

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
April 17, 2002

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Item 1 - Roll Call and Introductions

The meeting was called to order on April 17, 2002 at 9:05 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Clifford Waldeck, Vice-Chair; Kristen Addicks; Doreen Chiu; Shalom Eliahu; William Schumacher; and Mary Warren.

Board members absent: Josephine De Luca and John Reininga.

New staff in the NPDES Permit Division were introduced: Gina Kathuria introduced Linda Rao and Lila Tang introduced Abigail Smith.

Item 2 – Water Quality Excellence Award to U.S. Steel Corporation – Recognition for Cleanup of Bay Sediment at Shearwater Site near Oyster Point Boulevard, South San Francisco, San Mateo County

Randy Lee gave the staff presentation. He described a sediment remediation project undertaken by U.S. Steel at its former Shearwater site in South San Francisco. He said about 20,000 cubic yards of contaminated sediment were removed from the top three feet of a three-acre area. Mr. Lee said the contaminated sediment was replaced with clean fill.

William Schumacher congratulated U.S. Steel for the remediation project.

John Muller presented a Water Quality Excellence Award to Tony Nuzzo of U.S. Steel Corporation for remediation completed at the former Shearwater site.

Mr. Nuzzo thanked the Board for giving the award to U.S. Steel. He also thanked staff for their cooperation during the project.

Item 3 - Public Forum

Evelyn Cormier, Hayward Area Planning Association, asked that 401 certification for a project in Hayward be postponed.

Loretta Barsamian said small projects, such as the project in question, generally are dealt with at the staff level. She asked if the Board would like to review small project

applications. William Schumacher recommended reviews for small projects remain at the staff level.

Phil Bobel, City of Palo Alto, discussed the legislative status of AB 2351. He noted the bill would amend the mandatory minimum penalty law.

Clifford Waldeck asked whether Assemblymember Carole Migden had expressed support for the bill. Mr. Bobel said Ms. Migden had chosen not to be involved with the pending legislation.

Craig Johns, Partnership for Sound Science in Environmental Policy, also discussed the legislative status of AB 2351. He suggested the Board send a letter to the author of the bill indicating support for AB 2351.

Mr. Schumacher spoke in favor of sending a letter. Ms. Barsamian noted the Governor's Office had not yet taken a position on the bill. Dorothy Dickey noted comments on legislation generally are forwarded to the State Water Resources Control Board.

Item 4 – Minutes of the February 27, 2002 Board Meeting

The minutes were adopted unanimously by the Board.

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

Ms. Barsamian said she met with the ABAG Executive Council to talk about stormwater issues. She also discussed meeting with representatives from Contra Costa County to talk about stormwater requirements for new development projects. Ms. Barsamian said stormwater provisions currently apply to localities having over 100,000 people. She noted starting in March 2003 stormwater provisions would apply to localities of 10,000 people or more.

Larry Kolb said he met with Public Works Directors of Alameda County to discuss stormwater issues.

Ms. Barsamian described a meeting with Assemblymember Joe Nation. She said they discussed regional board activities.

Ms. Barsamian said John Muller had recently been named Farmer of the Year at the annual Farm Day Luncheon in Half Moon Bay. She also said the San Mateo County Board of Supervisors appointed Mr. Muller to the Board of Directors of the Coastsides County Water District.

Mr. Muller talked about an item in the Executive Officer's Report regarding potential impacts of fire fighting chemicals on water quality and the Marin County Fire Department. Mr. Muller asked if staff should send a bulletin to other fire departments warning them of adverse impacts firefighting products may have on water quality. Ms. Barsamian noted the Marin County Fire Department was preparing a pollution prevention plan that could be distributed to other fire departments.

In response to a question from Mr. Muller, Ms. Barsamian explained the process for awarding Proposition 13 grant funds.

Mary Warren asked about a lawsuit regarding Wendt Ranch Project filed by two citizen groups. Ms. Barsamian, Yuri Won, and Bruce Wolfe described issues in contention.

Clifford Waldeck said he enjoyed a recent cruise of the bay that was sponsored by Save the Bay Association.

Mr. Muller reported attending a meeting of Board Chairs held at the State Water Resources Control Board in Sacramento.

Item 6 - Uncontested Calendar

Ms. Barsamian recommended adoption of the uncontested calendar.

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

Item 7 – Mr. Kelly Engineer and All Star Service, Inc., for the property at 1791 Pine Street, Concord, Contra Costa County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Late Technical Report

Jolanta Uchman gave the staff presentation. Ms. Uchman said in March 2001 the Regional Board adopted an Administrative Civil Liability against Mr. Kelly Engineer and All Star Gasoline, Inc. She said in April 2001 the dischargers appealed the Regional Board's action to the State Board.

Ms. Uchman said in January 2002 the State Board remanded the ACL back to the Regional Board (1) to name the proper corporate entities and (2) to include findings to justify naming an individual who is also the owner and shareholder of a corporation that operates the business.

In response to the remand, Ms. Uchman said staff identified All Star Service, Inc. as the proper name of the corporate entity. She said All Star Gasoline, Inc. was a name the corporate entity formerly used.

Ms. Uchman said the tentative order names Kelly Engineer because he is the sole corporate officer of All Star Service, Inc. and he runs the day-to-day operations of the gasoline station. She said these facts are included in the findings of the tentative order.

Ms. Uchman noted Paul Rosenstein, attorney for All Star Service, Inc., claimed the parties do not have the ability to pay the fine imposed by the ACL. However, she said the ability to pay issue was not raised in the remand. She said the Regional Board is limited to consider only matters raised in the State Board's remand.

Paul Rosenstein said he believed ability to pay the fine is a relevant issue. He also raised a due process issue concerning lack of notice to All Star Service, Inc. He said the

corporation did not receive a Notice of Violation letter sent by staff before the ACL complaint was issued by the Executive Officer.

Ms. Barsamian noted the State Board's remand is included in the supplemental to this item. Ms. Barsamian said the Regional Board procedurally is limited to consider only the two issues remanded for further action.

Ms. Dickey said the remand from the State Board specifically found that no due process violation occurred when the ACL complaint was addressed to All Star Gas, Inc. instead of All Star Service, Inc.

Mr. Eliahu asked about the dischargers' ability to pay. Ms. Barsamian said that issue would be considered under Item 8. Ms. Dickey reiterated the State Board remand did not direct the Regional Board to consider ability to pay as an issue.

In response to a question from Mr. Schumacher, Mr. Rosenstein said he was representing All Star Service, Inc. Mr. Rosenstein said prior to a formal name change, the corporation was called All Star Gasoline, Inc. Mr. Rosenstein noted another corporation now is named All Star Gasoline, Inc.

Ms. Barsamian recommended adoption of the tentative order as supplemented.

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

Roll Call:

Aye: Mrs. Addicks, Mrs. Chiu, Mr. Eliahu, Mr. Schumacher, Mr. Waldeck, Mrs. Warren, Mr. Muller

No: none.

Motion passed 7 – 0.

Item 8 – Mrs. Perrin Engineer and All Star Service, Inc., for the property at 1791 Pine Street, Concord, Contra Costa County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Late Technical Report

Ms. Uchman gave the staff presentation. She said All Star Service, Inc. operates a service station and Mrs. Perrin Engineer owns the property on which the service station is located.

Ms Uchman said in June 2001, staff requested the dischargers submit a work plan to determine the extent of soil and groundwater contamination at the service station site. She said the work plan was due August 27, 2001. When the work plan was not received, she said the Executive Officer on September 25, 2001 issued a Notice of Violation letter. Ms. Uchman noted the workplan was received on November 29, 2001 and was approved shortly afterward. She said in February 2002 the Executive Officer issued a Complaint for Administrative Civil Liability in the amount of \$16,350 for 93 violation days between the date the workplan was due and the date it was received.

Ms. Uchman said Paul Rosenstein, attorney for Perrin Engineer and All Star Service, Inc., claimed the dischargers do not have the ability to pay the fine imposed by the ACL. She said the dischargers' financial and tax information submitted by Mr. Rosenstein was reviewed by the Economics Unit of the State Water Resources Control Board. However, she said the dischargers have not submitted additional information requested by the Economics Unit.

At the Board meeting, Paul Rosenstein raised a due process issue concerning lack of notice to Perrin Engineer. He said Mrs. Engineer did not receive a Notice of Violation letter sent by staff before an ACL complaint was issued by the Executive Officer. He also said the dischargers do not have the ability to pay an ACL fine. Mr. Rosenstein requested this item be continued 90 days in order for the dischargers to provide "a laundry list of information" requested by the Economics Unit.

In response to a question from Mrs. Addicks, Mr. Rosenstein said corporate tax returns must be prepared.

Mr. Waldeck asked whether this matter could be referred to the Attorney General's Office for enforcement. Ms. Barsamian explained the Board's options regarding the ACL complaint. Ms. Dickey discussed action that could be taken to collect a judgment.

Mrs. Addicks asked about the estimated cost to complete cleanup work. Stephen Hill said a cost estimate is not known because there has not been a thorough site investigation.

Mr. Waldeck and Mr. Muller expressed their belief that the dischargers should accept responsibility to complete the cleanup work.

Mrs. Warren noted staff requested several years of tax returns. She asked why the returns were not produced. Mr. Rosenstein said the dischargers need more time.

Stephen Hill said the ACL names Perrin Engineer and All Star Service, Inc. as jointly responsible to pay the ACL fine. He said Mr. Rosenstein accepted service of the ACL complaint on behalf of Perrin Engineer. He also said the dischargers have had about two months to produce financial documents.

Mrs. Chiu noted her support for granting the dischargers' request for a 90-day continuance.

Mrs. Addicks and Mr. Eliahu noted the dischargers' lack of cooperation with staff. They emphasized the importance of working with staff to resolve problems.

Mr. Rosenstein said there was a violation of due process when Perrin Engineer did not receive a Notice of Violation letter prior to receipt of the ACL complaint. He said his acceptance of service of the ACL complaint did not waive the due process violation. Mr. Rosenstein noted Kelly Engineer now is working with a respectable environmental firm and said progress on cleanup work has been made.

Ms. Dickey explained due process considerations for an ACL complaint as compared to a NOV letter. She believed adequate notice of the NOV letter had been given.

Mr. Muller complimented the dischargers for installing monitoring wells.

Ms. Barsamian recommended adoption of the tentative order as supplemented.

Motion: It was moved by Mr. Schumacher, seconded by Mrs. Addicks, and it was voted to adopt the tentative order as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Addicks, Mr. Eliahu, Mr. Schumacher, Mr. Waldeck, Mrs. Warren, Mr. Muller

No: Mrs. Chiu

Motion passed 6 – 1.

[The Board took a break at 10:58 a.m. and resumed at 11:10 a.m.]

Item 9 – Central Marin Sanitation Agency, Wastewater Treatment Plant, San Rafael, Marin County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Loretta Barsamian said Central Marin Sanitation Agency signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$15,000, of which \$3,000 will be used for a supplemental environmental project.

Item 10 – City of Palo Alto, Water Quality Control Plant, Palo Alto, Santa Clara County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Loretta Barsamian said City of Palo Alto signed a waiver of its right to a hearing on the proposed MMP. She noted no Board action was necessary. Ms. Barsamian said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$12,000, of which \$3,000 will be used for a supplemental environmental project.

Item 11 – Overview of Proposed Basin Plan Amendment to Establish Site-Specific Water Quality Objectives and Water Quality Attainment Strategies for Copper and Nickel in South San Francisco Bay, South of the Dumbarton Bridge

Richard Looker gave the staff presentation. He said USEPA established the water quality objectives currently used for copper and nickel in Lower South San Francisco Bay. He said the objectives were intended to apply in all waterbodies without consideration of local conditions.

Mr. Looker noted the current dry season concentrations for copper and nickel in Lower South San Francisco Bay are above the water quality objectives established by USEPA. He said a technical report produced as part of the TMDL process found that the specific metal chemistry in Lower South San Francisco Bay is such that not all copper and nickel

is available for uptake by aquatic organisms. He said the report concluded current copper and nickel concentrations do not adversely affect aquatic life in that area of the bay.

Mr. Looker said a technical report produced as part of the TMDL process also addressed the question of what strategies are needed to ensure current loadings of copper and nickel do not increase. He said that the report recommended development of a pollution prevention plan and continued monitoring of ambient waters. He noted NPDES permits currently require POTWs and the Urban Runoff Program in Lower South San Francisco Bay to implement these strategies.

Mr. Looker reviewed contents of the Region's Basin Plan. He said the Basin Plan includes: (1) a statement of beneficial water uses; (2) water quality objectives needed to protect those uses; (3) and strategies to achieve objectives.

Mr. Looker said next month staff will recommend the Board adopt Basin Plan amendments to establish (1) site specific water quality objectives for copper and nickel in Lower South San Francisco Bay, and (2) the requirement for a pollution prevention plan and a monitoring program to ensure compliance with the site-specific objectives. He said the proposed amendments are protective of beneficial uses in Lower South San Francisco Bay and take into account local conditions.

Mr. Schumacher asked about brake pads as a source of copper. Mr. Looker said a project has been proposed to see if brake pads are a major source of copper. He said brake pad manufacturers voluntarily have agreed to produce pads containing less copper if they are shown to be a major copper source.

Mr. Muller congratulated staff for their work on technical reports produced as part of the TMDL process.

Mr. Eliahu asked about the relationship between total and dissolved loads for copper and nickel. Mr. Looker explained how sediments could contribute to dissolved loads of copper and nickel.

Mrs. Warren asked about controlling the amount of copper that enters the system at car washing facilities. Dr. Kolb said wastewater from such facilities is processed at sewage treatment plants and a substantial amount of copper is removed.

Tom Mumley described a stakeholder group known as the Brake Pad Partnership. He said the brake pad industry has begun looking at alternatives to the use of copper in brake pads. He noted the manufacture of brake pads includes public safety issues.

Mr. Eliahu asked whether the use of copper pipes in residential homes contributes to the amount of copper in Lower South San Francisco Bay. Dr. Mumley responded affirmatively.

David Tucker, City of San Jose, and Lorrie Gervin, City of Sunnyvale, spoke in support of the proposed amendment.

Phil Bobel, City of Palo Alto, also spoke in support of the proposed amendment. He discussed ways to minimize sources of copper.

Craig Johns, Partnership for Sound Science in Environmental Policy, expressed support for the amendment. He said use of PVC pipes in place of copper pipes could lead to a dioxin problem.

Ms. Barsamian complimented the public entities in Lower South San Francisco Bay that provided funding for the TMDL project.

Item 12 – Lake Merced, City and County of San Francisco – Report on Restoration Program

Larry Kolb introduced Michael Carlin, Chief of Planning, for the San Francisco Public Utilities Commission. Mr. Carlin noted that over a number of years the water level of Lake Merced has dropped. He said the lake lies within the westside groundwater basin. He said the cities of Millbrae, South San Francisco and Daly City pump groundwater from the westside basin.

Mr. Carlin said representatives of the cities of San Francisco and Daly City and three privately owned golf courses are trying to develop a conjunctive use approach to managing westside groundwater. He said the representatives recently entered into a principals document that provides: Daly City would sell recycled water to the golf courses; San Francisco would sell, at a reduced rate, surplus surface water to Daly City; and under a pilot project, San Francisco would treat stormwater from Daly City that drains into Lake Merced.

Mr. Schumacher described Daly City's earlier efforts to sell recycled water for golf course use.

Mr. Muller asked whether water used for reclamation purposes should receive tertiary treatment. Mr. Carlin noted technological improvements have reduced treatment costs.

Mr. Schumacher asked about a bill recently introduced into the legislature that deals with the repair of the Hetch Hetchy pipeline. Mr. Carlin noted the City of San Francisco opposes the bill and said the City is trying to develop a compromise solution.

Jerry Cadagan, Committee to Save Lake Merced, complimented Daly City's efforts to try to address the problem with the water level at Lake Merced. He believed water quality problems in the lake result from the declining water level problem. He encouraged the use of recycled water.

David Dawdy, Lake Merced Task Force, said the amount of groundwater being pumped from the westside basin aquifer increases the risk that saltwater may intrude.

Katie Pilat, Neighborhood Parks Council, also discussed the potential danger of saltwater intrusion.

Mr. Eliahu asked about the depth of Lake Merced. Ms. Pilat said the lake is about 18 feet deep.

Mrs. Addicks asked who is responsible for helping people concerned about the water level of the lake. Ms. Barsamian noted the regional board would issue permits to entities that discharge water into the lake. Dr. Kolb added the State Board has authority on issues of water rights, such as overdrafts of groundwater.

Item 13 – Status Report on Contra Costa Clean Water Program and its 2000-2001 Annual Report

Christine Boschen gave the staff presentation. She said the Contra Costa Clean Water Program includes 16 cities, the county, and a flood control district. She said the Program has been regulated by an NPDES municipal stormwater permit since 1993.

Ms. Boschen reviewed two components of the stormwater permit: industrial inspections and public outreach activities. She said the Program is in compliance with the NPDES permit. However, she recommended improvements in some program areas.

Don Freitas, Manager of the Contra Costa Clean Water Program, thanked staff for a recent review of Program activities. He expressed concern about the cost to implement proposed stormwater standards for new development.

Mr. Waldeck asked which county department handles the clean water program. Mr. Freitas replied the public works department.

Mr. Freitas discussed a Memorandum of Understanding entered into by the Regional Board, Bay Area Clean Water Agencies, and the Bay Area Stormwater Management Agencies Association. He noted the MOU facilitates the development of TMDLs.

Adjournment

The meeting was adjourned at 1:00 p.m.