

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD SAN
FRANCISCO BAY REGION

MEETING DATE: June 10, 2020

ITEM: **3**

SUBJECT: **Minutes for the May 13, 2020 Board Meeting**

**May 13, 2020 Board Meeting
Draft Minutes for Board Consideration**

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 (510) 313-0610.

Note: **Bold text** in paragraphs for each item represent topics Board members focused on and were discussed more extensively than others.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:05 a.m. on Zoom Virtual Meeting platform.

Board Members Present	Board Members Absent	Status
Chair James McGrath		QUORUM
Vice-Chair Jayne Battey		
William Kissinger		
Newsha Ajami		
Alexis Strauss Hacker		

Executive Officer Michael Montgomery introduced Toxic Cleanup Division Chief Alec Naugle. Mr. Naugle introduced new supervisor Elizabeth Wells who joined the division as a Senior Water Resources Control Engineer. Planning Division Chief Xavier Fernandez introduced Sarabeth George who joined the division as an Engineering Geologist.

Item 2 – Public Forum

Michael J. Van Zandt, attorney representing Catholic Charities, commented that Saint Vincent's School in Marin County has been affected by contamination from the Prosperity dry cleaners. He said the Marinwood LLC who is responsible for cleanup has missed several reporting deadlines and failed to complete required cleanup work. Catholic Charities is trying to develop their property and continues to have contamination on their land. He requests that this be an item before the Board soon, acknowledged that a Notice of Violation was sent and urges continued and strong action.

Bill McNicholas from Cleanup Marinwood Plaza Now Oversight Committee commented that Marinwood Plaza owners have failed to comply with Orders. He said that there was a prospective buyer who offered cooperation in helping with cleanup but recently backed out of purchase.

Stephen Nestel from Cleanup Marinwood Plaza Now Oversight Committee commented that they have been coming to Board meetings for seven years and they want the contamination removed. They are frustrated that deadlines were missed and that they cannot get this cleaned up. He said the contamination is affecting a dairy and a wetlands and may have caused a potential cancer hot spot in a nearby condominium complex. He urged the Board to issue the maximum amount of penalty to get some action.

Chris Malan, Living Rivers Council, commented that they follow the Board's work, have helped with TMDLs and are following study of microplastics and collecting them for disposal. She said she noted that microplastic control is in research mode and wanted to know if the Board can provide guidance to manufacturers and the waste management industry regarding reduction of microplastics. She asked if she could collaborate with the Board on this issue.

Chair McGrath suggested Ms. Malan look through San Francisco Estuary Institute (SFEI) work regarding microplastics.

Item 3 – Minutes of the March 11, 2020, Board Meeting

Vice-chair Battey made a motion to approve the minutes. Board Member Ajami seconded the motion.

ITEM APPROVED

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

State Water Board Member Tam Doduc commented on the Water Boards' budget in context of the state budget situation due to the Covid crisis. She said all agencies are expecting some belt-tightening and the State Water Board is prioritizing support of our existing staff and continuing mission critical activities. She said the Governor's May revision to the state budget would be out tomorrow. She said there will be staff workshops on Vapor Intrusion Guidance next week and public comments are currently being solicited; the guidance will guide management of cleanup of sites with vapor intrusion risk. She said the State Water Board must adopt a definition of microplastics in drinking water by July 2020 and by July 2021 must develop a test methodology, adopt regulations for doing testing and reporting, present guidance for issuing notification levels in drinking water and certification standards for labs analyzing microplastics. She said that microplastics are discharged into the environment as well as being found in drinking water so the effort will have to be expanded. She acknowledged this region's and SFEI's contributions to microplastics understanding.

Board Member Ajami asked if Ms. Doduc knows the status of the bill on flushable wipes. Ms. Doduc said she does not but would look into it.

Board Member Ajami said she has been following the clogging issues from flushable wipes and financial challenges of utilities.

Vice-Chair Battey has also been following wipes issue and gave a shout out to Half Moon Bay for some humorous outreach. She said she got involved with THRIVE who is doing

work to eliminate single-use plastics in San Mateo County, including microplastics. She said she is serving as an expert advisor and applauds the organization's efforts.

Board Member Gunther commented that he appreciates the value of the Regional Monitoring Program and acknowledged former Board Chair Dr. Terry Young's and Assistant Executive Officer Dr. Thomas Mumley's contributions to establishing the program.

Board Member Hacker said she attended a meeting with Caltrans last week at which they raised awareness of upcoming deadlines per Caltrans' Order and establishing alliances with upper management. She has been looking into infrastructure funding bills at the federal level. She indicated some concern that instead of financing large programs like the State Revolving Funds, as in the past, the bills create multiple small competitive grant programs for USEPA to deliver which is less efficient. She also said the bills included other competitive grant programs for water quality issues such as PFAS.

Chair McGrath described the meeting with Caltrans last week that also included Mr. Montgomery and State Water Board Member Esquivel and State Water Board management. He said the Board wanted Caltrans to understand the Board's concerns about increasing funding and improving identification, specification and progress of work projects and program. He said they identified next steps for Caltrans and Board staff. He further said the Board will set a closed session later this month to finish personnel discussion with the Executive Officer and consider negotiations with San Francisco Public Utilities Commission.

Mr. Montgomery presented Executive Officer's Report items. He said he is proud of staff for following up quickly on violations related to Prosperity Cleaners cleanup. He mentioned two climate change-related items, last month's report on the Adaptation Atlas that explains expanding that work, and Board participation in Bay Adapt to advance regional planning for climate change adaptation and rely on our authorities to help support this effort. He gave a shout out to Jessica Watkins and Bill Johnson for presenting the Sanitary Sewer Overflow data regarding the effect of wipes on short notice. He also mentioned upcoming milestones for the Vineyard Program including Farm Plan completion and monitoring program.

Board Member Kissinger asked questions about Prosperity Cleaners and whether the public commenters were accurate in stating no cleanup has occurred since submitting the plan. Division Chief Alec Naugle clarified that this was accurate. Board Member Kissinger asked about frequency and purpose of the monitoring that the discharger failed to complete. Board Member Kissinger expressed concern about the violations and expectation of enforcement. Board Member Ajami said the Board needs to take more action to compel cleanup and hold the discharger accountable. Board Member Hacker shares concerns of other Board members and recommends that staff provide monthly status reports so the Board will know in advance whether the August deadline will be met or not and suggested reporting on requisite field work. Board Member Kissinger asked if work will still all be done by 2027. Mr. Montgomery explained that we set a short-term deadline for source remediation and excavation and the 2027 deadline is for groundwater cleanup. He further said it is challenging to set a specific deadline for groundwater cleanup. Assistant Executive Officer Lisa McCann added that staff is also planning to update the cleanup order to add clearer

milestones and effective monitoring and evaluation of progress on remediation to understand if the 2027 deadline is achievable. Chair McGrath reiterated that staff should understand the Board members' interest in following up and insuring additional progress on this site. He said he expects staff to bring appropriate revised requirements and enforcement back to the Board in the future.

Board Member Gunther commented that the success of the Vineyard Program is the foundation laid by Mike Napolitano's watershed management work and wants the Board to continue to use watershed management efforts similarly to build foundations throughout the region.

Vice-Chair Battey asked Mr. Montgomery to comment on how the Covid crisis is affecting our work. Mr. Montgomery said we are managing requests to delay some required field work and monitoring, will have to maneuver the state budget situation and may have to reevaluate some priorities and pace of work. He said he anticipates the most likely impact to water quality protection will follow from local agencies' capacities given their financial losses. Vice-Chair Battey said while we may have to slow down in many areas, we might also be able to reinvent some aspects of our work, like green infrastructure.

Chair McGrath administered the Oath.

Item 5 – Consideration of Uncontested Items

- A. **Cedar Fair Entertainment Company, California's Great America, Santa Clara, Santa Clara County** – Reissuance of NPDES Permit
- B. **Vista Corporation, Clover Flat Landfill, Clover Flat Resource Recovery Park, Calistoga, Napa County** – Updated Waste Discharge Requirements

Chair McGrath indicated that Item 5B is off the Uncontested list. Mr. Montgomery introduced Item 5A.

Board Member Hacker asked questions about the discharge, possible reuse of treated wastewater, whether TMDL loads apply to this discharge. She also pointed out some minor edits needed. Staff Engineer John Madigan and NPDES Division Chief answered the questions. Attorney Yuri Won said that the motion to adopt this permit must include the change pointed out by Board Member Hacker.

Chair McGrath asked for a recommendation for adoption of Item 5A that includes the changes. Board Member Kissinger moved adoption of the permit with the changes. Board Member Ajami seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

ITEM 5A ADOPTED

Mr. Montgomery introduced Item 5B. Staff Geologist Alyx Karpowicz provided a description of the Clover Landfill and the Waste Discharge Requirements.

Chris Malan, representing Living Rivers Council, thanked the Board and staff for working with the landfill and requested the Board to consider revising language referring to expansion work at the landfill, and expressed concern with the landfill's ability to do independent self-monitoring and reporting. She said she was switching hats to representing ICARE for additional comments. She said the landfill is violating the Clean Water Act and many other laws, and that she objects to specific terminology regarding radiation hazards related to storing water in frac tanks mixed with stormwater and leachate. She said that levels are characterized by others as "high" and "spectacular" and wants "low levels" and "trace" replaced with more accurate language. She also said she wants soil and water samples taken at the site due to ongoing radiation hazards at the landfill.

Chair McGrath asked if she has other concerns about removal of tanks and disposal of the radiological material. Ms. Malan said yes because a CalRecycle report says the tanks are still onsite, material is likely present, and a staff person onsite went to the hospital from exposure.

Christy Pestoni of Clover Flat Landfill said she provided a clear timeline of removal of tanks and materials and cleaning that occurred to the Board. She said the landfill replaced the management and operational team with qualified and expert members, established a board for internal and external accountability, and made significant financial investments to manage and contain all leachate onsite, remove sediment and treat pH levels. She described the actions going forward as proactive and indicated that they currently have no violations.

Board Member Ajami asked about requirements for landfills that accept radiological waste and whether this is one or not. Mr. Montgomery explained that the naturally occurring radiological material came to the landfill inadvertently in the frac tanks delivered to the Clover Flat Landfill without the landfill owner's knowledge. This landfill is not authorized to accept radiological waste. Ms. Pestoni corroborated this and explained the tanks were ordered for uses such as storing fire-fighting water and were instead used to store water to control leachate discharges. Mr. McGrath asked Ms. Pestoni if they have recourse for the tanks being sent with radiological materials and if she agrees with Ms. Malan's characterization of the radiological waste. Ms. Malan said the tanks and waste were all handled and removed properly and has all the documentation to demonstrate that.

Board Member Kissinger asked questions about acceptance of wastewater biosolids sludge due to an inconsistent statement in the Tentative Order prohibiting acceptance of sludge. Ms. Karpowicz said the landfill can accept biosolids sludge under specific conditions and with specific testing and Board staff edited the order in response to comments about this. Chair McGrath asked if staff is confident that radiological waste was disposed of properly and Mr. Montgomery asked if there was any evidence of leakage. Ms. Karpowicz said Board staff is confident about the removal of tanks and

waste and water quality is protected. She said both Board staff and County staff inspected and found no evidence of leakage.

Ms. Won proposed edits needed to clarify the language referring to expansion at the landfill and acceptance of sludge. Chair McGrath commented that the Board should avoid characterizing radiological material as “trace.”

Board Member Gunther wants to know if the Board can take action to avoid this type of situation where hazardous waste is improperly imported to facilities in this region. Ms. Won said this is prohibited and does not think the Board can do anything about it. Board Member Hacker agreed that this is probably a Department of Transportation violation that would be extremely hard to track down and suggested we used social media or other outreach to prevent this in the future.

Board Member Battey asked if the Board is aligned with other regulatory agencies involved with this site. Mr. Montgomery said we are in close coordination with the County who implements CalRecycle authorities for waste management and with the California Department of Fish and Wildlife who will report on natural resource damages. Board Member Kissinger wanted to know if Geotracker is up to date since reports to follow site progress will all be posted there and whether the public can be notified of reporting. Ms. Karpowicz said this function does not exist in Geotracker but Board staff can provide copies of any reports and letters that are uploaded to Geotracker to Ms. Malan.

Chair McGrath asked for a recommendation for adoption of Item 5B. Mr. Montgomery said the motion should include the changes. Board Member Kissinger made a motion to approve Item 5B with the changes discussed. Board Member Ajami seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

ITEM 5B ADOPTED

Waste Discharge Requirements

Item 6 – Santa Clara Valley Water District, Stream Maintenance Program, Santa Clara County – Reissuance of Waste Discharge Requirements and Water Quality Certification and Rescission of Order No. R2-2014-0015

Mr. Montgomery introduced the item and Environmental Scientist Susan Glendenning made the presentation.

Board Member Ajami said she finds giving mitigation credit for homeless encampment cleanup is a brilliant idea and is glad that homeless encampment cleanup is incorporated into our permits more systematically.

Board Member Gunther said he is interested in having Valley Water both maintain flood protection and enhance water quality and habitat and wants to know if the Board is tracking and able to demonstrate how this program contributes to enhancement. Ms. Glendenning said there is a database now (that did not exist during the first five years of the program) that will provide the opportunity to evaluate enhancement, e.g., consider amount of softscape versus hardscape included in projects. Board staff will be able to better establish a watershed approach in response to evaluation of next five-year period. Watershed Division Chief Keith Lichten added that there is also a distinct opportunity outside this Order to rely on capital projects as also contributing to watershed-scale improvements in the future.

Board Member Hacker asked for clarification on a statement about use of concrete. She said she recognizes the District's main purpose is not fish protection but hopes that Board and the District can work on strategies to enhance fish habitat through capital projects and any other efforts.

Sue Tippets with Valley Water commented that this program will provide for continued routine maintenance that is essential for Valley Water to ensure flood protection to communities. The manual demonstrates an updated, collaborative approach and incorporates lessons learned and acceptance by multiple federal and state agencies. She said Valley Water appreciates the cooperation by Board staff.

Katja Irvin, Conservation Chair for Sierra Club Loma Prieta Chapter, commented that they support the comments submitted by CalTrout and Guadalupe-Coyote Resource Conservation District. She said the Sierra Club is concerned that CEQA review does not have to occur for some projects such as vegetation management that removes large woody debris. She expressed support for measures that improve habitat especially for listed species and that she wants more oversight by regulatory agencies. She also expressed concern for a series of projects, such as pipeline projects, that show how common emergencies occur that are outside of the permit so recommended they be covered by this program.

Board Member Battey asked if staff wants to add anything in response to comments.

Board Member Gunther said he is pleased with the depth of effort this program presents and the evolution to higher maintenance and protection measures for stream channels compared to twenty years ago. He reiterated that he understands the objective of these advanced measures and wants to see how that will be measured on an on-going basis to demonstrate if we are meeting the objectives.

Board Member Hacker suggested we raise the level of confidence or good will in the program amongst all the parties by gathering them all together to review how the program is going, perhaps at the end of the year.

Board Member Kissinger echoed other comments and asked about one thousand foot boundary and said he doesn't understand why it is not in the interest of the Board and the agency to apply the same standards and measures above the one thousand foot boundary. Ms. Glendenning responded to say that there are not many projects that need to occur in the upper watersheds outside that boundary and these areas are privately owned. Ms. Tippetts added that reservoirs are at the six hundred-foot level so there are no or very few projects above the reservoirs. Mr. Montgomery reinforced the efficiencies gained by approving the manual to set the program terms.

Chair McGrath acknowledged great work of staff and the challenges of providing flood protection while also protecting habitat. He said this program will let us focus on important projects and includes great benefits in the mitigation requirements such as preservation of land.

Mr. Montgomery asked Valley Water representative Ms. Tippetts to convene a meeting, perhaps using an existing workgroup. Ms. Tippetts said they will. Mr. Montgomery asked Division Chief Keith Lichten to describe the meeting once it happens for the Executive Officer's Report and to respond to Board Member Gunther's comments about evaluating effectiveness towards meeting long-term objectives. Mr. Lichten said staff will report back on the meeting and expects to bring evidence of meeting objectives forward through some existing efforts in the watersheds, such as FAHCE, capital projects considerations, reach-scale projects under the Stream Maintenance Program, etc. Mr. Gunther offered that he understands this is a challenge.

Mr. Lichten suggested changes to the Order per Board Member Hacker's request for clarification.

Mr. Montgomery recommended adoption of the Order with the changes.

Board Member Kissinger made a motion to approve the item with the changes. Vice-Chair Battey seconded the motion.

Ayes: McGrath, Battey, Kissinger, Ajami, Hacker, Gunther

Nos: none

ITEM ADOPTED

Informational Item

Item 7 – Per- and Polyfluoroalkyl Substances (PFAS) Overview and Statewide Investigation Efforts – Status Report

Mr. Montgomery introduced the item and State Water Board Geologist Erica Kalve and Staff Engineer Kimberlee West made the presentation.

Board Member Gunther asked about our understanding of distribution in the Bay, presence in sediment and whether current compounds monitored best indicate the toxicology of other compounds and in mixtures of compounds. Mr. Mumley explained that monitoring in the Bay is comprehensive and expanding and Ms. Kalve responded to questions about monitoring for toxicity and mentioned collaboration between state agencies to address toxicity and health impacts.

Chair McGrath commented that the coordination is impressive and appreciates the government agencies' response. He further asked if we know how landfill data lines up for lined versus unlined landfills. Ms. West said we have not evaluated that yet but plan to.

Board Member Ajami commented about challenges with replacement chemicals and how we can be more proactive to address them. Ms. Kalve said AB 756 will treat these compounds as a class so that agencies are not chasing replacement chemicals individually. She also mentioned that agencies are outreaching to manufacturing companies such as carpet makers to see if we can stop using PFAS and identify if and where they are beneficial. Ms. West added that new compounds are more mobile and more bioaccumulative. Mr. Montgomery said that these are considerations in negotiations with industry as industry claims that the replacement chemicals are safer but may not have demonstrated that adequately. He said California is in the forefront of tackling these issues. Ms. Kalve said there is preliminary evidence at the federal level for progress towards better safety evaluations before chemicals released for use, more like Europe.

Chair McGrath said he wants to see some policy-making given there are so many chemicals out there with varying risks and this administration has not paid as much attention to the health downsides and identifying where there are public health benefits.

Board Member Hacker commented that chemicals come along that are toxic over time and responses take a long time to address them, such as discovery of MTBE in groundwater in California. She asked Mr. Montgomery about the communication with customers of drinking water and if there is a template or approach as more systems are identified. Mr. Montgomery said the Division of Drinking of Water is investigating the drinking water and the Division of Water Quality is investigation the sources and they are coordinating. He said our role is to be available to help drinking water systems identify sources, to investigate more wells such as private wells, and further source identification, but we have not received any resources to do this.

Mr. Mumley offered a future update on emerging contaminants and what we are learning about their presence in the Bay through the Regional Monitoring Program.

Chair McGrath said he is interested in any trends.

Board members discussed scheduling closed session on Personnel.

Item 8 - Correspondence

Item 9 – Closed Session – Personnel

The Board did not meet in closed session for Personnel in this meeting

Item 10 – Closed Session – Litigation

The Board did not meet in closed session for Personnel in this meeting

Item 11 – Closed Session – Deliberation

The Board did meet in closed session to deliberate in this meeting.

Item 12 – Adjournment

The meeting was adjourned at 2:13 p.m.