

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
November 17, 2004

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Item 1 - Roll Call and Introductions

The meeting was called to order on November 17, 2004 at 9:07 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: Clifford Waldeck, Chair; Mary Warren, Vice-Chair; Doreen Chiu (Note: Mrs. Chiu arrived at approximately 9:10 a.m.) Josephine De Luca; Shalom Eliahu; John Muller; and John Reininga.

Board member absent: Kristen Addicks.

Dale Bowyer introduced new staff: Carrie Sandahl and Brendan Thompson.

Item 2 - Public Forum

L.A. Wood, resident of the City of Berkeley, distributed copies of an article he wrote about Berkeley's stormwater program that was published in the Berkeley Daily Planet. He said the City was not complying with the NPDES stormwater permit issued by the Board and suggested staff might need to enforce permit requirements.

Mr. Wood expressed concern that he was not able to email copies of the article to Board members.

The Board and counsel discussed setting up a procedure to allow the public to send emails about water quality concerns to Board members. Counsel cautioned that email communications with Board members must take into account ex parte laws and suggested a staff person review the emails to ensure compliance.

Kevin Buchan, Western States Petroleum Association, said at the September Board meeting he requested the Mercury TMDL be amended: (1) to require a mercury air deposition study be conducted instead of a study concerning the environmental fate of mercury in crude oil, and (2) to require the study in a 13267 letter instead of directly in NPDES permits.

Mr. Buchan said he thought the Board adopted both requests. However, he said the Basin Plan Amendment posted on the Board's website states that the refineries study

concerning the environmental fate of mercury in crude oil would be imposed through a 13267 letter.

Mr. Wolfe said the Board directed staff to use a 13267 letter to require the study. He said staff would clarify the scope of the study in the letter. He said the letter has not been issued yet.

In reply to a question, Mr. Wolfe said the Basin Plan Amendment the Board adopted included an implementation plan to regulate mercury. He said the implementation plan would be carried out through individual NPDES permits. He said the refineries' study to be made pursuant to a Section 13267 letter would provide direction for requirements in individual NPDES permits.

Mrs. De Luca said it was important to study the contribution of mercury in air deposition. She also said it was important the Board work with the Air Resources Board.

Staff suggested they take a look at the transcript of the September Board meeting and report back to the Board about provisions in the motion of adoption of the Basin Plan Amendment.

Mr. Buchan said he understood staff would forward the Amendment to the State Board in the near future and that the Board would not meet again until January. He asked that the Board clarify the focus of the study.

Mr. Waldeck said staff would address WSPA's concern and would report back to the Board.

Mr. Buchan asked if the January agenda could include an item concerning the refineries study.

Mrs. De Luca and Mrs. Warren concurred with Mr. Buchan's request.

Mr. Wolfe recommended such an item not be placed on the January agenda. He said it was important that the processing of the Basin Plan Amendment move forward. He reiterated staff would read the transcript of the September Board meeting and would report to the Board on available options.

Sejal Choksi, San Francisco BayKeeper, said voters in the City of Los Angeles recently approved a \$500 million bond measure directed at improving water quality and promoting clean water. She said \$75 million of the money would be used for stormwater programs. She suggested a similar ballot measure might be considered in the Bay Area to fund stormwater programs.

Item 3 – Minutes of the October 20, 2004 Board Meeting

Motion: It was moved by Mr. Reininga, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the October 20, 2004 Board meeting.

Mrs. Chiu, Mrs. De Luca, and Mrs. Warren abstained because they did not attend the October Board meeting.

Item 4 – Chairman’s, Board Members’ and Executive Officer’s Reports

Mr. Waldeck said the City of Mill Valley adopted a resolution regarding an ABAG program called Stop the Sewer Backup Month.

Mr. Wolfe said staff is working with local collection systems to reduce the occurrence of sanitary sewer overflows and to improve the systems’ reporting of overflows.

Mr. Wolfe discussed a legislative hearing regarding the Zeneca site that was recently held in Richmond. He said following the hearing, he agreed to transfer oversight for cleanup of the upland portion of the site to the Department of Toxic Substances Control.

Mrs. De Luca and Mr. Muller expressed concern about the perception that staff’s oversight was not protecting public health.

Mr. Waldeck said staff did a good job throughout the hearing. He said he hoped staff develops a stronger working relationship with DTSC and the Bay becomes cleaner because of the cooperative effort.

Mr. Wolfe said one of the outcomes of working on the Zeneca site was the need for staff to improve communication with local decision makers. He suggested the written Executive Officer’s Report that is prepared monthly be sent to Bay Area legislators.

Mrs. Warren concurred with Mr. Wolfe’s suggestion.

Mrs. De Luca recommended the communication with local decision makers include telephone calls and face-to-face visits in order to understand community concerns.

Nancy Sutley, State Board member, said that the Governor appointed Cal/EPA Secretary Terry Tamminen to serve as Cabinet Secretary. She said Alan Lowenthal has been selected as the Chair of the Senate Environmental Quality Committee.

Ms. Sutley said the State Board would be considering: (1) a resolution requesting staff develop a sanitary sewer overflow reduction program and (2) guidelines for the Integrated Regional Water Management Grants. She also said Cal/EPA staff are concerned that DTSC and the regional boards work closely on site cleanups.

Item 5 – Ultramar Inc.’s Former Golden Eagle Refinery, Martinez, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Ultramar Inc. signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$24,000. He said \$19,500 would be used for a supplemental environmental project.

Item 6 – Kobe Precision, Inc., Hayward, Alameda County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Kobe Precision, Inc. signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000. He said \$6,000 would be used for a supplemental environmental project.

Item 7 – Pacific Gas and Electric Company, Hunter’s Point Power Plant San Francisco – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

In reply to questions, Mr. Wolfe said the discharger has been regulated by an NPDES permit since 1994. He said the discharger exceeded the chlorine limitation in 2000. He said Migden legislation requires the exceedence be treated as a serious violation and a mandatory minimum penalty of \$3,000 be assessed.

Mr. Wolfe said staff administratively continued the NPDES permit past the initial five-year term. He said the discharger produces electricity and discharges disinfected heating water to the Bay. He said the plant is expected to be closed in 2006.

Mrs. De Luca asked if a \$3,000 penalty assessment serves as a deterrent for a serious violation.

Mr. Wolfe said the Migden legislation defines what constitutes a serious violation and requires that a \$3,000 minimum penalty be assessed. He said the penalty assessment could be greater than \$3,000. He said in this case the discharger agreed to waive the right to a hearing and to pay the penalty.

In reply to a question, Mr. Wolfe said the same penalty for a serious violation is imposed on large and small dischargers.

Item 8 – Triennial Review of the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) – Adoption of Resolution and Prioritized List of Basin Plan Issues

Steve Moore gave the staff report. He said the Basin Plan is the primary regulatory document for the Board. He said federal law requires that it be updated every three years. He said staff conducted a triennial review, prioritized issues, and proposed a three-year work plan for amendments.

Mr. Moore said the work plan does not include amendments for Total Maximum Daily Loads. He said a different process is used to prioritize TMDL amendments.

Mr. Moore described stakeholder involvement in the triennial review process. He said comment letters were received and a public workshop was held. He described ranking criteria that were used to score potential Basin Plan issues. He described some of the issues on the prioritized list attached to the Tentative Resolution.

Delphine Prévost, Assistant Director of Bay Planning Coalition, spoke in favor of the prioritized list. However, she raised three concerns. First, she said beneficial reuse projects, like restored wetlands, often have effluent from dewatering that may not meet objectives in the California Toxics Rule. She said staff should consider whether the benefits of the projects outweigh short-term disadvantages. Second, she suggested the Basin Plan include a policy dealing with effluent mixing zones. Third, she requested Basin Plan amendments take into account economic considerations and the need for housing.

Mr. Wolfe recommended adoption of the Tentative Resolution and Prioritized List of Basin Plan Issues.

Motion: It was moved by Mrs. Warren, seconded by Mr. Muller, and it was voted to adopt the Tentative Resolution and Prioritized List of Basin Plan Issues as recommended by the Executive Officer.

Mrs. De Luca asked staff for an update on the status of the Mercury TMDL Basin Plan Amendment.

Mr. Wolfe said staff is preparing the administrative record to forward to the State Board. He said staff, the State Board, and U.S. EPA have been trying to resolve issues raised by U.S. EPA.

Mrs. De Luca said she understood the Board gave conditional approval of the Mercury TMDL at the September Board meeting.

Mr. Wolfe said the Board adopted a Resolution to Amend the Basin Plan and Establish a Mercury TMDL, while recognizing that outstanding issues with U.S. EPA needed to be resolved.

Mr. Reininga asked how much time remained for negotiation with U.S. EPA before the administrative record would be forwarded to the State Board.

Tom Mumley estimated the administrative record would be prepared by the end of November or early December. He said the State Board would send the Basin Plan Amendment out for public comment and probably would not act on it until March.

In reply to a question, Ms. Dickey said staff is not required to forward the Basin Plan Amendment to the State Board within a certain number of days after adoption by the Regional Board.

Roll Call:

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

No: None

Motion passed 7 – 0.

Item 9 – Novato Sanitary District, Novato, Marin County – Reissuance of NPDES Permit

Mr. Wolfe recommended adoption of the tentative order. He said outstanding issues with the discharger had been resolved.

Motion: It was moved by Mr. Muller, seconded by Mrs. Warren, and it was voted to adopt the Tentative Order as recommended by the Executive Officer.

Roll Call:

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

No: None.

Motion passed 7 – 0.

Item 10 – Santa Clara Valley Urban Runoff Pollution Prevention Program – Status Report on Hydromodification Plan Approval and New and Redevelopment Control Measure Implementation Issues

Jan O’Hara gave the staff presentation. She said the Board must approve the Hydromodification Plan prepared by the Santa Clara County Program. She said staff is concerned because the HMP exempts many projects from stormwater requirements. She said, for example, projects located in watersheds that are 90% or more built out are exempt. She anticipated the Board would consider the HMP in February 2005.

Ms. O’Hara also discussed how some Santa Clara cities are implementing stormwater treatment measures. She said staff plans to bring a permit amendment to the Board in February 2005 that would clarify implementation of treatment measures.

Ms. O’Hara said Santa Clara Valley cities were required to implement treatment measures for Group 1 projects starting in October 2003. She said staff understands that some cities exempted applications submitted before October 2003 even though all the information necessary to review the application was not submitted. She said the cities deemed the applications complete.

Ms. O’Hara said the City of San Jose has phased the implementation of Group 1 projects. She said some Group 1 projects are not required to implement treatment controls until 16 months after the October 2003 compliance date.

Ms. O’Hara said an Alternative Compliance Program adopted by the Santa Clara Program must be approved by the Board. She said the City of San Jose has developed the equivalent of an Alternative Compliance Program without obtaining Board approval. She said an Alternative Compliance Program allows developers to construct offsite treatment controls when it is impracticable to treat stormwater on-site. She said San Jose has defined impracticability very broadly.

Ms. O’Hara said San Jose has exempted smart growth projects from treatment control requirements. She said smart growth is defined to include projects built in areas served by water and sewer.

Mr. Eliahu said large storage basins would be required to alleviate erosion from stormwater runoff.

In reply, Mr. Wolfe said there is an opportunity in designing projects to include measures that reduce peak flow rates.

Mr. Reininga suggested it might be more efficient if staff and cities negotiate Alternative Compliance Programs and not bring the issues to the Board for approval.

Mr. Wolfe recommended the Board approve Alternative Compliance Programs. He said other stormwater permits in the region also have a similar requirement.

Dale Bowyer said problems developed with San Jose's Alternative Compliance Program because it was not reviewed. He said there needs to be a review process.

Mrs. Warren asked if stormwater provisions that apply to large cities in the region would be the same.

Mr. Wolfe said one reason to amend the Santa Clara Valley permit is to make it consistent with other stormwater permits. He said staff eventually would like to see a regional permit adopted.

Adam Oliveri, Program Manager for the Santa Clara Valley Urban Runoff Pollution Prevention Program, said the Santa Clara Program has led the implementation of stormwater measures in the Bay Area. He said the Santa Clara Valley permit was adopted before other stormwater permits, and the Santa Clara Valley permit has earlier compliance dates than other stormwater permits.

Dr. Oliveri spoke in favor of a regional stormwater permit. He said Santa Clara Valley jurisdictions would like to see a level playing field.

Dr. Oliveri said staff painted an inaccurate picture of stormwater accomplishments in Santa Clara Valley. He said Santa Clara Valley jurisdictions replied to staff's comments on the HMP and he thought reasonable compromises had been made. He said the HMP should be implemented incrementally. He said the Coyote Valley and Evergreen developments in San Jose would be required to meet HMP provisions.

Dr. Oliveri opposed staff's plan to amend Santa Clara Valley's stormwater permit. He said collaborative processes should be used to make program changes in the middle of a permit term. He said the language in the permit dealing with "deemed complete" and "begin implementation" does not need to be amended.

Mr. Muller asked Dr. Oliveri if he felt rules were being changed in the middle of the game.

Dr. Oliveri said he would feel that way if the "deemed complete" and "begin implementation" language were changed.

Mr. Reininga said the HMP exempts projects developed in watersheds that are 90% built out. He said staff estimates projects built on most of the land in San Jose would fall within the 90% built out exemption.

Dr. Oliveri said local jurisdictions decided on the exemption after a lot of discussion. He said the exemption was based on an appropriate balance between the risks of causing adverse environmental impacts versus the development costs of implementing the HMP. He said projects exempt under the HMP might still be required to comply with treatment measures.

Mr. Muller said Santa Clara Valley jurisdictions appear to have taken steps in a relatively short period of time to implement the stormwater permit.

Mr. Bowyer expressed concern that some of the actions of the cities were not consistent with the stormwater permit.

Mrs. De Luca encouraged staff to try to build stronger working relationships with Santa Clara Valley jurisdictions.

Bill Ekern, Director of the City of San Jose Redevelopment Agency, spoke in favor of developing a regional stormwater permit. He also spoke in favor of using the same implementation schedule in Bay Area stormwater permits.

Mr. Ekern said the Santa Clara Valley stormwater permit is being implemented and there is not an immediate need for a permit amendment in February. He said the Coyote Valley and Evergreen projects would be required to meet HMP provisions.

Mr. Wolfe said it was very helpful to hear that the projects would include stormwater measures under the HMP.

Mollie Dent, Senior Deputy City Attorney, City of San Jose, said the City Council asked City staff to try to have Santa Clara Valley's stormwater permit implemented on the same schedule and following the same rules as other stormwater permits in the region. She said the City Council would like a level playing field.

In reply to a question, she said the San Jose City Council Urban Runoff Policy was adopted by the City Council at a public meeting in October 2003.

Mike McNeely, City Engineer, City of Milpitas, said provisions in the stormwater permit were developed through a collaborative process with all stakeholders, and he asked the Board not to amend the permit in February. He said the City deems projects complete in order to comply with the State Permit Streamlining Act and not to avoid stormwater requirements.

Sejal Choksi, San Francisco BayKeeper, spoke in support of staff's efforts to have the Santa Clara Valley stormwater program comply with permit requirements. She said stormwater is a large pollution problem in the Bay Area.

Ms. Choksi said a number of counties must comply with stormwater requirements and implementation schedules are similar in time. She said Santa Clara Valley's request for additional time would allow major projects to be developed without necessary treatment controls.

Ms. Choksi said San Jose has misinterpreted permit language in a way that diminishes what the law requires. She objected to the fact that the City exempts smart growth projects from treatment requirements.

Mr. Bowyer said Santa Clara Valley cities have requested the implementation schedules for all stormwater programs be the same. He said time has elapsed since the Santa Clara Valley permit was adopted, and the schedules for stormwater programs are similar. He said it was important projects include treatment measures. He estimated treatment measures would cost 1% - 2% of total capital costs.

Mr. Muller said he would be concerned if local jurisdictions misinterpreted provisions in the stormwater permit.

Mrs. Warren asked if staff was concerned with implementation by other cities in the Santa Clara Valley besides San Jose and Milpitas.

Mr. Bowyer said more development probably is occurring in San Jose and Milpitas than in other cities.

Mr. Wolfe said staff does not have concerns at this point with the other cities. He reiterated staff is concerned about San Jose and Milpitas' interpretation of stormwater requirements.

Mr. Reininga said developers prepare a lot of information by the time they make a project application. He said he was sympathetic to the idea that projects be deemed complete early in the development process.

Mr. Wolfe said opportunities are available during the design process to include treatment controls in projects.

Mr. Waldeck commended staff for placing the status report on the agenda. He said the burden is on staff to help local jurisdictions understand stormwater requirements and the burden is on local jurisdictions to reply to staff's concerns.

Mr. Wolfe said staff would continue to have discussions with the cities. He emphasized the importance of not missing opportunities to develop stormwater measures in projects that are being planned.

Mr. Eliahu said he thinks local jurisdictions understand how to implement stormwater requirements. He said the implementation schedule appears to be the problem.

In reply, Mr. Wolfe said San Jose's Alternative Compliance Program does not appear to comply with stormwater requirements.

Yuri Won said San Jose appears to be coming up with exceptions to stormwater requirements that swallow the rule.

Mrs. Warren suggested staff meet with representative from San Jose and Milpitas to work out how stormwater requirements are to be interpreted.

Mr. Reininga concurred with Mrs. Warren.

Mr. Wolfe said past meetings with the cities have been productive and staff will continue to hold meetings.

Mr. Waldeck thanked everyone who participated in the discussion.

Item 11 – Consideration of Formation of Board Subcommittee

Mr. Wolfe said there are eight members currently serving on the Water Board. He said the terms of three members have expired, although by law they may continue to serve until November 30, 2004.

Mr. Wolfe said if a quorum of Board members cannot be convened in upcoming months, he would like a Board subcommittee to meet, hear issues, and make a recommendation to the full Board when a full Board is able to convene.

Mr. Wolfe said three or more Board members could conduct a panel hearing under California Water Code section 13228.14. He said Board members sitting on the panel would conduct a panel hearing and make a recommendation to the full Board.

Mr. Wolfe said the tentative resolution authorizes the Board Chair to appoint panels and subcommittees.

Yuri Won said Board members would review the transcript of the subcommittee workshop or the panel hearing before the full Board votes.

Motion: It was moved by Mr. Muller, seconded by Mr. Eliahu, and it was voted to adopt the Tentative Resolution as recommended by the Executive Officer.

Roll Call:

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

No: None.

Motion passed 7 – 0.

Mr. Muller suggested a nominating committee be appointed to recommend candidates to serve as Chair and Vice-Chair in 2005.

Mr. Waldeck appointed Mr. Eliahu and Mrs. De Luca to serve on the nominating committee.

Mr. Reininga recommended staff work with U.S. EPA to resolve outstanding issues before submitting the Mercury TMDL Basin Plan Amendment to the State Board.

Adjournment

The Board meeting was adjourned at approximately 12:53 p.m.

