

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

June 14, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on June 14, 2006 at 9:02 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

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

Board member absent: none.

Board members welcomed Josephine De Luca back. Mrs. De Luca said she looked forward to returning and thanked Board members and staff.

Tom Mumley and John Wolfenden introduced new staff: Barbara Baginska; Kevin Brown; and Elizabeth Allen.

John Muller said Gary Wolff recently was appointed to serve on the State Board. Board members thanked Dr. Wolff for his service on the Regional Board and Mr. Muller presented a Certificate of Appreciation to him.

Dr. Wolff thanked Board members and said he has enjoyed serving on the Regional Board. He said he would take his oath of office for the State Board upon completion of the Board meeting, and at that time, would resign from the Regional Board.

Item 2 - Public Forum

Sejal Choksi, Baykeeper, said ex parte communication rules allow Board members to meet with individuals to discuss the proposed mercury TMDL. She said Board members must disclose on the record participation in the meetings. She expressed concern that staff may have discouraged Board members from meeting with the public.

[This subject was discussed further under Item 10.]

Edward Schulz, Napa County resident, said the County's stormwater program has some deficiencies and asked for help in correcting them.

Item 3 – Minutes of the May 10, 2006 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the May 10, 2006 Board meeting.

Mrs. De Luca abstained from voting because she did not attend the Board meeting.

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

Mr. Muller said State Board Chair Tam Doduc recently held a telephone conference call with Regional Board Chairs.

Mr. Wolfe reported staff participated in a joint agency inspection of several sailing clubs in the Alviso Slough area. He reported signing a Memorandum of Understanding with the California Energy Commission regarding the proposed San Francisco Electric Reliability Project. He said both the Energy Commission and the Water Board have regulatory authority over the project site.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar with the following exception: Item 5G would be heard after the uncontested calendar.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. De Luca, and it was voted to adopt the uncontested calendar with the exception of Item 5G as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck;
Mrs. Warren; Dr. Wolff; Mr. Muller

No: None

Motion passed 8 – 0.

Item 5G – StoneBrae L.P., StoneBrae Country Club Project, Hayward, Alameda County – Amendment of Waste Discharge Requirements Order No. 01-025

Mr. Wolfe recommended adoption of the tentative order.

Mrs. Warren recused herself from consideration of the item.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. De Luca, and it was unanimously voted to adopt the tentative order as recommended by the Executive Officer.

Item 6 – Sonoma Valley County Sanitation District, Sonoma, Sonoma County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Sonoma Valley County Sanitation District signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the District agreed to pay a Mandatory Minimum Penalty in the amount of \$39,000. He said \$27,000 may be used for a supplemental environmental project.

Item 7 – City of South San Francisco, San Mateo County – Hearing to Consider Imposition of Administrative Civil Liability for Discharge of Untreated Wastewater into Waters of the State

Mr. Wolfe said the City of South San Francisco signed a waiver of the right to a hearing on the proposed ACL. He said no Board action was necessary. Mr. Wolfe said the City agreed to pay an Administrative Civil Liability in the amount of \$516,000. He said \$484,000 may be used for a supplemental environmental project.

Item 8 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Sonoma Creek Watershed Pathogen Total Maximum Daily Load (TMDL) and Implementation Plan – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Item 9 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Napa River Watershed Pathogen Total Maximum Daily Load (TMDL) and Implementation Plan – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Peter Krottje said the proposed TMDLs for the Sonoma Creek Watershed and the Napa River Watershed presented at the April board meeting included E. coli bacteria targets. He said, at the request of U.S. EPA, staff recently added two more bacteria targets: total coliform and fecal coliform.

Mr. Krottje said the current Basin Plan contains total coliform and fecal coliform water quality objectives and U.S. EPA recommended the TMDLs be consistent with the Basin Plan.

Mr. Krottje said the TMDLs will include a sunset clause to terminate the total and fecal coliform targets when E. coli water quality objectives are adopted for the State. He anticipated the objectives would be adopted in 2007.

Tina Low described actions that parties in each source category will be required to take to reduce pathogens. She said staff recommends actions address multiple pollutants (pathogens, nutrients, and sediments) and be phased over time. She said parties are encouraged to coordinate actions on a watershed basis.

Michael Abramson, General Manager, Napa Sanitation District, said the District is required by its NPDES permit to meet an enterococcus bacteria limit. He expressed concern that it would be required to meet total and fecal coliform limits if the targets are added to the Napa River Watershed TMDL.

Tom Mumley and Dyan Whyte reiterated that U.S. EPA requested the TMDLs include targets for total and fecal coliform. They said implementation requirements in the TMDLs for municipal wastewater dischargers like Napa Sanitation District would not change because of the additional targets.

Diane Fleck, U.S. EPA, recommended the Board adopt the TMDLs and recommended the TMDLs include total and fecal coliform targets.

Sandy Ellis, Executive Director, Napa County Farm Bureau, said she worked with UC Cooperative Extension and the Natural Resources Conservation District to develop a proposal for implementation actions that Napa County grazing operators might take. She said grazing operators often have small profit margins and program requirements must be financially feasible. She anticipated programs would address multiple pollutants.

Mr. Abramson said staff addressed his concerns and spoke in favor of the Napa River Watershed TMDL.

Mr. Wolfe said staff would like to work with the Farm Bureau and other stakeholders on implementation programs that promote economies of scope and address multiple pollutants.

Dr. Wolff suggested property owners be allowed to participate as a group in programs that are implemented at a watershed level.

Dr. Wolff asked where compliance would be measured for pathogen objectives and targets.

Dr. Mumley said the Board would issue Waste Discharge Requirements or Waivers of Waste Discharge Requirements to regulate implementation programs. He said the regulatory documents would clarify where compliance would be measured.

Dr. Wolff requested a fifth bullet be added to page A-17 of the Supplemental to the Sonoma Creek Watershed TMDL: Collect sufficient data to evaluate the costs of pathogen source control measures and the existence of other pollutant reduction benefits (e.g. nutrients or sediments) if any.

Mr. Wolfe said the proposed language would facilitate adaptive management of the TMDL.

Motion: It was moved by Dr. Wolff, seconded by Mrs. Bruce, and it was voted to adopt the tentative resolution for the Sonoma Creek Watershed Pathogen TMDL as supplemented and amended by Dr. Wolff.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 8 – 0.

Dr. Wolff requested a fifth bullet be added to page A-10 of the Napa River Watershed TMDL: Collect sufficient data to evaluate the costs of pathogen source control measures and the existence of other pollutant reduction benefits (e.g. nutrients or sediments) if any.

Motion: It was moved by Dr. Wolff, seconded by Mr. Eliahu, and it was voted to adopt the tentative resolution for the Napa River Watershed Pathogen TMDL as supplemented and amended by Dr. Wolff.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 8 – 0.

[The Board took a break at 11:08 a.m. and resumed the meeting at 11:20 a.m.]

Item 10 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish New Water Quality Objectives and a Revised Total Maximum Daily Load (TMDL) and Implementation Plan for Mercury in San Francisco Bay – Hearing to Consider Proposed Basin Plan Amendment (No Action Will Be Taken At This Meeting)

Ms. Won said ex parte rules allow Board members to communicate with individuals about the proposed TMDL. She said the rules require disclosure on the record of the content of communications and when and with whom communications occurred.

Mr. Eliahu reported receiving a letter from Baykeeper requesting a meeting. He said he declined to meet.

Mrs. Bruce reported receiving an email message from Baykeeper. She said her schedule precluded her from reading attachments to the email or replying to it.

Dr. Wolff reported meeting with Baykeeper and Clean Water Action and said the substance of their conversation was covered in the letter Baykeeper, Clean

Water Action, and the Natural Resources Defense Council submitted as part of the written record on the proposed TMDL.

Dr. Wolff asked legal counsel whether she advised any Board members not to meet with Baykeeper.

Ms. Won replied in the negative.

Mr. Eliahu said Ms. Won advised him he could meet with Baykeeper.

Mr. Muller said some time ago he was told by staff that it was his decision whether to meet with Baykeeper. He said at the time he was encouraged not to meet.

Mr. Wolfe said he suggested to several Board members that they hear the presentation at the Board meeting before deciding whether to meet with Baykeeper for further discussion.

Mr. Waldeck reported meeting with Baykeeper and NRDC and said the substance of their conversation was covered in the letter the organizations submitted into the record. He reported memorializing his comments with Baykeeper and NRDC and with citizens in the Mill Valley area in an email that he sent to staff. He said he discussed the contents of the email in a telephone conversation with Kevin Buchan, Western States Petroleum Association.

Mrs. Brouhard reported receiving an email from Baykeeper.

Mrs. De Luca said she did not meet with Baykeeper and did not remember receiving an email.

Mr. Muller said he was not able to open the attachments to the email from Baykeeper and said he did not meet with the organization.

Tom Mumley said in September 2004 the Regional Board adopted a Mercury TMDL. He said in September 2005 the State Board remanded the TMDL back to the Regional Board for revisions. He said today staff is presenting a proposed TMDL that has been revised to comply with the Remand Order.

Carrie Austin said the proposed TMDL adds new mercury water quality objectives: (1) 0.2 ppm mercury in large predatory fish and (2) 0.03 ppm mercury in small prey fish. She said the current four-day water quality objective for mercury will be deleted.

Ms. Austin said 12 kilograms a year is the aggregate mercury load allocated to municipal wastewater dischargers. She said the allocation represents a 33% reduction from the allocation in the TMDL adopted by the Board in 2004. She said staff reduced loads by 20% for facilities that employ advanced wastewater treatment and reduced loads by 40% for facilities that employ secondary treatment. She said staff did not reduce loads for facilities that discharge less than one-tenth of a kilogram of mercury a year.

Ms. Austin said staff anticipates operators of wastewater facilities will be able to reduce mercury loads by 20% through pollution prevention programs. She said staff anticipates the second 20% (total 40%) reductions in loads will be achieved through facility upgrades (for reasons other than this mercury TMDL) and participation in a pollutant offset program.

Ms. Austin said the proposed TMDL requires dischargers to implement both narrative requirements, such as monitoring effluent for methylmercury and studying local impacts of methylmercury, and numeric requirements (i.e. load allocations).

Ms. Austin said staff is working to see that old mercury mines that discharge stormwater contaminated with mercury are inventoried and hot spots along the periphery of the Bay that contain mercury enriched sediment are identified.

Tom Mumley said requirements for municipal wastewater dischargers in the proposed TMDL are implemented through NPDES permits. He said staff is developing a watershed mercury NPDES permit that will include the TMDL numeric requirements, an aggregate mercury limit for all municipal wastewater dischargers and individual mercury allocations for individual wastewater facilities. He said mercury limits in the NPDES permit will be consistent with load allocations in the TMDL.

Dr. Mumley said the proposed TMDL requires individual wastewater dischargers to take immediate action if they exceed individual allocations. He said dischargers must submit a report explaining the cause of an exceedance and proposed remedies.

Dr. Mumley said staff will pursue enforcement action against individual wastewater dischargers who exceed individual allocations only when the aggregate mass limit for municipal wastewater dischargers is exceeded

Dr. Mumley said the Mercury TMDL adopted by the Board in 2004 required Bay Area petroleum refineries to investigate the fate of mercury in crude oil. He said staff issued a Water Code Section 13267 letter that required the refineries to report on how much mercury the plants emit into the air annually and the fate of the mercury once emitted. He said the report is due next year.

In reply to a question, Dr. Mumley said a pollution offset program has not been developed yet.

In reply to questions, Dr. Mumley said work is being conducted to make sure the mercury TMDL for the Delta portion of the Central Valley is stringent enough to implement the load allocation in the proposed TMDL.

Gary Wolff said a sentence on page A-16 of the proposed TMDL provides a shield to agencies and asked that it be deleted: "An urban runoff management agency that complies with these permit requirements shall be deemed to be in compliance with the receiving water limitations relative to mercury."

Dr. Mumley said staff limited revisions to issues raised in the Remand Order. Dr. Wolff requested the third question on page A-24 include the following: "In particular, is there new evidence regarding methylmercury that might justify a methylmercury TMDL or allocation, either in addition to or instead of the total mercury approach used initially in this Basin Plan Amendment."

Dr. Mumley said staff would try to include his suggestion.

[Mr. Waldeck left the meeting at 12:38 p.m.]

Dr. Wolff requested the last bullet on page A-19 and the fourth bullet on page A-20 be amended to read: "Conduct or cause to be conducted studies aimed at better understanding mercury fate, transport, and biological uptake and the conditions which methylation occurs in the San Francisco Bay and tidal areas. The first such studies shall be completed no later than four years after adoption of this Basin Plan Amendment by the Regional Board."

Dr. Wolff asked if third parties could bring lawsuits to enforce allocations to individual wastewater dischargers.

Dr. Mumley replied affirmatively. He said, however, NPDES permits for individual wastewater dischargers will clarify how, when, and by whom enforcement actions could be brought.

Dr. Wolff requested the first full paragraph on A-19 include the following: "If a facility exceeds its individual mercury load allocation, or an effluent mercury trigger concentration, it shall be in violation of its permit unless it both (a) obtained a credit for additional discharges through the procedures specified in its permit and (b) demonstrated no local effects of mercury discharges according to the criteria specified in its permit. Permit limits plus credits obtained or minus credits granted to other dischargers shall be enforceable numeric criteria for determining individual violations."

Diane Fleck, U.S. EPA, spoke in favor of the proposed TMDL. She said U.S. EPA supports the new water quality objectives and the revised wasteload allocations for municipal wastewater dischargers.

Jim Kelly, Director of Operations, Central Contra Costa Sanitary District, spoke in favor of staff's regulatory approach to take enforcement action only when the aggregate municipal wastewater load has been exceeded. He said the watershed approach provides a catalyst for municipal wastewater dischargers to develop region wide pollution prevention programs.

Andria Ventura, Clean Water Action and Environmental Justice Coalition for Water, made recommendations regarding development of a pollution offset program. She said load allocations to individual dischargers should be enforceable. She recommended actions staff is taking to inventory and address mercury legacy sources be included in the proposed TMDL.

Ms. Ventura recommended deletion of a sentence on page 25 of the proposed TMDL that allows the Board to change the compliance schedule and allocation amounts for municipal wastewater dischargers if a pollution offset program is not established. She said the sentence could serve as a disincentive for dischargers to take strenuous action to reduce loads.

Ms. Ventura requested urban stormwater agencies should be required to “aggressively identify and regulate through permits and the TMDL fixed sources within their watershed of airborne mercury-laden particles and dust which may enter runoff.”

Michelle Plá, Executive Director, Bay Area Clean Water Agencies, said BACWA met with Baykeeper and Clean Water Action to discuss mercury issues, and met separately with U.S. EPA. She said BACWA members would be willing to meet with Board members after completion of today’s hearing.

Ms. Plá suggested staff do further analysis to substantiate the new water quality objectives. She said BACWA believes the objectives may be more stringent than necessary.

Ms. Plá said the proposed TMDL significantly reduces allocations to wastewater dischargers. She said BACWA members believe full compliance with the reductions should be contingent on establishment of a pollution offset program. She said allocations to municipal wastewater dischargers account for less than 2% of the mercury load to the Bay.

Ms. Plá said BACWA members will investigate ways to reduce public health impacts of mercury. She said they do not believe they should finance health care programs.

Kevin Buchan, Western States Petroleum Association, spoke in favor of the proposed TMDL and said WSPA looks forward to the adoption hearing.

Ellen Johnck, Executive Director, Bay Planning Coalition, asked whether the suspended sediment target would apply to decant water from dredged material disposed at upland sites. She suggested further discussion was needed regarding studies dredging operators will be required to make concerning their operations and the fate and transport of mercury in the Bay.

David Williams, Director of Wastewater, East Bay Municipal Utilities District, said EBMUD, as part of a water recycling program, anticipates transferring treated wastewater to industrial facilities for use in industrial processes. He said when treated wastewater is transferred, EBMUD’s mercury load released to the Bay would decrease and the industrial facility’s load would increase. He requested the TMDL allow municipal wastewater permittees to transfer mercury credits to industrial permittees.

Sejal Choksi, San Francisco Baykeeper, recommended the proposed TMDL include wasteload allocations that can be enforced against individual dischargers. She recommended a sentence be added to the proposed TMDL that requires

refineries to calculate the amount of mercury in the crude oil they bring into their facilities every year.

Ms. Choksi concurred with Dr. Wolff's request to delete a sentence on page A-16 of the proposed TMDL because it provides a shield to urban runoff management agencies. She concurred with Ms. Ventura's request to delete a sentence on page A-25 of the proposed TMDL because it could serve as a disincentive for dischargers to take strenuous action to reduce loads.

Khalil Abu-Saba, Senior Scientist, Quicksilver Solutions, stressed the importance of working on projects that implement the TMDL. He said he looked forward to the Board adopting the proposed TMDL.

Robert Falk, Counsel for Santa Clara Valley Urban Runoff and Pollution Prevention Program, spoke in opposition to the request made by Dr. Wolff and Ms. Choksi to strike a sentence on page A-16 of the proposed TMDL. He said it is important to local government officials that local stormwater agencies will not be subject to enforcement action if the agencies comply with their NPDES permits.

Peter McGaw, representing Partnership for Sound Science in Environmental Policy, spoke in favor of the proposed TMDL. He said the amount of mercury in crude oil can vary depending upon the origin of the oil.

Mrs. Bruce asked if staff might change allocations to source categories during implementation of the TMDL.

Mr. Wolfe replied affirmatively. He said mercury levels in some source categories might be reduced more during implementation than in others and staff might recommend modifying allocations among the categories.

Adjournment

The Board meeting was adjourned at 1:50 p.m.