

California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT
A Monthly Report to the Board and Public

October 2008

The next regular scheduled Board meeting is October 8, 2008.

See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda

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Court Rules in Favor of Board on Vincent Road Sites (Elizabeth Allen)

In September, the Contra Costa County Superior Court ruled in favor of the Board in a challenge to the Executive Officer's issuance of a Water Code section 13267 order. The decision concerned section 13267 orders that required subsurface investigations on two adjoining properties along Vincent Road in Pleasant Hill. The two properties - Mayhew Center and Walnut Creek Manor - are located immediately upgradient of the Hookston Station cleanup site.

Board staff has been attempting to identify the party (or parties) responsible for a release of tetrachloroethene (also known as perchloroethene, or PCE), a solvent that was detected in groundwater during the site investigation at the Hookston Station site. The PCE appears to originate near the boundary between Mayhew Center and Walnut Creek Manor, upgradient of the Hookston Station site, and has mixed with solvents originating at Hookston Station. Both property owners were required to conduct subsurface investigations under the authority of section 13267. These investigations are needed to evaluate the nature and extent of the soil and groundwater contamination in the vicinity of all three sites and to design appropriate cleanup measures.

After their petitions challenging the section 13267 orders were dismissed by the State Board, each of the landowners filed a petition seeking a writ of mandate against this Board in Contra Costa County Superior Court. Mayhew Center subsequently dropped its petition, leaving the petition by Walnut Creek Manor pending before the court. The court

ruled on September 12 that the Board properly exercised its authority to request technical reports pursuant to section 13267 and that our actions in issuing the 13267 order were consistent with the weight of evidence. The court noted that the Board has broad authority to request technical reports under that Water Code section.

Mayhew Center is now moving ahead with a phased subsurface investigation, approved by Board staff. We will keep the Board informed on how Walnut Creek Manor responds to the court action.

Enforcement - Pending Complaints & Orders (Brian Thompson)

The Assistant Executive Officers issued five administrative civil liability complaints during the month of September with notices for public hearings during upcoming Board hearings. Copies of the complaints can be found on our web site:
http://www.waterboards.ca.gov/sanfranciscobay/pending_en.shtml.

Administrative Civil Liability (ACL) Complaints:

- An ACL complaint with a proposed fine of \$23,375 was issued to the Crystal Springs County Sanitation District in Redwood City (San Mateo County) for unauthorized discharges of raw sewage to waters of the State.
- An ACL complaint with a proposed fine of \$750,000 was issued to the Town of Hillsborough (San Mateo County) for unauthorized discharges of raw sewage to waters of the State.
- An ACL complaint with a proposed fine of \$950,000 was issued to the City of San Mateo (San Mateo County) for unauthorized discharges of raw sewage to waters of the State.
- An ACL complaint with a proposed fine of \$64,000 was issued to the San Francisco Public Utilities Commission for violations of the NPDES permit issued to the Sunol Valley Water Treatment Plant in Sunol (Alameda County).
- An ACL complaint with a proposed fine of \$248,000 was issued to Caltrans for violating general discharge prohibitions of its Statewide Storm Water Permit.

I have publicly noticed Tentative Orders setting Administrative Civil Liabilities for the following two cases in which the Water Board's prosecution team and the dischargers have agreed to a settlement. The Tentative Orders can be found on our web site:
http://www.waterboards.ca.gov/sanfranciscobay/pending_en.shtml. I intend to adopt ACL Orders if no significant comments are received the 30-day comment period.

- The dischargers of Pete's Stop in San Jose (Santa Clara County) will pay proposed liabilities of \$48,000 and \$25,000 for violating a Waste Discharge Requirement permit and a Cleanup and Abatement Order, respectively.
- Rutherford Grove Winery in Rutherford (Napa County) will pay \$5,500 of the proposed \$11,100 liability and will complete a Supplemental Environmental Project (with a value at or exceeding \$5,500) for violating reporting provisions of a General Permit for Storm Water Discharges Associated with Industrial Activities.

Municipal Regional Stormwater Permit (MRP) Update (Dale Bowyer)

Board staff are preparing a revised MRP tentative order, after extensive review of all comments received during the initial public comment period and at the March 2008 testimony hearing, and after further discussions with key stakeholder groups, including the Bay Area Stormwater Management Agencies Association, the National Resources Defense Council, Save the Bay, San Francisco BayKeeper, and the Home Builders Association of Northern California. Our goal is to produce a MRP that increases implementation flexibility while maintaining compliance accountability, reduces requirement detail and prescriptiveness, streamlines reporting, and places more emphasis on "bottom line" or "on the ground" actions. Staff have worked hard to address the components in the tentative order released in late 2007 that raised the greatest concern among permittees, while maintaining key action elements requested by environmental stakeholders.

We anticipate releasing the revised tentative order for another public comment period in November. It will be accompanied by a summary of responses to major comments received to date. A complete response to all of the hundreds of comments received will be available before the MRP adoption hearing in early 2009. We will also hold workshops with stakeholders around the time of release of the revised tentative order to describe the revisions.

Delta Strategy Workplan (Wil Bruhns)

This is a follow up on the Delta Strategy Workplan, last reported on to the Board in the July EO Report. In January 2008, the Board adopted a resolution "Specifying Actions the Water Boards Will Take to Protect Beneficial Uses of the San Francisco Bay/Sacramento San Joaquin Delta Estuary." The State Board and the Central Valley Water Board adopted similar resolutions. Our staff collaborated on the development of the Workplan that was adopted by the State Board on July 16. The major addition made by State Board members during their hearing was a provision calling for evidentiary hearings on factual issues about the Delta. The Workplan is available at http://www.waterrights.ca.gov/baydelta/strategic_workplan.htm.

The main elements of the Workplan are:

- 1) Water Quality and Contaminant Control
- 2) A Comprehensive Delta Monitoring Program
- 3) Southern Delta Salinity and San Joaquin River Flow Objectives
- 4) Suisun Marsh Objectives
- 5) Comprehensive Review of the Bay-Delta Plan, Water Rights, and Other Requirements
- 6) Activities to Ensure that the State Water Project's (SWP) and Central Valley Project's (CVP) Methods of Diversion in the Delta are Reasonable, Beneficial, and Protect the Public Trust
- 7) Water Right Compliance, Enforcement, and Other Activities to Ensure

Adequate Flows to Meet Water Quality Objectives

8) Water Use Efficiency for Urban and Agricultural Water Users

9) Other Actions

Those portions of the Workplan that most affect the San Francisco Bay Region, and towards which our staff resources will primarily be directed, include: implementation of the San Francisco Bay mercury TMDL, development and implementation of San Francisco Bay TMDLs for PCBs and selenium, issuance of permits for cooling water discharges from power plants in Pittsburg, and participation in the development of the Suisun Marsh Habitat Management, Preservation, and Restoration Plan.

Since the July Workplan adoption there have been followup actions. On September 30, the Central Valley Water Board had a stakeholder meeting on establishing a Regional Monitoring Program for the Delta, similar to the one we initiated in the Bay Area in 1993. Our staff participated in this meeting. State Board, and its staff, have had workshops and hearings on updating the Bay Delta Plan, establishing sediment quality objectives, establishing a once-through-cooling policy, water use efficiency requirements, San Joaquin River flow requirements, and salinity standards. Also, the State Board has formally asked for factual issues to be reviewed at its proposed evidentiary hearings. These were due September 29, with the hearings expected early next year. Finally, procedurally the Central Valley Water Board formally adopted the Delta Strategic Workplan in September. Our staff plan to bring the Workplan to this Board in November for discussion and adoption.

U. S. EPA and OAL Approve TMDL Walker Creek Mercury TMDL (Jill Marshall)

On September 29, U.S. EPA gave final approval to the Walker Creek mercury TMDL. This was the last approval step before we can formally incorporate the TMDL as an amendment to our Basin Plan. The amendment includes a TMDL and implementation plan for mercury in the Walker Creek and Soulajule Reservoir watersheds in western Marin County, and establishes two new water quality objectives for mercury in those watersheds. The Board adopted this TMDL in January 2007. State Board approved it in July 2008, and the Office of Administrative Law gave its approval earlier this month.

In my August 2008 report to the Board, I described a number of coordinated implementation actions ongoing in the Walker Creek and Tomales Bay watersheds, including the conditional waiver of waste discharge requirements for grazing lands in the Tomales Bay watershed, which the Board approved in July. Jill Marshall is working with the Marin and Sonoma Resource Conservation Districts to coordinate several agencies' work in the area, implementing the Tomales Bay Pathogens TMDL and future TMDLs for nutrients and sediment in the area.

Sausal Creek Restoration (Habte Kifle/Shin-Roei Lee)

On July 22, we issued a water quality certification that approves a project to restore 350 linear feet of an existing 650-foot long culverted section of Sausal Creek in the Town of Portola Valley in San Mateo County. The purpose of the project is to daylight a creek channel that has been diverted through a 60-inch reinforced concrete pipe for over 40 years. The project is designed to recreate a stable and functional waterway based on local

geomorphic conditions and processes, in addition to sound engineering design. The restored open creek will improve flood capacity and will enhance aesthetic and habitat values. The daylighted creek will have greater hydraulic capacity than the existing culvert, and it will slow stormwater runoff and increase percolation and infiltration, reducing impacts to receiving water bodies and improving water quality.

The project will also provide diversified habitat and ecosystem functions. It is expected to create refuge and foraging areas that would attract insects and wildlife, such as frogs, dragonflies, newts, a variety of songbirds, ducks, herons, quail, kingfishers and, potentially in time, resident rainbow trout living downstream. Other beneficial uses of the restoration include providing educational and recreational values.

The banks of the restored creek will include carefully placed boulders, log deflector and habitat structures, as well as native riparian plant materials selected for their local appropriateness and habitat values. Several clusters of native riparian trees will provide shade to specific locations along the creek. Further, a small free-span pedestrian bridge will be integrated with the pathway system to separate pedestrian circulation from the vehicle access provided by the culvert. The bridge, which is located above the estimated 100-year water surface elevation, would enhance opportunities for educational experience and programs associated with the restored creek.

Project landscaping has been designed and plant materials selected to ensure that the creek will be a dynamic and functional environment throughout the year. In the dry season, grasses and sedges will remain along the banks, and gravel and stones will be revealed in the creek bed. The subsurface water is relatively shallow so that the creek will continue to support and provide valuable refuge for animals and insects during the dry season.

The Town is required to monitor and submit an annual report each year on December 31, documenting the success of the daylighted section of Sausal Creek and stability of the improvements for five consecutive years, with the first report to be submitted no later than one year after completion of construction. In addition, the Town is required to document this restoration effort consistent with our wetland tracker internal policy.

The project has been also supported and permitted by other regulatory agencies, including the U.S. Army Corps of Engineers and the California Department of Fish and Game.

Point Molate Fuel Depot Property Transfer (George Leyva)

In 1995, the federal Base Realignment and Closure Commission recommended that the Point Molate Naval Fuel Depot be closed and transferred to civilian use. In September 2003, approximately 364 acres were transferred by the Navy to the City of Richmond. The remaining 41 acres were not transferred in 2003 in order to allow for a determination of how best to cleanup these remaining acres of the Fuel Depot.

Federally-owned contaminated property may be transferred without prior cleanup by an "early" transfer, or FOSET (Finding of Suitability of Early Transfer). Such an "early" transfer requires approval of the Governor before proceeding. In order for the Governor to

approve the FOSET, a mechanism must be in-place to ensure that an acceptable cleanup would be completed after the transfer.



POINT SAN PABLO PENINSULA
PHOTO COURTESY OF DON GOSNEY

A Tentative Order has been prepared as the “mechanism” to ensure the cleanup of the remaining 41 acres, which also imposes cleanup requirements for the entire 405-acre Fuel Depot site. Board staff prepared and arranged for the broadcast of a Fact Sheet to notify the Richmond community about the Tentative Order and to invite them to review and comment on the Order, as well as to attend the our regular Board meeting in November, when the Tentative Order will likely be considered.

The Tentative Order has been prepared primarily to ensure that the Fuel Depot will be adequately cleaned up after the “early” transfer of the remaining portions of the Fuel Depot as described in the FOSET. Regardless of whether the transfer of the remaining 41 acres to civilian use occurs or not, the Order will remain valid, and cleanup of the entire Fuel Depot will proceed.

Since the City of Richmond currently owns a substantial portion of the Fuel Depot (364 acres, pursuant to the September 2003 property transfer agreement), and the Navy is responsible for the past releases at the Fuel Depot, both the City and the Navy are named as dischargers required to comply with the Tentative Order. However, under a separate agreement between the City and the Navy, the City will take on the responsibility for the cleanup activities. If and when the City subsequently transfers the property to a private entity for the purpose of site development, that transferee will then also be required to comply with the Order.

Cleanup plans required by the Tentative Order must include verification that the final cleanup remedy has eliminated potential threats to human health and the environment, as a result of the release of any pollution from the Fuel Depot exceeding the site cleanup goals. The Tentative Order specifies tasks that will ensure cleanup of the Fuel Depot such that long term monitoring will not be needed, except at the Site-1 landfill. In addition, the

requirements of the Order continue beyond the initial cleanup and will remain enforceable during any site development.

All documents submitted pursuant to the Order are subject to the California Environmental Quality Act because of potential impacts to the community from the cleanup activity. All remedial action plans will be evaluated for consistency with the Environmental Impact Report currently being prepared by the City of Richmond.

We encourage the public to review the Tentative Order and provide comments. Comments are due to the Board staff no later than close of business on October 17. The Tentative Order and the FOSET can be viewed at our offices or may be viewed and downloaded from the internet at:

http://www.waterboards.ca.gov/sanfranciscobay/press_room/announcements.shtml

Del Monte Plant Brownfield Redevelopment (Adriana Constantinescu)

In late September, I issued a "no further action" letter for the former Del Monte Plant #3, a 17-acre Brownfield site in San Jose. This action signifies the completion of site investigation and cleanup. Del Monte began cannery operations here in 1917, making this one of the oldest fruit and vegetable canneries in the western United States. The cannery used 15 underground storage tanks to store various petroleum hydrocarbons. KB Home South Bay, the current owner and developer of the site, removed the 15 tanks, associated piping, sumps, and 25,000 tons of contaminated soil. Site cleanup proceeded sequentially on different portions of the site, followed by redevelopment. The firm is constructing 235 condominiums, 148 townhomes, and a network of landscape areas at the site. The redevelopment will use state of the art post-construction stormwater treatment measures. The location of the redevelopment provides easy access to Caltrain and the future San Jose BART station.

Pillar Point Harbor Circulation Study (Carmen Fewless)

The San Mateo County Resource Conservation District (RCD) is directing a study funded by the State Board to identify the sources of bacteria in Pillar Point Harbor and develop a plan to address them. A critical component of this effort is a circulation study to shed light on how pollution travels within and out of the Harbor. The circulation study was conducted September 27 to 29. Board staff were part of the volunteer force for this study.

Pillar Point Harbor is an enclosed bay with a watershed that has complex inputs and water flows. It contains an inner boat harbor, pier, and saltwater/brackish tidal marsh. It receives drainage from creeks, storm drains, outflow pipes, and large, mixed use areas including an airport, agricultural, commercial and residential sections. The Harbor contains five beaches, Capistrano Beach, Yacht Club Beach, Marsh Beach, Mavericks Beach, Inner Harbor Beach and Beach Hose Beach.

The water quality at the Harbor is chronically so poor that the State Board recently listed it as impaired by coliform bacteria. For several years, Capistrano Beach has been among the top ten most polluted beaches in California in dry weather conditions, and is

permanently posted by the San Mateo County Environmental Health Department as a potential health hazard.

Within the local community, there are numerous opinions as to the primary sources of fecal pollution impacting the Harbor, including, but not limited to, human contamination from leaking sewer lines, avian contamination from resident and migratory bird populations, and lack of flushing in the Harbor due to the presence of two breakwalls. Although much effort has been expended on studying the locations of fecal pollution impacting the Harbor, including water sampling and fecal bacteria indicator enumeration studies, data on identification of primary sources and their relative contributions to the overall pollution problem are lacking. The RCD's project, "Identification of Sources of Fecal Pollution Impacting Pillar Point Harbor" funded by the State Board, is a comprehensive study of all the possible sources of pollution and how flows interact in the confines of the enclosed Harbor.

During the circulation study, rhodamine and fluorocene, two dyes used most frequently in these types of environmental studies, were released in select locations in the Harbor. It was not expected that the Harbor would change color; if dyes were visible, they appeared in isolated patches or streaks. Water was sampled in multiple locations and at different depths to track how dyes travel, providing information on how pollution travels in the Harbor. In addition, oranges were tagged and released from various locations and tracked to see where they travel and land, providing more information on how pollutants may flow.

We will keep the Board informed on the results of the study and on progress made in addressing the pollution in the Harbor.

Transition to Geotracker 2.0 (Barbara Sieminski)

In early July, the State Board launched a new version of GeoTracker, the Water Boards' database for the groundwater cleanup programs. The GeoTracker database has two primary goals: 1) to provide information to the public on our cleanup efforts, and 2) to provide a tool for regulators to effectively manage cases, track site cleanup progress, and measure performance standards. Groundwater cleanup site responsible parties have been required to submit all data and reports to GeoTracker since 2002.

GeoTracker 2.0 has been greatly updated and customized to reflect the evolving needs of the cleanup programs. GeoTracker 2.0 is more user friendly, and provides a dramatic improvement in performance over the old version. It provides the public with easier access to environmental information, while providing responsible parties with a simplified process for submitting electronic documents (e.g., an upload which took about 20 minutes in the old GeoTracker, now takes only 5 seconds). The system has become a more effective regulatory tool for case management, cleanup progress tracking, outreach and performance measurement.

Currently, the GeoTracker contractor is focusing on implementing additional features and functions to make the database even better. Representatives from the State and Regional Water Boards have been discussing further improvements at regular meetings with the

GeoTracker contractor, including developing a list of basic data entries, to enhance consistency throughout the State.

In-house Training

We have had a vacation from in-house training and will resume in November, with our annual health and safety refresher course. Brownbag seminars included a September 11 webcast session on capture-zone analysis.

Staff Presentations

The Brake Pad Partnership (Partnership) is a collaborative endeavor of water quality regulatory agencies, automobile brake pad manufacturers, environmental groups, and stormwater management agencies to investigate the physical and chemical properties of copper in brake pad wear debris and determine its behavior and potential impact in the environment. Richard Looker presented a paper on the Brake Pad Partnership's technical studies and helped conduct a workshop on water quality threats associated with automobiles at the International Water Association's Diffuse Pollution Conference, held August 25-29 in Khon Kaen, Thailand. There were over 200 environmental professionals and policy makers from over 40 countries at the conference. Richard prepared the paper and presentation and made the trip to Thailand on his own time. As part of his Board job, Richard managed the Proposition 13 grant received by the Partnership in 2003 to fund its investigations. The Partnership has completed its technical studies, and the results suggest that copper from brake pads significantly contributes to water quality impacts in San Francisco Bay. Richard is currently representing water quality regulatory interests by serving on the Partnership steering committee, which is working on legislation to mandate phased reductions in the copper content of brake pads sold in California.

On September 19, Shin-Roei Lee gave an update to the Joint Policy Committee that is made up of executive members from ABAG, BCDC, the Bay Area Air Quality Management District, and the Metropolitan Transportation Commission. The presentation was an update on the transportation-related requirements expected to be included in the upcoming Municipal Regional Stormwater Permit.

On September 25, several Board staff participated in a Bar Association of San Francisco event, "Meet Your Regulator" – Dorothy Dickey, Stephen Hill, and Anders Lundgren. This annual event provides an opportunity for our staff to interact with environmental attorneys on various water quality issues.