

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES

May 10, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on May 10, 2006 at 9:04 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; and Gary Wolff.

Board member absent: Josephine De Luca.

Bill Johnson introduced John Madigan, new staff in the NPDES Division.

Bruce Wolfe said Jim Ponton and Selina Louie were selected to receive Sustained Superior Achievement Awards for their outstanding job performances. Mr. Muller presented a Certificate of Appreciation to Mr. Ponton and to Ms. Louie.

Tam Doduc, State Board Chair, said a panel that was convened to consider whether stormwater permits should include numeric limits will present recommendations in the near future. She said a committee has been designated with considering salinity management in the Central Valley.

Reed Sato said he recently joined the State Board staff to serve as Director of the Office of Enforcement. He made some introductory remarks.

Item 2 - Public Forum

Doug Eberhardt, U.S. EPA, reported funding was recently approved for a cumulative effects analysis of cooling water intake structures in the transition zone area between the Sacramento-San Joaquin Delta and San Francisco Bay.

Francisco Da Costa, Director, Environmental Justice Advocacy, spoke about the need to bring enforcement against entities that cause pollution.

Kristen Trisko expressed concern about the impacts a proposed subdivision in the town of Danville would have on seasonal wetlands.

Steve Nilforoustran, Stormceptor, asked about staff's stance on the use of stormwater proprietary devices by municipalities and developers.

Mr. Wolfe said staff is interested in learning about evolving technology but does not promote individual proprietary devices.

Item 3 – Minutes of the May 10, 2006 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mrs. Bruce, and it was unanimously voted to adopt the minutes of the May 10, 2006 Board meeting.

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

Mr. Wolfe said staff has begun holding California Environmental Quality Act scoping meetings on development of a stream and wetlands system protection policy.

Mr. Wolfe said work has begun to restore Skaggs Island to wetlands and Jim Ponton has taken the lead in addressing petroleum related cleanup issues.

Clifford Waldeck said he represents the Board on the San Francisco Bay Conservation and Development Commission. He said through his work at BCDC he was recently selected chair of a regional airport planning committee.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 6 – TWC Storage, LLC, 1165 East Arques Avenue, Sunnyvale, Santa Clara County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Unauthorized Discharge of Waste and a Hazardous Substance into Waters of the State

Jorge Leon, State Board attorney, said he would serve as the Board's legal counsel. He said Bruce Wolfe, Stephen Hill, and Max Shahbazian would serve as prosecutorial staff and Yuri Won would serve as the prosecutorial staff's legal counsel.

Max Shahbazian said TWC bought the subject property in 2005 in order to develop a self storage facility. He said on July 15, 2005 TWC's demolition contractor damaged a transformer that contained perchloroethylene (PCE). He said the contractor placed the damaged transformer on a pile of demolition debris to drain. He said on Sunday, July 17, 2005 an emergency response contractor

placed contaminated debris and soil into bins in order to remove them. He said on Monday, July 18, 2005 TWC began pumping PCE out of the transformer.

Mr. Shahbazian said on Tuesday, July 19, 2005 TWC notified the State Office of Emergency Services of the spill.

Mr. Shahbazian said staff believes the damaged transformer released PCE for four days before being pumped.

Mr. Shahbazian said on January 27, 2006 staff filed an Administrative Liability against TWC alleging the PCE spill violated the Water Code.

Mr. Shahbazian said TWC breached a duty of ordinary care by not properly managing the contents of the transformer. He said TWC was responsible for identifying equipment and contents of equipment before starting demolition at the property. He said the property is an active Superfund site that is located adjacent to a children's daycare center.

Mr. Shahbazian said after the spill, TWC remediated soil and groundwater at the property and removed 2,300 cubic yards of PCE contaminated soil.

Mr. Shahbazian said in determining the amount of the ACL penalty, staff considered factors listed in Water Code Section 13327: nature, circumstances, extent and gravity of the violation; susceptibility of the discharge to cleanup; degree of toxicity of the discharge; and with respect to the discharger, ability to pay and ability to continue in business, voluntary cleanup efforts undertaken, prior history of violations, degree of culpability, and economic savings resulting from the violation. He said staff found the gravity of the violation, the toxicity of the discharge, and the degree of culpability outweighed TWC's cleanup efforts. He said checking and draining liquids out of transformers before beginning demolition is a routine practice.

Yuri Won said the ACL Complaint alleged two violations of the Water Code. She said the first violation alleged TWC violated Sections 13264 and 13265. She said Section 13264 states that no person may make a discharge without filing a report of waste discharge and Section 13265 states a person who discharges a hazardous waste in violation of Section 13264 is liable civilly.

Ms. Won said TWC claimed Section 13264 applies to planned discharges and not to accidental ones. In reply, she said the section applies to both types.

Ms. Won said the second violation alleged TWC violated Section 13350(b) which provides that any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged into waters of the state except in accordance with waste discharge requirements or the Water Code shall be strictly liable civilly.

Ms. Won said TWC claimed it was not responsible for the discharge because it was not actively involved in the demolition. In reply, she said TWC had authority and ability to control activities on its property.

Ms. Won said a violation of Section 13350(b) may be excused under Section 13350(c). She said one Section 13350(c) defense is: an event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge. She said TWC has not proven that a Section 13350(c) defense was the cause of the discharge.

Mr. Shahbazian said \$5,000 a day is the maximum penalty allowed for each of the two violations alleged. He said the total maximum penalty allowed for four days of discharge is \$40,000.

In reply to a question, Stephen Hill said a groundwater sample collected on October 13, 2005 from a monitoring well near the PCE spill contained 12,000 ug/l PCE. He said the well contained between 7 and 68 ug/l PCE in fifteen sampling events taken between 1992 and 2000.

Jeff Lawson, attorney for TWC, cross-examined Mr. Shahbazian. Mr. Leon said cross-examination questions appeared to be directed towards eliciting testimony about the standard of care and how TWC allegedly breached the standard. He suggested receiving testimony from TWC's witnesses might be more helpful.

Mr. Lawson said TWC would present three witnesses: Jon Rosso, who would discuss the due diligence investigation of the property; John Werfal, who would discuss immediate action taken in response to the spill and voluntary remediation action taken later; and Jack May who would discuss the spill from the firm's point of view.

Jon Rosso, Director of Environmental Services, Clayton Group Services, said Clayton staff reviewed environmental documents and interviewed environment professionals of the previous property owner. He said Clayton staff also reviewed documents in regulatory agencies' files and interviewed professionals from key regulatory agencies. He said the previous property owner abandoned the property in 1989 and went through a formal facility closure process in 1990. He said Clayton staff made a visual inspection of the property and remaining remnant equipment appeared to be consistent with the facility closure report.

Mr. Rosso said Clayton's environmental due diligence investigation met the standard of care under ASTM guidance and industry standards.

Jeff Werfal, Clayton Group Services, said the transformer was damaged about 9:00 a.m. on Friday, July 15, 2005. He said, in an effort to minimize the spill, the demolition contractor swung the transformer over to a concrete containment area. He said samples were taken to try to determine the nature of the spill.

Mr. Werfal said by Sunday, July 17, 2005 an emergency response contractor had started loading up soil and construction debris from the containment area. He said the emergency response contractor worked through Friday, July 22, 2005.

Mr. Werfal said Clayton was hired to conduct remediation activities and began excavation and sampling on Saturday, July 30, 2005. He said most source removal cleanup was completed by October 11, 2005.

Jack May, TWC principal, said the company is a small two person investment firm that usually does not work on development projects. He said the firm hires the best team it can find when the firm works on a development. Mr. May said he walked the property four times before the spill.

Mr. May said on Friday, July 15, 2005 he received a telephone call about the spill while he was traveling north to a meeting. He said he told his contractors to take immediate action to take care of the spill and an emergency response contractor was hired on July 15th.

Mr. May said he regrets that he did not immediately report the spill by calling 911. He said his firm has spent \$11/2 million to remediate the property. He said the District Attorney's Office investigated facts concerning the spill and decided not to bring an action.

Mr. Lawson summarized TWC's actions and said the firm did not breach a standard of care.

Tom Brouchoud, parent of a child that used to attend the adjacent daycare center, urged the Board to impose the \$40,000 fine.

In reply to a question, Mr. Leon said he believed the allegations in the Administrative Civil Liability complaint were legally sound. He said the Water Code sections alleged would allow for a maximum fine of \$40,000. He said the Board had discretion, using Water Code Section 13327 factors, to determine whether the fine should be at the maximum amount or less.

Mr. Wolfe recommended adoption of the tentative order.

Mrs. Bruce expressed reluctance with assessing the full \$40,000 penalty and said really punitive measures should be reserved for really bad actors.

Dr. Wolff said he would consider reducing the penalty. He said he was in favor of some penalty because TWC failed to notify immediately a public safety agency.

Mr. Muller said he was not in favor of reducing the penalty.

Mr. Waldeck made a motion to adopt the tentative order.

Mrs. Brouhard seconded the motion.

Dr. Wolff asked if other Board members would be interested in lowering the penalty.

Mr. Eliahu and Mrs. Warren replied affirmatively. .

Mrs. Bruce moved to amend Mr. Waldeck's motion to impose a total penalty of \$25,000. She said \$5,000 would be imposed for one day of spill and \$20,000 would be imposed for days when TWC did not notify a public agency.

Ms. Won said the Board could consider Water Code Section 13327 factors in determining the penalty amount. She said, however, staff did not allege the Water Code section which imposes liability against a party that fails to notify a public agency of a spill.

Mr. Leon recommended the phrase "other matters as justice may require" be added to Section 8 of the final order.

Mr. Waldeck said he did not agree to Mrs. Bruce's amendment of the motion.

Mrs. Bruce moved to make a substitute motion to impose a penalty of \$25,000.

Mr. Eliahu seconded the substitute motion.

Mrs. Bruce said she ascribed \$5,000 of the penalty to a Section 13264 and Section 13265 violation and \$20,000 to a Section 13350 violation. She discussed Water Code Section 13327 factors and the weight she gave to each factor in calculating the penalty amount.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mrs. Warren; Dr. Wolff

No: Mr. Waldeck; Mr. Muller

Motion passed 5 – 2.

Mr. Leon recommended the subsections of Section 8 in the tentative order be deleted. He recommended the second sentence of paragraph 8 be amended to read: In determining the amount of civil liability, The Board considered factors set forth in Water Code Section 13327.

Dr. Wolff moved to adopt Mr. Leon's recommendations. The Board unanimously voted to adopt the motion.

[At 12:33 p.m. the Board took a lunch break and resumed the meeting at 1:14 p.m.]

Item 7 – East Bay Regional Parks District, Union Sanitary District, and East Bay Dischargers Authority, Hayward Shoreline Marsh, Hayward, Alameda County – Reissuance of NPDES Permit

Robert Schlipf said Union Sanitary District provides about three million gallons a day of treated wastewater to the Hayward Shoreline Marsh. He said wastewater

is transported to the marsh through an East Bay Dischargers Authority pipeline. He said East Bay Regional Parks District manages the marsh.

Mr. Schlipf described how EBRPD routes treated wastewater through a series of marsh basins before discharging the wastewater to the Bay. He said the marsh was restored in 1988 and has created habitat for 12 species of fish and more than 200 species of birds.

Mr. Schlipf said U.S. EPA expressed concern that bacteria limits in the tentative order may not protect beneficial uses like water contact activities and shellfish harvesting. In reply, Mr. Schlipf said staff proposes to amend the Basin Plan so to reflect current beneficial uses of the receiving water.

Doug Eberhardt, U.S. EPA, thanked Lila Tang and Robert Schlipf for their work on the tentative order. He said staff has agreed that when the permit is reissued in five years, beneficial uses and water quality objectives in the reissued permit will be consistent with the Basin Plan.

Richard Currie, General Manager, Union Sanitary District, said the District is willing to collect information to help staff with the Basin Plan amendment process.

Neal Fujita, Natural Resources Manager, East Bay Regional Park District, urged the Board to adopt the tentative order. He said the marsh provides wonderful educational and environmental benefits.

Mr. Wolfe recommended adoption of the tentative order.

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

Roll Call

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

No: None

Motion passed 7 – 0.

Item 8 – Mirant Potrero, LLC, Potrero Power Plant, San Francisco, San Francisco County – Reissuance of NPDES Permit

Derek Whitworth said the Mirant facility creates electricity by burning natural gas to create steam that drives generators. He said the steam is condensed and recycled after it passes through the generators.

Mr. Whitworth said the facility uses up to 226 million gallons of Bay water a day to condense the steam. He said a once-through cooling process is used: water from the Bay enters the facility through an intake, flows through the facility for about three minutes, and discharges through an outfall to the Bay. He said water is about 10 degrees Fahrenheit warmer at discharge than at intake.

Mr. Whitworth said the California Independent Systems Operator considers the facility necessary for the supply of power to San Francisco.

Mr. Whitworth said federal Clean Water Act Section 316(b) Phase II regulations apply to existing power plants. He said the regulations require dischargers to reduce damage to marine organisms caused by impingement (organisms caught on filter screens) and entrainment (organisms going through pumps, pipes, and heat exchangers).

Mr. Whitworth said the regulations require that a discharger prepare a Comprehensive Demonstration Study. He said the Study establishes a baseline from which a discharger would be required to reduce damage to marine organisms. He said the regulations also provide for different technologies that a discharge could implement to reduce damage or measures that a discharger could take to compensate for damage.

Mr. Whitworth said the tentative order requires Mirant to submit a Comprehensive Demonstration Study by November 2007. He said the tentative order also requires preparation of other studies, such as a thermal study to characterize the effect of the thermal plume.

Mr. Whitworth said community groups would like the Board to adopt a Community Permit they drafted instead of adopting the proposed tentative order.

Mr. Whitworth summarized the community groups concerns. He said the groups claim that marine organisms are damaged because the facility uses outdated technology. He said the groups believe the facility should update immediately the technology that is used. He said the groups claim that heat and pollutants are discharged from the facility.

In reply, Mr. Whitworth said heat is added to the discharge of once-through cooling water. He said pollutants in the discharge are primarily those contained in the intake. He recommended Mirant be given the opportunity to complete the studies required in the tentative order before being required to implement new technologies or take compensating measures.

Mr. Whitworth said community groups claim Basin Plan Discharge Prohibition 1 prohibits Mirant from discharging cooling water in shallow Bay water. In reply, he said the Prohibition applies to wastewater and not to Mirant's cooling water. He said the Prohibition requires 10:1 dilution of wastewater upon discharge.

Mr. Whitworth said U.S. EPA reported the Board could require Mirant to implement new technologies to reduce impingement and entrainment before studies are completed. He said examples of new technologies include variable

speed pumps and upland cooling towers. In reply, Mr. Whitworth said staff believes the studies should be completed first in order to find the best long term solution.

Jeffery Russell, Vice President, Business Operations, Mirant California, LLC, requested the Board approve the tentative order. He said Mirant acquired the facility seven years ago and is committed to environmental responsibility. He said Mirant must meet a “reliability must run” agreement it has with the California Independent Systems Operator.

In reply to a question, Mr. Russell said the facility could be retrofitted to use an alternate cooling method.

Dave Hansell, Plant Manager, Mirant-Potrero LLC, said air emissions from the facility have been reduced because Mirant upgraded the technology used. He said he looks forward to working with staff to implement the tentative order. He said Mirant submitted four study plans to staff as preliminary steps before beginning work on required studies.

In reply to questions, Mr. Hansell said the facility produces 362 megawatts at peak capacity. He said Mirant chlorinates and dechlorinates cooling water for about an hour a day. He said water discharged from the facility is in the same basic condition as it is upon intake.

Peter McGaw, Archer Norris, Attorney for Mirant, said it was important Mirant complete the Comprehensive Demonstration Study before the facility is required to implement new technology. He said the tentative order would include fewer effluent limits if water intake credits were allowed. He discussed statistical variability that could result from laboratory testing of water intake samples.

Aaron Peskin, President, San Francisco Board of Supervisors, speaking on behalf of all Supervisors, requested the Board adopt the Community Permit prepared by City representatives and community groups. He said the tentative order prepared by staff allows Mirant to operate an out-dated cooling system without making substantial changes before 2011.

Supervisor Peskin said the Bay Conservation and Development Commission and the California Energy Commission rejected Mirant’s proposed facility expansion that would use once-through cooling water. He said evidence demonstrated once-through cooling harms the Bay and feasible alternatives exist. He said the State Lands Commission recently adopted a resolution stating its intent to reject leases for power plants proposing to use once-through cooling systems.

Sophie Maxwell, Supervisor, San Francisco Board of Supervisors, requested the Board consider the Community Permit. She said she represented the district where the Mirant facility is located and she spoke from a community perspective.

Dennis Herrera, City Attorney, City and County of San Francisco, urged the Board to adopt the Community Permit. He said it allows Mirant to install an upland cooling system and protects the Bay and the people who live around it.

He said consensus has emerged about the harm posed to aquatic biologic resources by once-through cooling systems.

Susan Leal, General Manager, San Francisco Public Utilities Commission, recommended the Board adopt the Community Permit and reject staff's tentative order.

Barbara Hale, Assistant General Manager, San Francisco Public Utilities Commission, read a letter that Mayor Gavin Newsom, Supervisor Sopenia Maxwell, City Attorney Dennis Herrera, and SFPUC General Manager Susan Leal sent to the Water Board. Ms. Hale read "This Community Permit would allow Mirant to come into compliance over time by installing an upland cooling system or by closing the plant when it is no longer needed to ensure electric reliability. We provided this permit to your staff in November 2005. We hope you will adopt it."

Michael Boyd, President, Californians for Renewable Energy, Inc., opposed adoption of the tentative order. He said the tentative order should require Mirant to implement measures to mitigate adverse environmental impacts.

Doug Eberhardt, U.S. EPA, said Mirant is operating under an NPDES permit that expired in 1999. He urged the Board to update the permit.

Nancy Yoshikawa, U.S. EPA, said under 316(b) the Board has discretion to use Best Professional Judgment to protect the environment from adverse environmental harm. She said using the discretion, the Board might or might not choose to impose immediately technologies like cooling towers. She said 316(b) also requires the discharger to submit a Comprehensive Demonstration Study.

Mr. Wolfe said the tentative order includes a five year term and that is the maximum term of NPDES permits.

Greg Karras, Senior Scientist, Communities for a Better Environment, said cooling water from Mirant's facility is discharged into shallow, shoreline water. He said the discharge digs a hole in polluted Bay sediment and pollutants become suspended. He said the facility intakes cooling water at a location close to where water is discharged and the discharge pollutes the intake.

Mr. Karras recommended Basin Plan Prohibition 1, requiring 10:1 dilution, apply to the facility's cooling water discharge. He said the cooling water should not be discharged into shallow water.

In reply to questions, Mr. Karras said the community is concerned about environmental impacts of older power plants. He said studies have shown it is feasible to fit two types of cooling towers into the facility's site.

Shana Lazerow, Staff Attorney, Communities for a Better Environment, spoke in opposition to the tentative order. She said Basin Plan Prohibition 1 applies to Mirant's shallow water discharge. She said the discharge contains pollutants that have adverse ecological impacts.

Amy Chastain, Program Associate, Baykeeper, requested the Board not adopt the tentative order. She recommended the discharger install immediately variable speed pumps and switch to upland cooling as soon as possible.

David Fierberg, San Francisco, requested the Board not adopt the tentative order. He discussed the impact of once-through cooling on the Bay.

Francisco Da Costa, Director, Environmental Justice Advocacy, expressed concern about pollution of Bay water.

Theresa Mueller, Deputy City Attorney, City and County of San Francisco, suggested the Board adopt a permit for a term less than five years. She read a letter Chris Daly, Supervisor, San Francisco Board of Supervisors wrote to the Water Board requesting the Board adopt the Community Permit.

James Minor, State Bar Certified Law Student, Environmental Law and Justice Clinic, Golden Gate University, requested the tentative order be revised. He recommended the Board require that the facility immediately upgrade the technology it uses. He said data submitted to staff documents the facility's thermal and toxic impacts.

Karen Pierce, President, Bayview Hunters Point Community Advocates, urged the Board to adopt the Community Permit and take steps to correct adverse environmental impacts from the facility. She said the Bayview Hunters Point community has one of the City's worst health records. She said 14 percent of the residents eat fish caught in the Bay, and many residents eat fish more than once a week.

Dr. Wolff thanked Ms. Pierce for commenting on water quality based injustice. He said staff has said that tidal action may redistribute pollutants in Bay water and the cooling water discharge may not cause pollutant suspension. He said staff needs time to understand the process better.

Ms. Pierce asked the Board to help protect the community. She said feasible technology exists to prevent harm from cooling water discharge.

John deCastro, Potrero Boosters Neighborhood Association, spoke in favor of the Community Permit and said once-through cooling should be phased out.

Philip Long, Staff Attorney, Communities for a Better Environment, read a letter Dave Lewis, Executive Director, Save the Bay, sent to the Water Board requesting the Board adopt the Community Permit.

Angela Haren, Programs Manager, California Coastkeeper Alliance, urged the Board to reject the tentative order. She recommended the Board require Mirant take interim action such as installing variable speed pumps and long term action to eventually eliminate once-through cooling.

Tony Kelly, President Potrero Boosters Neighborhood Association, said the Association worked to prepare the Community Permit and he urged the Board to adopt it.

Dick Millet, Potrero Boosters Neighborhood Association, requested the Board reject the tentative order and find a way to improve the adverse environmental impacts of the facility.

Joe Boss, Potrero Boosters Neighborhood Association, asked the Board to reject staff's tentative order and adopt the Community Permit.

Alan Ramo, Director, Environmental Law and Justice Clinic, Golden Gate University, said staff gave the discharger a time extension to prepare a Comprehensive Demonstration Study. He said under Section 316(b) the quid pro quo for granting a time extension is that a discharger must immediately use Best Technology Available. He said the Board can require that Mirant immediately use variable speed pumps and begin developing an alternative cooling system.

Dr. Wolff asked U.S. EPA staff and Board staff whether Section 316(b) requires that a discharger implement Best Technology Available before completing a Comprehensive Demonstration Study. U.S. EPA staff replied in the affirmative. Ms. Won said a discharger may complete a Comprehensive Demonstration Study before implementing Best Technology Available.

Dr. Wolff said many community groups believe staff has enough data to understand the facility's adverse environmental impacts. He said the community groups would like the Board to take action now. He asked staff whether the entrainment study referred to in Finding 21 had been prepared in final form.

Lila Tang said entrainment issues are defined. She said Dr. Peter Raimondi reviewed Mirant's entrainment study and made findings. She said impingement issues need to be studied. She said Section 316(b) requires both entrainment and impingement be assessed because one type of technology, like cooling towers, may address both impacts.

Mr. Eliahu asked if the tentative order could include an expiration date of 2008 instead of 2011. Mr. Wolfe replied affirmatively.

Dr. Wolff said he believed there was enough evidence to show entrainment at the Mirant facility adversely affects beneficial uses.

Mr. Eliahu spoke in favor of adopting the tentative order prepared by staff and said the Board could modify the permit after the Comprehensive Demonstration Study is submitted.

Mr. Waldeck said he would like the tentative order to include a 2008 expiration date.

Mr. Eliahu made a motion to adopt the tentative order prepared by staff. The motion failed for lack of a second.

Mr. Muller spoke in favor of adopting the tentative order because it contains more stringent pollutant limits than the existing permit.

Dr. Wolff suggested the tentative order be adopted with three amendments: (1) the term of the permit would expire on December 31, 2008; (2) a sentence would be added to Provision 6 stating it is the intention of the Board to prohibit a once-through cooling system in any future permit renewal unless the discharger demonstrates to the Board's satisfaction that continued use of once-through cooling would have minimal environmental impact; and (3) the self-monitoring program frequency for chronic toxicity tests would be increased from twice a year to monthly.

Larry Kolb suggested Dr. Wolff's second amendment read: It is the Board's intention to prohibit the discharge of once-through cooling water, unless the discharger demonstrates that its discharge has no significant impact on San Francisco Bay. The Board intends to resolve this issue no later than December 31, 2008.

Mr. Wolfe suggested putting the second amendment into a finding rather than a provision. Ms. Won explained the second amendment would not be legally binding if it were placed into a finding.

Dr. Wolff agreed to the wording suggested by Dr. Kolb and concurred with the suggestion of Mr. Wolfe and Ms. Won to put the second amendment in a finding.

Dr. Wolff made a motion to adopt the tentative order with three amendments: (1) the term of the permit would expire on December 31, 2008; (2) add language read by Larry Kolb with the addition of words "to the extent legal" to Provision 6; (3) the self-monitoring frequency for chronic toxicity tests would be increased from twice a year to monthly.

Mrs. Bruce seconded the motion.

Peter McGaw objected to amending the tentative order. He said the Board did not have evidence on which to base the second amendment. He said he understood Dr. Raimondi's review of Mirant's entrainment study was in draft form and had not been completed.

Bill Johnson said Dr. Raimondi's report was substantially completed and his conclusions would not be changed substantially.

Ms. Tang said although staff may view Dr. Raimondi's report as final, Mirant may not agree.

Dr. Wolff, after discussion with staff, moved to add a fourth amendment to his motion: (1) Finding 21 include a sentence stating that based on peer review by Dr. Peter Raimondi, the Board finds that impacts resulting from entrainment are significant and (2) the phrase "This study has not been finalized" should be removed from the last sentence in the Finding.

Mrs. Bruce agreed to the amendment.

Ms. Tang said final water quality based effluent limits for copper and nickel would be removed from the tentative order because the compliance schedule extends beyond 2008.

Roll Call:

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

No: Mr. Eliahu

Motion passed 6 – 1.

Item 9 – California Department of Transportation, Pigeon Pass State Route 84 Realignment, Alameda County – Issuance of Waste Discharge Requirements and Water Quality Certification

Brendan Thompson said Caltrans plans to realign about two miles of Highway 84 at a location between Livermore and I-680. He said a high rate of accidents occurs on Highway 84, and Caltrans has given the project the highest priority public safety status.

Mr. Thompson said staff expedited preparation of the tentative order because the project is urgent. He said Caltrans is working on preparing a mitigation package that meets requirements of the tentative order.

Mr. Thompson said the project will permanently fill 2.21 acres of wetlands and creeks. He said the tentative order requires Caltrans to provide about 10,400 linear feet of creek enhancement and 5.6 acres of wetlands creation. He said the amount of mitigation is based on the high quality of the impacted creeks and wetlands. He said the project impacts mature oak riparian wetlands, and habitat for the California red-legged frog, the California Tiger Salamander, and the vernal pool fairy shrimp.

Mr. Thompson said Caltrans has proposed on-site mitigation as follows: 0.92 acres of wetlands creation; 791 linear feet of creek creation; and 1,510 linear feet of creek enhancement. He said most mitigation will occur off-site. He said the Basin Plan requires an increased level of mitigation when the mitigation occurs off-site.

Mr. Thompson said Caltrans is regulated under a statewide General Stormwater Permit. He said the agency was not able to develop sufficient stormwater treatment at the realignment project and the tentative order requires development of an alternative compliance project. He said a potential project has been identified.

Mr. Thompson reviewed a supplemental that included six revisions to the tentative order.

David Yam, Chief, Office of Water Quality, Caltrans, requested the Board adopt the tentative order. He said Caltrans is working with landowners in order to develop mitigation measures like conservation easements.

In reply to a question, Mr. Yam said the project is considered high priority because it is safety related.

Mr. Wolfe recommended adoption of the tentative order as supplemented.

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

Roll Call

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

No: None

Motion passed 7 – 0.

Item 10 – Site Cleanup Program – Status Report

This item was continued to a future Board meeting.

Adjournment

The Board meeting was adjourned at approximately 5:15 p.m.