



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

**November 18-19, 2015 Board Meeting
Draft Minutes for Board Consideration**

ADOPTED January 13, 2016

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Item 1 - Roll Call and Introductions

Meeting called to order at 9:04 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Status</u>
Steve Lefkovits		QUORUM
Newsha Ajami (arrived at 9:14)		
William Kissinger		
Margaret Abe-Koga (arrived at 9:09, left at 11:02)		
John Muller (left at 11:02)		
Vice-Chair James McGrath		
Chair Terry Young		

Senior Scientist Christine Boschen introduced new Water Resource Control Engineer Elyse Heilshorn. Division Chief Lila Tang introduced new Senior Water Resource Control Engineer Mary Boyd. Attorney Tamarin Austin introduced new legal staff Marnie Ajello.

State Board Member Tam Doduc updated the Board about the Governor’s order reiterating concerns about the drought and a December 7 State Board workshop. She also announced hearings on a stormwater strategy and Proposition 1 guidelines and a draft joint powers agreement between the State Board, Fresno Flood Control District, and Alameda County Flood Control and Water Conservation District. She also noted that she’ll be involved in water rights hearings associated with California Water Fix projects April – August 2016.

Item 2 - Public Forum

Richard McMurtry gave a brief presentation on efforts to create a trash free Coyote Creek. San Francisco resident Donna Marie Ponferrada discussed concerns regarding sanitary sewer overflows in her neighborhood. San Francisco resident Nancy Huff described the December 2014 floods and damages to her home because of sanitary sewer overflows. Lisa Dunseth, a Mission Terrace resident in San Francisco, stated that she was horrified by the situation and described nuisance conditions in the neighborhood. David Hooper also described problems in the Mission

Terrace neighborhood. He urged the Board to nudge the San Francisco Public Utilities Commission to solve the problem. Chair Young asked for a followup discussion in the December Executive Officer's Report.

Nicole Sasaki, attorney with San Francisco Baykeeper, thanked the Board for its efforts to enforce against Point Buckler, LLC. She noted that this is the most egregious fill of tidal marshland in the Bay's recent history. She stated that if there is an opportunity for third-party participation in future hearing processes, Baykeeper would be interested in participating. She thanked the Board for taking a stand to protect the Bay's tidal marshland from illegal fill. Executive Officer Bruce Wolfe noted that he would report back to the Board on this item.

Item 3 - Minutes of the September 9, 2015 Board Meeting

Chair Young recommended this item be carried over to the December meeting.

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

Chair Young recommended this item be carried over to the December meeting.

Consideration of Uncontested Items (heard before items 3 and 4)

Item 5A – City and County of San Francisco, San Francisco Public Utilities Commission, Pulgas Dechloramination Facility, Redwood City, San Mateo County – Rescission of NPDES Permit

Item 5B – Union Sanitary District, Wet Weather Outfall of Raymond A. Boege Alvarado Wastewater Treatment Plant, Union City, Alameda County – Reissuance of NPDES Permit

Item 5C – Phillips 66 Company San Francisco Refinery – Updated Waste Discharge Requirements and Rescission of Order No. R2-2005-0026

Item 5D – American Linen Supply Company, Maryatt Investments, Inc., Charles Maryatt, and David Maryatt, for the property located at 290 South Maple Avenue, South San Francisco, San Mateo County – Adoption of Site Cleanup Requirements

Mr. Wolfe recommended adoption of items 5A, 5B, 5C, and 5D (as supplemented).

Board Member Kissinger recused himself from Item 5A. Board Member Muller moved for adoption of Item 5A; Vice Chair McGrath seconded the motion.

Ayes: Lefkovits, Ajami, Abe-Koga, Muller, McGrath, Young

Nos: none

Recuse: Kissinger

ITEM ADOPTED

Vice Chair McGrath moved for adoption of items 5B, 5C, and 5D (as supplemented); Board Member Ajami seconded the motion.

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

Nos: none

ITEMS ADOPTED

Basin Planning

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to establish a Total Maximum Daily Load (TMDL) and Implementation Plan for Selenium in North San Francisco Bay

Staff Engineering Geologist Barbara Baginska gave the presentation to the Board. She described the proposed TMDL and implementation plan, selenium trends in the Bay, comments received, and staff's response to comments. Chair Young noted that on October 21 she met with Craig Johns, Kevin Buchan, and Board staff to discuss added selenium inputs from potential future sources. She also reported that she spoke with Dr. Presser of USGS to discuss the implications of using different trophic transfer factors to derive the TMDL and the pending EPA site specific selenium standard.

Chair Young asked a number of questions about monitoring. She noted that U.S. EPA commented about the trophic transfer factor and asked clarifying questions. Vice Chair McGrath asked about selenium trends. Chair Young asked about U.S. EPA's plan to develop site specific standards for the Bay. She asked for clarification about what would happen if U.S. EPA comes out with a standard that is lower than the TMDL target. Board staff Naomi Feger described staff's efforts to coordinate with U.S. EPA and options moving forward. Chair Young asked for clarification about what would happen if there was a new source discharging into the North Bay. Board members and staff discussed the possibility of additional sources. Staff clarified that a new source would not be allowed to discharge if it did not have an allocation, and that the Board would be able to choose at that time whether or not to reopen the TMDL. Vice Chair McGrath asked about the data depicted on Figure 40 in the Staff Report.

Diane Fleck representing U.S. EPA addressed the Board. She noted that Board staff coordinated this effort with U.S. EPA, and U.S. EPA supports adoption of the TMDL. Kevin Buchan, representing the Western States Petroleum Agencies (WSPA), addressed the Board. He expressed support for the TMDL and noted that WSPA is in the process of securing an expert to continue studying bioaccumulation. Craig Johns, representing the Partnership for Sound Science, complemented staff on the quality of the report and staff's willingness to meet with him. He also discussed possible changes in loads that may be associated with a Delta Water Fix. He noted support for the TMDL. Ian Wren, representing the San Francisco Baykeeper, noted that there are no monitoring requirements for fish tissue and that it is a discretionary aspect of the Regional Monitoring Program. He also asked the Board to reconsider the TMDL after U.S. EPA adopts criteria. He noted that the Water Fix could result in up to a 20% increase in sturgeon selenium levels and that the Board should this monitor closely.

Vice Chair McGrath noted that the trend analysis is compelling in that there is no upward trend in selenium and that good efforts are underway. Chair Young summarized the TMDL and discussed her understanding of USGS trophic transfer research and the conceptual model, which are very site-specific. She highlighted that staff has used site-specific data. She noted support for the proposed allocations and added that if U.S. EPA adopts a lower number, the allocations may not need to be revised.

Board Member Kissinger asked about staff's plan for addressing selenium in the South Bay. Ms. Feger stated that this effort is a few years out. Board Member Kissinger also asked about the basis for the five-year monitoring frequency. Ms. Feger described the RMP's sampling strategy. Assistant Executive Officer Tom Mumley clarified that use of fish tissue plugs may allow for more frequent sampling. Ms. Feger noted that there is a selenium strategy workgroup as part of the RMP that includes the State and federal resource agencies.

Board Member Kissinger moved for adoption of Item 6; Board Member Abe-Koga seconded the motion.

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

Nos: none

ITEM ADOPTED

Item 7 – Municipal Regional Stormwater NPDES Permit – Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County – Reissuance of NPDES Permit

Board members Muller and Abe-Koga recused themselves from Item 7.

RECESS at 11:02 a.m.; RECONVENED at 11:22 a.m.

Since District 16 Assemblywoman Catherine Baker needed to leave, Chair Young allowed her to speak before staff presented the Item. Assemblywoman Baker testified that the proposed permit contains requirements that cannot be met and will force noncompliance. She noted that the goal of the community is to work in partnership with the Board to reach attainable goals.

Division Chief Keith Lichten gave the presentation to the Board. He gave an overview of the reissuance process, the Municipal Regional Stormwater Permit (MRP) regulatory role and history, and notable issues receiving public comments, including green infrastructure planning, monitoring, and trash and PCBs reductions. Board members Ajami and Kissinger asked clarifying questions. Chair Young encouraged the Board members to state their preliminary thoughts on what they've read or heard to date, so that commenters could focus their testimony. Gary Grimm, attorney for Alameda County's program expressed concern about the Board members expressing tentative opinions prior to hearing public testimony. Board Legal Counsel Yuri Won noted that she did not see any problems with Board members giving preliminary thoughts since there had already been two hearings on this issue.

Vice Chair McGrath put forward four points: green infrastructure is not a new requirement, some end of pipe monitoring will likely be required, data gathered this permit term will be used to inform the next permit in five years, and all facilities installed need to be adequately maintained. Board Member Lefkovits highlighted two themes: the importance of specific, yet flexible, requirements and comments without a constructive alternative are far less useful. Board Member Kissinger expressed a desire that the permit be enforceable, predictable, and contain clear metrics that can be achieved. Board Member Ajami discussed the need for and

challenges to measuring success and opportunities to cost share. Chair Young noted that staff made some substantial changes in response to comments, and she was particularly interested in hearing from commenters why these changes are not enough. She noted that she thought the requirements and methods of determining compliance were clarified and the supplemental further clarifies a number of items. She asked for clarification on trash monitoring and the possibility of group monitoring.

Teresa Geringer, representing District 7 State Senator Steve Glaser, addressed the Board. She noted the Senator's support for the goals of the Board and the intent of the permit. However, she noted that the Senator encouraged the Board to not adopt the permit and to work to find a solution that is environmentally responsible and financially feasible. Zach Ross, speaking on behalf of Assemblymen Kevin Mullin and Rich Gordon, highlighted the limitations of municipalities to generate revenue and efforts to address this. He described efforts underway to implement SB 985 and recommended the Board be thoughtful in prioritizing water quality concerns. Contra Costa County Supervisor Candace Anderson requested changes to the permit so that cities and counties can reasonably comply. She further explained how Contra Costa County will be impacted if the permit is adopted as proposed. City of San Jose Vice Mayor Rose Herrera described the City's efforts to protect water quality, comply with the previous permit, and address homeless issues. She requested specific changes: removing the maximum allowable trash reduction percentage offset for creek cleanups, eliminate July 2016 and July 2018 trash goals, and a clear and feasible path to compliance with the PCBs provisions. City of Dublin Councilman Don Biddle expressed concerns about green infrastructure, trash loading reductions, and PCBs requirements. He noted that many of the requirements were unfunded mandates and urged the Board to reevaluate cost implications. City of Livermore Mayor John Marchand expressed concern that significant resources may be spent without a demonstrable improvement to water quality. City of Concord Vice Mayor Laura Hoffmeister described the City's three areas of concern: trash, PCBs, and green infrastructure requirements. She highlighted the lack of funds to fully implement these provisions and urged the Board to focus on one of the three. City of Oakley Mayor Doug Hardcastle, advocated for more time to reach goals.

RECESS at 1:14 p.m.; RECONVENED at 1:45 p.m.

City of Walnut Creek Council Member Loella Haskew, who was also acting as Mayor Pro tem, read a letter from the Mayor that described the results of source control efforts but noted that options to implement further controls are limited and asked for a greater credit for these efforts. City of Danville Council Member Newell Arnerich requested changes for three areas: PCBs reductions – because they should not be an issue in rural areas, the trash load reduction formula to a maximum credit of 15%, and full trash capture on private property. City of Pleasant Hill Vice Mayor David Durant discussed how he did not think there were ways his City could achieve the mercury and PCBs reduction goals. He also noted that the efforts underway to ban certain types of packaging should be allowed to run their course before imposing new requirements. City of Moraga Vice Mayor Michael Metcalf expressed concern about the permit. He noted that cities lack authority to require school districts to control trash and that they are exploring legal options for requiring privately-owned retail centers to install trash capture

devices. City of San Pablo Vice Mayor Rich Kinney requested that the 70% trash reduction requirement be extended to the end of the permit term. He noted that plastic and Styrofoam bans appear to be reducing trash. Lafayette City Council Member Mike Anderson questioned the one-size fits-all approach for PCBs reductions. He noted support for the proposed changes submitted by the Contra Costa Clean Water Program. City of San Ramon Council Member Harry Sachs urged the Board to continue the dialogue for better solutions before adopting a permit. He urged the Board to create mechanisms of compliance that would be financially sustainable to municipalities. City of El Cerrito Mayor Pro tem Greg Lyman urged the Board to develop incentives for the cities to comply. He noted that selective enforcement will not stop third party lawsuits. He also expressed support for action levels to encourage municipalities to collect and analyze data and changes to the trash load reduction credit to better recognize local cleanup efforts. City of Hercules Council Member Bill Kelly requested support for the use of action levels so that the cities would not be subject to third party suits. City of Orinda Mayor Dean Orr discussed the success of creek cleanup programs and requested the formula be changed so fair and attainable credit is given. He also noted that, given the lack of industry in Orinda, they will not be able to achieve the PCBs load reductions.

Matt Fabry, chair of the Bay Area Stormwater Management Agencies Association (BASMAA), gave a joint presentation with Dr. Khalil Abusaba and attorney Bob Falk. Mr. Fabry expressed disappointment that two Board members recused. He noted that the permit represents a paradigm shift with the green infrastructure plan requirements. He requested feedback from the Board on highest priorities so that resources can be aligned. He requested more flexibility in source control. He suggested that a goal of 75% reduction in trash by 2019 is more feasible. He also requested that the performance criteria be switched to action levels to limit enforcement and third party lawsuits for things that are outside of each permittee's control. Dr. Abusaba presented a PowerPoint illustrating difficulties in finding sufficient sources to clean up to address PCBs reduction targets. Mr. Falk, legal counsel to the Santa Clara Valley Pollution Prevention Program (SCVPPP), gave a presentation summarizing concerns with the numeric limits associated with the mercury and PCB reductions. Mr. Falk asserted that numeric actions levels as opposed numeric effluent limits should be in the permit and explained his rationale.

Nancy Woo, Assistant Director of the Water Division at U.S. EPA Region 9, thanked staff for leading an inclusive permit development process. She expressed her support for this forward-thinking stormwater permit and its approach for addressing legacy pollutants and trash, and advancing the planning and implementation of green infrastructure. She described a grant to develop tools and financing options for green infrastructure. She noted an upcoming workshop on green infrastructure planning. Phil Bobel, representing the City of Palo Alto, emphasized two points: numeric limits do not work for stormwater permits, and the last paragraph on the first page of the staff addendum sheet triples the amount of trash assessment that will need to be conducted. Joe Sbranti, Pittsburg City Manager, echoed support for the comments made by the previous speakers. He noted concern about meeting the PCBs reduction requirements.

Allison Chan, representing Save the Bay, noted support for the mandatory trash reduction milestones and the additional guidance on the frequency of visual assessments. She urged permittees to not wait until the next permit term and to begin consistent monitoring and data

collection. Ms. Chan read a letter, signed by over 800 people, urging the Board to adopt a stronger permit to get the Region to zero trash loading. She also urged the Board to develop a separate and more comprehensive process for monitoring and reducing non-stormwater sources of trash. Melody Tovar, representing the City of Sunnyvale's Environmental Services Department, requested that a letter be added to the record. Chair Young denied this request but encouraged Ms. Tovar to summarize all the key points during her testimony. Ms. Tovar focused her remarks on how PCBs are being addressed. She asked that the Board make it a priority to update its approach for addressing PCBs-contaminated sites and remove the 50% cap of the benefit awarded to a permittee. She requested that the trash source control cap be raised to incentivize actions and urged the Board to reject supplemental changes regarding the trash assessment approach. Chair Young and Vice Chair McGrath asked a number of clarifying questions about credits given for referring PCBs-contaminated cases and other aspects of the program.

Joe Calabrigo, Danville Town Manager, expressed support for the green infrastructure plan requirement. He asked for consideration of many of changes requested by previous speakers. He stated that he hoped there would be a cooperative effort moving forward to find the funding to implement all the requirements. George Torgun, representing Baykeeper, gave a PowerPoint presentation. He stated that it is extremely premature to insert the alternative compliance language into this permit. Mr. Torgun asked for clarity on monitoring requirements and requested that wet season outfall monitoring be included in the permit. Ian Wren, representing Baykeeper, commented that Provision C.10 is inconsistent with the statewide trash policy. He asserted that a trash TMDL is needed and that this approach would address all sources of trash, not just those associated with municipal stormwater. He raised questions about green infrastructure plans and reasonable assurance analyses. He encouraged the Board to delay adoption of the permit until the State Board's trash amendment is finalized and guidance from U.S. EPA is completed. Board Member Ajami asked a clarifying question about a reference made to non-listed 303(d) waterbodies. She also asked about the Los Angeles Regional Water Board's stormwater permit.

RECESS at 4:05 p.m.; RECONVENED at 4:16 p.m.

Barbara Hawkins, City of San Pablo Engineer, discussed reasons why the City may not be able to reduce PCBs loads and urged the Board to adopt an action level as opposed to a compliance level. Craig Johns, Partnership for Sound Science, stated that the Trash Policy is not yet binding because is not approved by OAL and that when adopted, the permit would be in conflict. He requested that the Board remove section C.10.b.4 because bans do not necessarily reduce trash. Chair Young asked about a written comment suggesting that municipalities explore contracting out to trash collectors to also clean out full trash capture devices. Vaikko Allen, with Contech, discussed biotreatment and studies related to bioretention. He suggested that alternative systems should be allowed. He requested a change to C.3.c.i.2)c)ii to allow for the use of innovative technologies in areas with a smaller footprint. Lesley Estes, representing the City of Oakland, stated that the narrow metrics in the permit will focus attention more on compliance at the cost of not implementing other actions that may have more overall benefit. She described Oakland's program to address illegal dumping and creek cleanups and emphasized the need to

give more credit to those programs.

Tom Dalziel, Program Manager for the Contra Costa Clean Water Program, noted that he agreed with comments made by BASMAA, SCVPPP, and Mr. Bobel. He stated that the new provisions in the supplemental will increase the cost of compliance. Mr. Dalziel described the benefits of creek cleanups and stated that the 10:1 offset will not work and suggested it should be 3:1 with maximum 15% credit. He also asserted that product bans make sense for items that persist in the environment. Beth Baldwin, staff to the Contra Costa County Clean Water Program, requested that the trash load reduction requirement be revised to a single compliance milestone of 75% by July 1, 2019, to provide more time for permittees to budget and install trash capture devices. She asked for clarification on the frequency of trash visual assessments. She also stated that full trash capture devices are not the panacea that everyone thought they would be and that they do not affect behavior changes. Leah Goldberg, Deputy Senior Attorney for the City of San Jose, noted that she was disheartened that two Board members recused themselves. She expressed concern that a subcommittee of the Board carried on the previous meeting as opposed to a quorum of the Board. She also noted her concern with the trash assessment frequency in the supplemental memo.

Cece Sellgren, Stormwater Manager for Contra Costa County, described why the trash reduction credits for creek cleanups should be credited more. Andrew Wemmer, Environmental Compliance Supervisor with the City of South San Francisco, discussed the infeasibility of meeting the load reduction performance criteria for PCBs and mercury and requested a numeric action level instead. Michele Mancuso, Watershed Manager for Contra Costa County, encouraged the Board to change the requirements for creek cleanups back to one event a year and 3:1 credit. She expressed concerns about the supplemental proposal and stated that it is unclear about implementation and that it should have been distributed earlier. Steven Prée, Environmental Program Manager with the City of El Cerrito and Clean Water Program Coordinator, stated that trash assessments do not remove trash. He described the City's community cleanup events and the benefits of bans, including smoking and bag bans. He also urged the Board to actively regulate BART. Dan Sequeira, City of Pleasanton Civil Engineer, noted appreciation for the extension of the deadline to implement the green infrastructure plans. He described the infeasibility in retrofitting some existing roads because public right of ways make it difficult. He suggested that the Board remove the requirement but fund the design. Michelle Daher, representing the City of East Palo Alto, suggested that waterway cleanups be given 1:1 credit and stated that the PCBs plan is half-baked. Laura Hoffmeister, City of Clayton Clean Water Program Manager, described compliance challenges for small cities and areas in the permit where one size does not fit all. She asserted that the PCBs reduction requirements should not be applicable to areas that were not industrial. She also expressed that since Clayton is built out, it should not have to develop a green infrastructure plan.

Gary Grimm provided legal comments for the Alameda countywide permittees. He noted strong support for the revisions made to the Fact Sheet. He noted concern with some of the Board's procedures and stated that it would have served the public's interest if all Board members were involved in this decision. He also noted concern about the lack of time they are being given to evaluate the changes proposed in the errata sheet. Mr. Fabry, representing the San Mateo Countywide Program, summarized a resolution adopted by the City and County Association of

Governments of San Mateo County. James Scanlin, Alameda Countywide Clean Water Program Manager, clarified comments made by Ms. Tovar earlier about PCBs cleanups. He discussed why full trash capture will not work everywhere. He described the benefits of incentivizing source control programs and public outreach. Geoff Brosseau, Executive Director of BASMAA, requested that the Board adopt one of the two recommendations presented in Mr. Falk's slides. He urged the Board not to devalue source control and cleanup activities and provide more flexibility in crediting the use of these tools. He concluded by stating that one target later in the permit term, such as a 75% target in 2019, will be much more effective than having multiple targets. John Steere, Watershed Planner with Contra Costa County, strongly encouraged the Board to receive the testimony they received today, observe the patterns, and work with the permittees as partners.

MEETING RECESSED at 5:42 p.m.

Item 7 continued on November 19, 2015

Chair Young reconvened the meeting on November 19, 2015, at 9:04 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Board members present: Chair Terry Young, Vice Chair James McGrath, Steven Lefkovits, Newsha Ajami, and William Kissinger.

Board members absent: John Muller and Margret Abe-Koga

Chair Young asked staff to provide responses to comments received. Dr. Mumley stated he'd organize his comments in the same order as the items are listed in the permit. Dr. Mumley stated that the Board in the past has applied receiving water limitations. He noted that the State Board accepted the alternative compliance path set forth in the Los Angeles Regional Water Board's municipal stormwater permit. He described how the green infrastructure requirements call for communities to develop plans to be prepared to take advantage of opportunities to retrofit. He emphasized that the permit does not force retrofit but should help avoid missed opportunities. Vice Chair McGrath asked if there is an off-ramp for small urban areas or areas of low density. Mr. Lichten described how staff envisions the green infrastructure planning process. Chair Young noted that her interpretation of the green infrastructure plan requirements appear to be adaptable for small cities.

Mr. Wolfe added that the plans called for under Senate Bill 985 would be an integral part of these green infrastructure plans. Board Member Ajami asked about Proposition 1 funding. Board Member Kissinger asked for an explanation as to the tie between the requirement of green infrastructure plans and outfall water quality. Dr. Mumley noted that the fundamental nexus is the reduction in directly-connected runoff when implementing green infrastructure. Board members asked a number of questions about green infrastructure.

Dr. Mumley described the proposed monitoring requirements and their historical and legal basis. Vice Chair McGrath asked for clarification on the scaling-up process in terms of the

evolution of monitoring requirements in context of pilot projects. Board staff Richard Looker further described how the monitoring requirements for 'pollutants of concern' has evolved. He described how the approach is more flexible to allow us to better answer management questions. Chair Young asked about changes in overall monitoring costs. Mr. Looker described how permit as proposed is 'cost neutral'. Dr. Mumley described how outfall monitoring is part of the tool box. Vice Chair McGrath described how the sources, pathways, and loadings monitoring approach can drive a reasonable assurance analysis.

Dr. Mumley reviewed the trash provisions. He noted that changes were made to the tentative order in response to comments to increase the maximum credit for source control efforts, such as bag bans. He added that the benefit of additional source control can be accounted for as part of the visual assessments. Vice Chair McGrath asked about how rigorous the documentation needs to be to receive credit up to 10%. The Board members discussed various benefits of source reduction measures and their relationship to observational results. Board staff Dale Bowyer explained that there is also another approach outlined in the visual assessment section to allow for documentation of reductions.

In regard to offset values for creek cleanups and direct discharge controls, Dr. Mumley clarified the proposed increases in cleanup offset caps and direct discharges. He further described the thinking behind the offset credit ratio and noted that on-land cleanups are valued directly as a load reduction. Board Member Kissinger asked for more clarification on the 10:1 ratio and asked for the downside of moving towards a 3:1 ratio. Chair Young noted that creek cleanups are after-the-fact mitigation for a problem. She noted that the previous permit did not explicitly credit creek cleanups so it is unclear how the 10% credit would now be a disincentive. Dr. Mumley suggested that if a discharger can show that they have removed trash prior to it getting into the creek, this could be considered an effective trash reduction effort.

Dr. Mumley summarized the discussions pertaining to the statewide trash amendments. He noted that he is confident that the revised tentative order is equivalent, if not better. In response to issues raised about trash generated at schools, he explained that school districts can be designated under the statewide small MS4 permit if it is demonstrated that they are a problem. Vice Chair McGrath asked whether the Executive Officer would be willing to discuss with school supervisors the significance of the issue. Chair Young asked about the suggestion that a TMDL be developed to address trash. Mr. Wolfe responded that the permit is the vehicle for addressing the trash issue, and, if it does not solve the problem, a TMDL can be developed. He noted that other regulatory controls can also be evaluated at a later date.

Dr. Mumley discussed the supplemental proposal intended to clarify the Fact Sheet and the questions raised regarding the frequency of visual trash observations. He also noted that what is in the Fact Sheet is not directly enforceable; it is more a statement of expectations. Chair Young noted that during the July workshop, she requested that the frequency of assessments be clearly specified.

Dr. Mumley articulated staff's perspective on the C.10 language changes proposed by Chair Young that were distributed at the beginning of the meeting. Board Legal Counsel Yuri Won

stated that the changes fall within the logical outgrowth rule. Chair Young noted that the changes were discussed at previous workshops.

Dr. Mumley reviewed the PCBs requirements. He rebutted statements made by Mr. Falk and described the basis of Board staff's proposed approach. He clarified that staff has stated numerous times and in numerous forums that the limits are intended to be enforceable. He described the history leading up to the development of these limits. He described how the permit implements the PCBs TMDL. Vice Chair McGrath asked a hypothetical question to clarify how compliance would be determined pertaining to this provision. The Board members asked for further clarification regarding compliance evaluations. Board Member Lefkovits asked for clarification on credits vs. requirements for actions such as the building demolition program. Vice Chair McGrath raised the question about third party lawsuits and how they relate to compliance. Mr. Looker described the proposed approach for accounting for reductions associated with hot spot cleanups. Board Member Kissinger asked for clarification regarding numeric action levels as opposed to numeric effluent limits. He discussed the possibility of permittees being in violation the permit.

CLOSED SESSION at 1:00 p.m.; RECONVENE at 2:47 p.m.

Vice Chair McGrath discussed aspects of green infrastructure. He noted that a more rational plan for green infrastructure is needed, as opposed to making decisions building by building. He added that is not the intent of the permit to punish people who attempt to implement green infrastructure. He also stated his intention and desire to work with the legislative process to find funding to implement green infrastructure. Board Member Kissinger noted that he was persuaded about the need for numeric limits but recognized there is a need for methods to achieve them. In regard to enforcement, he stated that if permittees are taking the necessary steps, his assumption is that staff will not be initiating enforcement. He also discussed the need to provide incentives for creek cleanups.

Board Member Ajami reiterated the desire of the Board to partner with municipalities. She noted her support of numerical limits. She encouraged permittees to look for creative ways to comply with the permit and come up with solutions. Board Member Lefkovits discussed the common goal amongst permittees and the Board.

Chair Young reiterated the desire of the Board to work as partners and the importance of the permit for water quality. She stated that the revised tentative order reflects the Board's earlier statements that they were willing to give on the PCBs issue and that many of the changes should make it easier for permittees to comply. With respect to trash, she stated that she is comfortable with all of the trash provisions. She acknowledged the concerns expressed about the 10:1 ratio for calculating an offset for creek cleanups. She noted that staff made a good case for the 10:1 and a 10% cap. However, she thought the dischargers brought up some good reasons to support a 3:1 ratio. She reiterated her concerns about going down a road with steady progress but not achieving the final trash reduction endpoint. She suggested that staff draft changes to the proposed permit language that would provide for a 3:1 ratio for creek cleanups to be credited towards the 10% cap for the 2017 compliance date, and a 10:1 ratio to get to the

10% cap for the 2019 compliance date. Mr. Wolfe confirmed that this would also include a 3:1 ratio for the 60% reduction by 2016. Mr. Bowyer asked for clarification that this only applies to creek cleanups and not direct discharges, which Chair Yong confirmed.

Chair Young noted concern about the volume of reporting, and directed staff to work on making the reporting more efficient. Vice Chair McGrath clarified that his support for the green infrastructure requirements is based on his understanding that there will be an easy fix for those areas where it is not needed or appropriate. Chair Young asked staff to work on permit language to address the Board's wishes on suggested changes.

RECESS at 3:25 p.m.; RECONVENED at 3:50 p.m.

Dr. Mumley presented a modified provision C.10 based on the Board members requested changes and walked the Board members and the audience through those changes in the permit and Fact Sheet.

Mr. Wolfe acknowledged the significant stakeholder process and all the areas in the permit for which there was agreement. He stated that there is nothing in the revised tentative order that is not a requirement of the federal Clean Water Act, thus there would be no State unfunded mandates. He summarized the permit and noted that it is a tool to help cities and counties protect and restore the Bay and comply with the Clean Water Act. He recommended adoption of the revised tentative order with 1) the changes just presented by Dr. Mumley, 2) the supplemental staff handed out yesterday morning, 3) the supplemental Chair Young produced, and 4) editorial changes - paragraph numbering on page 130 and the correct certification date on page 154 at the end.

Vice Chair McGrath moved for adoption of Item 7 as recommended by the Executive Officer; Board Member Ajami seconded the motion.

Ayes: Lefkovits, Kissinger, Ajami, McGrath, Young

Nos: none

ITEM ADOPTED

MEETING ADJOURNED at 4:11 p.m.