

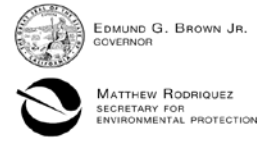
STATE OF CALIFORNIA

**REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

MEETING DATE: April 11, 2018

ITEM: **3**

SUBJECT: **MINUTES OF THE MARCH 14, 2018 BOARD MEETING**



San Francisco Bay Regional Water Quality Control Board

March 14, 2018 Board Meeting
ADOPTED April 11, 2018

Note: Copies of orders, resolutions, and minutes are posted on the Regional Water Board's website (www.waterboards.ca.gov/sanfranciscobay). Information about obtaining copies of audio recordings of Board meetings may be obtained by calling the Board's file review coordinator at (510) 622-2430. Written transcripts of Board meetings may be obtained by calling California Reporting, LLC, at (415) 457-4417.

Item 1 – Roll Call and Introductions

Meeting called to order at 9: a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Table with 3 columns: Board Members Present, Board Members Absent, Status. Lists names of present members (Chair Terry Young, Vice-Chair James McGrath, Cecilia Ogbu, Newsha Ajami, William Kissinger, Steve Lefkovits, Jayne Battey) and the status QUORUM.

Item 2 – Public Forum

Stephen Nestel, of Clean Up Marinwood Plaza Now, commented that the Marinwood Plaza, Prosperity Cleaners Site still has high soil vapor concentrations, endangering nearby residences, and additional treatment and/or site cleanup is needed. He showed slides with this information.

Bill McNicholas, of Cleanup Marinwood Plaza Now, echoed Mr. Nestel's comments. Chair Young asked if he wanted the letter he submitted put in the record. He answered affirmatively.

David Trotter, attorney for Silveira family, presented a printed figure of the site and commented that the offsite groundwater treatment system needs to treat a larger area and that further groundwater delineation should be conducted in the southeastern portion of the offsite groundwater plume. Board members asked about well locations, proposed injection lines, results, and declining concentrations in response to injection. Engineering Geologist Ralph Lambert responded that pilot testing continues and shows bioremediation results and that staff will be reviewing a report on these results in April. Division Chief Stephen Hill added that the site is under a cleanup order, is in compliance, onsite soil gas conditions still exist, and additional cleanup may be required. Chair Young requested a followup item in May or June in the Executive Officer's Report on the status of the project after the April Report is submitted.

Bob Simon, citizen, asked to comment on Item 6 now as he had to leave before Item 6. Chair Young allowed him to comment. He said there is trash all over the highways so he was at the meeting to call attention to that. Caltrans is responsible for cleanup but this is not happening. He said Board members are the enforcement board so he wanted to bring it to their attention. The trash ends up in the Bay and this is embarrassing. We need to get a handle on it.

Vicky Dehnert, citizen, also commented that roadways in Marin County have lots of trash, and Caltrans failure to cleanup puts an unfair burden on cities. The amount of trash has reached a crisis situation. She said she cannot go pick up trash on the highway due to safety concerns and Caltrans rarely does it.

Item 3 – Minutes of the February 14, 2018 Board Meeting

Executive Officer Bruce Wolfe recommended adoption of the Minutes from the February 14, 2018, Board Meeting.

Chair Young asked if all were in favor of adoption of the Minutes – all Ayes. Chair Young then asked if anyone was opposed - none opposed.

Minutes were approved.

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

Board Member Ajami reported that last Friday she and Mr. Wolfe attended a workshop on Potable Reuse. The discussion was interesting and included issues of health, permitting, regional collaboration, policies needed, concerns about how difficult it is to set it up as an individual community, source protection, and how NPDES permits need to be revisited or reorganized to reflect changes in flow and concentrations in effluent. Regulatory agencies are often blamed for obstructing innovative approaches and at the workshop she tried to demonstrate that this is not the case. The main points from the workshop were that communities and agencies need to work together to address water supply and quality issues and aging infrastructure.

Mr. Wolfe added that the term potable reused is evolving, communities recognize the need to go from treating wastewater for irrigation and industrial use to treating wastewater for drinking water and are exploring how to make it part of their water supply portfolio. Last week the State Board adopted reservoir augmentation regulations for putting treated wastewater into drinking water reservoirs based on the state of the science on public health issues and how best to address them, e.g., how much of a reservoir volume can be treated wastewater and how long should it stay in a reservoir before delivery. Challenges remain including: public concern about safety of drinking water and water supply; water quality agencies need to coordinate better; brine or waste product from reverse osmosis treatment needs disposal and regulation; distribution to multiple uses, such as through purple pipe, takes infrastructure and energy; new treated water is not always needed or desired in accessible locations. Adding capacity through discharge directly to reservoirs may be a useful expansion of how to use treated wastewater.

Mr. Wolfe gave an overview of this month's Executive Officer's Report. He mentioned the Aquifer Storage and Recovery project in Sonoma and commented that we want to be sure regulatory issues are not the impediments. He highlighted restoration of a wetland and creek where an unauthorized dam had been discovered in Henry Coe State Park in Santa Clara County and where staff will be monitoring to insure whether restoration is successful. Board Member Kissinger asked how this was discovered. Mr. Wolfe said a private property owner was looking for water supply, and we expect to find similar situations related to cannabis grows.

Mr. Wolfe reminded Board Members that on April 30, 2018, NDPES conflict forms are due, and, on April 1, 2018, Form 700 Economic Interests forms are due.

Board Member Lefkovits said the Urban Land Institute is having a series on Climate Change and the need to consider regulatory and civic issues; there will be a need for revenue for infrastructure for communities. He asked if we have an inventory of water infrastructure that can be shopped around. Mr. Wolfe said the Bay-wide Nutrient Management Plan report from bay wastewater dischargers will be submitted soon, and we will report back to the Board on which facilities are at risk from sea level rise in a few months. Vice Chair McGrath recommended a one-time look at cost of improvements to facilities for nutrient goals, flood protection, etc. Chair Young said we should let this be the beginning of an important discussion, and we will continue to inventory what is our response to climate change.

Uncontested Items

Item 5A – Oro Loma and Castro Valley Sanitary Districts, Oro Loma and Castro Valley Sanitary Districts Water Pollution Control Plant – Intermittent Wet Weather Discharge, San Lorenzo, Alameda County – Issuance of New NPDES Permit

Item 5B – Waste Management of California, Inc. – Kirby Canyon Recycling and Disposal Facility, San Jose, Santa Clara County – Updated Waste Discharge Requirements and Rescission of Order No. R2-2007-0021

Mr. Wolfe introduced the items, said they are all uncontested, and we received no comments except what is in the Item 5B agenda package. He recommended adoption of these items.

Adoption moved by Board Member Lefkovits and seconded by Chair Young.

Vice Chair McGrath commented on the Oro Loma and Castro Valley Permit. Mr. Wolfe said that the Point of Sale Ordinance is in the works to control flows and that is part of what we will report back on this summer related to the nutrient strategy. Board Member Kissinger asked about past Kirby Canyon issues before the Board. Mr. Wolfe said he does not recall an issue with this landfill but it is commonly mixed up with another canyon landfill. The Kirby Canyon landfill permit updates site ownership.

Ayes: Young, McGrath, Ogbu, Ajami, Lefkovits, Battey, Kissinger

Nos: None

ITEM ADOPTED

Item 6 – Municipal Regional Stormwater NPDES Permit, Permittee Compliance with the 70% Trash Load Reduction Requirement; and Caltrans Implementation Status, Trash Reduction Requirements of Caltrans Statewide Stormwater NPDES Permit – Information Item

Mr. Wolfe introduced the item and Senior Water Resource Control Engineer Dale Bowyer presented the item.

Board members Kissinger and Ajami asked about Caltrans' obligations and level of implementation statewide compared to this region. Mr. Bowyer responded that they have slightly enhanced requirements for our region, but a future permit reissuance will make the requirements here consistent with statewide requirements. Assistant Executive Officer Thomas Mumley indicated that Caltrans is pursuing efforts beyond what they've committed and have implemented more extensive trash requirements in Los Angeles. Dr. Mumley explained that the current statewide permit prioritized efforts associated with Total Maximum Daily Load requirements, in recognition of the huge burden on Caltrans to participate in multiple TMDL implementation plans throughout the State. This created the opportunity for Caltrans to prioritize and take iterative steps to comply. There was some funding dedicated for the TMDL implementation. In our region, we are implementing trash control through the stormwater permit, not TMDLs, so these funds were not available for trash control in the Bay Area. The statewide permit was recently amended to allow use of these funds for trash control in the Bay Area.

Board members commented on or asked questions about trash reduction assessment methods, what other states are doing to keep their highways clean, if trash is increasing over time, if staff knows the root causes, options for reducing trash, future compliance, and compliance constraints. Mr. Bowyer and Dr. Mumley responded with the following: trash increases seem to be from homeless encampments, roads, and increased use of plastics; data collection will indicate trends and improve our understanding of trash and its reduction in the future; this is a statewide issue further addressed with the State Board's adoption of a narrative trash objective and prohibition on discharging trash everywhere; this action by the State Board will umbrella the non-traditional stormwater dischargers, such as schools; staff expects increased compliance as several municipalities are planning to install full trash capture devices, and some will issue ordinances to make commercial facilities cover and pick up their trash.

Mr. Ruben Abrica, Mayor of East Palo Alto, submitted a letter to the Board that outlines how the City of East Palo Alto will improve compliance. He said they are a small city with 50 percent of residents living in a flood area. They are investing money to install a full capture trash device. He confirmed the city's commitment to address its trash load. Mr. Bowyer explained that this one device will bring them from 60 percent now to 80 percent by summer because it will be placed to capture 67 percent of the area of the City. Board Member Battey asked Mr. Arabica if he knew the source of his trash. He answered sources are shopping

centers and housing turnover due to a low income population and more people losing their housing.

Sean Charpentier, Assistant City Manager of the City of East Palo Alto, had nothing to add but thanked the Board for accepting their proposal to come into compliance.

Amanda Booth, City of San Pablo Environmental Analyst, said the city is compliant through full trash capture devices and offsets. Their city knew it would be difficult to achieve 70 percent reduction on time so they started early to study their storm drain system and identify where they could implement full trash capture and/or other methods and address the limitations of hydrology and their drainage system. She said she strongly encourages the Board to retain offsets (credits) in the permit because they have successfully implemented and tracked removal from these measures, and the amount of trash removed from these measures is significant. Board members asked if they evaluated their system to address sea level rise and about the city's enforcement capability. Ms. Booth responded that they have considered sea level rise and they have authority. She gave an example of catching an illegal dumper and giving them a citation but said they are limited in enforcement because the District Attorney does not prioritize these cases for criminal proceedings.

Ben Eichenberg from San Francisco Baykeeper said he is very concerned about trash in the Bay. They have been cleaning up and have observed all kinds of trash including needles and plastic hoses and have seen harm to wildlife. Permittees are reporting compliance but there are problems with self-reporting, verification of results, and sufficiency of assessments. They want to see a solid roadmap for compliance and funding to implement. Caltrans is the worst offender and is polluting the Bay, and he encouraged the Board to take enforcement to get them into compliance. They think staff can inspect and do visual checks, and permittees should increase the number of visual assessments to corroborate the percent load reduction reported. The State is looking at using this program for the whole state so it needs to be more effective. Some cities claim no trash, which does not make sense and brings into question the methodology. Caltrans' non-compliance should be taken to State Board. Enforcement actions should be substantive and include monitoring.

Chris Sommers from EOA, Inc., has worked on this issue for twenty years and consults with many municipalities for compliance with trash requirements. He made comments based on his experience with municipalities in the Bay Area about what is working. Most people, per a recent international conference, are working on education about trash control or cleanup from waterways and beaches to keep debris out of waterways. Only California is working on the trash fate in between education and removal from waterways, such as full trash capture within municipalities before discharge to waterways. Plastics in the ocean are expected to increase significantly; plastic production in the U.S. will quadruple in next few decades. His firm has been conducting training events (funded by State Board) on how to do assessments. This work and these methods are relatively new, and the Bay Area is in the forefront so we are

making progress. Other areas are turning to the Bay Area as leaders in trash reduction both regarding cleanup and source control.

Alison Chan from Save the Bay sees that municipalities are improving trash reduction but remains concerned based on recent reports by permittees. Several are behind in meeting goals and unlikely to catch up. Many submitted results based on insignificant monitoring and inadequate assessments, so it appears that assessment results cannot be substantiated. The Board should require detailed plans for coming into compliance and should review if monitoring was inadequate and address that. Board Member Battey asked if staff wants to respond. Mr. Bowyer said that there is not a requirement to do a specific number of visual assessments so was unclear about the interpretation that four times are required. The permit requires a level of assessment appropriate to the case the permittees are making. It remains unknown how many assessments are needed. Data is being collected for the first time and in real time so we do not have a lot of data or experience yet. Staff at municipalities are learning how to do assessments, and where and when. In the future we will have more information to direct more meaningful assessments. Ms. Chan said the permit does direct some rules of thumb regarding how frequent and how many assessment events a permittee should do and suggests a minimum.

David Lewis, director of Save the Bay, said he appreciates the work staff is doing and the time the Board has dedicated to this issue for public input. No organization has spent more time on this issue than his, and the person who has contributed the most is Alison Chan. He said the will to require the local municipalities to implement has not happened so we do not have a body of data to work with yet. Caltrans is recalcitrant and is not implementing requirements. The problem is not looking at other states or cities that are clean; the problem is failure to enforce the law. Enforcement should include short-term actions in the next six months, long term actions, a time frame to implement, costs, reporting requirements including cleanup data (what was done and when) and monitoring data so the public can see what and how they are doing.

Board members asked if we can we provide more tools to municipalities, such as increased enforcement tools like model ordinances and increased fines for littering and dumping. They also asked how we can target funding so cities have more flexibility to address multi-benefits and problems. Mr. Lewis said the best thing this Board can do is enforce the requirements on Caltrans, which will compel these conversations and result in additional funding.

Board Member Battey asked about costs to municipalities and the relationship of trash reduction in Caltrans right-of-ways to trash reduction needs in each municipality. She said she is concerned that wealthier communities are farther away from Caltrans right-of-ways such that we are putting the highest costs and expectations on the communities with the least resources to comply. Watershed Division Chief Keith Lichten said that Caltrans can only implement full trash capture on 20 percent of the area in its right-of-ways so it needs to collaborate with municipalities to implement additional capture.

Dr. Mumley said that the City of Vallejo is one of the cities that did not achieve the 70% reduction target and came to this meeting but had to leave. They understand their commitment to comply and improve their performance.

Shaila Chowdhury, Chief Environmental Engineer for Caltrans District 4, commented that litter is a growing problem in California. Caltrans is committed to doing their part. She introduced Hardeep Takhar, Stormwater Manager of District 4, to make a presentation. The presentation included a description of Caltrans facilities and areas of trash generation, current efforts to reduce trash, visual assessments, feasibility studies to identify projects, their costs and status, plans for full trash capture retrofit, retrofits through cooperative implementation projects (with local municipalities), new trash capture devices, on-going maintenance (litter pickup, adopt-a-highway program, etc.), evaluating opportunities to optimize maintenance, and public education. He said they are committed to continuing these efforts and also to do monitoring and reporting to demonstrate trash capture.

Vice Chair McGrath asked about Caltrans' budget and its Bay Area highway improvement budget. Ms. Chowdhury responded with approximate numbers for various stormwater controls such as trash pickup, street sweeping, storm drain cleaning, and public education and commented that this is a much higher priority than the amount budgeted. Board members further asked about the limitations of funding and the low number of acres Caltrans is planning to address. Chair Young asked if they can provide a list of each pot of money and the amount in each. Chair Young and Vice Chair McGrath asked about how Caltrans coordinates with local agencies when planning projects and whether they are seeking multi-benefits. Ms. Chowdhury said Caltrans is embracing asset management and will be able to give higher priority to projects that include trash controls, starting in 2020, which will increase the budget targeted for more trash control. Dr. Mumley asked when the projects that will be prioritized starting 2020 will actually be shovel ready or built, and Ms. Chowdhury responded that the first ones will be ready in 2022.

Board Member Ajami asked about visual assessments and encouraged use of social media to improve assessments. Caltrans staff responsible for assessments explained how they are planning to improve spatial and temporal assessments to improve data collection and data quality and to guide maintenance crews and said they are basing assessments on the methods of the Bay Area Stormwater Management Agencies Association.

Beth Baldwin from Contra Costa County, Watersheds Program Manager, commented that Hercules and Pinole were here and had to leave. To achieve 80 percent reduction often requires public-private partnerships. She encouraged the Board to keep the credits for voluntary creek and shoreline cleanups because they are learning that the trash often comes from dumping and from trash outside the area. Mr. Lichten said Hercules and Pinole are early adopters of ordinances and other management practices that may be transferable to other municipalities.

Jim Scanlon, Alameda County Stormwater Program Manager, commented that source control is the best method of trash control, and he does not think that the municipalities should have to assess and prove the reduction of trash from source control. The county has a ban on all single-use plastic by stores and restaurants. This is one of the most comprehensive bans in the country.

Dr. Mumley stated that staff's next steps include holding the municipalities who are out of compliance accountable to come into compliance. He asked for direction from the Board on the East Palo Alto scenario. Staff will continue to evaluate the assessment of data and sufficiency of data. Staff also wants to determine the best approach to estimating trash reduction from surveys and from source controls. Staff wants to incentivize source control to prevent discharge and not give extra credit only for cleaning up. Regarding Caltrans, he said staff sees the commitment to improve but needs to pursue enforcement or another approach and welcomes Board direction. Regarding source controls, such as bans, they work better if they are not done on an individual community basis as that can provide a disadvantage to businesses operating only in that municipality (or an advantage for those not subject to bans in another municipality). As staff learns what is working to control trash in individual municipalities, staff will look to requiring similar implementation across all municipalities.

Mr. Lichten acknowledged Board staff Derek Beauduy who works on Caltrans and Elyse Heilshorn who works on municipal stormwater for their contributions to this agenda item. He also said there are plenty of municipal partners contributing and that some of the best opportunities for Caltrans may be to retrofit existing corridors and structures.

Chair Young asked for Board discussion, and Board members commented on potential enforcement, incentives for communities, involving the public, improving assessments, how to deal with credits, limitations on resources and budgets, and source control versus cleanup.

Chair Young synthesized the discussion and directed staff to consider the following: individual enforcement orders for those who did not achieve 70 percent reduction targets and, if appropriate, hold them accountable for implementing their own plans or a better plan; requirements to demonstrate financial capacity to carry out the plans; review of other provisions to see if permittees are out of compliance with other provisions and take enforcement for those, too; verification of compliance for those who reported target reduction levels via spot-checking; evaluation of whether assessments support the conclusions of 70 percent reduction or higher; removing offsets in the next permit draft based on the previous acknowledgement that they were part of a compromise package and would not be in the next permit due to the double counting as explained by Dr. Mumley; and source reduction accounting or clarity for how to get some credit. Chair Young also said the Board would consider East Palo Alto last for an individual enforcement order so that they have more time to implement the plan proposed in the letter they gave to the Board at this meeting.

Attorney Tamarin Austin asked for clarification about Chair Young's suggestions for enforcement and consistency with the Enforcement Policy in calculating penalties. Chair

Young clarified that she is commenting on how to consider enforcement. Dr. Mumley added that staff is considering all enforcement tools available.

Board members discussed the Caltrans presentation including that that Caltrans has limited authority and resources and is not doing enough soon enough. They said Caltrans needs to collaborate with communities, increase the pace of trash cleanup, and incorporate asset management. Chair Young indicated that she thinks Caltrans needs an enforcement action as well.

This item was informational so no action was taken.

Item 7 – Department of Defense Cleanup Program – Accomplishments and Status – Information Item

Mr. Wolfe introduced the item. Senior Engineering Geologists Alec Naugle and David Elias in the Groundwater Protection Division made a presentation.

Board members asked about Hunters Point, the CERCLA process, and vapor intrusion mitigation. Mr. Naugle, Mr. Elias, and Mr. Wolfe provided responses.

Item 8 – Correspondence

Mr. Wolfe called attention to the letter from the Marin Conservation League presenting Staff Engineer Leslie Ferguson an environmental award.

Item 9 – Closed Session – Personnel

The Board did not meet in closed session to discuss personnel matters.
[Authority: Government Code section 11126(a)]

Item 10 – Closed Session – Litigation

The Board met in closed session to discuss litigation, specifically Sweeney et al. v. Cal. Regional Water Quality Control Bd. et al., per Authority of Government Code sections 11126(e)(1) and 11126(e)(2)(A)-(C).

Item 11 – Closed Session – Deliberation

The Board did not meet in closed session to consider evidence received in an adjudicatory hearing or deliberate on a decision to be reached based on that evidence.
[Authority: Government Code section 11126(c)(3)]

Item 12 – Adjournment to next meeting on April 11, 2018