

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
January 11, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on January 11, 2006 at approximately 9:05 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce; Shalom Eliahu; Clifford Waldeck; Deborah Widener; and Gary Wolff.

Board member absent: Josephine De Luca.

Mr. Muller introduced Deborah Widener who is a new Board member. Ms. Widener made introductory remarks.

John Wolfenden introduced Cleet Carlton who is new staff in the Toxics Cleanup Division.

Item 2 – Election of 2006 Chair and Vice-Chair

Mr. Muller said Shalom Eliahu and Margaret Bruce were appointed at the November Board meeting to serve on a nominating committee.

Mr. Eliahu, on behalf of the committee, placed Mrs. Warren's name in nomination as Vice-Chair. No further nominations were made.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Ms. Widener; Dr. Wolff; and Mr. Muller

No: None

Mrs. Warren was elected Vice-Chair.

Mr. Eliahu, on behalf of the committee, placed Mr. Muller's name in nomination as Chair. No further nominations were made.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Ms. Widener; Dr. Wolff; and Mr. Muller

No: None

Mr. Muller was elected Chair. At that point, he began serving as 2006 Chair. He thanked Board members for the opportunity to serve.

Item 3 - Public Forum

Steve Ritchie, Executive Project Manager, South Bay Salt Pond Project, California Coastal Conservancy, said the long term restoration of the salt ponds is expected to begin in 2008. He said Steve Moore and Robert Schlipf, Board staff, are working with the California Department of Fish and Game and the U.S. Department of Fish and Wildlife Service on interim pond management.

Mr. Ritchie said he anticipates public and private funds will be used to restore the salt ponds. He said public agencies might conduct mitigation projects within the restoration area. He said the U.S. Army Corps of Engineers will conduct a study to establish restoration of the salt ponds as a potentially federally fundable project.

Item 4 – Minutes of the November 16, 2005 Board Meeting

Dr. Wolff requested the tenth paragraph on page 6 regarding one of his concerns with the Water Quality Attainment Strategy for Diazinon and Pesticide-Related Toxicity in Urban Creeks be amended. He requested the sentence “He said he is not looking for exact actions” be amended to read “He said he is not looking for exact actions but wanted strategic decision points and timelines.”

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the November 16, 2005 Board meeting as amended by Dr. Wolff.

Ms. Widener abstained because she did not attend the meeting.

Item 5 – Chairman’s, Board Members’ and Executive Officer’s Reports

Mr. Waldeck said he would testify later in the day before the San Francisco Board of Supervisors Land Use Committee in favor of the City’s green business program.

Mr. Muller said on December 14, 2005 he and Mr. Wolfe met with Wayne Natri, U.S. EPA Regional Administrator, to discuss EPA’s concern that the Water Board has a number of expired NPDES permits that have not been reissued. Mr. Muller said the subject would be discussed later in the meeting.

Mr. Muller said on January 6, 2006 he and staff met with Assemblyman Gene Mullin regarding the Ox Mountain Landfill.

Mr. Muller said State Board Chair Tam Dudoc is holding monthly telephone conference calls with Regional Board Chairs.

Mr. Wolfe said he recently met with some Regional Board Executive Officers and State Board managers to discuss how the State and Regional Boards could coordinate enforcement actions.

Dr. Wolff said the Executive Officer's Report states that human waste and public disposal of unused medications down the drain are major sources of pharmaceuticals in POTWs' effluent. He said the Executive Officer's Report states that the Bay Area Pollution Prevention Group will conduct a region-wide pharmaceutical "take-back" program. He raised the question whether POTWs should install measures to treat pharmaceuticals.

In reply to a question, Lila Tang said members of the Bay Area Pollution Prevention Group are POTWs. She said the Group is part of the Bay Area Clean Water Agencies organization.

Dr. Wolff praised staff for producing a document entitled "Pollution Prevention Reporting for POTWs" to help municipalities prepare pollution prevention reports.

Mr. Wolfe said the document is available on the Water Board's website under "Available Documents."

Dr. Wolff asked about funding to remediate mercury in the Guadalupe River watershed. Staff replied funding sources have not been identified.

In reply to a question, Stephen Hill said the Alameda County Water District recently installed a well to monitor an aquifer in the transition zone between the Niles Cone and East Bay Plain groundwater basins. He said monitoring will help the District understand what interaction there is between the basins and how much groundwater can be drawn without causing saltwater intrusion.

In reply to a question, Yuri Won said the California Supreme Court recently denied a petition for review filed by Communities for a Better Environment and San Francisco Baykeeper. She said the petition concerned a Court of Appeal decision on the Tesoro Golden Eagle Refinery's NPDES permit. She said the denial affirms that the Board may include in NPDES permits, where justified, an interim discharge limit based on performance and a final discharge limit based on a Board-adopted TMDL.

Dr. Wolff and Mrs. Bruce, members of a Board stormwater subcommittee, said on December 14, 2005 they met with staff and discussed ways to improve the quality of stormwater runoff. They said staff plans to conduct several workshops to discuss the subject with the stakeholder community.

Mr. Wolfe said staff will publicize when the workshops will be held.

Dorothy Dickey said Board members act in a quasi adjudicatory role when voting on stormwater permits. She said Board members that attend the workshops may not have off-the-record conversations with interested persons concerning stormwater permits that

will be considered for adoption. She said substantive information that Board members consider when voting on permits must be part of the record. She said the workshops would be recorded and minutes would be taken in order to preserve a record.

Item 6 – Consideration of Uncontested Items Calendar

Mr. Waldeck spoke in favor of reusing tire shreds in road construction projects.

Mr. Wolfe said a conditional waiver of waste discharge requirements for tire sheds reuse in road construction projects was issued to the California Department of Transportation in 2000. He said the Water Code currently requires the Board to review and reissue waivers of waste discharge requirements every five years.

In reply to a question, Mr. Wolfe said the tentative order for Item 6C extends for an additional eight months the deadline for waste acceptance and landfill closure at the West Contra Costa Sanitary Landfill. He said the tentative order does not allow the discharger to increase the amount of waste to be disposed at the landfill above the amount authorized in the 2002 Board order.

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 7 – ConocoPhillips Company, San Francisco Refinery, Rodeo, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said ConocoPhillips signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said ConocoPhillips agreed to pay a Mandatory Minimum Penalty in the amount of \$111,000. He said \$63,000 would be used for supplemental environmental projects.

Item 8 – General Chemical Corporation, Pittsburg, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said General Chemical Corporation signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the District agreed to pay a Mandatory Minimum Penalty in the amount of \$33,000. He said \$24,000 would be used for a supplemental environmental project.

Mr. Wolfe said Board members have asked that staff summary reports for mandatory minimum penalty actions address whether permittees have resolved underlying problems that caused the violations. He said future staff summary reports would include the information.

Mrs. Bruce asked that the staff summary reports include a paragraph describing a permittee's compliance history at a plant location.

Mr. Muller raised the question whether imposing minimum penalties for violations give permittees sufficient incentive to resolve problems.

Mr. Wolfe said the law requires the Board impose a minimum penalty of \$3,000 under certain circumstances. He said the Board has the authority to impose an Administrative Civil Liability that could include a fine exceeding the mandatory minimum.

Mrs. Bruce recommended staff develop a set of internal guidelines to determine when a fine imposed under an Administrative Civil Liability would be more appropriate than a mandatory minimum penalty.

Mr. Waldeck concurred with Mrs. Bruce. He also recommended permittees invite environmental groups to their facilities to see environmental work being done and encouraged the two groups to collaborate in resolving differences.

Lila Tang said staff would review Board members' suggestions and would consider whether some violations warrant fines greater than \$3,000.

Item 9 – NPDES Program – Status Report

Lila Tang described the NPDES wastewater program conducted in the Region. She said regulated facilities include: sanitary sewer plants; petroleum refineries; power plants; and manufacturing facilities. She said there are over 340 permittees.

Ms. Tang said the NPDES program has been extremely successful in reducing the amount of pollutants entering the Bay. She said innovative programs may be required to reduce pollutant amounts further.

Ms. Tang gave examples of innovative programs staff has developed: selenium reduction in petroleum refineries' effluent; pretreatment for industrial effluent; pollution prevention programs; and a sanitary sewer overflow program.

Ms. Tang said the Board initiated development of the Regional Monitoring Program because of requirements in NPDES permits. She said the RMP provides scientific data about water quality in San Francisco Bay.

Ms. Tang said staff has developed an electronic reporting system and more than 50 permittees submit data electronically.

Ms. Tang said staffing in the NPDES program has decreased by 9 to 10 staff over the last six years. She said the workload has increased. She said implementation of the mandatory minimum penalty program has caused part of the increase.

Ms. Tang said staff has taken steps to increase efficiency and productivity. She said an outside contractor funded by U.S. EPA has been used to help with the workload. She said, however, the reduction in staff resources has been severe and staff is not able to issue permits at the same level as six years ago.

Ms. Tang said U.S. EPA has set a goal that there be no expired wastewater permits in the Region by the end of 2006. She said more staff must write permits or there must be more efficiency in permit issuance in order to meet the goal.

Ms. Tang said a permit template that has been developed may improve efficiency. She said a drawback to directing more staff to write permits would be that fewer staff would be available to conduct innovative programs that have been successful.

Ms. Tang said about 30% of the NPDES wastewater permits in the Region currently are expired and additional permits would expire in 2006. She said staff has made a commitment to the State Board to work on reissuing permits.

Ms. Tang said permits expire five years after issuance. She said permittees are required to comply with permits even after expiration.

Ms. Tang said staff is focused on protecting the Region's water quality. She reiterated permittees must comply with expired permits.

In reply to a question, Mr. Wolfe said the State reallocated staff positions for Regional Boards' NPDES programs in the 1999-2000 fiscal year. He said the San Francisco Bay Region received fewer staff positions as a result of the reallocation.

Alexis Strauss, U.S. EPA, Director, Water Division, said a number of years ago, U.S. EPA set a national goal that 90% of NPDES wastewater permits be current. She said the goal cannot be met in California unless the San Francisco Bay Region improves its rate of reissuing permits.

Ms. Strauss said staff in the Region has a practice of working with permittees to achieve consensus. She said the practice takes a lot of time. She suggested the Board resolve some of the issues.

Ms. Strauss said U.S. EPA has developed a permit template that could be used to reissue minor NPDES permits.

Ms. Strauss said U.S. EPA paid an outside contractor to help Regional Boards in California with NPDES wastewater programs. She said the contractor assistance has been withdrawn from the San Francisco Bay Region in part because of U.S. EPA's concern over the lack of progress made in reissuing permits. She said U.S. EPA would like to receive a reissuance schedule from staff and restore contractor assistance.

Ms. Strauss said U.S. EPA would like to see the Region achieve an NPDES program that includes a balance of permit reissuance, compliance, enforcement and public transparency. She suggested the Board Chair discuss staff allocations with Chairs of the Regional Boards and the State Board. She suggested allocations should match workloads.

Dr. Wolff said Ms. Strauss implied that staff resources in the Region are sufficient and could be used more effectively. He asked Ms. Strauss if she would provide a statistical comparison of productivity in reissuing permits among the Regional Boards.

Ms. Strauss answered affirmatively and said she would provide the comparison. She said a management challenge at all levels of government is dealing with competing needs and resources, and learning to live with imperfections. She suggested staff has sufficient resources to reissue in 2006 currently expired permits.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, concurred with Ms. Tang that permittees must comply with permits after expiration and that innovative programs have been important in protecting water quality in the Bay.

Ms. Plá said provisions in new programs like TMDLs and the state implementation plan are included in permits when the permits are reissued. She said staff may sometimes wait to reissue a permit until action has been taken on a TMDL or Basin Plan Amendment because TMDLs and BPAs affect permits.

Sejal Choksi, San Francisco Baykeeper, said all facilities in the Bay Area should implement state of art treatment technology. She said other Regional Boards are reissuing NPDES permits more quickly than the San Francisco Bay Region. She said staff has undermined Baykeeper's efforts to enforce permits and permit violations. She said she would give an example at a future Board meeting.

[Mrs. Warren left the meeting at approximately 11:30 a.m.]

Mr. Eliahu suggested staff could use the help of the outside contractor to prepare some of the minor permits.

[Mr. Waldeck left the meeting at approximately 11:35 a.m.]

Mr. Wolfe said the volume of wastewater processed by some of the minor facilities is low. He said staff resources have been used where facilities have greater water quality impact. He said after the contractor has prepared a permit, staff spends time making the document a finished product to be presented to the Board. He said staff has found that the quality of permits prepared by the contractor varies.

Ms. Strauss said U.S. EPA provided grant money to the State of California to fund staff of California's Regional Boards who work on NPDES wastewater permits. She said, U.S. EPA also obtained an outside contractor to work on NPDES wastewater programs.

Ms. Strauss said about the time the outside contractor was obtained, the State no longer was able to use the grant money. She said this was because the State budget did not authorize staff positions that U.S. EPA would fund. She said the State asked U.S. EPA to use the money to fund the outside contractor further.

In reply to a question, Ms. Strauss suggested the outside contractor be used to draft permits and the permit template be used to reissue expired minor permits.

Dr. Wolff said staff stated permittees must comply with expired permits and expired permits may not create water quality problems. He said Ms. Strauss implied that every permit does not need to be perfect. He said small deficiencies may not have much water quality impact. He raised the question whether there is much difference in water quality

impact between expired permits and permits that are reissued but contain small deficiencies.

Ms. Tang said permittees frequently request permit amendments when there are deficiencies. She said the correction progress drains staff time.

Ms. Strauss said U.S. EPA prefers to spend NPDES grant money to fund staff in the Regional Boards. She reiterated grant money was put into the contractor mechanism because staff positions were not available for funding.

Dorothy Dickey said permits drafted by an outside contractor should comply with the Region's Basin Plan. She said permittees can petition the State Board about permits that do not comply and staff time spent addressing petitions is time taken away from permit preparation.

Mr. Wolfe said staff would give Ms. Strauss a schedule of permits that would be reissued in 2006.

Mr. Muller appointed Shalom Eliahu and himself to sit on a Board subcommittee dealing with the permitting process.

Mr. Wolfe suggested the Board consider that a standard of quality underlies the permitting process. He suggested the standard should be included in a discussion about permitting.

Item 10 – Sanitary Sewer Overflows – System for Reporting and Tracking

Johnson Lam said staff has developed a web-based system for sewage collection agencies to report sanitary sewer overflows (SSOs). He said staff has received over 900 reports of SSOs since the new reporting system went on line in December 2004.

Mr. Lam thanked the Bay Area Clean Water Agencies for helping to fund the web-based system and for communicating with sewage collection agencies about how to use it.

Mr. Lam showed slides illustrating a Yahoo map application of the SSO data. He said maps can be used to show the location of spills by city, neighborhood, and street.

Douglas Humphrey, Manager, Stege Sanitary District, and Chair of BACWA's Collection System Committee, said information entered into the reporting system will help sewage collection agencies understand how their records compare to their peers. He said the integrity of the data entered into the system is important. He said BACWA has work collaboratively with staff on developing the reporting system, and looks forward to continuing the positive effort.

Ken Greenberg, U.S. EPA, urged staff to make information entered into the reporting system available to the public as soon as possible. He said agencies might have an incentive to improve performance when they see what their neighbors are doing. He said U.S. EPA would help staff conduct workshops with sewage collection agencies regarding the web-based system. He said data entered into the system could help staff identify problems that may require enforcement action to resolve.

In reply to a question, Lila Tang said a new reporting system being developed by the State Board, the California Integrated Water Quality System, would be operational statewide in the later part of 2006.

Adjournment

The Board meeting was adjourned at 12:26 p.m.