

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

July 8 and 9, 2008

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.waterboards.ca.gov/sanfranciscobay)

Item 1 – Roll Call and Introductions

The meeting was called to order on July 8, 2008 at approximately 1:00 p.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; Steven Moore; William Peacock; Rameshwar Singh.

Board members absent: none.

Item 2 – Public Forum

There were no public comments.

Mr. Wolfe discussed the attachment to the Agenda entitled "Notes on Water Board Agenda." He said in the past, the "Conduct of Board Meetings" section of the Notes included the following sentence: "Presentation materials must be consistent with and not extend beyond the scope of oral testimony, and will not be made part of the record unless designated by the Board Chair."

Mr. Wolfe said staff amended the "Conduct of Board Meetings" section (1) by deleting the phrase "and will not be made part of the record unless designated by the Board Chair" from the above sentence and (2) by adding a sentence: "Power point slides will not be made part of the record unless the Board views them during its meeting."

Mr. Wolfe said due to an error, the "Notes on Water Board Agenda" attached to the July 2008 Agenda did not include the amendments. However, he said the amendments are in effect and will be included in attachments to future Agendas.

Item 3 – Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed – Adoption of CEQA Negative Declaration

Wil Bruhns made introductory comments.

Carmen Fewless gave a presentation that covered Item 3 and Item 4.

Ms. Fewless said the Waiver requires landowners or operators of grazing lands to implement measures to help reduce the level of pathogens, nutrients, sediment, and mercury released from their operations into waters. She said requirements are applicable to grazing operations that are 50 acres or more in size.

Ms. Fewless said grazing landowners or operators are required:

1. to submit to the Water Board a Notice of Intent to Comply by January 31, 2009;
2. to develop a Ranch Water Quality Plan by November 15, 2009;
3. to submit to the Water Board a certification that its operations meet Waiver conditions. The first annual certification is due November 15, 2009.

Ms. Fewless said a Ranch Plan must include a description and schedule of Management Practices that will be implemented to control the release of pollutants. She said staff prepared a checklist that a permittee can use to develop a Ranch Plan. She said a Ranch Plan also must include a Compliance Monitoring and Reporting Plan.

Ms. Fewless said to comply with a Compliance Monitoring and Reporting Plan, a permittee is required to visually inspect its operations and verify that its Management Practices are effective. She said some inspections are required to be made during the dry season and others during the rainy season.

Ms. Fewless said Walker Creek watershed permittees are required to develop Management Practices that minimize the release of mercury in sediments deposited along Creek banks and in floodplains.

Ms. Fewless said in 2007 representatives from agricultural organizations formed a Technical Advisory Group to review the Waiver and make recommendations.

Ms. Fewless said staff did not receive any comment letters on Item 3.

Ms. Fewless said staff received ten comment letters on Item 4. She said staff made some modifications to the Waiver based on the comments. She said a number of stakeholders requested the deadline for preparation of Ranch Plans be extended. She replied to the stakeholders' request by saying the Implementation Plan for the Tomales Bay Pathogens TMDL required Ranch Plans be prepared by January 2009. She said that deadline was extended at the request of the Technical Advisory Group. She expressed belief that there would be enough time for permittees to comply with the November 15, 2009 deadline.

In reply to a question from Mr. McGrath, Dyan Whyte discussed concerns about mercury in sediment deposited along Walker Creek.

Staff replied to questions from Dr. Young. Ms. Whyte said the Tomales Bay Pathogen TMDL did not establish a timeframe for achieving pathogen water quality standards. She described monitoring efforts being conducted by various parties in the Tomales Bay watershed.

Ms. Fewless said permittees are required to visually inspect receiving waters to determine if pollutants are being released from their operations. She said Management Practices must be adjusted if problems, such as turbidity, are observed.

Ms. Fewless said permittees are required to visually inspect their entire operations during the month of September. She said inspections conducted at other times mostly would focus on areas that are being actively grazed. She said a number of third party programs may be developed to help permittees comply with Waiver requirements.

In reply to a question from Dr. Singh, Ms. Whyte discussed concerns about erosion and sediment transport.

Mr. Wolfe recommended adoption of Item 3, the Tentative Resolution Certifying a Negative Declaration for a Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek, and Olema Creek).

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

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;
Mr. Muller

No: None

Motion passed 7 – 0.

Item 4 – Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed – Adoption of Conditional Waiver

David Lewis, Watershed Management Advisor, University of California Cooperative Extension, thanked staff for its work in developing the Waiver. He requested staff continue to work with the grazing community to develop inspection records, annual certifications, and Ranch Water Quality Plans. He requested staff help permittees identify funding sources.

Mr. Lewis said staff has stated permittees that make significant progress in developing Ranch Plans by November 15, 2009 will be considered in compliance with the Waiver. He encouraged staff to use that type of flexibility when applying Waiver requirements.

Mr. McGrath asked Mr. Lewis whether he was in favor of adoption of the Waiver if staff helped permittees with compliance.

Mr. Lewis said he was in favor of Waiver adoption and concurred with Mr. McGrath's statement.

Nancy Scolari, Executive Director, Marin Resource Conservation District, expressed appreciation for staff's work in developing the Waiver and requested staff's help in developing Ranch Water Quality Plans. She requested the deadline for preparing Ranch Plans be extended.

Ms. Scolari said Management Practices will be implemented in the Tomales Bay watershed even if the deadline for Ranch Plans is extended. She said during the past five years, the Resource Conservation District has helped implement a number of agricultural Management Practices in the watershed and implementation of Management Practices will continue.

In reply to questions from Dr. Singh, Ms. Scolari requested the deadline for preparation of Ranch Plans be extended six months beyond the November 15, 2009 deadline. She said it would be helpful if a model Ranch Plan was developed.

Leslie Corp, Field Representative, Western United Dairymen, spoke in favor of adoption of the Waiver. She expressed concern that permittees will not be able to prepare Ranch Water Quality Plans by the proposed deadline and requested an extension to November 15, 2010. She read from a June 18, 2008 letter that Paul Martin, Director of Environmental Services, Western United Dairymen, submitted to staff in which he indicated he was in favor of adoption of the Waiver.

Joel Gerwein, Project Manager, California State Coastal Conservancy, expressed concern about the deadline for preparation of Ranch Water Quality Plans. He said it will take time for permittees to set up implementation schedules. He said some permittees may need to implement Management Practices that are beyond their financial means. He requested permittees that try to obtain funding to implement Management Practices not be penalized if they experience delays.

In reply to a question from Mr. McGrath, Ms. Fewless said the Waiver requires that a permittee identify Management Practices and develop an implementation schedule. She said the schedule must be feasible and implementation costs are a factor to be considered.

Dr. Singh asked if the Water Board has sufficient staff to review the number of certifications that grazing permittees will submit annually.

Mr. Wolfe said staff's review of annual certifications should be straight forward. He said a permittee's annual certification will provide a snapshot of implementation actions that have been taken and monitoring results that have been observed.

In reply to a question from Dr. Singh, Mr. Wolfe said permittees are required to submit compliance certifications by November 15, 2009. He said ideally permittees will be able to certify Ranch Water Quality Plans have been prepared. He said if the Board would like to see a level of flexibility in applying Waiver requirements, staff will look at ways to accomplish that.

Mr. Moore said annual certifications help establish accountability. He spoke against extending the deadline for preparation of Ranch Water Quality Plans.

Dr. Young expressed concern about the effectiveness and efficiency of Waiver requirements. She said the Waiver does not include milestones for reducing levels of pollutants. She recommended streamlining the compliance process for permittees that are implementing Management Practices under other environmental programs. She said permittees should have the option of using third party certifications to demonstrate compliance with the Waiver.

Mr. Wolfe concurred with Dr. Young that permittees should be able to document compliance with the Waiver through participation in other environmental programs.

Dyan Whyte said a recent discussion she had with stakeholders in the Tomales Bay watershed about developing third party programs was positive.

In reply to a question from Mr. Eliahu, Mr. Wolfe said the use of septic systems near Tomales Bay is a concern.

Mr. McGrath said he thought the Waiver appropriately balances the need for efficiency and effectiveness.

Mr. Wolfe recommended the Board adopt the Tentative Resolution Conditionally Waiving Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek and Olema Creek) in the San Francisco Bay Region

Motion: It was moved by Mr. McGrath, seconded by Mr. Moore, to adopt the Tentative Resolution as recommended by the Executive Officer.

Dr. Young said requirements in the Waiver could be improved. However, she said she recognized it was important that implementation begin.

A vote was taken on the motion.

Roll Call:

Aye: Mr. Eilahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;
Mr. Muller

No: None

Motion passed 7 – 0.

Item 5 – Consideration of a Resolution Delegating Authority to Executive Officer to Issue Administrative Civil Liability Orders

Yuri Won said Administrative Civil Liability Complaints generally have been resolved as follows: (1) a permittee contested a Complaint, the Board held an adjudicatory hearing, and at the conclusion of the hearing issued an ACL Order; or (2) a permittee did not contest a Complaint, waived its right to a hearing, and paid the liability. She said ACL Orders were not issued in the second situation.

Ms. Won said ACL Orders are the preferred method to resolve Complaints because Orders can be enforced more easily than Complaints. She said the Tentative Resolution authorizes the Executive Officer to issue ACL Orders in cases where permittees do not contest Complaints and waive rights to hearings.

Board members and staff discussed issues related to the Tentative Resolution.

Motion: It was moved by Mr. Peacock, seconded by Mr. Moore, to adopt the Revised Tentative Resolution.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;
Mr. Muller

No: None

Motion passed 7 – 0.

[At 3:15 p.m., the Board took a brief break. Upon completion of the break, the Board resumed the meeting in closed session. At 5:16 p.m., the Board completed the closed session and took an evening recess.]

Item 6 – Roll Call and Introductions

The meeting resumed on July 9, 2008 at 9:04 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; Steven Moore; William Peacock; Rameshwar Singh.

Board members absent: none.

New staff was introduced. Dale Bowyer introduced Margaret Beth and Anna Torres introduced Ayana Fiñones.

Mr. Muller presented Sustained Superior Achievement Awards to Barbara Sieminski and Mark Johnson.

Bruce Wolfe said Ms. Sieminski and Mr. Johnson are staff in the Board's Toxic Cleanup Division and have worked successfully with cleanup activities that involve community outreach and public participation.

Item 7 – Public Forum

There were no public comments.

Item 8 – Minutes of the March 11 and 12, 2008 Board Meeting

Mr. Wolfe said the Minutes of the March 11 and 12, 2008 Board Meeting will be circulated for consideration at the August Board Meeting.

Item 9 - Chairman's, Board Members', and Executive Officer's Reports

Mr. Muller and Mr. Moore reported attending a meeting regarding stream and wetland systems. Mr. Moore said Region 2 staff is working with others to develop a policy on the topic.

Mr. McGrath reported meeting with Michele Plá, Executive Director, Bay Area Clean Water Agencies, and said they discussed general issues regarding water quality.

Mr. Muller said the Board may meet on August 22, 2008 to discuss personnel issues.

Gary Wolff, State Board liaison to Region 2, addressed the Board.

Item 10 – Consideration of Uncontested Non-Enforcement Items Calendar

Mr. Muller said a speaker would like to be heard on Item 10D.

Mr. Wolfe recommended the Board consider Item 10D after considering Item 10 and Item 11.

Mr. Muller said he would accept a motion for Items 10A, 10B, and 10C.

Mr. Peacock made a motion that was seconded by Mr. McGrath.

Mr. Moore recused himself from consideration of Item 10B.

Dorothy Dickey recommended the Board consider together the Uncontested Non-Enforcement Items on which Mr. Moore could participate.

Mr. McGrath thanked staff for work on Item 10B and Item 11A.

Mr. Muller asked for a voice vote on Item 10A and Item 10C. The Board voted unanimously to approve the Items.

Mr. Muller said the Board would consider Item 10B.

Motion: It was moved by Mr. Peacock, seconded by Mr. McGrath, and it was voted to adopt the Revised Tentative Order for Item 10B.

Mr. Moore recused himself from consideration of Item 10B.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Peacock; Dr. Singh; Dr. Young; Mr. Muller

No: None

Recusal: Mr. Moore

Motion passed 6 – 0.

Item 11 – Consideration of Uncontested Enforcement Items Calendar

Mr. Wolfe recommended adoption of the Uncontested Enforcement Item.

Motion: It was moved by Mr. McGrath, seconded by Mr. Peacock, and it was unanimously voted to adopt the Uncontested Enforcement Item as recommended by the Executive Officer.

Mr. Moore recused himself from consideration of Item 11A.

Item 10D was heard next.

Arthur Coon, Legal Counsel, on behalf of Gumtree, LLC, spoke in favor of adoption of the Tentative Order and thanked Marcia Liao for her work in preparing the Tentative Order.

Mr. Wolfe recommended adoption of the Revised Tentative Order.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, and it was voted to adopt the Revised Tentative Order as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;
Mr. Muller

No: None

Motion passed 7 – 0.

Item 12 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Total Maximum Daily Load (TMDL) and Implementation Plan for Pathogens in Richardson Bay – Hearing to Consider Adoption of the Proposed Basin Plan Amendment

Mr. Wolfe said the second hearing on the Basin Plan Amendment would be held today. He said the first hearing was held at the April 9, 2008 Board Meeting.

Farhad Ghodrati discussed proposed requirements to reduce pathogen levels in Richardson Bay. He discussed water quality targets, the total maximum daily load, and load allocations to source categories.

Mr. Ghodrati said staff made minor changes to the Amendment based upon public testimony and comment letters. He described comments that staff received that did not result in modifications to the Basin Plan Amendment.

Mr. Wolfe recommended amending references to “biannual” on Table 7-4 of the Basin Plan Amendment to read “biennial.” He said staff recommends sewage collection systems for houseboats and vessels be evaluated on a biennial basis and not on a biannual basis.

Nancy Yoshikawa, Environmental Scientist, U.S. EPA, spoke in support of adoption of the Basin Plan Amendment. She commended Naomi Feger and Mr. Ghodrati for their work.

Mr. Wolfe recommended adoption of the Tentative Resolution with the following amendment to Exhibit A of the Tentative Resolution (Basin Plan Amendment): change “biannual” to “biennial” in Table 7-4.

Motion: It was moved by Dr. Young, seconded by Mr. Peacock, to adopt the Tentative Resolution with the amendment to Exhibit A (Basin Plan Amendment) as recommended by the Executive Officer.

Mr. Moore spoke in favor of adoption of the Basin Plan Amendment. He spoke in favor (1) of protecting shellfish harvesting as a beneficial use in Richardson Bay and (2) of using coliform bacteria as an indicator of pathogen sources.

A vote was taken on the motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 7 – 0.

Item 13 – Allied Defense Recycling, Mare Island Shipyard Dry Docks, Vallejo, Solano County – Issuance of New NPDES Permit

Heather Ottaway said Allied Defense Recycling proposes to lease two dry docks at Mare Island Shipyard to use for repairing, building, salvaging, and dismantling ships. She said the firm has not leased the dry docks yet.

Ms. Ottaway said ships will be allowed to enter and exit the dry docks after the dry docks have been flooded with water from Mare Island Strait. She said water used to flood the dry docks will be removed by sump pumps and will be released back into the Strait without receiving treatment. She said each dry dock has the capacity to hold nearly 20 million gallons of water.

Ms. Ottaway said the Tentative Order requires the firm to implement a Best Management Practices and Pollution Prevention Program to control the release of pollutants during its operations. She said pollutants may include paint chips, blast abrasives, sediment, marine growth, oil, solvents and plastics. She said Best Management Practices will focus primarily on the removal of particulates and the cleaning of walls and floors in the dry docks.

Ms. Ottaway said process water used in ship dismantling operations, seepage water from dry dock walls, seepage water from caissons, and stormwater runoff from the surface of the dry docks could collect in sumps in the dry docks. She said the firm is required to dispose of this type of water in accordance with applicable Federal, State, and local laws and requirements.

In reply to a question from Mr. McGrath, staff said pollutants released in the dry docks must be cleaned up and disposed of properly. Staff said the Tentative Order requires that the firm collect wipe samples and rinsewater samples from floors and walls in the dry docks.

Dr. Young said it is not clear how a violation of Best Management Practices, such as those addressing the cleaning of dry dock walls and floors, would be determined. She said the Tentative Order does not include numeric standards that can be used to regulate the release of pollutants.

Ms. Ottaway said staff will request the firm modify its Best Management Practices if monitoring data indicate high pollutant levels. She said there are no effluent guidelines for dry dock facilities. She said staff will not be able to compare the firm's monitoring data to effluent guidelines.

Lila Tang said the Tentative Order requires the firm collect sediment samples (1) outside the dry docks and (2) at a background location in Mare Island Strait. She said after enough samples have been collected, staff will be able to determine whether dry dock operations contribute to contamination in the Strait.

Mr. McGrath said if Best Management Practices are implemented appropriately, any residue left on dry dock walls and floors will be diluted by the large volume of water used to float ships.

Dyan Whyte said the Tentative Order allows the Board to take enforcement action if the firm does not implement its Best Management Practices and Pollution Prevention Program adequately.

Gary Whitney, Director of Marine Operations, Allied Defense Recycling, described procedures that the firm will use to conduct its operations. He said materials, including hazardous materials, will be disposed of properly.

In reply to a question from Dr. Singh, Mr. Whitney said seepage water could enter a dry dock from a caisson, from a ship, from dry dock walls, and from stormwater runoff.

Dr. Young recommended the firm's Best Management Practices Plan include the thresholds the firm will apply in evaluating the analytical results of rinseate and wipe samples and in determining whether further cleanup will be required.

Mr. McGrath recommended the Tentative Order be amended to include (1) a hazardous material business plan and (2) thresholds that will be applied in evaluating analytical results of rinseate samples and in determining whether further cleanup is required.

Mr. Wolfe said the Tentative Order requires that the firm's Best Management Practices Plan include BMPs for shipyard activities and the activities are listed in the Tentative Order. He said "Waste disposal" is one activity on the list.

Mr. McGrath recommended the activity be amended to read "Waste characterization and disposal."

Mr. Wolfe recommended the firm propose thresholds that will be applied to evaluate analytical results and determine whether further cleanup is required. He recommended the firm include the thresholds in the Best Management Practices Plan submitted to staff.

Mr. McGrath agreed with Mr. Wolfe's recommendation. However, he expressed concern that the procedures that are used be transparent to the public. He suggested the Staff Report be amended to clarify what staff will do to ensure the thresholds in the firm's Best Management Practices Plan are sufficient.

Mr. Peacock commended Mr. Whitney for his testimony.

Amy Chastain, Staff Attorney, San Francisco Baykeeper, recommended the Board take its time to consider whether to amend the Tentative Order and that any proposed amendments be considered at the next Board meeting.

Mr. Wolfe said the Tentative Order requires the firm to annually review and evaluate BMPs. He said the Tentative Order could be amended to require that the firm also annually review and evaluate monitoring procedures.

Dr. Young recommended the Tentative Order not be amended. She said the discussion today should make it clear that the firm's Best Management Practices Plan include thresholds that will be applied in evaluating the analytical results of rinseate and wipe samples and in determining whether cleanup is required.

Dr. Singh spoke in favor of adoption of the Tentative Order.

Mr. Wolfe recommended the Tentative Order be amended to require the firm to identify in its Best Management Practices Plan actions that will be taken as a result of findings from the Monitoring and Reporting Program.

Mr. Eliahu spoke in favor of adoption of the Tentative Order, perhaps with the minor changes suggested.

Mr. Moore thanked Board members for their discussion. He thanked Mr. Wolfe for his efforts to amend the Tentative Order.

Mr. Wolfe recommended adoption of the Tentative Order with the following amendments: (1) changing the item listed on page 13 from “Waste disposal” to “Waste characterization and disposal”; and (2) adding a new subsection on page 12 under VI.C.2.b. to read: “v. Response to Sampling Data BMPs – measures that will be taken in response to data collected from the Monitoring and Reporting Program including trigger values for specific response.”

Motion: It was moved by Mr. Peacock, seconded by Dr. Young, to adopt the Tentative Order as amended and as recommended by the Executive Officer.

Mr. McGrath said the proposed amendments addressed his concerns.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 7 – 0.

Mr. Wolfe said staff recognizes the importance of providing a clear understanding of how regulatory documents with narrative requirements will be enforced.

[At 11:28 a.m., the Board took a brief break. Upon completion of the break, the Board resumed the meeting in closed session. At approximately 12:30 p.m., the Board completed the closed session.]

Item 18 – Adjournment

The Board meeting was adjourned at approximately 12:30 p.m.