

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

March 11 and 12, 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 March 11, 2008 at 9:07 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; Rameshwar Singh.

Board members absent: William Peacock (note: Mr. Peacock arrived at 2:35 p.m.).

John Muller welcomed new Board member Steven Moore. Mr. Muller administered the Oath of Office to Mr. Moore.

Mr. Moore made introductory remarks.

Gary Wolff, State Water Resources Control Board liaison to Region 2, gave an update on State Board activities. Dr. Wolff introduced Monique DeBarruel. He said Ms. DeBarruel was attending the meeting due to her participation in a Water Education Foundation class.

Item 2 – Public Forum

There were no public comments.

Item 3 – Municipal Regional Stormwater NPDES Permit – Alameda County, Contra Costa County, Santa Clara County, San Mateo County and all of the Cities and Flood Control Agencies within those Counties, Cities of Fairfield-Suisun and Vallejo – Hearing to Receive Testimony on Tentative Order (No Action Will Be Taken)

Mr. Muller recused himself from consideration of the proposed permit.

Dr. Young served as Chair.

Shin-Roei Lee said the proposed permit consolidates Phase I stormwater permits issued to the following jurisdictions: Contra Costa County; Alameda County; San Mateo County; Santa Clara County; the City of Vallejo; and the Cities of Fairfield-Suisun City.

Mr. Bowyer said previous permits required permittees prepare stormwater management plans. He said permittees no longer will be required to prepare the plans. He said the level of detail previously included in the plans is incorporated into the proposed permit.

Rameshwar Singh asked if water quality has improved because permittees have implemented stormwater programs.

Mr. Bowyer said monitoring stormwater is difficult. He said the proposed permit includes comprehensive monitoring requirements that will help answer whether water quality is improving.

Mr. McGrath disclosed two ex parte communications he had regarding the proposed permit. He said he had a telephone conversation with Larry Kolb and reported Dr. Kolb suggested the Board establish a working group, possibly including Board members, to reduce controversy about the permit.

Mr. McGrath said Laura Thompson, Bay Trail, requested a meeting to discuss concerns about proposed requirements for new trails. He said he sent her an email reply suggesting she send written comments for distribution to all Board members.

Geoff Brosseau, Executive Director, Bay Area Stormwater Management Agencies Association, said proposed permit requirements should be cost-effective and prioritized. He requested the Board direct staff to work with permittees to prioritize and phase requirements.

Mr. Eliahu asked whether Mr. Brosseau was suggesting proposed requirements should be phased over a longer amount of time than is proposed.

Mr. Brosseau said that would be one way to make requirements more cost-effective. He said efficiencies also may be gained if various parts of the permit were developed with a common vision.

Dr. Young requested speakers suggest ways the permit could foster innovation and still promote accountability.

Mr. Brosseau suggested the permit include measurable goals.

Don Freitas, Chairperson, Bay Area Stormwater Management Agencies Association, Manager, Contra Costa Clean Water Program, and Mayor, City of Antioch, said permittees do not have resources to implement proposed requirements. He requested requirements be integrated and prioritized. He said staff and stakeholders need time to collaborate.

Guy Houston, Assemblyman, Fifteenth District, Assembly, California Legislature, said the Board has vacancies for representatives from municipal government and county government and lacks a delegated position for a representative from the business community. He recommended the Board refrain from considering the proposed permit until representatives from the three groups are able to participate.

Kisasi Brooks, speaking on behalf of Loni Hancock, Assemblywoman, Fourteenth District, Assembly, California Legislature, encouraged the Board to require measurable reductions in the amount of trash that enters Bay Area waters.

Supervisor Gayle Uilkema, Contra Costa County Board of Supervisors, said the proposed permit will cost substantially more to implement than the County's current stormwater permit. She requested the Board work with permittees to develop funding for permit implementation.

Speaking on behalf of the Town of Danville were: Candace Anderson, Mayor; Newell Arnerich, Vice-Mayor; and Joe Calabrigo, Town Manager. Mayor Anderson said the proposed permit requires permittees develop enhanced trash controls on ten percent of their developed land. She said high trash areas in Danville do not cover that percentage of land. She requested the Town be allowed to develop a trash reduction plan tailored to the community.

Vice-Mayor Arnerich said the proposed permit requires permittees inspect all catch basins annually. He said the Town's program of annually inspecting and cleaning a portion of catch basins has proven to be effective and requested the community be allowed to continue the program.

Mr. Calabrigo, on behalf of the Contra Costa County Public Managers, entered into the record a summary of cost estimates for permittees in Contra Costa County to implement proposed requirements. He said the public managers have made specific suggestions to staff about proposed requirements. He said the managers would like to continue discussions with staff and develop a workable permit. He entered into the record a statement from a Town Council Member.

Sepi Richardson, Mayor Pro Tem, City of Brisbane, said the City has limited resources to implement proposed requirements. She said the City would be required to obtain voter approval under Proposition 218 to increase stormwater fees.

Speaking on behalf of the City of Pleasanton were: Jennifer Hosterman, Mayor; and Rob Wilson, Director of Public Works. Mayor Hosterman said the community takes a progressive approach to water issues. However, she said some of the proposed requirements are overly burdensome.

Mr. Wilson said permittees would like to work with staff to make proposed requirements for trash, reporting, and the threshold for stormwater treatment controls more effective.

Speaking on behalf of the City of Fremont were: Bill Harrison, Vice Mayor; and Kathy Cote, Environmental Services Manager, and Chair, Management Committee, Alameda County Clean Water Program. Vice-Mayor Harrison said the threshold for projects required to include stormwater treatment controls is lowered in the proposed permit from 10,000 square feet to 5,000 square feet. He said a study has shown that projects with less than 10,000 square feet of impervious area account for a small fraction of development. He questioned whether the lower threshold can be justified using a cost-benefit analysis.

Ms. Cote said permittees are concerned the proposed permit requires them to use resources inefficiently. She said permittees have submitted comments recommending improvements to proposed requirements and requested the recommendations be incorporated into the permit.

Maryann Derwin, Mayor, Town of Portola Valley, said proposed requirements that are appropriate for cities may not be appropriate for small towns. She requested the permit allow municipalities flexibility to develop local solutions to stormwater issues.

Speaking on behalf of the City of Concord were: Laura Hoffmeister, City Council Member and former Mayor; Guy Bjerke, City Council Member; Qamar Khan, Director of Public Works; and Jeff Roubal, Stormwater Program Manager. Council Member Hoffmeister said the proposed permit requires permittees inspect more types of commercial facilities than they currently are required to inspect. She said the proposed requirement will be costly to implement.

Council Member Bjerke said the proposed permit includes an unmanageable number of requirements. He recommended the Board take steps to prioritize requirements and make them cost-effective.

Mr. Khan said the proposed permit requires permittees develop stormwater treatment controls for new bicycle lanes, sidewalks, and trails. He said the costly requirement could impede construction of projects and reduce bicycle and pedestrian travel.

Mr. Roubal said the proposed permit requires each permittee complete an annual report. He said completing annual reports is costly and time consuming and does little to reduce pollution.

Speaking on behalf of the City of San José were: Forrest Williams, City Council Member and Melody Tovar, Deputy Director, Environmental Services Department. Council Member Williams recommended the Board direct staff to revise the proposed permit to achieve a better balance between benefits and costs.

Ms. Tovar said the proposed permit requires permittees develop multiple trash control measures in the same area. She said permittees first are required to develop enhanced trash management control measures and later in the permit term to install trash capture devices. She said requiring multiple measures in the same area is wasteful.

Gwen Regalia, Mayor, City of Walnut Creek, said the City's current trash reduction program effectively addresses local problems. She said implementing proposed trash requirements would be wasteful. She requested the permit allow permittees the flexibility to tailor trash programs to local conditions.

Speaking on behalf of the City of Livermore were: John Marchand, Vice Mayor; and Darren Greenwood, Water Resources Manager. Vice Mayor Marchand requested the Board and staff work together to develop a permit that provides water quality benefits at manageable costs. He said the Board has vacancies for representatives from municipal government and county government and requested the permit not be considered for adoption until the vacancies are filled.

Mr. Greenwood said proposed requirements are overly specific and will cause permittees to move from conducting innovative, effective programs to conducting compliant programs.

Speaking on behalf of the City of Dublin were: Tim Sbranti, Vice Mayor; and Mark Lander, City Engineer. Vice Mayor Sbranti said the City submitted several letters to staff with suggestions on ways to improve the proposed permit and did not receive replies.

Mr. Lander requested the proposed permit allow communities flexibility to develop trash programs that address local problems.

Robert Gottschalk, Vice Mayor, City of Millbrae, said the proposed schedule for implementing tasks is unmanageable. He said local governments have limited resources and face serious budget challenges.

Brandt Grotte, Deputy Mayor, City of San Mateo, said some proposed monitoring requirements appear to be inappropriate and proposed training requirements appear to be overly prescriptive.

Larry Franzella, Mayor, City of San Bruno, said the proposed permit requires permittees develop stormwater treatment controls as part of arterial street rehabilitation projects. He said the costly requirement will reduce the limited resources available for municipal street improvement.

Speaking on behalf of the Town of Moraga were: Rochelle Bird, Town Council Member; and Frank Kennedy, Stormwater Program Coordinator. Council Member Bird said municipalities do not have the resources to implement proposed requirements and may be placed in immediate noncompliance if the permit is adopted.

Mr. Kennedy expressed concern about the point in the planning process when new requirements become applicable to development projects.

Christine Kroluk, Vice-Mayor, Town of Hillsborough, requested permittees and staff work together to develop a permit that communities can sustain financially.

Speaking on behalf of the City of San Pablo were: Paul Morris, City Council Member; and Karineh Samkian, Stormwater Program Manager. Council Member Morris said the proposed permit requires permittees install trash capture devices. He said cleanups conducted by hand may be more effective than structural devices in some situations. He requested the permit provide permittees flexibility to develop local trash programs.

Ms. Samkian discussed the proposed requirement for stormwater treatment controls in arterial street rehabilitation projects. She said San Pablo is built out and its streets are bordered by existing development. She said there is not space next to streets to develop treatment controls.

Ed Balico, City Council Member, City of Hercules, requested the proposed permit exempt projects for new sidewalks, bicycle lanes, and trails from stormwater treatment requirements.

John Hanecak, Mayor, City of Pleasant Hill, said permittees have calculated costs to implement current and proposed stormwater requirements. He requested staff calculate benefits that are being realized or will be realized from implementation of current and proposed requirements. He said costs and benefits should be compared.

Peter Murray, Mayor, City of Pinole, requested the Board reduce the number of proposed requirements or prioritize the requirements to help make implementation costs manageable.

Speaking on behalf of the City of Clayton were: Julie Pierce, Vice Mayor; David Shuey, City Council Member and former Mayor; and Laura Hoffmeister, Assistant to City Manager. Vice Mayor Pierce said proposed requirements for municipal street sweeping are overly prescriptive.

Council Member Shuey said Clayton is a small community with limited resources. He requested the Board direct staff to develop flexible permit requirements that are workable for both small and large municipalities.

Ms. Hoffmeister said permittees are starting to gain experience with the 10,000 square feet threshold in current permits for stormwater treatment controls and requested the proposed permit retain the threshold. She distributed to Board members a paper copy of a power point presentation summarizing her comments.

Speaking on behalf of the City of Oakley were: Kevin Romick, City Council Member and former Mayor; and Frank Kennedy, Stormwater Program Coordinator. Council Member Romick requested staff help permittees identify permanent, ongoing revenue sources to fund proposed requirements.

Mr. Kennedy expressed concern with the number of databases permittees are required to prepare to comply with proposed requirements.

Rosanne Foust, Mayor, City of Redwood City, said stakeholders and staff are committed to the goal of protecting Bay Area waters. She recommended parties collaborate to craft a workable permit.

Rob Schroeder, Mayor, City of Martinez, requested the state help permittees fund proposed requirements. He requested the Board direct staff to reduce the number of requirements if state funding is not available.

Speaking on behalf of the City of San Ramon were: H. Abram Wilson, Mayor; and David Hudson, City Council Member. Mayor Wilson recommended permittees and staff work together to develop funding sources to implement proposed requirements.

Council Member Hudson said staff has not analyzed the level of water quality benefits that may be achieved by implementing new and expanded requirements.

Kelly Fergusson, City Council Member and former Mayor, City of Menlo Park, recommended the proposed permit focus on achievable goals. She said the annual reporting requirements would be simpler if permittees are required to report on achievement of goals.

Doug Eberhardt, Chief, NPDES Permits Office, U.S. EPA, Region 9, requested the proposed permit require developers meet quantifiable goals for low impact development techniques.

Roger James, Senior Consultant, Water Resources Management, requested the proposed permit require permittees meet measurable goals for trash reduction.

Jack Gregg, Supervisor, Water Quality, California Coastal Commission, spoke in favor of the proposed 5,000 square feet threshold for projects required to incorporate stormwater treatment controls. He said small projects often are developed in the coastal zone.

Speaking on behalf of Save the Bay were: David Lewis, Executive Director; and Athena Honore, Policy Associate. Mr. Lewis requested the Board take action to measurably reduce trash pollution in Bay Area waters.

Ms. Honore discussed possible funding sources for stormwater programs.

Cynthia Royer, Water and Wastewater Resources, City of Daly City, said in September 2006 permittees submitted to staff a proposed stormwater plan that permittees agreed they could implement. She requested the Board direct staff to use the plan as a basis to develop the proposed permit.

Speaking on behalf of the Bay Area Stormwater Management Agencies Association were: Jill Bicknell, Assistant Program Manager, Santa Clara Valley Urban Runoff Program; Chris Sommers, Monitoring Program Coordinator, Santa Clara Valley Urban Runoff Program; Arleen Feng, Alameda Countywide Clean Water Program; and Jon Konnan, Consultant. Ms. Bicknell requested the proposed permit retain the 10,000 square feet threshold that is in current permits for development of stormwater treatment controls.

Mr. Sommers requested the proposed permit require permittees identify problem trash sites; identify sources of trash and transport pathways to the problem sites; and implement plans tailored to the sources and pathways at the specific sites.

Ms. Feng distributed to Board members a paper copy of a power point presentation summarizing her comments. She requested the proposed permit allow permittees the flexibility to use an adaptive approach to implement monitoring programs. She said results of initial monitoring efforts should inform the nature of subsequent efforts.

Mr. Konnan said abating PCB sites may be the most effective way to reduce PCB levels in urban runoff. He discussed oversight of abatement activities.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, said the proposed permit requires permittees develop pilot programs to divert stormwater from pump stations to sewer facilities. She said further study is necessary to verify that diverted stormwater will not cause facilities to have hydraulic capacity overloads and NPDES permit violations.

Sejal Choksi, Baykeeper and Program Director, San Francisco Baykeeper, requested the proposed permit include: (1) numeric Municipal Action Levels and require monitoring sufficient to determine if levels are exceeded and (2) numeric effluent limits based on TMDL wasteload allocations for pesticides, mercury and PCBs. She said she would be willing to talk to the public in communities that have Proposition 218 ballot measures for stormwater fees.

John Fuller, Director of Public Works, City of Pittsburg, requested the proposed permit allow communities flexibility to tailor programs to specific circumstances.

Richard James, speaking on his own behalf, said creeks are littered with disposable receptacles. He said people should remember to pick up after themselves and leave places cleaner than they found them.

Lesley Estes, Manager, Stormwater Program, City of Oakland, requested the proposed permit provide municipalities with flexibility to use an array of strategies to address trash problems. She said installation of trash capture devices is an appropriate strategy in some circumstances.

Bart Lounsbury, Attorney, Natural Resources Defense Council, said proposed requirements for low impact development do not include enforceable standards. He recommended the permit limit the maximum allowable Effective Impervious Area in developments to three percent.

Richard Napier, Executive Director, City/County Association of Governments of San Mateo County, read comments written by James Vreeland, Mayor, City of Pacifica. Mayor Vreeland requested the proposed permit allow permittees the flexibility to develop local programs to deal with stormwater at pump stations.

Mr. Napier discussed the difficulty of obtaining funding for stormwater programs.

Larry Kolb, speaking on his own behalf, suggested the Board appoint a subcommittee to review the costs and benefits of the proposed permit.

Phil Bobel, Manager, Environmental Compliance, City of Palo Alto, said the proposed permit adds mobile businesses, including mobile food service facilities, to the list of commercial businesses that permittees are required to inspect for stormwater related problems. He questioned whether the expanded inspection requirement will produce real-world water quality benefits and recommended the requirement be deleted from the permit.

Eva Justimbaste, Stormwater Program, City of Burlingame, said proposed requirements for trash reduction are overly prescriptive and requested the permit allow permittees flexibility to develop local programs.

Linda Best, President, Contra Costa Council, recommended the Board direct staff to work with permittees to develop a cost-effective permit.

Speaking on behalf of the Contra Costa Clean Water Program were: Khalil Abu Saba, Consultant; Tom Dalziel, Assistant Program Manager; and Dan Cloak, Consultant. Dr. Abu Saba discussed several proposed monitoring requirements.

Mr. Dalziel said permittees in the Contra Costa Program require developers incorporate a specific low impact development approach into the design of their projects. He said requirements in the proposed permit would force permittees to abandon use of their approach. He said staff recently assured permittees it was not staff's intention to prevent continued use of the approach.

Mr. Cloak requested the Board direct staff to allow permittees in the Contra Costa Program to continue to use their LID approach.

Meg Giberson, speaking on behalf of her husband and herself, discussed funding for stormwater programs. She entered photographs into the record.

Tim Potter, Superintendent, Source Control Program, Central Contra Costa Sanitary District, reiterated concerns expressed by Ms. Plá regarding proposed requirements that permittees develop pilot programs to divert stormwater from pump stations to sewer facilities. He requested sewer agencies receive credit in their NPDES wastewater permits for accepting pollutant loads in stormwater.

Shin-Roei Lee, on behalf of L A Wood, entered into the record a copy of an editorial Mr. Wood wrote for a local newspaper.

Speaking on behalf of Contra Costa County were: Rich Lierly, Manager, Stormwater Program; and David Swartz, Watershed Management Planner. Mr. Lierly said implementation of some proposed requirements may exceed permittees' legal authority.

Mr. Swartz said the proposed permit requires permittees sweep all roads. He said the County's program of sweeping only those rural roads with curbs and gutters has proven effective and requested the County be allowed to continue the program.

Greg Connaughton, Assistant Chief Engineer, Contra Costa County Flood Control & Water Conservation District, discussed proposed requirements applicable to the District as a non-population based permittee.

Eric Anderson, Urban Runoff Coordinator, City of Mountain View, said the proposed permit requires new trail projects include stormwater treatment controls. He said Mountain View is expanding its creek trail system and the cost of the proposed requirement could serve as a disincentive to further expansion.

Kristy McCumby Hyland, Environmental Analyst, City of Sunnyvale, said the proposed permit requires permittees develop a regional pilot study to collect impervious surface data for projects that add or replace 1,000 to 10,000 square feet of impervious area. She said Sunnyvale already has given that type of data to staff. She said small projects can be regulated under proposed site design and source control requirements. She requested the requirement for the pilot study be deleted from the permit.

Kevin Cullen, Program Manager, Fairfield-Suisun Urban Runoff Program, speaking on behalf of the City of Fairfield, the City of Suisun City, and the Fairfield-Suisun Sewer District, said proposed monitoring and reporting requirements are burdensome.

Matthew Fabry, Program Coordinator, San Mateo Countywide Water Pollution Prevention Program, said last year at a stormwater workshop the Board suggested staff develop a multi-agency team to consider trash reduction issues. He said a team has not been formed and requested a team be developed to deal with trash reduction on a comprehensive basis.

Dermot Casey, Stormwater Coordinator and Hazardous Materials Specialist, San Mateo County, said the proposed addition of new types of businesses to the list of facilities permittees must inspect is overly prescriptive. He requested permittees be allowed flexibility to tailor inspection programs to local problems.

Karen Borrmann, Assistant Director of Public Works, City of Belmont, said the proposed permit requires permittees regulate releases of potable water by water utilities. She requested the Board adopt a General Permit to regulate the releases.

Speaking on behalf of the Alameda Countywide Clean Water Program were: James Scanlin, Program Manager; Gary Grimm, Legal Counsel; and Scott Seery, Senior Hazardous Materials Specialist. Mr. Scanlin requested the threshold for requiring development of stormwater treatment controls in new and redevelopment projects remain at 10,000 square feet.

Mr. Grimm requested the Board direct staff or a Board subcommittee to meet with permittees and resolve critical issues.

Mr. Seery said the proposed requirement relating to the frequency permittees must inspect some categories of industrial and commercial facilities is overly prescriptive. He recommended the permit allow municipalities the flexibility to develop inspection schedules that reflect the risk and compliance histories of local facilities.

Speaking on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program were: Adam Olivieri, Program Manager; and Robert Falk, Legal Counsel. Dr. Olivieri requested the Board prioritize proposed requirements.

Mr. Falk said permittees' implementation of costly proposed requirements should be conditioned on receipt of State funding. He requested staff work with permittees to reach consensus on requirements. He said he prepared the following documents and requested they be entered into the record: (1) a paper copy of a power point presentation summarizing his comments; and (2) a summary of the legal framework for municipal stormwater regulation in California.

Dr. Young accepted the first document into the record. She did not accept the second document.

Kathleen Phalen, Utility Engineer Manager, Public Works Department, City of Milpitas, requested the proposed permit include less cumbersome and labor intensive reporting requirements.

Speaking on behalf of CONTECH Stormwater Solutions, Inc. were: Hong Lin, Regional Regulatory Manager; and Gary Lippner, Stormwater Consultant. Dr. Lin said developers are required to follow an order of preference listed in the proposed permit when they select treatment controls. She requested the preference order be deleted from the permit. She requested developers be allowed to select treatment controls using performance based criteria.

Mr. Lippner discussed a proprietary product that can be used to capture trash and debris in stormwater.

Ella Foley-Gannon, Legal Counsel, Home Builders Association of Northern California, discussed proposed requirements that allow developers of some projects alternative ways to comply with requirements for on-site hydraulically sized treatment controls. She requested the Association be included in future discussions between staff and stakeholders about proposed low impact development requirements.

Peter Schultze-Allen, Coordinator, Stormwater Program, City of Emeryville, requested the Board extend the public comment period on the proposed permit for six months and direct staff to evaluate the cost for the City to implement the permit.

Dr. Young said all persons requesting to speak had testified. She asked Board members for their comments.

Mr. McGrath said it may not be appropriate to regulate stormwater throughout most of the region with one set of requirements.

Mr. Moore spoke in favor of comments made by the Mayor of the Town of Danville who requested an opportunity to develop a trash management plan that addresses local problems. Mr. Moore recommended such an approach be incorporated into the permit and municipalities be allowed flexibility to tailor programs to local problems.

Mr. Eliahu recommended staff work with permittees to reach consensus. He recommended permittees be required to achieve goals rather than to comply with prescriptive measures.

Mr. Peacock said there are differences between large and small communities and recommended the permit allow permittees flexibility to develop programs that address local conditions. He said permittees face financial constraints and recommended the permit incorporate a balanced approach that takes costs into consideration.

Mr. McGrath requested staff recommend a process to be used to prioritize proposed requirements. He requested the process include environmental groups. He said his priority of proposed requirements is: (1) to remove on-land legacy pollutants; (2) to stop degradation of streams through hydromodification; (3) to improve capture of urban pollutants; (4) to improve inspection of best management practices; (5) to reduce trash; (6) to develop information to help parties assess accomplishments and identify future actions.

Dr Singh recommended staff consult with stakeholders and compromise on some requirements. He recommended the proposed permit be cost-effective and include measurable outcomes.

Dr. Young recommended the proposed permit include goals or benchmarks. She said permittees expressed concern that some requirements may not benefit water quality significantly. She recommended staff evaluate requirements to determine those that will produce substantial water quality benefits compared to implementation efforts.

Mr. Eliahu recommended the Board not micromanage proposed requirements.

Mr. McGrath concurred with Board members who recommended the proposed permit include measurable standards.

Mr. Wolfe said staff will reply in writing to written and oral comments made on the proposed permit and will revise the permit based upon the comments. He said staff also will meet with stakeholders to review comments. He recommended a subcommittee of Board members not be involved in that process. He said staff will report back to the Board and recommend the next steps that should be taken.

Mr. Wolfe said the Board had completed consideration of Item 3.

Mr. Muller resumed serving as Chair. He said the Board would recess until tomorrow morning.

[At 11:07 a.m., the Board took a break and resumed the meeting at 11:25 a.m. At 1:05 p.m., the Board took a lunch break and resumed the meeting at 1:52 p.m. Mr. Peacock arrived at 2:35 p.m. At 4:12 p.m., the Board took a break and resumed the meeting at 4:25 p.m. Mr. Eliahu left the meeting at 6:21 p.m. At 6:25 p.m., the Board took an evening recess.]

Item 4 – Budget, Staffing, Workplans and Board Operations – The Board will discuss state budget, staffing, work plans, and Board operations for fiscal years 2007-08 and 2008-09. No Board action or voting will take place.

This item was heard after Item 16.

Item 5 – Closed Session – Personnel – The Board will meet in closed session to conduct the annual performance review of the Executive Officer.

This Item was not heard.

Item 6 – Roll Call and Introductions

The meeting resumed on March 12, 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.

Board members absent: Rameshwar Singh (Note: Dr. Singh arrived at 9:37 a.m.).

Gina Kathuria introduced Paisha Jorgensen, new staff.

Item 7 – Public Forum

Yoshiko Tagami, Suisun Citizens League; Beth Garber, California Healthy Communities Network; Dwight Acey, Suisun Citizens League; Phil Tucker, Project Director, California Healthy Communities Network, expressed concern about a proposed large commercial project to be built in Suisun City. Mr. Tucker distributed copies of a letter he wrote to Mr. Muller that further specified their concerns.

Mr. Wolfe said staff notified the project developer that its application for a Water Quality Certification is incomplete. He said he would keep the Board informed on the project.

Richard McMurtry, Santa Clara Creeks Coalition, presented a plaque to James McGrath to welcome him as a Board member.

Mr. McGrath thanked Mr. McMurtry.

Item 8 – Minutes of the January 30, 2008 Board Meeting

Motion: It was moved by Mr. Eliahu, seconded by Dr. Young, and it was voted unanimously to adopt the Minutes of the January 30, 2008 Board Meeting.

Mr. Moore did not participate because he was not present at the meeting.

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

Mr. Muller reported attending a March 3, 2008 meeting of the California Statewide Watershed Forum.

Mr. Wolfe said final approval had been given to the San Francisco Bay Total Maximum Daily Load for Mercury. He said, as a result of the approval, the Watershed Permit for Mercury now is effective.

Mr. Wolfe gave an update on the Suisun Bay Reserve Fleet.

[Dr. Singh arrived at 9:37 a.m.]

Mr. Wolfe said staff is updating the process that sewer agencies follow to notify the Board of spills.

Mr. Moore encouraged discussion on the comparative risks associated with different types of spills.

Dr. Mumley reported participating in a recent meeting concerning a draft report prepared by the Bay Area Clean Water Agencies. He said the topic of the report is dioxins in the Bay.

Mr. McGrath reported having conversations with several people in the regulatory and scientific community about dioxins.

Mr. Muller allowed Richard McMurtry, Santa Clara County Creeks Coalition, to address the Board on a Public Forum issue.

Mr. McMurtry said an Erosive Forces Workshop was held in January 2007 in the South Bay. He requested the Board take action on recommendations made by Workshop participants.

Item 10 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the Uncontested Items Calendar with the following exception: Item 10B be removed and continued to a future meeting.

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

Item 11 – Novato Sanitary District, Wastewater Treatment Plant, Novato, Marin County – Hearing to Consider Mandatory Minimum Penalty for Discharge in Violation of Effluent Limitations

Item 12 – City of Redwood City, 850 Jefferson Avenue, Redwood City, San Mateo County – Hearing to Consider Mandatory Minimum Penalty for Discharge in Violation of Effluent Limitations

Item 13 – Fairchild Semiconductor System 19, 369 Whisman Road, Mountain View, Santa Clara County – Hearing to Consider Mandatory Minimum Penalty for Discharge in Violation of Effluent Limitations

Mr. Wolfe said permittees for Items 11, 12, and 13 waived their rights to a hearing on the Mandatory Minimum Penalties. He said no Board action was necessary.

In reply to a question from Mr. McGrath, Mr. Wolfe said the permittee for Item 13 corrected the problem that caused the violations and the problem is not expected to reoccur.

In reply to a question from Mr. Eliahu, Mr. Wolfe said the permittee for Item 11 gave staff an initial proposal for a supplemental environmental project. He anticipated the proposal would be finalized within sixty days.

Mr. Wolfe said a contractor will provide oversight to ensure the supplemental environmental project is completed.

Dr. Young concurred with staff's action to assess the minimum penalties for permittees for Items 11, 12, and 13. She said the violations occurred while permittees were trying to ascertain whether a problem existed or while they were attempting to fix a problem. She said future cases may present situations where assessment of more than the minimum penalty is appropriate. She spoke in favor of permittees using supplemental projects to address local problems.

In reply to a question from Mr. Moore, Mr. Wolfe discussed use of penalty funds for supplemental environmental projects.

Ms. Whyte said Sandi Potter and she have prepared a draft template to be used for press releases when mandatory minimum penalties are assessed. She said the template is being reviewed.

Item 14 – Cosco Busan Oil Spill – Hearing to Consider Resolution Authorizing Referral to Attorney General for Judicial Enforcement of November 2007 Oil Spill

Mr. Wolfe requested this Item be continued until the April Board meeting.

Item 15a – City of Benicia, Wastewater Treatment Plant, Benicia, Solano County
– Reissuance of NPDES Permit

Item 15b – City of Benicia, Wastewater Treatment Plant, Benicia, Solano County
– Adoption of Cease and Desist Order for Discharge in Violation of NPDES Permit

John Madigan gave a presentation that covered both Items 15a and 15b.

Mr. Madigan said the proposed permit includes Action Plans to control copper and cyanide sources. He said tasks called for in the Plans are specific to the permittee.

He said the Copper and Cyanide Action Plans are consistent with site specific objectives the Board adopted. He said the objectives are subject to additional regulatory approvals.

Mr. Madigan said the City of Benicia and the Bay Area Clean Water Agencies sent staff comment letters on the proposed permit and Cease and Desist Order. He discussed several of their comments.

Mr. Madigan said the commenters objected to a task in the Cease and Desist Order requiring plant upgrades for treatment of cyanide. In reply, he said the task will not be required once new effluent limits based on the cyanide site specific objective become effective. He said there is sufficient time for the objective to be approved before implementation of the task.

In reply to a question from Mr. McGrath, Mr. Wolfe said increased influent during the winter season is a concern for every sewer agency. He said the permittee's treatment plant and collection system appear to have sufficient capacity to treat and convey winter influent.

Chris Tomasik, Assistant Director of Public Works, City of Benicia, said the City spent substantial funds during the last eight years to upgrade its treatment facility and collection system. She introduced Gerald Gall, Superintendent, Wastewater Treatment Plant, and Tom Hall, Consultant. She requested the Board adopt the proposed permit and Cease and Desist Order and thanked Lila Tang, Bill Johnson and John Madigan for their work on the documents.

In reply to a question from Mr. Eliahu, Ms. Tang said for the last seven or eight months staff has included ammonia limits in wastewater permits. She described a process that can be used to treat ammonia.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, recommended adoption of the proposed permit. She requested the Action Plans for Copper and Cyanide be implemented through a regional watershed permit. She said copper sources could be identified more effectively on a regional basis. She said if a regional approach were taken, permittees could still be required to take individual actions.

Ms. Plá expressed concern that permittees will be not able to meet proposed dioxin limits.

Ms. Plá said BACWA is preparing fact sheets discussing blending, private laterals, and inflow and infiltration in an effort to better understand the issues. She suggested BACWA and the Board hold a workshop to discuss winter weather management at sewer facilities.

Ms. Plá said Bay Area wastewater agencies are developing pollution prevention programs and one type of program being developed is a pharmaceutical disposal program.

In reply to a question from Mr. Peacock, Ms. Plá said she would mail information about pharmaceutical disposal programs to Board members.

In reply to a question from Mr. Moore, Mr. Wolfe said staff included Action Plans for Copper and Cyanide in the proposed permit for legal reasons. He said implementing copper and cyanide reduction through a regional approach would be effective.

In reply to a question from Dr. Singh, Mr. Wolfe said the Bay is listed as impaired by dioxins and staff must include limits in the permit for legal reasons. He recognized the difficulty wastewater agencies have in treating dioxins in a cost effective manner.

Mr. Wolfe recommended adoption of the Revised Tentative Order as supplemented.

Motion: It was moved by Mr. McGrath, seconded by Mr. Peacock, to adopt the Revised Tentative Order as supplemented and 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.

Mr. Wolfe recommended adoption of the Revised Tentative Cease and Desist Order as supplemented.

Motion: It was moved by Mr. McGrath, seconded by Mr. Peacock, and it was voted to adopt the Revised Tentative Cease and Desist Order as supplemented and 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.

[At 11:15 a.m., the Board took a break and the meeting resumed after the break.]

Item 16 – U.S. Fish and Wildlife Service, Bair Island Restoration Project, Redwood City, San Mateo County – Adoption of Waste Discharge Requirements and Water Quality Certification

Andrée Breaux said the goal of the Bair Island Restoration Project is to restore 1,400 acres to tidal salt marsh. She said the restoration will occur on portions of three islands located in the Bair Island Complex: Inner Bair Island; Middle Bair Island; and Outer Bair Island.

In reply to a question from Dr. Singh, Dr. Breaux said the Restoration Project is expected to be completed in 50 years. She discussed the restoration cost.

Dr. Young recommended the Board simplify and expedite permit requests for projects like the proposed project. She said these types of restoration projects provide a net water quality benefit and a net ecological benefit.

Mr. McGrath recommended the Board apply a cautious standard to restoration projects. He said the projects should have clear objectives and effective monitoring programs.

Mr. McGrath asked what access the public would have to the Bair Island Complex after completion of restoration.

Clyde Morris, former Manager, Don Edwards San Francisco Bay National Wildlife Refuge, said the public will continue to be able to use a trail on Inner Bair Island. He said the trail will no longer form a loop. He said each end of the trail will have a new wildlife viewing platform. He said a viewing platform for kayakers will be built on Corkscrew Slough. He said volunteers will lead tours in areas that otherwise will be closed to the public.

Mr. Moore and Mr. Muller thanked Mr. Morris for his dedication to the restoration project.

Mr. Eliahu expressed enthusiasm for the project.

Mr. Morris thanked Dr. Breaux, the Board, and staff for their work on the project.

Mr. Wolfe recommended Table 2 in Finding 25 on page 8 of the Revised Tentative Order be amended. He recommended the line on the Table for Marsh Plain Fill & Construction Fill for Inner Bair Island be amended to read 146.48. He recommended the column total for Inner Bair Island be amended to read 151.66.

Mr. Wolfe recommended adoption of the Revised Tentative Order as amended.

Motion: It was moved by Dr. Young, seconded by Mr. Moore, and it was voted to adopt the Revised Tentative Order as amended and 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 – Budget, Staffing, Workplans and Board Operations – The Board will discuss state budget, staffing, workplans, and Board operations for fiscal years 2007-08 and 2008-09. No Board action will take place.

Mr. Wolfe discussed Board operations.

Dr. Mumley discussed future TMDLs that staff will bring for the Board's consideration. He discussed the process for amending the Basin Plan and for amending the impaired waters listing.

Item 21 – Adjournment

The Board meeting was adjourned at approximately 12:36 p.m.