

Adopted as Submitted 10/8/08

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

May 14, 2008

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Item 1 – Roll Call and Introductions

The meeting was called to order on May 14, 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; Rameshwar Singh.

Board members absent: none.

Item 2 – Public Forum

Trish Mulvey, CLEAN South Bay, discussed water quality activities in the South Bay.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, said Clean Water Agencies voluntarily are conducting programs to collect pharmaceuticals. She said the goal of collection programs is to ensure people do not dispose of the products down drains. She said the collection programs help keep products out of wastewater treatment facilities.

Tim Leathers, Vice-President, Almar Marinas, spoke as a representative of the Clean Marinas California Program. He said the Clean Marinas California Program is a voluntary, industry financed program that encourages marina operators to use best management practices to reduce pollution in coastal waters. He said about seventy marinas in California have received Clean Marina designation since the Program was started in the State in 2003.

Terry Young asked if a marina operator could use certification through the Clean Marinas Program to comply with requirements of a regulatory program.

Mr. Leathers said that is a goal the Program is working to achieve.

Item 3 – Minutes of the February 13, 2008 Board Meeting

Motion: It was moved by Mr. Peacock, seconded by Dr. Young, and it was unanimously voted to adopt the minutes of the February 13, 2008 Board Meeting

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

Mr. Muller, Dr. Singh, and Mr. Moore reported attending the Water Education Workshop held on April 21 and 22, 2008.

Mr. McGrath reported meeting with a stakeholder to discuss priorities of the Regional Board.

Mr. Moore said American Wetlands month is celebrated in May. He urged people to enjoy wetlands in the Bay Area.

Mr. Muller thanked Mary Rose Cassa and staff for participating in recruitment efforts with science and engineering students.

Mr. Peacock led a round of applause for Mr. Muller who was honored on April 14, 2008 as one of the winners of U.S. EPA Region 9's annual Environmental Awards. Mr. Muller said he felt privileged to receive the award and thanked the Board, staff, and members of the audience for their congratulations.

Item 5 – Consideration of Uncontested Non-Enforcement Items Calendar

Mr. Wolfe recommended adoption of the Uncontested Non-Enforcement Items Calendar with the following exception: removal of Item 5c because it is not an action item.

Motion: It was moved by Mr. Peacock, seconded by Mr. Eliahu, to adopt the Uncontested Non-Enforcement Items Calendar as recommended by the Executive Officer.

In reply to a question from Mr. McGrath, Beverly James, General Manager, Novato Sanitary District, described design capacity at the Novato wastewater treatment plant for seasonal influent.

A vote was held on the motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 7 – 0.

Item 6 – Consideration of Uncontested Enforcement Items Calendar

Mr. Wolfe recommended adoption of the Uncontested Enforcement Items Calendar.

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

Item 7 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish New Water Quality Objectives and a Total Maximum Daily Load and Implementation Plan for Mercury in Waters of the Guadalupe River Watershed – Hearing to Consider Testimony on Proposed Basin Plan Amendment (No Action Will Be Taken)

Carrie Austin described three regions in the Guadalupe River watershed: the upper watershed; the middle watershed; and the lower watershed. She said former mercury mines are located along a ridge in the upper watershed. She said the former mines comprise the New Almaden Mining District.

Ms. Austin said Almaden Reservoir, Guadalupe Reservoir, and Calero Reservoir are located in the middle watershed. She said the reservoirs are engineered impoundments that capture waters draining from the Mining District.

Ms. Austin said creeks that drain from the reservoirs are located in the lower watershed. She said Guadalupe Creek drains from the Guadalupe Reservoir and Los Alamitos Creek drains from Almaden Reservoir. She said Guadalupe Creek and Los Alamitos Creek join to form the Guadalupe River.

Ms. Austin said the lower watershed is urbanized. She said the town of New Almaden is located along upper Alamitos Creek.

Ms. Austin said the Basin Plan amendment addresses the problem of elevated levels of mercury in fish. She said a fish consumption advisory was issued warning the public not to consume fish in the middle and lower regions of the watershed.

Ms. Austin said the Basin Plan amendment establishes two new methylmercury fish-tissue objectives: 0.05 milligrams methylmercury per kilogram for small preyfish and 0.1 milligrams methylmercury per kilogram for larger preyfish.

Ms. Austin said the Basin Plan amendment establishes targets that are the same as the water quality objectives.

Ms. Austin said the Basin Plan amendment includes concentration based loads and allocations for the three watershed regions. She said the load and allocation for the upper watershed is 0.1 milligrams of mercury per kilogram of sediment that erodes and becomes a bottom sediment in lakes and reservoirs. She said the load and allocation for the middle watershed is 1.5 nanograms of methylmercury per liter of water. She said the load and allocation for the lower watershed is 0.2 milligrams of mercury per kilogram of sediment that goes to San Francisco Bay.

Ms. Austin described four mercury sources in the watershed: mining waste; urban stormwater runoff; naturally occurring mercury in soil; and atmospheric deposition. She said mining waste and urban stormwater runoff are controllable mercury sources.

Ms. Austin said the Basin Plan amendment implementation plan includes two phases, each spanning ten years. She said during the first phase, actions are required to control mining waste sources in the upper watershed and to develop methylmercury controls in impoundments.

Ms. Austin said the goal during the second phase of implementation is to cleanup mining waste accumulated in creek beds and banks in the lower watershed. She said cleanup in the lower watershed generally will commence after mining waste in the upper watershed has been controlled.

Ms. Austin said the Guadalupe Mercury Work Group was involved in the development of scientific studies for the Basin Plan amendment. She said the Work Group was co-chaired by the Santa Clara Valley Water District and Water Board staff. She said stakeholders were participants.

Ms. Austin discussed comments received on the amendment. She said staff will prepare written replies to comments and testimony and will revise the amendment as necessary.

Michael Boulland, New Almaden area property owner, requested staff meet with the Los Alamitos Creek watershed community to explain requirements and to allow community participation in the process of preparing the Basin Plan amendment.

Michael Cox, New Almaden resident, requested the Guadalupe Mercury Work Group be reconvened and allowed time to consider revisions to the amendment. He expressed concern that allocations in the amendment include a lower mercury concentration in sediment in the upper watershed than in the lower watershed.

Roberta Lamons, New Almaden resident, expressed concern about the scientific basis of the Basin Plan amendment. She requested the amendment be revised and the revision process includes scientists, creekside property owners, and other residents of the Guadalupe River watershed.

Steven Ritchie, Executive Project Manager, South Bay Salt Pond Restoration Project, recommended the Board adopt the Basin Plan amendment as soon as possible. He said efficiently and effectively reducing sources of mercury in the Guadalupe River watershed will help with restoration of South Bay salt ponds.

Beau Goldie, Deputy Operating Officer, Santa Clara Valley Water District, recommended the Water Board and the District work collaboratively to implement the Basin Plan amendment. He said the District has limited resources and recommended implementation measures emphasize on-the-ground actions rather than significant amounts of additional studies.

Kirk Lenington, Senior Resource Planner, Midpeninsula Regional Open Space District, said the Basin Plan amendment allows parties who are responsible for cleaning up mining waste to participate in a coordinated watershed monitoring program. He recommended the Board provide leadership in organizing coordinated monitoring.

Andrew Kenefick, Senior Legal Counsel, Waste Management, Inc., and making comments on behalf of Guadalupe Rubbish Disposal Company, Inc., said the Basin Plan amendment establishes concentration based loads rather than rate-based daily loads. He said the amendment establishes mercury concentrations in erodible soil fines. He expressed concern that erodible soil fines is a vague term and that allocations will be imposed as soil cleanup standards.

Lisa Killough, Director, Santa Clara County Parks and Recreation Department, said the Basin Plan amendment establishes loads based on mercury concentrations in sediment. She expressed concern that loads and allocations may not be attainable. She said mercury occurs naturally in soil and rare serpentine habitat values should be protected. She requested the Board allow responsible parties greater flexibility in the implementation of actions than the amendment presently provides.

Andria Ventura, Program Manager, Clean Water Action, also representing Environmental Justice Coalition for Water, said fish tissue targets in the Basin Plan amendment protect humans who consume thirty-two grams of fish a day. She recommended targets protect subsistence fishers who may have higher consumption levels. She recommended the amendment include exposure reduction requirements.

Ms. Ventura read comments written by Sara Aminzadeh, San Francisco Baykeeper. Ms. Aminzadeh requested the Basin Plan amendment require an inventory of local mercury emission sources and an investigation of significant local mercury air emissions be completed. Ms. Aminzadeh requested a special study be completed to evaluate the effectiveness of control measures for local mercury air emissions.

In reply to questions from Dr. Singh, Dr. Mumley said the amendment incorporates an adaptive implementation approach. He said cleanup of mining waste in the upper watershed is scheduled to occur before cleanup along Los Alamitos Creek and staff will meet with creek residents to discuss proposed requirements. He said staff will meet with responsible parties to explain that concentration based allocations will not be used as cleanup standards.

Mr. Eliahu said action should be taken to reduce mercury mining waste sources in the upper watershed. He said the adaptive implementation approach will be important in reducing mercury sources.

Mr. Moore discussed allocations of mercury concentrations in sediment compared to standards used for soil cleanup. He asked whether the allocations focus on the condition of sediments and concentration of pollutants in the water bodies.

Ms. Austin answered affirmatively and said the Basin Plan amendment is related to the mercury concentration in the sediments in the bottom of the reservoirs. She said cleanup standards would be established in permits issued to responsible parties.

Mr. Moore commended the Santa Clara Valley Water District for its pioneering work in applying existing technology to protect water quality in reservoirs.

Mr. McGrath said as the Basin Plan amendment is implemented, it will be important to gain further understanding about the physics and chemistry of mercury and the transformations of mercury into its various forms.

Dr. Singh asked if data are available to show the relationship between cleanup of mining waste and reduction of mercury concentration in waters. He said a correlation of the data would be helpful in understanding which cleanup actions are most effective.

In reply to a question from Dr. Young, Ms. Austin estimated the Basin Plan amendment will cost between \$200 million and \$1 billion to implement. She said most implementation actions will not involve studies.

Dr. Young said she assumed a load defined as a concentration in sediment is an average over the whole section of the watershed and that the concentration would not necessarily be applied to every site or every cleanup.

Staff concurred.

Dr. Young suggested staff clarify that at a particular site, the focus is on mercury loads and that the overall goal in the watershed is a concentration.

Dr. Young spoke in favor of requiring parties to cleanup mining waste in the upper watershed. She recommended parties be given credit for early implementation of actions. She recommended cleanup not be required in areas of rare serpentine habitat.

Mr. McGrath recommended staff consider innovative ways to manage the methylation process.

Mr. Peacock asked about the number of subsistence fishers in the South Bay.

Mr. Wolfe said staff appreciated receiving stakeholders' testimony. He said staff will review the testimony and the written comments and will work to improve the Basin Plan amendment.

Mr. Moore recommended staff bring the Basin Plan amendment for the Board's consideration for adoption as soon as possible.

[Mr. Peacock and Mr. Eliahu left the meeting at approximately 11:55 a.m.]

Item 8a – Dow Chemical Company, Pittsburg Plant, Pittsburg, Contra Costa County – Reissuance of NPDES Permit

Item 8b – Dow Chemical Company, Pittsburg Plant, Pittsburg, Contra Costa County – Issuance of Cease and Desist Order

Vince Christian gave one presentation that covered Items 8a and 8b.

Mr. Christian said the Tentative Order includes effluent limits for copper, dioxins, and cyanide. He said data indicate the permittee is able to comply immediately with copper limits. He said the Tentative Order includes a schedule for the permittee to achieve compliance with final dioxin limits. He said the Cease and Desist Order includes a time schedule for the permittee to achieve compliance with final cyanide limits.

Mr. Christian said a Supplemental corrects the Revised Tentative Order, Attachment F (Fact Sheet), Section IV.C.4.c.(6). He said the last sentence of the paragraph should read "The Discharger can immediately comply with these alternative limits,..."

Mr. Wolfe recommended Provision 2 and Provision 3 of the Tentative Cease and Desist Order be corrected to refer to Table 1 and not Table 2.

Mr. Wolfe recommended adoption of the Revised Tentative Order as supplemented for Item 8a.

Motion: It was moved by Dr. Young, seconded by Mr. McGrath, to adopt the Revised Tentative Order as supplemented and as recommended by the Executive Officer.

Roll Call:

Aye: Mr. McGrath; Mr. Moore; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 5 – 0.

Mr. Wolfe recommended adoption of the Tentative Cease and Desist Order as corrected for Item 8b.

Motion: It was moved by Mr. McGrath, seconded by Dr. Young, to adopt the Tentative Cease and Desist Order as corrected and as recommended by the Executive Officer.

Roll Call:

Aye: Mr. McGrath; Mr. Moore; Dr. Singh; Dr. Young; Mr. Muller

No: None

Motion passed 5 – 0.

Item 9a – Marin County Sanitary District No. 5, Sanitary District No. 5 Wastewater Treatment Plant, Tiburon, Marin County – Reissuance of NPDES Permit

Item 9b – Marin County Sanitary District No. 5, Sanitary District No. 5 Wastewater Treatment Plant, Tiburon, Marin County – Issuance of Cease and Desist Order

Mr. Moore recused himself from consideration of this Item.

Mr. Muller said there was not a quorum of Board members present.

Mr. Wolfe recommended the Item be continued to the July Board meeting.

Item 10 – Environmental Screening Levels – Status Report

Elizabeth Allen discussed Environmental Screening Levels developed by Water Board staff. She described how ESLs may be used. She described recent modifications to the ESLs.

Item 15 – Adjournment

The Board meeting was adjourned at approximately 12:25 p.m.