

**California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT
A Monthly Report to the Board and Public**

December 2008

The next regular scheduled Board meeting is December 10, 2008.

See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda

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Implementing the Grazing Operations Waiver (Carmen Fewless)

As a step toward the implementation of the Conditional Waiver of WDRs for Grazing Operations in the Tomales Bay Watershed (adopted in July 2008), Board staff mailed a package containing the Waiver's Notice of Intent to comply, along with copies of the Waiver and Grazing Checklist, to the owners of 425 agricultural parcels in the Tomales Bay Watershed. To get the landowner's name and information for the mail package, Board staff used Marin County's Agricultural Parcel Information, confirmed by County staff to be an accurate list of parcels in the Tomales Bay Watershed. This information was listed by Assessor Parcel Number, not by ranch facility, so in some cases, a ranch owner may have received more than one mail package for his/her ranch. Ranchers are required to submit only one Notice of Intent per ranch facility. The mail package also included a letter that introduced the Waiver, listed the required submittal deadlines, provided a link to Waiver information on our website, and listed staff contact information. The mail packages went out on November 7, 2008.

In mid-October, Board staff were alerted via e-mail by a member of the Marin County Farm Bureau, that the mailing list to be used was not entirely accurate, as it included information for parcels not in the Watershed. The Farm Bureau's e-mail, however, did not include any specific information, corrections to the list, or an alternative, more accurate list. In absence of another landowner information list, staff used the one provided by the County, and, in order to address the list's inaccuracies, included a Notice of Non-Applicability form to be filled out by those reached in error. In the last two weeks since the package was sent out, staff have been contacted by approximately 25 landowners who, in the majority, have reported not having grazing activities on their land. In addition, staff has received a handful

of signed Notices of Intent and approximately 20 signed Notices of Non-Applicability. Board staff is, and will continue to be, available to address any questions or concerns raised by landowners or the public regarding the mail package and the Waiver. Notices of Intent to comply with the Waiver are due to the Board by January 31, 2009.

Other activities related to implementation of the Waiver include:

- Marin Resource Conservation District, National Resource Conservation Service and UC Cooperative Extension conducted a Grazing Waiver Workshop for ranchers on November 10.
- Board staff met with the National Park Service staff on November 14 to discuss the Waiver requirements for ten ranches that drain into Tomales Bay that are owned by the Park Service.
- Board staff are finalizing a \$30,000 contract with ABAG and Marin RCD to provide outreach to ranchers on the Waiver requirements for the part of the Walker Creek watershed that drains to Tomales Bay . Marin RCD has also submitted a concept proposal for the 2008 319(h) Grant Program to work with ranchers on development of ranch water quality plans and to implement BMPs, as required by the Waiver.

Ballast Water NPDES Permits (Naomi Feger)

Resolution of a lawsuit filed by environmental groups has led to the U.S. EPA proposing issuance of a general Clean Water Act (CWA) NPDES permit to regulate discharges, including ballast water, from vessels 79 feet or longer in length. Commercial vessels less than 79 feet and commercial fishing vessels of any length were exempted from the permit by Congress until further study is completed. Congress also excluded recreational vessels from requiring vessel discharge permits. The date for finalizing the permit is December 19, 2008. States have been asked to provide a water quality certification under CWA Section 401; the State Board is in the process of drafting a certification to submit to EPA by January 1, 2009. Section 401 of the CWA requires states to certify that federal permits meet state water quality standards.

California has its own ballast water regulations, including performance standards for the discharge of ballast water, created as part of the Marine Invasive Species Act, which was passed by the legislature in 2003. The act reauthorized and enhanced an existing ballast water management and control act. The State Lands Commission (SLC) is responsible for overseeing these regulations and coordinates with the Water Boards. The water quality certification issued by the State Board to EPA will likely integrate requirements of these State regulations into the certification.

This Board placed San Francisco Bay on the 303(d) impaired water body list for aquatic nuisance (exotics) species in 1998. In 2000, the Board passed a resolution forwarding a TMDL report on preventing introduction of invasive species to the estuary to EPA, recommending a TMDL of zero. We did not adopt a TMDL at that time and are not considering adoption of a TMDL for two reasons: 1) the TMDL program is not the preferred program to address prevention of the introduction of exotic species; and 2) state agencies other than the SLC are prohibited from regulating ballast water discharges. We do continue to participate in the efforts by the SLC to develop the ballast water program

through the SLC's technical advisory panel. Staff will also participate in the California Aquatic Invasive Species Management Team, currently being established by the State Resources Agency.

Redwood Landfill in Marin County (Vic Pal)

At the November 12 Board Meeting public forum, two speakers from the Green Coalition Responsible Waste/Resource Management discussed their concerns regarding the State Integrated Waste Management Board's upcoming Solid Waste Facilities Permit (SWF) revision for Redwood Landfill, located north of Novato. The Redwood Landfill has been in operation since about 1958, and is regulated by this Board through Waste Discharge Requirements (WDRs) and the Industrial Storm Water Permit. The landfill has been in the process of obtaining a revised SWF permit since 1998. The revised SWF permit will increase the capacity of the landfill, but does not include major changes in land-filling operations. Marin County's Local Enforcement Agency certified the Final Environmental Impact Report (FEIR) for the SWF on June 10, 2008. The Waste Board will consider the SWF revision on December 17, 2008. The landfill is currently in compliance with permits issued by our Board.

The environmental review process required preparation of several detailed reports, including a Long-Term Flood Protection Plan and a Leachate Facilities Leak or Spill Contingency Plan. These reports were recently submitted to Board staff, who have confirmed that they conform to Board policies as well as the landfill's current permits. Existing WDRs for this site were adopted in 1996. Revisions to these 1996 WDRs will be brought before the Board in 2009 for consideration after the SWF permit is revised. Revised WDRs will incorporate new changes and other pertinent information developed during the environmental review process.

Brief responses to the primary issues raised by the Green Coalition speakers on November 12 are outlined below. These issues are also discussed in the FEIR.

1. Separation of Landfill and Groundwater: Engineered Alternative to 5-foot Separation
In accordance with State and federal regulations, an engineered alternative to requiring five-foot separation between the landfill and groundwater was approved by Board staff in February 2006. The landfill footprint, which is in contact with groundwater at some locations, was in place before inception of these State and federal regulations. The landfill leachate collection and control system (LCRS) is one of several engineered controls that comprise the engineered alternative to the five-foot of separation requirement. The following factors also supported the staff's approval of the engineered alternative: (1) there is an interior and perimeter leachate collection and removal well network; (2) the operator maintains a hydraulic gradient towards the leachate collection network; (3) there is a general upward hydraulic gradient below the footprint of the landfill; (4) the bay muds below the landfill are of low permeability; and (5) there is a program to control leachate levels within the landfill. These measures, in combination with the LCRS, provide equivalent environmental protection to the 5-foot separation requirement.

2. Leachate Water Used for Dust Control

In 1994 Board staff approved using leachate for dust control if the leachate meets "clean" standards and is applied between May and October at rates that do not exceed evaporation potential. Periodically hauling leachate offsite is not considered to be more environmentally friendly than current best management practices, considering trucking, greenhouse gas emissions, and energy requirements for treatment at a wastewater treatment plant.

3. Adequacy of Landfill and Surrounding Levees for Flood Protection

The levee system around the landfill, referred to as the perimeter levee, protects the landfill from flooding. Exterior levees around the remainder of the site are in the process of being raised to meet the same flood protection levels as the perimeter levees. Financial assurances are also in place for consideration of future potential sea level rise per the facility's post-closure financial assurance required by the Waste Board. At this time, however, the levees still provide 100-year flood protection to the landfill.

4. Adequacy of Leachate Facilities Leak and Spill Contingency Plan

The Leachate Facilities Leak or Spill Contingency Plan was updated and submitted as a condition of the FEIR. The updated plan describes the LCRS and leachate storage facilities at the landfill. The plan identifies potential leak or spill scenarios including warning signs, potential causes, and measures to prevent leaks or spills. Should a leak occur, the plan provides detailed corrective actions to prevent releases of leachate into the surrounding wetlands, creeks, and groundwater. Corrective actions include temporary use of the permitted sludge impoundments as contingency storage. The landfill is also in the process of developing additional leachate storage capacity to accommodate leachate and stormwater that could be generated during an unusually wet winter.

5. Historic Surface Sloughs Adjacent to the Landfill

In 1995, the landfill conducted an extensive review of site geologic information, including available maps, well data, and boring logs. The goal of this evaluation was to identify all areas that could potentially transmit groundwater. The facility then established a comprehensive monitoring program for early detection monitoring. The perimeter trench system, which is installed to -5 feet mean sea level, also intersects any surface and/or shallow expression of sloughs and troughs, thereby eliminating the potential for offsite migration. Thus, the LCRS, combined with the inward gradient present at the site, ensures water quality protection. The FEIR also includes mitigation measures requiring the facility to conduct further investigations of geological conditions at the site; based on the results of these further studies and in conjunction with issuance of revised WDRs, Board staff will modify the current monitoring program as necessary. Board staff will continue to keep the Board apprised of water quality issues associated with the existing landfill and its proposed expansion.

Enforcement - Pending Complaints & Orders (Brian Thompson)

I have publicly noticed a tentative order setting Administrative Civil Liability (ACL) fines for a case in which the Board's prosecution team and the operators of Eagle Marine in Martinez have agreed to a \$4,500 settlement. I intend to sign the agreement and issue the

ACL Order if no significant comments are received within the 30-day comment period. A copy of the tentative order can be found on our web site:

(http://www.waterboards.ca.gov/sanfranciscobay/pending_en.shtml).

On November 24, I signed an order setting ACL fines for Pete's Stop in San Jose. Dyan Whyte, as the Board's prosecution team lead, issued two ACL complaints against Pete's Stop in August 2008 and reached settlement agreement on those complaints in September for the initially circulated ACL fine amounts. The November Order, which received no comment during its October public comment period, approves the settlement agreements and orders Pete's Stop to pay fines of \$25,000 and \$48,000, as agreed to in the settlement agreements.

Signature at the Estuary, Oakland (Cleet Carlton)

Board staff is requiring investigation of vapor intrusion potential at a recently-constructed town home development next to the Oakland Estuary. Staff is also investigating discharger compliance with vapor-intrusion controls specified in the Board's 2004 site cleanup requirements for the site.

Signature at the Estuary is a town home development on Derby Avenue, on the Oakland side of the estuary that separates Oakland from Alameda. From 1925 to 1985, the property was a former bulk fuel distribution terminal. During this period, petroleum and related chemicals leaked from above-ground and underground storage tanks and pipelines into subsurface soil and groundwater. In 2003, the site was acquired by Signature Properties for redevelopment into town homes.

In 2004, the Board issued final site cleanup requirements (SCR) for the site. The SCR set cleanup standards, approved Signature Properties' cleanup plan (which included engineering and administrative controls), and required its implementation. The SCR were intended to render the site suitable for residential use. Signature removed contaminated soil, added an oxygen-releasing compound to the groundwater, and replaced the soil with imported clean fill. It also recorded a deed restriction.

In 2006, Board staff expressed concern over rising concentrations of residual groundwater contaminants. We requested information from Signature to verify compliance with administrative and engineering controls. In response, Signature initiated a soil vapor investigation. Soil vapor monitoring in 2006-2008 indicated significant concentrations of gasoline and benzene in soil vapors in the vicinity of some town homes. These results were presented in a Progress Report submitted in October 2008.

Board staff met with Signature and its consultants in early November to discuss the Progress Report and future activities. During this meeting, Signature stated that the passive ventilation and vapor barriers, which were part of the required engineering controls and which were documented in the deed restriction and sales disclosure, were mistakenly omitted from the building construction. Signature proposed to submit a work plan for an alternate depressurization system pilot study by early 2009. The purpose of this study will be to design a system to mitigate the potential for soil vapors to enter indoor air.

The field activities during August 2008 apparently caught the attention of residents, prompting them to ask us for an update on cleanup status and the vapor intrusion issue. Board staff met with homeowners on November 6 at a homeowners association meeting, where we provided an update on the site history and current status, including Signature's proposal for an alternate mitigation system.

Board staff is also investigating Signature's compliance with vapor-intrusion controls specified in the SCR. We will update you on significant new developments in this matter.

San Lazaro Avenue Investigation (Nathan King and Max Shahbazian)

Board staff recently completed an analysis of soil and groundwater investigation results in the San Lazaro Avenue area of Sunnyvale, and determined that four sites in the area should be closed and three sites should complete additional investigation and cleanup.

We oversee a number of significant groundwater contamination sites in Sunnyvale, and the San Lazaro Avenue area is located near them, at Central Expressway and North Wolfe Road. Shallow groundwater in the San Lazaro Avenue area is contaminated by the solvent trichloroethene from numerous light-industrial activities. In the past, our oversight efforts in this area were slowed by several recalcitrant dischargers and our focus on more significant contamination sites nearby. In recent years, we have been able to turn our attention to this area. In fall 2007, the Board imposed \$20,000 administrative civil liability fines (ACL) against two sites in the area for failure to submit investigation reports. Both parties subsequently submitted the required reports. One paid up immediately and the second just completed a series of ACL payments after the Attorney General initiated a collection action.

We have now received investigation reports from all the parties and have comprehensively reviewed the recent and previous investigation reports from the seven sites in the San Lazaro Avenue area. We will be issuing draft closure letters for public comment for the following four sites:

- 150 San Lazaro Avenue
- 162 San Lazaro Avenue
- 895 Kifer Road (former Pilkington Barnes Hind site)
- 170-180 North Wolfe Road (former Icore International site)

We will be requiring additional investigation and/or cleanup at the following three sites:

- 154 San Lazaro Avenue
- 158 San Lazaro Avenue (former Magnetics site)
- 150 North Wolfe Road (former Royal Auto Body site)

Mercury Biosentinel Workshop (Andree Greenberg)

Board staff hosted a Mercury Biosentinel Workshop on November 11, to seek input on the use of biosentinels (e.g., small, young-of-the-year fish or other biological species) to answer the "where" and "when" questions of how methyl-mercury is getting into the food

web at wetland restoration projects in the Bay. The San Francisco Estuary Institute and the U.S. EPA were involved in organizing the workshop.

The goal of the workshop was to share such information among scientists, managers, and regulators and develop guiding principles for the appropriate application of biosentinel monitoring to Bay Area projects. The workshop is important to the Board because: (1) the mercury TMDL implementation plan calls for wetlands to be designed and operated to minimize methyl-mercury production and to result in no net increase in loading to the Bay; and (2) the Board has issued several orders in the past few years to restore former salt ponds to tidal marsh that require methyl-mercury monitoring. One of those orders was for the South Bay Salt Pond Restoration Project. The results of the Mercury Biosentinel Workshop will be written up and distributed to interested parties, and a standing subcommittee may be established to provide guidance on future monitoring of habitats and species that can better inform the adaptive management of restoration projects and TMDL implementation. Biosentinels are also an important component of the mercury strategy developed through the Regional Monitoring Program to address baywide mercury.

The Mississippi Silverside is one of the common fish biosentinels. The early findings from the UC Davis Biosentinel Program suggest that tidal wetlands, including the Napa Marsh and parts of the North Delta, that remain inundated, without periodic drying cycles, had relatively low methyl-mercury uptake into biota.

Water Board Softball Success (Richard Looker)

The Aquabats, a softball team comprised mainly of Board staff, compiled a 7-3 record and earned a second-place finish in its City of Oakland co-ed softball league. In addition, they won the league tournament by upsetting the regular season champion, to whom it had lost 23-7 in their previous regular season match up. The tournament final ended in dramatic fashion with the Aquabats executing a rare, 'shortstop to first to home' game-ending double play to preserve a 7-6 victory. The embarrassingly large trophies for the regular season finish and tournament championship are on display for a limited time in the Board's reception area on the 14th floor. The Aquabats roster includes the following staff: Anna Torres, Ben Livsey, Cleet Carlton, Elizabeth Wells, George Rose, Kevin Brown, Lindsay Whalin, Paisha Jorgensen, Ray Arebalos, Richard Looker, and Tina Low. These staff deserve congratulations and perhaps a stipend to purchase ibuprofen.

In-house Training

In November we had in-house trainings on two topics: annual health and safety refresher and enforcement. Our December training will be on computer topics (Word, Excel, and Powerpoint). Brownbag seminars included a November 5 session on vapor barrier technology (to prevent subsurface VOC vapors entering buildings) and a November 6 session on nitrogen in the San Francisco Bay-Delta estuary.

Staff Presentations

Farhad Ghodrati and Naomi Feger were invited to attend the North Bay Watershed Association Board meeting on November 7. Farhad Ghodrati gave a presentation on the recently adopted Total Maximum Daily Load for pathogens in Richardson Bay, providing an overview of the water quality issues in the Bay and the actions being required by the Water Board to address the impairment.

On November 18, I made an invited presentation on the Board's current priorities for TMDLs, stormwater permitting, and other significant water quality actions in San Mateo County to the San Mateo County Board of Supervisors' Environmental Quality Committee. After the presentation, Committee members Rich Gordon and Jerry Hill asked questions, focusing on how County actions can best coordinate with and support the Water Board's anticipated actions. During the ensuing public comment session, many representatives of county agencies and public groups commented and asked me questions. Chair Muller attended and wrapped up the public comment session by emphasizing how the Water Board focuses on water quality issues and looks to the County and its cities to address associated land use issues.