

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

May 8, 2013 Board Meeting Minutes

Adopted June 12, 2013

Note: Copies of orders, resolutions, and minutes are posted on the Regional Water Board's website (www.waterboards.ca.gov/sanfranciscobay). Information about obtaining copies of audio recordings of Board meetings may be obtained by calling the Board's file review coordinator at (510)622-2430. Written transcripts of Board meetings may be obtained by calling California Reporting, LLC, at (415)457-4417.

Item 1 - Roll Call and Introductions

The meeting was called to order on May 8, 2013, at approximately 9:06 am in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland.

Board members present: William Kissinger, Margaret Abe-Koga, James McGrath, Vice-Chair Terry Young, and Chair John Muller.

Board members absent: none.

Tam M. Doduc, State Water Board Member and liaison to the San Francisco Bay Region, addressed the Board. She discussed efforts underway to develop a statewide trash policy and noted that the latest draft of the statewide wetland policy should be re-released late this month or early next month. She also noted that the State Board's Groundwater Strategic Plan should be released within the next few months.

Item 2 – Public Forum

Board legal counsel Yuri Won and Tamarin Austin reminded parties planning to speak during the Public Forum that because there is a pending NPDES permit for Lehigh they cannot speak to matters pertaining to that permit. Rhoda Fry informed the Board about the recent settlement between Lehigh and the Sierra Club. She thanked Board staff for their investigative work and public outreach efforts. She noted that a multi-agency effort is needed going forward to regulate this facility. Bill Almon also spoke about the recent settlement and noted that now that selenium is being addressed, the agencies need to be aware that there may be a problem with hexavalent chromium. Board staff Dyan Whyte informed the Board about the recent \$10 million settlement between Lehigh and the Sierra Club. She noted that she was quoted in a press release as supporting the settlement. As part of the settlement, Lehigh will be implementing selenium reduction treatment technology. She further noted that this will be discussed in detail when the Board considers issuing an individual NPDES permit for the facility. In addition, Ms. Whyte noted that they will hear more about the creek restoration when the Board is asked to issue a permit for the project. Ms. Whyte stated that staff will continue to work with all parties to assure that settlement conditions fulfill permit requirements.

Item 3 – Minutes of the March 13, 2013 Board Meeting

The Board voted unanimously to adopt the minutes.

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

Vice-Chair Young noted that the Public Policy Institute of California just released a report titled Stress Relief: Prescriptions for a Healthier Delta Ecosystem and that on May 10 she will participate on a panel discussing the report. She also noted that she would be participating in a meeting on May 21, along with Chair Muller and Board staff, with representatives of the grape growing industry to discuss approaches to regulating vineyards in Napa and Sonoma.

Board Member Kissinger discussed his recent trip to China as part of the Governor’s trade delegation. Executive Officer Bruce Wolfe gave an overview of his written report for this month.

Item 5 – Consideration of Uncontested Items

Mr. Wolfe recommended that the Board consider Items 5B, 5E, and 5G separately.

Item 5A - California Department of Transportation, Devil’s Slide Tunnel Project, San Mateo County – Rescission of NPDES Permit

Item 5C - San Francisco International Airport and North Bayside System Unit , Mel Leong Wastewater Treatment Plants (Industrial and Sanitary) and Wastewater Collection System, South San Francisco, San Mateo County – Reissuance of NPDES Permit and Rescission of Cease and Desist Orders

Item 5D - Browning-Ferris Industries, Corinda Los Trancos (Ox Mountain) Landfill, Half Moon Bay, San Mateo County – Reissuance of NPDES Permit

Item 5F - Department of the Navy, Former Mare Island Naval Shipyard, Vallejo, Solano County – Rescission of Waste Discharge Requirements Order No. 97-100

Item 5H - Sonoma Land Trust, Sears Point Restoration Project, Sonoma County – Issuance of Waste Discharge Requirements and Water Quality Certification

Item 5I - Emergency, Abandoned, and Recalcitrant (EAR) Account Program for Leaking Underground Storage Tanks – Adoption of Resolution Nominating Sites to the State Water Resources Control Board’s Annual Site List

Mr. Wolfe recommended adoption of items 5A, 5C, 5D, 5F, 5H, and 5I

Board Member McGrath moved; Board Member Abe-Koga seconded the motion to approve the uncontested items recommended by Mr. Wolfe.

Ayes: McGrath, Young, Muller, Abe-Koga, Kissinger.

Item 5B - City of Burlingame and North Bayside System Unit, Wastewater Treatment Facility and Wastewater Collection System, Burlingame, San Mateo County – Reissuance of NPDES Permit

Eva Justimbaste, representing the City of Burlingame, commented briefly on the public outreach component of the NPDES permit and suggested that staff visit the facility prior to the next reissuance.

Mr. Wolfe recommended adoption of item.

Board Member McGrath moved; Board Member Abe-Koga seconded the motion to approve Item 5B.

Ayes: McGrath, Young, Muller, Abe-Koga, Kissinger.

Item 5G - Port of Oakland, Berth 10 Multi-User Dredged Material Rehandling Facility, Oakland, Alameda County – Update of Waste Discharge Requirements and Rescission of Order No. 98-019

Mr. Wolfe recommended adoption of the item.

Board Member Abe-Koga moved; Board Member Kissinger seconded the motion to approve Item 5G.

Ayes: Muller, Abe-Koga, Kissinger

Abstain: McGrath, Young

Item 5E - West County Agency, West County Wastewater District, City of Richmond, and Richmond Municipal Sewer District No.1; West County Wastewater District Water Pollution Control Plant, Richmond Municipal Sewer District Water Pollution Control Plant, and Wastewater Collection Systems; Richmond, Contra Costa County – Reissuance of NPDES Permit

Mr. Wolfe introduced the supplemental for this item that was made available to the public and Board members at the start of the meeting.

Jason Flanders with San Francisco BayKeeper provided testimony. Vice-Chair Young asked for clarification on storage tank volume and storm event size. Board staff Lila Tang responded and Vivian Housen, consultant for the City of Richmond, concurred.

Vice-Chair Young moved; Board Member McGrath seconded the motion to approve Item 5E.

Ayes: Muller, Abe-Koga, Kissinger, McGrath, Young

Item 6 - Sanitary District No. 1 of Marin County (also known as “Ross Valley Sanitary District”), Sanitary Sewer Collection System, Marin County – Adoption of Cease and Desist Order

Mr. Wolfe, as advisor to the Board on this item, described to the Board how staff has separated functions for this item. Board staff Dyan Whyte, as head of the Board’s prosecution team for this item, introduced the prosecution team. Board staff Mike Chee and State Board Office of Enforcement legal counsel Laura Drabrandt presented on behalf of the prosecution team.

Greg Norby, Ross Valley Sanitation District’s interim General Manager, presented the District’s plan for complying with the Cease and Desist Order. Theresa Dunham, the District’s attorney from Somach, Simmons & Dunn, reiterated the District’s desire to move forward and comply. Board Member McGrath inquired about the 45 repairs noted in the Order. Randall Ishii, Ross Valley Sanitation District Engineer, verified the approximate repair cost of the 45 sewer pipes. Mr. Norby discussed funding options and the District’s capital expenditure plan. Frank Eggers, President of the Ross Valley Sanitation District Board, provided background information on the issues and fiscal challenges faced by the District.

Mr. Wolfe recommended adoption of the Cease and Desist Order as supplemented.

Board Member McGrath moved; Vice-Chair Young seconded the motion to approve Item 6.

Ayes: Muller, Abe-Koga, Kissinger, McGrath, Young

Item 7 – Alcoa Construction Systems, Inc., Alcoa Properties, Inc., AP Construction Systems, Inc., Challenge Developments, Inc., Dr. Collin Mbanugo, F.M. Smith and Evelyn Ellis Smith, Leona Chemical Company, Ocean Industries, Inc., Realty Syndicate, Ridgemont Development, Inc., Watt Housing Corporation, Watt Industries Oakland, Watt Residential, Inc.; Leona Heights Sulfur Mine, Oakland, Alameda County – Amendment of Cleanup and Abatement Orders Nos. 98-004 and R2-2003-0028 and Rescission of Waste Discharge Requirements Order No. 92-105

Item 8 – Alcoa Construction Systems, Inc., Alcoa Properties, Inc., AP Construction Systems, Inc., Challenge Developments, Inc., Dr. Collin Mbanugo, F.M. Smith and Evelyn Ellis Smith, Leona Chemical Company, Ocean Industries, Inc., Realty Syndicate, Ridgemont Development, Inc., Watt Housing Corporation, Watt Industries Oakland, Watt Residential, Inc.; Leona Heights Sulfur Mine, Oakland, Alameda County – Adoption of Time Schedule Order for Prescribing Administrative Civil Liability

Mr. Wolfe, as advisor to the Board on these items, described to the Board how staff has separated functions on items 7 and 8. Board legal counsel Yuri Won, as part of the advisory team, discussed hearing procedures and the advisory team's request to meet in closed session with the Board. Ms. Whyte, as head of the Board's prosecution team for these items, introduced the prosecution team and Board staff Lindsay Whalin gave the prosecution staff presentation. She noted that her presentation was for both items 7 and 8. Ms. Whalin then responded to questions from Board Member McGrath regarding the feasibility of treatment. Ms. Whalin discussed options, and Ms. Whyte noted that the proposed order would not approve a cleanup plan at this time, but, rather, required the submittal of one. Ms. Whyte responded to questions by Board Member Kissinger about the lack of action on existing orders and deferred to dischargers to answer questions about ownership. John Efferson, legal counsel for Alcoa, responded to staff's presentation and questions. Glenn Friedman, legal counsel for Ocean Industries, responded to staff's presentation. City of Oakland representatives Rebecca Tuden and Ed Manasse commented on the permit requirements needed for cleanup and the City's desire to see the site cleaned up. Property owner Dr. Collin Mbanugo and his consultant provided comments and discussed obstacles encountered in trying to move forward.

Mr. Wolfe recommended a closed session to discuss items 7 and 8. Chair Muller convened the closed session at 12:33 pm. Vice-Chair Young, who recused from the items, did not participate in the closed session. Chair Muller reconvened the meeting at 1:08 pm. and requested Mr. Wolfe to put forward a recommendation. Mr. Wolfe recommended adoption of Item 7 with minor changes to deadlines. Prosecution team counsel Tamarin Austin requested a short break for the prosecution team to discuss the proposed deadline modifications. After a brief break, Ms. Whyte put forward a counter proposal that would allow staff sufficient time to review submittals. Mr. Wolfe agreed to Ms. Whyte's proposal and modified his recommendation.

Board Member McGrath moved; Abe-Koga seconded the motion to approve Item 7 as amended.

Ayes: Muller, Abe-Koga, Kissinger, McGrath

Recused: Young

Mr. Wolfe recommended that the Board not adopt Item 8 because it did not contain specific penalties for non-compliance. Ms. Won recommended this item be modified, re-circulated, and brought back to the Board at a later date.

Ayes: Muller, Abe-Koga, Kissinger, McGrath, Young

Recused: Young

Item 9 – Groundwater Awareness was continued to the June Board meeting.

Item 11B – Performance Review of the Executive Officer

The Board convened a closed session to conduct a performance review of the Executive Officer at 1:20 pm.

Item 14 - Adjournment

The meeting was adjourned at approximately 3:10 pm.