

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
July 19 and 20, 2005

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

The meeting was called to order on July 19, 2005 at 5:05 p.m. in Room 15-30A of the State Building, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce (participated by telephone until 5:40 p.m. when she arrived at the meeting); and Shalom Eliahu.

Board members absent: Josephine De Luca; Clifford Waldeck; and Gary Wolff.

Item 2 – Closed Session – Personnel

The Board met in closed session and evaluated the performance of the Executive Officer.

[The Board recessed the meeting for the evening at approximately 7:30 p.m.]

Item 3 - Roll Call and Introductions

The Board resumed its meeting on July 20, 2005 at 9:05 a.m. in the State Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce; Shalom Eliahu; and Clifford Waldeck.

Board members absent: Josephine De Luca; and Gary Wolff.

Item 4 – Public Forum

Philip Batchelder and Ken McIntire, San Bruno Mountain Watch, said Cypress Amloc Land Company operates a landfill on San Bruno Mountain. They expressed concern that pollutants from the landfill might contaminate surface water in Colma Creek and groundwater in the Daly City aquifer.

Bruce Wolfe said the landfill is regulated under a waste discharge requirements order. He said staff would review the order and give the Board a report on how the landfill affects water quality.

Michele Pla, Bay Area Clean Water Agencies, said staff from the Board and BACWA member agencies recently prepared a report entitled "Pollution Prevention Guidance and Tools for POTWs." She said the report describes elements of pollution prevention programs, steps to develop programs, and ways to evaluate program effectiveness. She thanked Linda Rao for her role in preparing the report.

Rick Holiday, Central Station Land Project, said he is a real estate developer planning to build 1,200 housing units in West Oakland. He said the project site needs some cleanup work before construction begins. He said a public participation plan would continue to be implemented while the site is cleaned up.

Mrs. Warren said the project would include affordable housing and thanked Mr. Holiday for his work on the project.

Marcus Johnson, West Oakland resident, spoke in favor of the proposed project and said many people who live near it also are in favor of the proposed project. He said residents feel the Board would be diligent in overseeing site remediation.

Margaret Gordon, West Oakland Environmental Indicators Project, said she did not oppose the proposed project. However, she said environmental justice issues like air quality and groundwater quality need to be addressed.

Item 5 – Minutes of the June 15, 2005 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the June 15, 2005 Board meeting.

Item 6 – Chairman's, Board Members' and Executive Officer's Reports

Mr. Muller said the Board had a Proclamation of Appreciation for Kristen Addicks for her service on the Board from 1999 to 2005. He said Mrs. Addicks was not able to be present today and the Proclamation would be mailed to her.

Tam Dudoc, State Board member, discussed the fiscal year 2005-2006 state budget. She said the number of staff positions in the state and regional boards for Brownfield and underground storage tank programs has been increased. She said general fund money used to pay for contracts to support the TMDL process for the state and regional water boards has been decreased.

Ms. Dudoc said the State Board recently held a workshop to discuss the practice of food processors and wineries to discharge wastewater and waste products to land. She said inappropriate land application of the discharge has the potential to affect groundwater adversely.

Ms. Dudoc said the State Board asked its staff to convene a panel to consider whether stormwater permits should include numeric limits. She said the panel would meet in Sacramento on September 14 and 15.

Mr. Wolfe said wineries and a small number of cheese processing facilities in this region discharge wastewater and waste products to land. He said most of these industries are located in Napa and Sonoma Counties.

Mr. Muller said Art Baggett, Chair of the State Board, initiated holding monthly teleconference meetings with regional board chairs. He said a teleconference meeting was held in July.

Mr. Muller said the August Regional Water Board meeting is canceled. He said the next Board meeting would be held on September 21, 2005.

Mr. Muller said a Water Quality Coordinating Committee meeting would be held in Sacramento on September 19 and 20.

Mr. Muller said in March 2005 the Board voted to hold an evidentiary hearing on Union Bank's request to add additional parties to the cleanup order for its Mountain View site. He said Steve Morse is serving as hearing officer to conduct pre-conference hearings regarding procedural requirements. Mr. Muller said the first pre-conference hearing was held recently.

In reply to a question, Mr. Wolfe said staff time to prepare for the hearing would be billed under the cost recovery program to Union Bank. Dorothy Dickey said Union Bank could seek reimbursement for staff costs from other parties. However, she said Union Bank would not be able to seek reimbursement through the Board's hearing process.

Mr. Wolfe said the State Board would consider the San Francisco Bay mercury TMDL tomorrow at its July 21, 2005 meeting. He said staff is working on an enforcement action against Cargill Salt for spilling toxic brine into Bay water. He said preparation of future TMDLs is a high staff priority.

Mr. Muller said Mary Warren was appointed as the Board's alternate representative to BCDC.

Item 7 – Consideration of Uncontested Items Calendar

Mr. Wolfe said Item 7C Starlink Logistics, Inc., formerly Rhone-Poulenc, sets out final site cleanup requirements for a proposed superfund site that the Board has overseen for about 20 years. He said the tentative order represents a cleanup milestone and thanked Mark Johnson for his work.

Mr. Wolfe thanked Steve Morse for his "long and steady hand" in overseeing cleanup of toxic sites during the last 20 years. Mr. Morse thanked Stephen Hill for his role in ensuring toxic sites are cleaned up.

Mr. Wolfe recommended adoption of the uncontested calendar.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. Warren, and it was unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer.

Item 8 – Hamilton Wetland Restoration Project, United States Army Corps of Engineers, San Francisco District, California State Coastal Conservancy, Novato, Marin County – Waste Discharge Requirements and Water Quality Certification

Naomi Feger said about 630 acres at the former Hamilton Army Airfield would be converted to tidal and seasonal wetlands. She said the former Hamilton property has subsided over the years because it has been protected by levees. She said dredged sediment would be placed on the property in order to bring it to a level necessary to establish wetlands. She said sediment would be taken to an off-loader in San Pablo Bay. She said water from San Pablo Bay would be pumped to the off-loader, mixed with sediment, and the resulting slurry would be pumped through a pipeline to the property. She said decant water would be discharged through an existing stormwater outfall pipe.

Ms. Feger said the tentative order regulates placement of dredged sediment, the water quality of effluent (decant), and the overall success of the wetland restoration project. She said Beth Christian, dredging permit coordinator, also worked on the tentative order.

Ms. Feger said the Army would complete remediation of the property before sediment is placed on the site. She said the Bel Marin Keys Unit 5 property would be added to the restoration project at a later time.

Ms. Feger said the project helps implement a goal of the Long Term Management Strategy (LTMS) for Placement of Dredged Material in San Francisco Bay. She said the LTMS has a goal of using 40% of Bay dredged sediment for upland disposal. She said sediment would be brought to the restoration project from the Port of Oakland's 50 Foot Project and other Bay Area dredging projects.

Lieutenant Colonel Tom Feir, District Engineer, U.S. Corps of Engineers, thanked Ms. Feger and members of the Corps' CORE team for their work on the project. He said the project would set the standard for other Bay Area restoration projects.

Tom Gandesbery, Project Manager, California Coastal Conservancy, thanked staff from the many agencies that contributed to the project. He said site cleanup, the first major hurdle in planning the project, was addressed in the Board's Order for Site Cleanup Requirements. He said the second major hurdle, public access via the Bay Trail, is addressed in a plan that the Water Board and the San Francisco Bay Conservation and Development Commission will consider.

Lee Halterman, Bay Dredging Action Coalition, spoke in favor of the tentative order. He applauded the fact that the project would use the Port of Oakland's dredged sediment. He urged staff to balance environmental protection and the viability of wetland restoration projects.

Roberta Reinstein, Port of Oakland, spoke in favor of the tentative order. She said the Port is scheduled to be the first dredging project to deposit sediment at the Hamilton site. She said the Port is removing sediment because it is deepening berths and channels.

Jim Levine, Manager, Montezuma Wetlands, expressed concern that discharge criteria for the Hamilton project are less stringent than criteria for the Montezuma Wetlands project. However, he said he did not object to the Board adopting the Hamilton tentative

order because staff recently agreed to review the Montezuma monitoring results and modify Montezuma monitoring requirements as appropriate.

Mr. Wolfe said the Montezuma project was one of the first major wetland restoration projects approved by the Board and staff has learned a lot through monitoring the decant water. He said it would be consistent with staff's adaptive management approach to review the Montezuma permit and modify limits as appropriate.

In reply to a question, Mr. Wolfe said the Montezuma project uses both cover and non-cover sediment and the Hamilton project only uses cover sediment.

Mr. Levine said monitoring data show there is not a difference in water quality between decant water from cover and non-cover sediment. He said differences in regulatory requirements for the two projects probably reflect the fact that the Montezuma project was the first major wetlands restoration project the Board approved.

Ms. Feger concurred with Mr. Levine that regulatory differences might reflect the fact that the Montezuma project was one of the first major wetlands projects approved. She reiterated the fact that staff has learned from monitoring at the Montezuma project.

Arthur Feinstein, San Francisco, spoke in favor of the tentative order. He said some tidal wetlands would be developed over former airport runways. He suggested there should be monitoring to see if wetland restoration on concrete surfaces, like runways, differs from restoration on natural surfaces.

Barbara Salzman, Marin Audubon Society, spoke in favor of the tentative order and thanked Ms. Feger for her work. She said the Marin Audubon Society was pleased the tentative order requires the discharger to prepare a public participation plan. She expressed concern about whether surface runoff would be able to flow out of a wildlife corridor during the eight years the project will be under construction.

Ms. Feger said the discharger would prepare a site operation plan that will describe surface water management. She said surface runoff would not be a problem once the restoration project is completed.

Susan Stompe, Marin Conservation League, spoke in favor of the tentative order. She said monitoring decant water would help detect if there are problems with dredged sediment quality.

Ellen Johnck, Executive Director, Bay Planning Coalition, spoke in favor of the tentative order and thanked staff for work done on the project. She suggested monitoring data be used to adaptively manage restoration projects.

Mr. Wolfe said the Hamilton project promotes wetland restoration and furthers the LTMS goal of upland use of dredged sediment. He said staff would try to see that the site is protected through adaptive management based on monitoring data. He said the needs of the dredging community would also be taken into consideration.

Mr. Wolfe recommended adoption of the tentative order as supplemented.

Shalom Eliahu thanked staff of the agencies that have worked on the restoration project.

Motion: It was moved by Mr. Waldeck, seconded by Mrs. Warren, and it was voted that to adopt the tentative order as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; and Mr. Muller

No: None

Motion passed 6 – 0

[The Board took a recess from approximately 10:45 a.m. to 10:55 a.m.]

Item 9 – Santa Clara Valley Urban Runoff Pollution Prevention Program, Santa Clara County – Amendment of NPDES Municipal Stormwater Permit

Dale Bowyer said the Santa Clara stormwater permit requires treatment controls be implemented in new construction and redevelopment projects. He said the permit categorizes new construction and redevelopment projects as either Group 1 or Group 2 projects. He said Group 2 projects create between 10,000 square feet and 1 acre of new impervious surface. He said the Revised Tentative Order creates two subcategories of Group 2 projects and sets out a schedule for implementation of Group 2 projects.

Mr. Bowyer said the Santa Clara stormwater permit requires that the Program submit a hydromodification management plan for the Board’s approval. He said Attachment A of the Revised Tentative Order includes provisions from the HMP submitted by the Santa Clara Program. He said the HMP would be implemented in: (1) areas that are less than 70% impervious surface, and (2) areas that are defined by a “built-out” parameter. He said, for example, in areas that contain less than 70% impervious surface and are less than 90% built out (1) projects larger than 20 acres must implement hydromodification controls fully and (2) projects 1 acre to 20 acres must implement on-site requirements to the maximum extent practicable, and in some instances off-site requirements.

Mr. Bowyer said Santa Clara permittees would be implementing stormwater programs before other Bay Area municipalities. He said staff would prepare a regional stormwater permit or permit blanket to help bring consistency to Bay Area stormwater programs.

Margaret Bruce asked whether controlling stormwater from new construction and redevelopment projects would improve the present situation or keep the status quo. Staff said stormwater controls for new construction and redevelopment projects would at best hold the line to the present situation.

Mrs. Bruce said municipalities might be more receptive to implementing stormwater programs if the economic benefits were quantified. She said economic benefits also could be shown for retrofitting existing development with stormwater controls.

Mrs. Warren said working with municipalities and developers to help them understand economic benefits might be helpful.

Mr. Wolfe said stormwater controls increase real property value in the long term and can be viewed as an investment. However, he said developers might be reluctant to spend money on controls at the time of construction.

Mrs. Bruce suggested stakeholders be involved in the development of a regional stormwater permit.

Adam Olivieri, Program Manager, Santa Clara Urban Runoff Program, thanked Bruce Wolfe, Larry Kolb, Shin-Roei Lee, Dale Bowyer, Jan O'Hara, and Sue Ma for their work on the Revised Tentative Order. He said the Program encouraged public participation during the development of the HMP. He said four public meetings were held. He said Santa Clara municipalities are required to implement stormwater programs before other Bay Area municipalities. He said a regional stormwater permit could promote consistency among programs.

Robert Falk, Legal Counsel, Santa Clara Stormwater Program, said it is important that the playing field for stormwater programs among Bay Area municipalities be leveled. He said municipalities with more stringent stormwater requirements have a challenge in dealing with the development community.

Dave Chesterman, Guadalupe Watershed Manager, Santa Clara Valley Water District, spoke in favor of the Revised Tentative Order. He said small developers might use off-site regional projects and in-stream projects to meet stormwater requirements. He said workshops should be held to discuss stormwater impacts from existing development. He said a regional stormwater permit would promote equity.

Randolph Shipes, Deputy Director of Environment Services, City of San Jose, said Santa Clara municipalities are concerned that implementation of stormwater regulations before other municipalities might adversely affect whether developers choose to locate industrial and residential projects in Santa Clara County, as well as the price of the developments. He said a regional stormwater permit would promote consistency among jurisdictions.

Sejal Choksi, BayKeeper, said interested parties were not included in meetings staff and Santa Clara municipalities held to negotiate the Revised Tentative Order. She said the HMP exempts too many projects from hydromodification requirements and allows delays for projects that are required to implement controls.

Ms. Choksi asked the Board not to adopt the Revised Tentative Order. However, she asked if the Board adopts the Revised Tentative Order that: (1) other countywide programs not be given similar exemptions and delays; (2) a regional stormwater permit be adopted that will level the playing field among programs; and (3) major Santa Clara cities report the amount of impervious surface being created on all projects regardless of size.

Mrs. Warren said costs to implement stormwater programs are a reality for municipalities and not an excuse.

Brenda Torres, Executive Director, Audubon Society, said the Audubon Society would like to help coordinate a workshop that focuses on stormwater impacts from existing development.

Brian Schmidt, Committee for Green Foothills, said the Revised Tentative Order does not require projects under 10,000 square feet to have treatment controls and projects under 1 acre to have hydromodification controls. He suggested Santa Clara municipalities be required to report to the Board changes in impervious surface from all projects regardless of size.

Larry Johmann, President, Board of Directors, Guadalupe-Coyote Resource Conservation District, said streams that are eroding would benefit from a program that regulates all stormwater regardless of the source. He recommended the stormwater permit regulate runoff from existing development and from all new construction and redevelopment projects regardless of size.

Mondy Lariz, Director, Federation of Fly Fishers, expressed concern that the Revised Tentative Order exempts many projects from stormwater regulation and does not consider existing development. He recommended stormwater programs use Dr. Ann Riley's "A Primer on Streams & River Protection for the Regulator & Program Manager." He encouraged staff to hold a workshop to discuss the regional stormwater permit.

Nathan Alley, attorney representing Guadalupe-Coyote Resource Conservation District, recommended the Board regulate stormwater from existing development. He suggested staff hold a workshop to discuss impacts from existing development.

In reply to a question, Mr. Wolfe said Santa Clara municipalities raised significant concerns during the public comment period on the Tentative Order and staff met with Program representatives to resolve the concerns. He said a number of issues would be considered in the development of a regional stormwater permit. He said staff's goal is to see that all stakeholders are involved in the public comment process.

Mr. Wolfe said Santa Clara's HMP will be the first HMP implemented in the Bay Area. Mr. Wolfe said opportunities to include stormwater controls in projects would be missed if the Board does not adopt the Revised Tentative Order today.

In reply to a question, Mr. Wolfe said staff would like to see consistency in the countywide stormwater programs. He said draft HMPs have been received from Alameda, Contra Costa, and San Mateo Counties. He said staff might bring the HMPs for the Board's approval in Fall 2005 or wait and include them in the regionwide stormwater permit.

Mr. Eliahu spoke in favor of adopting the Revised Tentative Order as supplemented.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Waldeck, to adopt the tentative order as supplemented.

Mrs. Bruce suggested staff hold a workshop to discuss the economic benefits of stormwater management (groundwater infiltration, pollution reduction, property

protection) and the economic costs of stormwater that is not managed (flooding, sedimentation, habitat loss, infrastructure damage). She identified a number of other discussion topics. She said the workshop would help in the development of the regional permit.

Mr. Waldeck asked if a workshop or symposium could be held after the Board voted on the Revised Tentative Order.

Mr. Wolfe replied affirmatively and said several symposiums or workshops might be held to cover topics that were identified.

In reply to a question, staff said a regional stormwater permit would help bring consistency among municipal stormwater programs.

Mr. Muller spoke in favor of adopting the Revised Tentative Order and said it represents a start at controlling stormwater.

Mrs. Bruce said she hoped the process to develop the regional stormwater permit would be very thorough.

Mr. Wolfe recommended adoption of the Revised Tentative Order as supplemented. He said many parties recognize the need to implement stormwater controls.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren and Mr. Muller

No: None

Motion passed 6 – 0.

Item 10 – Board Budget and Staffing – Status Report on the Board’s Fiscal Year 2005-2006 Budget and Staffing

Bruce Wolfe said the Governor recently signed the state budget. He said the State Board system is authorized funds and staff as if it were one agency, and each region receives a portion of authorized funds and staff.

Mr. Wolfe said the State Board system will receive funds for 1540 total staff positions, and this region will receive funds for 113 total staff positions. He said efforts are being made in this region to align staff positions with program priorities. He said there are some constraints on the alignment. He said about 20 different sources contribute to the funding of staff positions and some sources require funds be spent on particular programs.

Adjournment

The Board meeting was adjourned at 12:57 p.m.

