnyvale has never exceeded the 12 nanograms monthly average during the last 5 years.

Ms. Barsamian said it is not staffs' intention to limit Sunnyvale's growth. She said the Board could direct staff to review the concentration limit if Sunnyvale appears to be close to violating it.

Mr. Rose said the limit might be exceeded before staff had time to review the situation. He said sampling values could swing considerably from month to month.

Mr. Eliahu asked about the City's projected growth.

Mr. Rose said the City projects an increase of 25,000 people over the next 15 to 20 years.

Larry Kolb reiterated the tentative order proposes to maintain the status quo regarding the mercury concentration limit until the mercury TMDL is adopted.

Ms. Lee said the City might receive mercury mass offsets if it treats stormwater in its water pollution control plant.

Ms. Barsamian recommended the Board adopt the tentative order as supplemented and give her direction to negotiate programs like mass offsets and pollution prevention with the discharger if mercury concentration levels increase and violations appear likely.

Motion: It was moved by Mr. Waldeck, seconded by Mr. Reininga, and voted to adopt the tentative order as supplemented and to direct the Executive Officer to negotiate programs like mass offsets and pollution prevention with the discharger if mercury concentration levels increase and violations appear likely.

Mrs. Warren asked about assurances to help Sunnyvale avoid fines.

Ms. Barsamian said staff reviews the discharger's self-monitoring reports and may be able to consider options like mass offsets and pollution prevention if mercury

concentrations increase. However, she said staff might not be able to move fast enough to correct the situation before a mandatory minimum penalty is imposed.

Mr. Eliahu said he was in favor of adopting the tentative order. He reiterated the fact that during the last 5 years Sunnyvale had never exceeded the average monthly concentration limit. He noted in the next 5 years, the City is not expected to grow enough to reach the capacity of the water pollution control plant.

Mr. Reininga noted Sunnyvale used daily values instead of average monthly values when suggesting that violations of the average monthly concentration limit might occur. He recommended the Board adopt the tentative order and direct the Executive Officer to work with the discharger as suggested.

Mrs. De Luca said she was in favor of adopting the tentative order.

Dorothy Dickey said Mr. Thompson suggested mistakes might have been made when the Board adopted the existing permit. She said at this point it is difficult to debate his statement. She said Mr. Thompson suggested ways state and federal laws would authorize the Board to increase the concentration limit. However, she noted increasing the limit does not appear to be will of the Board.

Ms. Barsamian reiterated her earlier statement that the Board could direct her to monitor Sunnyvale's reports to see if growth causes an increase in mercury concentration levels. She said if concentration levels increase, she could try to negotiate programs like pollution prevention and mass offsets.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Reininga, Mr. Waldeck, Mrs. Warren, and Mr. Muller

No: None

Motion passed 6 – 0.

Item 14 – United States Department of Defense, Department of the Army; United States Department of the Interior, National Park Service; and the Presidio Trust for the property located at the Presidio of San Francisco, City and County of San Francisco – Adoption of Revised Site Cleanup Requirements and Rescission of Order No. 91-082 and Order No. 96-070

Jim Ponton said from 1846 to 1994 the U.S. Army owned the Presidio. He said during the Army's tenure there was petroleum contamination of soil and groundwater. He said in 1994 the U.S. Army transferred ownership of the Presidio to the National Park Service.

Mr. Ponton said in 1996 Congress created the Presidio Trust and gave the Trust the mission of preserving the Presidio and developing it into a self-sufficient park. He said in 1998 the Trust took over management responsibilities for most of the Presidio.

Mr. Ponton said the National Park Service continued to manage coastal portions of the Presidio. He said in 1999 the Presidio Trust and NPS entered into a Memorandum of Agreement regarding the coastal portion of the property. Under the MOA, he said the Trust assumed remediation responsibility for coastal areas.

Mr. Ponton said NPS contests the fact that it is a named discharger to the tentative order.

Dorothy Dickey said the State Board has held that all responsible parties should be named in tentative orders like the one involving the Presidio. She noted the State Board issues precedential orders that give Regional Boards direction.

Brian O'Neil, Superintendent, Golden Gate National Recreation Area, said when NPS acquired the Presidio from the U.S. Army, the Army retained cleanup responsibility for petroleum contamination. He said in 1999 the Army transferred cleanup responsibility to the Presidio Trust. He said NPS never has been responsible for cleanup of petroleum contamination.

Ms. Dickey said State Board orders indicate all dischargers in current ownership, possession, or control of property should be named in tentative orders like the Presidio's. She said State Board orders indicate contractual agreements between dischargers should not have a bearing on which dischargers are named to tentative orders. She said parties can change contractual agreements.

Ms. Dickey discussed whether dischargers should be named as primarily or secondarily responsible parties. She said State Board orders indicate secondary responsibility may be given when: (1) dischargers with primary status conduct cleanup in accordance with applicable orders; (2) the discharger who wishes to have secondary status did not initiate or contribute to the discharge; and (3) the discharger who wishes to have secondary status has limited ability to control the cleanup because someone else has exclusive control of the property.

Ms. Barsamian asked whether NPS had the ability to control cleanup activities.

Mr. O'Neil said Congress appropriated cleanup funds to the Army, and the Army subsequently transferred the funds to the Presidio Trust. He said NPS does not have funds to conduct cleanup. Also, he said the Army, the Trust, and NPS executed an agreement assigning cleanup responsibilities to the Trust.

Mr. O'Neil said NPS staff would be much more involved in the site cleanup program if NPS were named a primarily responsible discharger.

Mr. Ponton noted the Army and the Trust are not contesting the tentative order.

Craig Cooper, Presidio Trust, said the Trust stated in its comment letter that it prefers NPS not be named as a discharger. However, he said the Trust would not contest the tentative order whether or not NPS is named.

Mrs. De Luca asked whether the Trust was willing to accept responsibility for conducting remediation.

Mr. Cooper replied affirmatively and said the Trust would accept 100% responsibility for remediation.

Ms. Barsamian recommended NPS be named as a discharger in the tentative order. She said there is an outstanding question whether NPS should be named as a primarily or secondarily responsible discharger.

Board members discussed whether to name NPS as primarily or secondarily responsible.

Mr. Reininga asked if naming NPS as a secondarily responsible discharger would cut bureaucracy.

Steve Morse noted, over the years, some dischargers have been named secondarily in order to reduce bureaucracy.

Ms. Barsamian recommended the tentative order be adopted and NPS be named as a primarily responsible discharger. She said naming NPS as primarily responsible is consistent with past Regional Board orders and with direction from the State Board.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Waldeck, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. De Luca, Mr. Eliahu, Mr. Waldeck, and Mrs. Warren

No: Mr. Reininga and Mr. Muller

Motion passed 4 – 2.

#### Items 16 & 17 – Closed Session – Personnel and Litigation

At approximately 1:12 p.m., the Board went into closed session to discuss personnel and litigation issues. At the completion of the closed session, the meeting was adjourned.

#### Adjournment

The meeting was adjourned at approximately 1:50 p.m.