

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
February 8, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on February 8, 2006 at 9:00 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce; Shalom Eliahu; Deborah Widener; and Gary Wolff.

Board members absent: Josephine De Luca and Clifford Waldeck.

Item 2 - Public Forum

Sejal Choksi, San Francisco Baykeeper, said petroleum coke from a coke facility in Pittsburg, currently owned by Tesoro, is polluting streets, storm drains, and the Bay. She said petroleum coke is a by-product of the crude oil-refining process and contains mercury, lead, and arsenic.

Ms. Choksi said Tesoro must implement Best Available Technology in order to eliminate the pollution. She said a coke handling facility located next door to the subject facility does implement BAT and has set the standards for BAT.

Ms. Choksi said in September 1999 Baykeeper filed a lawsuit against the owner of the coke facility. She said in September 1999 the Water Board issued a Cleanup and Abatement Order that required BAT be implemented at the facility. She said in 2003 staff issued a letter stating that BAT has been implemented.

Ms. Choksi objected to the conclusions in the 2003 letter. She said Best Management Practices, not BAT, have been implemented. She said current BMPs are not controlling pollution.

Ms. Choksi said staff did not consult with Baykeeper before issuing the 2003 letter although a lawsuit had been filed. She said staff's file on the facility is incomplete and does not provide a basis for the letter.

Ms. Choksi said she requested staff conduct a surprise inspection at the facility and allow Baykeeper and its consultant to attend. She said, however, staff scheduled an inspection and gave prior notice to the owner.

Ms. Choksi recommended Baykeeper and staff work together to enforce the Clean Water Act and the Board convey to staff the importance of citizen enforcement. She recommended the 2003 letter be rescinded.

Yuri Won said the Board could not take action today regarding the facility. She said an item must be placed on the Board meeting agenda, with prior notice given, in order for action to be taken.

Brad Nail, Economic Development Director, City of Pittsburg, said winds dispersed petroleum coke from the facility over part of the downtown on a day in March 2005. He said the City is concerned about pollution that is being dispersed from the facility.

Bruce Wolfe said communication and cooperation is a two-way street. He said he learned only recently about Baykeeper's lawsuit. He said staff would look at the compliance history at the facility and would give the Board a report at the March Board meeting. He said ownership of the facility has changed hands over the years and Tesoro was not the 1999 owner.

Dr. Wolff said he would like to hear from staff on how citizens can help augment staff resources. He said he would wait for staff's report before commenting on the facility.

Mrs. Warren and Mrs. Bruce said they would hold their comments on the facility until staff's report next month.

Mr. Muller asked whether the public is allowed to accompany staff when staff inspects a facility. Ms. Won replied staff and the public may enter a facility with a property owner's consent.

Ms. Widener said she would like to understand why staff and Baykeeper had a miscommunication.

Larry Kolb said staff understands communication is important to accomplish Water Board work and strives to communicate with the regulated community and others.

Mr. Wolfe said staff working on the facility in recent years may not have been aware a lawsuit was filed in 1999.

Ms. Choksi agreed there must be two-way communication between Baykeeper and staff. She said they did work together at the time the lawsuit was filed.

Item 3 – Minutes of the January 11, 2006 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mrs. Brouhard, and it was unanimously voted to adopt the minutes of the January 11, 2006 Board meeting.

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

Mr. Muller introduced Phil Wyels, State Board attorney.

Margaret Bruce reported meeting with Mary-Ann Warmerdam, Director of Department of Pesticide Regulation, and DPR staff regarding the Pesticide TMDL. Mrs. Bruce said DPR representatives thanked Tom Mumley and Bill Johnson for their efforts and expressed interest in continuing to work with Board staff on pesticide-related issues.

Mr. Muller, Dr. Wolff, Mrs. Warren, and Mrs. Bruce reported being contacted by Richard Santos regarding water-related concerns in the area of Alviso Slough.

Mr. Muller said the February 5, 2006 issue of the San Francisco Chronicle Magazine included an article on invasive species in the Bay ecosystem. He reported participating recently in a telephone conference call with State Board Chair Tam Dudoc and Regional Board Chairs. He reported attending on January 17, 2006 a workshop on the Tomales Bay Pathogens TMDL held in Pt. Reyes Station. He reported attending on January 31, 2006 a workshop on salt buildup in the Central Valley held in Sacramento.

Mr. Wolfe reported meeting on January 6, 2006 with Assemblyman Gene Mullin regarding the Ox Mountain Landfill. Mr. Wolfe said Mr. Muller and staff participated in the meeting.

Mr. Wolfe said staff distributed a tentative order on the Mobil Bulk Terminal Cleanup at Fisherman’s Wharf in San Francisco. He anticipated the Board would consider the project at the March Board meeting.

Mr. Wolfe said next month he would discuss the Integrated Regional Water Management Program. He said the goal of the Program is to coordinate water related issues in watersheds, including water supply, water quality, and flood management.

Nancy Woo, Associate Director, U.S. EPA, said staff from U.S. EPA and the Water Board has met twice since the January Board meeting to discuss reducing the permit backlog. She said a conceptual agreement regarding permits to be issued by June 2007 and during Fiscal Year 2007-2008 has been reached. She anticipated a final agreement would be reached by the March Board meeting. She said U.S. EPA staff would work closely with Board staff to see that the terms of the agreement are met.

Mr. Muller thanked Ms. Woo for her presentation. He asked that Board members receive a copy of the final agreement.

Dr. Wolff said after the January Board meeting he received a telephone call from Alexis Strauss, U.S. EPA, regarding NPDES permits to be reissued. He said they agreed that Board staff should be able to catch up on the backlog. However, he said he told Ms. Strauss he was not sure staff resources are sufficient to keep up with the workload of permits to be reissued in the future.

Dr. Wolff said having sufficient staff to maintain the workload may need to be addressed as a budget issue.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Muller said a speaker wished to be heard on Item 5A.

Mr. Wolfe said the uncontested calendar included one item and suggested testimony be heard at this time.

Dr. Wolff and Mrs. Bruce recused themselves from consideration of Item 5A.

Robert Ellgas, Shaw Environmental and Consultant to PG&E, said PG&E purchased the Shell Pond property from Shell Oil Products. He said the tentative order allows PG&E to circulate Suisun Bay water through the 72 acre pond in order to reduce its salinity. He said a reduction in salinity would enhance terrestrial and aquatic life habitat.

In reply to a question, Lila Tang said staff would check to see if PG&E Shell Pond is named in the Mercury TMDL load allocation for industrial wastewater sources.

Mr. Muller thanked PG&E for work on the pond.

Mr. Wolfe recommended adoption of the uncontested calendar.

Motion: It was moved by Mrs. Warren, seconded by Mrs. Brouhard, and it was unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer. Dr. Wolff and Mrs. Bruce recused themselves from consideration of Item 5A.

Item 6 – The City and County of San Francisco, San Francisco International Airport – Industrial Wastewater Treatment Plant, San Francisco, 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 and County of San Francisco signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the permittee agreed to pay a Mandatory Minimum Penalty in the amount of \$3,000.

In reply to a question, Mr. Wolfe said wastewater permittees are required to conduct self monitoring programs and report monitoring results to the Board on a monthly basis. He said staff reviews the monitoring data to see whether violations of the Mandatory Minimum Penalty statute have occurred.

In reply to a question, Mr. Wolfe said staff will include in the Staff Summary Report more information on the compliance history of a permittee. He said the Report also will include information on whether a permittee has addressed the cause of a violation or whether a problem is ongoing.

Mr. Muller asked staff to give the Board an update on supplemental environmental projects that have been funded with Mandatory Minimum Penalties.

Item 7 – Chevron, Richmond Refinery, Richmond, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Chevron Richmond Refinery signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the permittee agreed to pay a Mandatory Minimum Penalty in the amount of \$12,000. He said \$12,000 would be used for a supplemental environmental project.

In reply to a question, Mr. Wolfe said staff issued a Notice of Violation to Chevron Richmond Refinery that required annual removal of solids from its effluent pipeline before wet-weather conditions begin.

In reply to a question, Robert Schlipf said the Notice of Violation was issued after the permittee incurred mercury violations.

Item 8 – TMDL Program Status Report – Information Item

Dyan Whyte gave the staff presentation. She said the Total Maximum Daily Load Program includes seven technical staff, a geographic information systems analyst, and a communications specialist.

Ms. Whyte said the federal Clean Water Act requires states to identify impaired waters and the pollutants causing impairment. She said there are 270 impairment listings in Region 2. She said each listing refers to a specific water body segment and a single pollutant.

Ms. Whyte said the Clean Water Act requires that Total Maximum Daily Loads be established for impaired waters. She said staff may combine similar waters and pollutants into a single TMDL project. She said over the next year and one-half the Board will consider seven TMDLs that address more than 50 impairment listings.

Ms. Whyte said a TMDL defines a problem by identifying water quality objectives that are exceeded and beneficial uses that are impaired. She said a TMDL establishes numeric targets that will restore the condition of the water. She said a TMDL identifies sources of pollutants reaching the water body. She said a TMDL assigns allocations of pollutant loads to sources. She said a TMDL establishes an implementation plan that describes how allocations will be implemented and other actions necessary to resolve impairment.

Ms. Whyte said a TMDL is developed in phases. She said the initial phase includes identifying issues concerning causes of impairment and information needed to understand how to resolve the impairment. She said in the next phase, staff describes the water quality problem, pollutant sources and potential implementation actions needed to cleanup the water body. She said staff meets with stakeholders to gain their input on regulatory options.

Ms. Whyte said staff then drafts a Basin Plan amendment, and the scientific basis of the amendment is peer reviewed. She said two Board hearings generally are scheduled for each TMDL project. She said the first hearing provides an opportunity for interested

parties to comment, and for Board members to ask questions of staff and stakeholders. She said at the second hearing the Board can adopt the Basin Plan amendment and establish the TMDL.

Ms. Whyte said adaptive implementation is the final TMDL phase. She said every five years staff will evaluate the effectiveness of implementation and will recommend if revisions are necessary.

Ms. Whyte discussed seven TMDLs that staff will bring to the Board during the next year and one-half: (1) Sonoma Creek Pathogens TMDL; (2) Napa River Pathogens TMDL; (3) Revised San Francisco Bay Mercury TMDL; (4) Napa River Sediment TMDL; (5) Walker Creek Mercury TMDL; (6) San Francisco Bay PCBs TMDL; and (7) Guadalupe River Watershed Mercury TMDL.

Mrs. Warren and Dr. Wolff thanked Ms. Whyte for an excellent presentation.

Dr. Wolff requested that TMDLs follow a standard template and identify actions by “who, what, and when.” Ms. Whyte said staff is working to address his concerns. She suggested he give feedback to staff after reviewing the next group of TMDLs.

Dr. Wolff asked if listings were grouped into TMDLs by pollutants, by watershed or by implementing mechanisms. He said the number of TMDLs might be reduced depending on how listings are grouped.

Ms. Whyte said some listings were grouped by water body and some were grouped because of overlapping implementation plans. She said staff plans to organize the Basin Plan in a comprehensive way after the Board adopts the next couple of TMDLs.

In reply to a question, Tom Mumley said the Mercury TMDL is required to have individual wasteload allocations for sanitary sewer plants. He said there may be some flexibility in creating a group allocation as an implementation mechanism. He said under the group allocation, a trading mechanism might be allowed.

In reply to a question, Dr. Mumley said staff expects to schedule a Board hearing in June on the Revised Mercury TMDL.

Mr. Wolfe said staff is trying to participate in smart growth initiatives to broaden public understanding that water quality issues and land use issues are tied.

Dr. Wolff asked staff to think about what the Board could do to encourage actions like that mentioned by Mr. Wolfe. He said the Board may need to address the big picture in order to facilitate implementation of TMDLs.

Mrs. Bruce discussed water quality impacts of different kinds of sewage treatment systems.

In reply to a question, Mr. Wolfe said a water body would be taken off the 303(d) list when a pollutant of concern is cleaned up. He said the goal of the TMDL program is to have waters attain beneficial uses.

Item 10 – Closed Session – Personnel

At approximately 11:20 a.m., the Board took a lunch break and went into in closed session to evaluate the performance of the Executive Officer. The meeting was adjourned at the conclusion of the closed session.

Adjournment

The Board meeting was adjourned at approximately 3:15 p.m.