

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
September 15, 2004

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Item 1 - Roll Call and Introductions

The meeting was called to order on September 15, 2004 at 9:08 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: Clifford Waldeck, Chair; Mary Warren, Vice-Chair; Doreen Chiu; Josephine De Luca; Shalom Eliahu; John Muller; and John Reininga.

Board member absent: Kristen Addicks.

Item 2 - Public Forum

Nancy Sutley, State Board member, said a public hearing would be held in Fresno to consider the environmental aspects of the California Performance Review. She said a Water Quality Coordinating Committee (WQCC) meeting would be held in October in Ontario. She said the State Board is working to develop a policy concerning the listing of impaired water bodies.

Item 3 – Minutes of the July 21, 2004 Board Meeting

Motion: It was moved by Mr. Reininga, seconded by Mrs. Warren, and it was unanimously voted to adopt the minutes of the July 21, 2004 Board meeting.

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

Mr. Muller said he is a member of U.S. EPA's Local Government Advisory Committee and recently attended a meeting.

Mr. Waldeck said he would like to accept the invitation of the Napa Flood Control and Water Conservation District to have the Board tour the flood project in the City of Napa.

Item 5 - Uncontested Calendar

Mr. Wolfe recommended adoption of the uncontested calendar with the following exception: Item 5D be taken off the uncontested calendar.

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

Item 5D – Union Pacific Railroad Company, Daniel C. and Mary Lou Helix, Elizabeth Young, John V. Hook, Nancy Ellicock, Steven Pucell, and Contra Costa County Redevelopment Agency, for the property referred to as Hookston Station and located at 228 Hookston Road, Pleasant Hill, Contra Costa County – Amendment of Site Cleanup Requirements

George Leyva gave the staff presentation. He said Hookston Station is used for commercial and light industrial activities. He said TCE used by a former tenant has impacted groundwater. He said impacted groundwater has migrated beneath an adjacent residential development known as Colony Park.

Mr. Leyva said air sampling results have shown there are detectable levels of TCE in indoor air of some Colony Park homes. He said TCE also has been detected in some backyard wells that are used for non-potable purposes. He said the indoor air sampling data and results of the screening level risk assessment indicate that additional work is needed.

Mr. Leyva said the tentative order requires additional indoor air sampling be conducted and a Baseline Human Health Risk Assessment be developed. He said the tentative order delays the proposed cleanup plan to allow information that will be developed to be incorporated into the plan. He said the tentative order requires periodic soil gas sampling and monthly status reports. He said staff intends to have a toxicologist review the Baseline Risk Assessment.

Mr. Leyva said the supplement to the tentative order requires that the Baseline Human Health Risk Assessment take into account Department of Toxic Substance Control's comments on the initial screening risk assessment as well as results from the additional indoor air sampling.

Replying to a question, staff said the backyard wells were built without permits from the appropriate county agency. Staff said the county health agency is aware of the situation.

Ronald Block, representing Colony Park Neighborhood Association, spoke in favor of the tentative order. He requested the additional indoor air samples be taken during daytime hours. He reiterated the Association's concerns that the Baseline Human Health Risk Assessment reflect DTSC's comments on the screening level risk assessment and that a toxicologist review the Assessment.

Mr. Wolfe said staff would work with the residents as the clean up project moves forward. He recommended the tentative order as supplemented be adopted.

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

Roll Call:

Aye: Mrs. Chiu; Mrs. De Luca; Mr. Eliahu; Mr. Muller; Mr. Reininga; Mrs. Warren; and Mr. Waldeck

No: None

Motion passed 7 – 0.

Item 6 – City and County of San Francisco, Sheriff’s Department, Sanitary Sewer System, San Mateo County – Hearing to Consider Administrative Civil Liability for Discharge of Untreated Wastewater to Waters of the State

Mr. Wolfe said the City and County of San Francisco, Sheriff’s Department signed a waiver of the right to a hearing on the proposed ACL. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay an Administrative Civil Liability in the amount of \$118,000. He said \$110,000 would be used for a supplemental environmental project.

Item 7 – City of Burlingame, Wastewater Treatment Plant, Burlingame, San Mateo County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said the City of Burlingame signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$9,000. He said \$9,000 would be used for a supplemental environmental project.

Item 8 – City of Petaluma, Water Pollution Control Plant, Petaluma, Sonoma County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said the City of Petaluma signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$87,000. He said \$51,000 would be used for a supplemental environmental project.

Item 9 – West County Agency, West County Wastewater District, and City of Richmond Municipal Sewer District, Richmond, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said West County Agency signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000.

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

Skip Sowko, Project Manager of Caltrans’ Devil’s Slide Tunnel Project, said the California Coastal Commission appealed the San Mateo County Board of Supervisors approval of the Tunnel Project. He said the appeal was filed in order to ensure that Caltrans transfer Martini Creek property to California State Parks. He said the appeal

recently was dropped because the Governor signed legislation approving the transfer. He said the appeal delayed the start of construction.

In reply to a question, Mr. Sowko said project construction might begin in December at the earliest.

Mr. Wolfe said Caltrans already has started to mitigate environmental impacts the project will cause.

Item 10 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish San Francisco Bay Mercury Total Maximum Daily Load (TMDL) and Implementation Plan – Hearing to Consider Adoption of Proposed Amendment

Mr. Waldeck said the second hearing on the draft TMDL would be held today. He said testimony would be limited to comments that address changes to the draft TMDL made since the June hearing. He said speakers would be grouped into the following categories: urban stormwater; environmental; U.S. EPA; wastewater; and dredging. He said staff would reply to comments after completion of each category of speakers.

Mr. Waldeck said no written comments would be received today. He said the deadline for written comments was June 2004.

Bill Johnson said the draft TMDL identifies mercury sources and allocates loads. He reviewed allocations to source categories: bed erosion; Central Valley watershed; Guadalupe River mining legacy; atmospheric deposition; rural runoff; wastewater; and dredging. He said the water quality standard for mercury would be met when allocations are achieved.

Richard Looker discussed revisions made to the draft TMDL since June. He said allocations to wastewater dischargers were changed to better account for year-to-year variability in loads. He said the draft now calls for greater management of risk for people who eat fish from the Bay. He said loads would be allocated to air emission sources when information becomes available. He said the draft includes greater detail on adaptive implementation. He said the allocation for dredging was revised to include a mass based allocation. He said every year dredging results in a net loss of mercury in the Bay.

Mr. Looker reviewed stakeholder comments that were not incorporated into the draft TMDL. He said the draft TMDL must be approved by the Board, the State Board, the Office of Administrative Law, and U.S. EPA.

Mr. Eliahu asked whether the allocation to wastewater dischargers takes growth into account. He said the current load for wastewater dischargers and the allocation are both 20 kilograms per year.

Mr. Looker said the statistical method that was used to calculate long-term average loads computes a figure at the 99% confidence level of the mean. He said the arithmetic average is lower for the same data set of past loads.

In reply to a question, Mr. Looker said more kilograms of mercury are lost from the Bay than enter the Bay each year. However, he said the amount of mercury entering the Bay must be reduced in order to meet numeric mercury targets in fish and bird eggs.

Mr. Waldeck said urban runoff dischargers would be the first group of speakers.

Donald Freitas, Chair of the Bay Area Stormwater Management Agency Association, said his comments are contained in his September 14, 2004 letter. He said BASMAA does not support or oppose the draft TMDL. However, he said BASMAA believes the draft does not address the real problem, which is bioavailable mercury. He said assuming a direct relationship between mercury concentration in sediment and mercury concentration in fish is inappropriate.

He said BASMAA believes the mercury load for urban stormwater is unrealistic because: (1) existing programs only address a small percentage of the allocation; (2) large scale treatment facilities are not affordable; and (3) there has not been sufficient analysis of the financial impact the draft TMDL would place on local governments.

Dave Chesterfield, Santa Clara Valley Water District, thanked staff for holding meetings during the summer to discuss the draft TMDL. He asked that requirements to reduce urban stormwater loads be balanced against costs to achieve reductions. He said the District is trying to design flood control and stream maintenance projects that will reduce the uptake of mercury into the food web.

Yuri Won said Mr. Freitas' letter of September 14, 2004 would not be received into the record. She said his testimony would be received.

Gary Grimm, attorney representing BASMAA, said Mr. Freitas submitted a letter because staff asked speakers to submit in writing comments that would be made at the hearing.

Mr. Waldeck said staff would reply to comments made by speakers representing urban stormwater agencies.

Dr. Mumley said the best scientific information available was used to make assumptions. He said studies conducted as part of the adaptive implementation process would be used to test assumptions.

Dr. Mumley said the draft TMDL was developed in order to meet federal requirements.

Dr. Mumley said the cost of urban stormwater programs is not expected to increase in the short term. He said additional activities necessary to implement load reductions would be identified through the adaptive implementation process. He said economic analyses would be included in the implementation process.

Mr. Waldeck said environmental representatives would be the next group of speakers.

Jennifer Jackson, Save the Bay, thanked staff for their work on the draft TMDL. She asked that the draft TMDL be amended: (1) to include specific actions to manage the risk to people who eat mercury-contaminated fish from the Bay; (2) to require wastewater

dischargers reduce mercury loads; (3) to allocate only individual allocations to wastewater dischargers; and (4) to include a joint action plan with the Central Valley Water Board to reduce mercury loads from its watershed.

Ms. Jackson said the draft TMDL predicts the Bay will recover from mercury impairment in 120 years. She said that is a long time for recovery.

Mrs. De Luca asked if staff has an outreach plan to help people who eat mercury-contaminated fish.

Mr. Wolfe said the Board is considering adoption of a Basin Plan Amendment to establish a TMDL for mercury. He said the Basin Plan is a regulatory document that staff refers to in preparing NPDES permits. He said permits to individual dischargers would require specific activities to manage risks to the fish consumers.

In reply to a question, Dr. Mumley said staff estimated the current cost to run urban stormwater programs at \$50 million. He said staff estimated an additional \$100 million would be needed to implement the urban stormwater allocation. He said increased expenditures would address multiple pollutants and not just mercury.

Dr. Mumley said the Clean Estuary Partnership is discussing actions to help manage the risk to fish consumers.

Gina Solomon, National Resources Defense Council, concurred with written comments submitted by WaterKeepers. She said load allocations are too generous and the time line for the Bay to recover from mercury impairment is too long. She said steps should be taken to protect people who eat mercury-contaminated fish. She said warning signs should be posted and education is needed for people unable to understand health implications of the warnings. She said alternative protein sources should be identified for some fish consumers.

In reply to a question, Dr. Solomon said once mercury is ingested, it takes about a year before the metal is removed from the human body.

Alicia Dean, Environmental Justice Coalition, asked that the draft TMDL include specific actions to reduce mercury related health risks. She said dischargers should not be allowed to quantify mercury loads as a five-year annual average. She asked that the draft TMDL include a course of action delineating how goals will be achieved in a reasonable time frame.

Michael Wharburton, Public Trust Alliance, said the draft TMDL does not protect public health in a reasonable time frame. He asked that dischargers not have the option of trading pollution credits. He recommended wastewater dischargers be required to reduce mercury loads below current levels.

Sejal Choksi, San Francisco BayKeeper, thanked staff for their work on the draft TMDL. She asked that the draft be amended to include specific actions: (1) to protect families that eat Bay fish; (2) to buffer mercury impacts on wildlife; and (3) to fund cleanup of existing mercury sources.

Ms. Choksi opposed use of the statistical method by which allocations to wastewater dischargers were calculated because the allocations allow an increase in loads above current performance. She said wastewater dischargers should be held accountable for exceeding individual allocations even if a group allocation is met. She recommended that a full time staff person implement the TMDL. She said the \$132 million staff estimated to be necessary to implement fully the TMDL was not enough in light of the fact it will take a long time for the Bay to recover from mercury impairment.

Leo O'Brien, WaterKeepers Northern California, thanked staff for their work on the draft TMDL. He recommended the draft TMDL require more implementation actions. He recommended local sources of air deposition receive load allocations. He spoke in favor of staff's estimate that funding should be tripled for full implementation of stormwater programs.

Andria Ventura, Clean Water Fund, commended staff for their work on the draft TMDL. She recommended the draft include specific implementation strategies. She recommended all dischargers be required to reduce mercury loads.

Susan Schwartz, Friends of Five Creeks, said there is a lot of uncertainty about implementation of the draft TMDL. She urged the Board to take steps to manage health risks to fish consumers.

Mr. Waldeck said staff would reply to comments made by speakers representing environmental organizations.

Dr. Mumley said the Basin Plan Amendment establishing a TMDL for mercury would be a regulatory document that would provide direction to staff. He said specific implementation actions would be developed after the draft TMDL is adopted.

Dr. Mumley said the Central Valley Water Board is developing TMDLs that will effectively address mercury sources in its region.

Dr. Mumley said the draft TMDL is based on predictions using a simple box model for the Bay. He said the sediment target is predicted to be met in about 120 years, and the Bay is predicted to recover from mercury impairment once the sediment target is met.

Dr. Mumley said a five-year arithmetic average would be used to evaluate compliance with load allocations for discharge from urban stormwater, Central Valley Watershed, and the Guadalupe River watershed. He said the five-year average takes into account rainfall variability between wet and dry years.

Dr. Mumley said the draft TMDL does not establish a pollution-offset program. He said the draft recognizes the potential that such a program could be established.

Dr. Mumley said the draft TMDL holds wastewater dischargers to their combined current loads. He said dischargers are provided incentives to reduce mercury loadings. He said the draft requires dischargers to conduct studies to understand the fate of mercury in the Bay and to take actions to reduce mercury related risks to humans and wildlife.

Dr. Mumley said staff recognizes local air deposition sources need to be studied. He said staff would work cooperatively with the Bay Area Air Quality Management District to better understand local emissions.

In reply to a question, Dyan Whyte said about 3% of the Bay Area population eat fish from the Bay.

Mr. Reininga suggested staff make a concerted effort to work with the Central Valley Water Board and the Air Resources Board in order to implement the TMDL. He asked about staff resources allocated to implementation. He suggested there may need to be greater outreach to fish consumers.

Mr. Wolfe said staff throughout the office would play a role in implementing the TMDL. He invited environmental groups to work with staff to review the effectiveness of outreach plans prepared by dischargers.

Mr. Waldeck said the next speaker represents U.S. EPA.

Dave Smith, U.S. EPA, said the draft TMDL does not comply with federal requirements. First, he said the draft TMDL does not demonstrate that the Basin Plan's four-day average total mercury objective of 25 nanograms per liter will be met.

Second, Mr. Smith said U.S. EPA does not support a TMDL allocation scheme that allows for an increase in mercury loads of wastewater dischargers. He said the statistical method staff used to allocate wastewater loads appears to allow for increases instead of capping loads at levels that would maintain current performance.

Mr. Waldeck said staff would reply to Mr. Smith's comments.

Dr. Mumley said the statistical method staff used was an appropriate way to define long-term average wastewater loads.

Dr. Mumley said staff is not able to show that the mercury objective of 25 nanograms per liter will be met everywhere in the Bay at all times. He said the draft TMDL is designed to protect mercury risks to human health and he recommended it be adopted as proposed. He said the TMDL would be revised as more information becomes available through adaptive implementation.

Mr. Wolfe said he contacted Alexis Strauss of U.S. EPA and suggested they meet to discuss the issues Mr. Smith raised.

Mr. Reininga expressed concern that the draft TMDL is being prepared in order to comply with federal requirements and several issues that remain unresolved.

In reply to questions, Mr. Smith recommended wastewater allocations be based on arithmetic averages. He said the statistical method is used to calculate long term averages at the 99% confidence level of the mean and results in a total load for municipal wastewater sources of 17 kilograms of mercury per year. He said the arithmetic average for the last four years is just over 11 kilograms per year.

In reply to questions, Mr. Wolfe said NPDES permit limits would be based on wastewater allocations. He said staff would like the limits to take into account interannual variability and not subject dischargers unfairly to compliance penalties under the mandatory minimum penalty law.

Mr. Muller and Mrs. De Luca concurred with Mr. Reininga's concern that U.S. EPA must approve the draft TMDL and issues remain unresolved.

Dr. Kolb said loads from wastewater dischargers comprise a very small component of the total mercury load entering the Bay.

In reply to a question, Yuri Won said if U.S. EPA does not approve the draft TMDL, the agency would prepare a TMDL. She said the Water Board would incorporate U.S. EPA's TMDL into the Basin Plan.

Mr. Wolfe said he was optimistic that staff and U.S. EPA would resolve issues that remain outstanding.

Mr. Smith said he strongly agreed with Mr. Wolfe and believed a resolution of the issues could be reached.

Mr. Waldeck said wastewater dischargers would be the next group of speakers.

Kevin Buchan, Western States Petroleum Association, said the draft TMDL requires refinery dischargers to study mercury contained in air deposited in the Bay. He said the draft states the study "...may be implemented via the Water Board's authority under Section 13267 of the California Water Code or the petroleum refinery wastewater NPDES permits." He requested the study be completed pursuant to a Section 13267 letter and requested the focus of the study be clarified.

Mr. Wolfe said the study could be completed pursuant to a Section 13267 letter.

Mr. Muller and Mrs. Warren spoke in favor of removing language in the draft TMDL that allowed the study to be part of NPDES permits.

Dorothy Dickey said a motion to amend the draft TMDL be made at the completion of the hearing.

Clark Hopper, Valero Refining Company, thanked staff for their work on the draft TMDL. He concurred with Mr. Buchan's request that the study be completed pursuant to a Section 13267 letter. He requested the draft specify that the focus of the study would be the contribution of air emission from the refineries to mercury impairment in the Bay.

Walt Gill, Chevron Texaco, concurred with requests made by Mr. Buchan and Mr. Hopper.

Lorrie Gervin, City of Sunnyvale, thanked staff for their work on the draft TMDL. She said the proposed municipal wastewater allocations would reduce capacity at Sunnyvale's treatment plant. She said anti-backsliding rules could prevent allocations from being increased after the draft TMDL is adopted.

Larry Bahr, Fairfield-Suisun Sewer District, commended staff for their work on the draft TMDL and for including stakeholders in review of the draft. He spoke in favor of the pooled allocation for municipal wastewater plants. He said urban stormwater allocations might not be achievable because a lot remains to be learned about mercury. He recommended staff prepare the watershed NPDES permit amendment for mercury soon.

Michele Pla, Executive Director of Bay Area Clean Water Agencies, thanked Bruce Wolfe, Tom Mumley, Richard Looker, Dyan Whyte, Bill Johnson and Laura Speare for their work on the draft TMDL. She encouraged the Board to adopt the draft TMDL. She said many dischargers are concerned about obtaining credit for programs that remove mercury before the metal gets into the waste stream. She said BACWA encourages the development of regional studies through the Clean Estuary Partnership.

Mr. Waldeck said staff would reply to comments made by speakers representing wastewater dischargers.

Mr. Wolfe said the scope of the refineries study would be set out in a Section 13267 letter.

Mr. Wolfe said allocations in the draft TMDL do not limit the amount of water treated at wastewater plants. He said allocations limit the amount of mercury discharged in effluent. He said treated water could be used in reclamation projects and plants with excess capacity could treat urban stormwater.

Dr. Mumley said there are exceptions to the anti-backsliding rule that applies to NPDES permits. He said one exception allows permit limits to be relaxed if limits are consistent with an approved TMDL.

Dr. Kolb said Sunnyvale has a large amount of excess capacity because the City's treatment plant was designed to treat wasteloads from a cannery that no longer exists.

Mrs. Warren said some parts of the Bay Area are predicted to experience substantial growth. She asked what would happen in the event treatment plants do not have sufficient capacity.

Mr. Wolfe said municipal wastewater permits currently require that dischargers send reports to staff when 75% of a plant capacity is reached due to factors like population growth.

Mr. Waldeck said dredging and disposal dischargers would be the next group of speakers.

Jim McGrath, Port of Oakland, thanked Tom Mumley, Dyan Whyte, Bill Johnson, Richard Looker, and Carrie Austin for their work on the draft TMDL. He said it was important to control mercury entering the Bay from erosion of sediment on the Bay floor.

Ellen Johnck, Bay Planning Coalition, introduced Delphine Prevost, BPC's new Assistant Director. Ms. Johnck asked for clarification regarding several provisions in the draft TMDL. She requested the draft include language requiring dredged material be analyzed in accordance with procedures of the Dredged Material Management Office. She

requested the draft take into account that dredging dischargers help fund studies through the Regional Monitoring Program.

[Mrs. Warren left the meeting at approximately 1:20 p.m.]

Khalil Abu-Saba spoke in favor of the draft TMDL. He discussed the concerns raised by Mr. Smith and also discussed several other provisions in the draft.

Mr. Waldeck said staff would reply to comments made by dredging and disposal dischargers.

Dyan Whyte, said the draft TMDL provides that mercury concentration in dredged material disposed of in the Bay must not exceed the 99th percentile mercury concentration of the previous 10 years of sediment samples collected through the RMP. She said the draft is consistent with procedures of the Dredged Material Management Office. She said a number of issues Ms. Johnck raised could be addressed in individual permits issued to dischargers.

Dr. Mumley said language in the draft TMDL has been amended to allow dredging and disposal dischargers to conduct studies or cause studies to be conducted. He said the amended language takes into account the fact that the dischargers help fund RMP activities.

Mr. Eliahu commended staff for their hard work and dedication in preparing the draft TMDL. He recommended the draft be adopted.

Mrs. Chiu said the draft TMDL represents a good start at overcoming mercury impairment in the Bay. She recommended the draft be adopted.

Mr. Muller said the draft TMDL seems to be a flexible document. He concurred with Mrs. Chiu that the draft represents a good start at overcoming mercury impairment.

Mr. Reininga congratulated staff and stakeholders who participated in developing the draft TMDL. He said the draft represents a giant step forward in helping clean up the Bay from mercury contamination.

Mrs. De Luca congratulated staff for their dedication in preparing the draft TMDL. She said the document represents a victory for the environment.

Mr. Waldeck thanked everyone involved in preparing the draft TMDL. He said the draft represents a step forward towards achieving a cleaner environment.

Mr. Wolfe recommended the Board adopt the Resolution to Amend the Water Quality Control Plan for the San Francisco Bay Region to Establish a Total Maximum Daily Load and Implementation Plan for Mercury in San Francisco Bay. He said there was a supplemental to the Amendment. He recommended a sentence in the last paragraph of page 12, the Basin Plan Amendment attached to the Resolution, be amended to read, "These requirements shall be implemented via the Water Board's authority under Section 13267 of the California Water Code."

Mr. Wolfe reiterated the scope of the study that refineries would prepare would be set out in a Section 13267 letter.

Motion: It was moved by Mr. Muller, seconded by Mr. Reininga, and it was voted to adopt the Resolution as supplemented, amended, and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Chiu; Mrs. De Luca; Mr. Eliahu; Mr. Muller; Mr. Reininga; and Mr. Waldeck.

No: None

Motion passed 6 – 0.

Adjournment

The Board meeting was adjourned at approximately 1:40 p.m.