

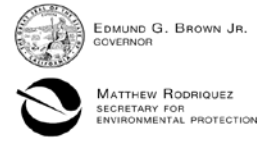
STATE OF CALIFORNIA

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

MEETING DATE: May 9, 2018

ITEM: **3**

SUBJECT: **MINUTES OF THE APRIL 11, 2018 BOARD MEETING**



San Francisco Bay Regional Water Quality Control Board

April 11, 2018 Board Meeting
ADOPTED May 9, 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.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Chair Terry Young	Steve Lefkovits	QUORUM
Vice-Chair James McGrath	William Kissinger	
Cecilia Ogbu		
Jayne Battey		
Newsha Ajami (arrived at 10:45 am)		

Item 2 – Public Forum

There were no speakers at the Public Forum.

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

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

Chair Young requested a clarification on page 8 to add the words “in the next permit draft” after the words “removing the offsets” and before “based on the previous acknowledgement...”

Board Member Battey asked for highlight (maybe bold text) for issues that were highlights of more extensive discussions.

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.

ITEM ADOPTED

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

Board Member Ogbu reported participation on the Prioritization Project Subcommittee of the Board. She said that the subcommittee has been meeting and asked Assistant Executive

Officer Lisa Horowitz McCann to give a brief update. Ms. McCann described progress to date and agreed to provide a status report in the May Executive Officer's Report.

Chair Young reported that she participated in the monthly Chairs' call. She said they discussed Direct Potable Reuse and the Cannabis Program. She also said she spoke to Gordon Burns, CalEPA Undersecretary for Environmental Protection, who suggested that the Board communicate with him regarding regulating Caltrans.

Mr. Wolfe noted that today is a meeting of the San Francisco Bay Restoration Authority at which the Authority's Governing Board will approve the first round of projects funded by Measure AA. He spoke about the types of projects, permitting challenges, and commitment to collaborate and facilitate implementation of these projects.

Mr. Wolfe gave an overview of this month's Executive Officer's Report. He mentioned that the Executive Officer's Report includes the Resilient San Francisco Project, which is one of several pilot projects proposed nationwide for beneficial reuse of dredge material. He also mentioned the post-fire monitoring results and implementation and that he attended a San Mateo County workshop on resiliency, spearheaded by Supervisor Dave Pine. Board Member Battey reported that she also attended this workshop and she was pleased with the attendance and engagement regarding sea level rise resiliency.

Mr. Wolfe announced that consultant and colleague Carl Morrison passed away last week in a single-engine plane crash. Mr. Morrison was involved in the Bay Area Integrated Regional Water Management region, Resilient by Design, and was leading the Bay Area Flood Protection Agencies Association. He was spearheading improvements in Advanced Quantitative Precipitation Information, to facilitate more precise rainfall forecasting for atmospheric rivers.

Chair Young asked a few questions about timeframes and replacement water for Prosperity Cleaners.

Uncontested Items

Item 5A – C&H Sugar Company, Inc., and Crockett Community Services District; C&H Sugar Company Refinery, Joint C&H Sugar Company-Crocket Community Services District Philip F. Meads Water Treatment Plant, and Crockett Community Services District Collection System; Crockett, Contra Costa County – Reissuance of NPDES Permit

Item 5B – Isis Properties, LLC; James K. Eu; and Ling Yu L. Eu, for the property located at 35 and 43 East Santa Clara Street, San Jose, Santa Clara County – Adoption of Site Cleanup Requirements

Item 5C – Phillips 66 Company, San Francisco Refinery, Rodeo, Contra Costa County – Update of Site Cleanup Requirements and Rescission of Order Nos. R2-2006-0065 and R2-2012-0081

Mr. Wolfe introduced the item. Mr. Wolfe stated there is a supplemental report for Item 5B, and recommended adoption of items 5A, 5B, and 5C with the changes in the supplemental report for Item 5B.

Board Member Battey moved adoption of items 5A, 5B with the supplemental information, and 5C. Vice-Chair McGrath seconded the motion.

Ayes: Young, McGrath, Ogbu, Battey

Nos: None

ITEMS ADOPTED

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to Establish Water Quality Objectives and a Total Maximum Daily Load (TMDL) for Dissolved Oxygen in Suisun Marsh, and to Amend the San Francisco Bay Mercury TMDL to Include Suisun Marsh – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Mr. Wolfe introduced the item. Staff Engineer Barbara Baginska made a presentation.

Board members asked about dissolved oxygen continuous monitoring and causes of black water. Ms. Baginska answered their questions.

Steve Chapell, Executive Director of the Suisun Resources Conservation District, commented that he has worked with all landowners, permitted entities, and Board staff to implement best management practices and comply with permits. He pointed out they work with landscapes, including about 50,000 acres of wetlands, that provide habitat and are dynamic from Delta outflow, drought, mosquito abatement, duck club management, etc.

Chair Young asked why “immediate action is not feasible” as stated in written staff response to a Baykeeper comment about violations of the acute standard. Ms. Baginska said that only small sections of Suisun Marsh in back-end sloughs experience these exceedances and require multiple coordinated actions of various agencies with competing needs, such as mosquito abatement management in short-term (draining sloughs), and these types of actions are showing improvements in dissolved oxygen. Chair Young commented that she would have liked the written response to comments to explain this as orally explained at the meeting. Board Member Battey asked if priorities are clear enough to guide the coordinated actions, for example mosquito abatement over water quality. Mr. Chapell said he manages sloughs and wetlands to comply with all goals as much as possible.

Vice-Chair McGrath complemented the work and the adaptive management process in this plan and Chair Young said that managing effectively in response to exceedances of acute dissolved oxygen levels is important. She also asked for more description of why the expert panel claimed that instantaneous minimum levels lacked a scientific basis. Ms. Baginska explained that this statement by the panel is due to limited data and understanding that instantaneous minimum levels may be misleading; the approach is to balance what studies

show, what the Board is trying to protect, and account for measurements that are not entirely precise or predictable.

(Board Member Ajami arrived at 10:45 a.m.)

Mr. Wolfe reiterated that the primary vehicle for managing duck clubs to meet dissolved oxygen levels is the Water Quality Certification Permit, which recognizes an adaptive management program that is showing improvements. Mr. Wolfe explained that the Board has a resolution before them that explains that this approval is the first in our Basin Plan amendment process; the process also requires State Board, Office of Administrative Law, and U.S. EPA approval.

Mr. Wolfe recommended adoption of the Resolution amending the Basin Plan.

Vice-Chair McGrath moved adoption and Board Member Ogbu seconded the motion.

Ayes: Young, McGrath, Ogbu, Ajami, Battey

Nos: None

ITEM ADOPTED

Item 7 – Sang Lee, Individually and Doing Business as Hillview Cleaners; Suk Lee, Individually and Doing Business as Hillview Cleaners; Eugene Zambetti, Individually and Doing Business as Hillview Cleaners; Estate of Julia Zambetti, Deceased, Individually and Doing Business as Hillview Cleaners; Estate of Peter Zambetti, Deceased, Individually and Doing Business as Hillview Cleaners; and Frank L. Burrell, Trustee of the Frank L. Burrell 1937 Trust, for the property located at 14440 Big Basin Way, Saratoga, Santa Clara County – Adoption of Site Cleanup Requirements

Board Member Ogbu stated that she worked at the same office as the attorneys who prepared the letter on behalf of one of the dischargers from 2009-2011, had no role involving this case, had no prior knowledge of any aspects of it, and can consider this case fairly.

Mr. Wolfe introduced the item. Chair Young read the hearing procedures and administered the oath.

Staff Engineer David Barr presented the Cleanup Team's testimony in support of the Tentative Order (Order) and recommendation to name all parties.

Board members asked about pilot well injections, risk of the plume impacting the creek, cleanup incentives, and timeframes. Mr. Barr and Toxics Division Chief Stephen Hill responded.

John Till, attorney, and Michael Harrison, engineer, representing Frank Burrell, commented that this is the wrong time to issue a cleanup order as they are close to a settlement with the parties that will fund the cleanup. They said the investigation work is complete, pilot testing reduced concentrations, and drinking water is safe. They also said the Order should be reopened for another comment period because the change from commercial cleanup levels to

residential cleanup levels is substantial. They requested that adoption of the Order be postponed until the settlement is complete and said they will implement the Remedial Action Plan (RAP) voluntarily. They estimated they needed about six months more.

Board members asked about the effectiveness of onsite cleanup work to date, how the Order complicates the cleanup, why the process has taken more than 13 years, and who amongst the parties has actually done or paid for the work. Mr. Till and Mr. Harrison responded and explained that there are three lawsuits and they involve Fireman's Fund Insurance who says they do not have responsibility to pay for cleanup. They also said the plume is not moving, partly due to pilot injection tests and attenuation. Mr. Burrell has paid for most of the work to date.

Jeff Hawkins, attorney representing the Lees, said there is insufficient evidence to name the Lees based on installation of new machines, new flooring, secondary containment, etc. Stephen Artis, representing the Lees, also said the Order complicates the settlement and insurance pay outs and buy backs.

David Wood, attorney representing Eugene Zambetti argued that Eugene Zambetti should not be named as he only had control, operation, and ownership for seven months and was not a co-operator since 1976 as indicated in Order. He requested that the Board not name Eugene Zambetti and add him in the future if current owner does not complete the cleanup.

Board members asked questions about lawsuits, insurance payments, and clarification of how the Order interferes with these.

Michael Huggins, representing Fireman's Fund Insurance and the estate of Peter and Julia Zambetti, said the Board should not name them because probate code does not apply here. They are deceased and there is no precedent to order a dead person to cleanup. He also said cleanup orders are not within indemnity that insurers must provide. Fireman's Fund is the insurer of all parties so he is funding both sides of the law suits.

Board members asked clarifying questions about Fireman's Fund's interest in resolving the law suits, amount of money they will pay, and time to compel completion of settlement. Mr. Huggins said they have offered \$2.8 million and that he would argue for 180 days due to the number of parties and complexities.

Board members further asked staff if they understand the \$2.8 million to be enough money to cover all the cleanup activities in the Order. Mr. Hill said yes.

George Cook, representing Santa Clara Valley Water District, said that he supports the Order as groundwater is a critical resource and Hillview Cleaners has impacted groundwater and released pollution into Saratoga Creek. He acknowledged that work has occurred on the site but urged implementation of remediation since the pollution was discovered 20 years ago.

Chair Young asked for closing statements.

The Cleanup Team asked Board members to identify questions or issues that they wanted to hear about in closing statements. Board members identified several issues related to the lawsuits and settlement, timing, site conditions and costs.

[The Board took a lunch break from 1:13 to 2:29]

Mr. Till said they will likely have a settlement in 30-60 days, the money then goes into a trust for implementation of the RAP, and it will take about 30-60 days to get court approval.

Mr. Artis said the responsibility for discharges have been attributed to the Lees on the basis only that they are dry cleaners, based on industry-wide operational practices, but not something the Lees did. He said there is no evidence beyond the fact that they are dry cleaners. He reiterated that the Order will create complications and that he will protect his client's legal interests, including filing a petition and appeal.

Mr. Wood said he is correcting the mistake and factual error that Gene did not get any control over the business until September 1982 and only had it for seven months. There must be substantial evidence of a discharge. Burrell Trust is an entity that is able to fund whatever work is needed beyond the settlement, so it's not necessary to name Gene Zambetti, and it is inequitable to do so.

Mr. Huggins said there is no legal basis for naming Peter and Julia Zambetti or their estates, no testamentary or probate estate, and no personal administrator or representative of the estate. There has to be an action in court. Naming them in an order would be a misapplication of the law.

Ms. McCann, representing the Cleanup Team, addressed Board members' questions.

Board Member Ajami wanted to hear more about the relationship between the Order and settlement. Ms. McCann said that dischargers have been talking about settlement for two years, so staff does not think there is a relationship; staff thinks the incentive to settle remains the same with or without an order, and the Order provides clarity about staff expectations.

Board Member Battey asked what the risks are to the Board if it delays action. Ms. McCann said there is a potential for vapor intrusion, and mitigation systems are necessary to protect human health. There are discharges to the creek and that is contrary to our Board policy and should be addressed as soon as possible. She also said staff is not persuaded that an additional 180 days will make a difference, as they have heard this before.

Board members Ajami and Battey asked whether anything staff heard today changed their position on naming parties. Ms. McCann said nothing today is new; the response to comments identifies the substantial evidence that supports naming each party.

Board Member Battey asked about the gap between insurance funding and the rest of the funding and how the cleanup will get funded. Chair Young asked what staff thinks cleanup will cost, and Board Member Ajami asked about prior experience in other cases. Ms. McCann said the dischargers' consultants have provided cost estimates; if they say that the \$2.8 million is going to cover it, staff is not going to second guess that. This amount is in the ballpark of what staff has seen for other sites.

Vice-Chair McGrath asked about who should pay and Chair Young mentioned wanting to see that the appropriate people are required to do the appropriate proportion of cleanup. Ms.

McCann pointed out that the Regional Water Board's job is to identify dischargers, not allocate costs.

Board Member Battey had questions about the future land use and economics associated with that. Ms. McCann said that is not staff's expertise and deferred to the dischargers.

Board Member Ogbu had questions about the appropriateness of residential cleanup levels being applied. Ms. McCann said staff received comments on the Tentative Order from two parties, Ed Firestone of Mint Leaf property, and Mr. Burrell's attorney, that suggested future residential use of the site. A residential unit already exists next door at Mint Leaf property and zoning allows for residential use.

Board Member Ajami asked for a staff response to Mr. Harrison's representation that the plume is contained. Ms. McCann said staff does not agree. There is a source on the property that is slowly diffusing and migrating to the creek.

Ms. McCann concluded that this case has been going on for many years, and staff thinks the benefits of issuing an order now significantly outweigh the costs. She recommended that the Board adopt the Order as revised and supplemented.

The Board went into Closed Session for deliberation. The Board may meet in closed session to consider evidence received in an adjudicatory hearing and deliberate on a decision to be reached based on that evidence. [Authority: Government Code section 11126(c)(3)]

Following Closed Session, Chair Young announced that the Board did not come to a decision and this Item will be continued until the July Board meeting.

Item 8 – Correspondence

Mr. Wolfe mentioned that there is a letter noting water quality issues caused by Lehigh and Stevens Creek quarries. Mr. Wolfe indicated that there is pending enforcement. Chair Young said since there is pending enforcement on Stevens Creek Quarry, it is better not to discuss at this time.

Item 9 – Closed Session – Personnel

No closed session occurred to discuss personnel matters.

Item 10 – Closed Session – Litigation

No closed session occurred to discuss litigation.

Item 11 – Closed Session – Deliberation

No closed session occurred separate from deliberation as recorded in Item 7 above.

Item 12 - Adjournment

Meeting adjourned at 3:07 p.m. until the next Board Meeting – May 9, 2018