



**San Francisco Bay Regional Water Quality Control Board**

**July 8, 2015 Board Meeting  
Draft Minutes for Board Consideration**

ADOPTED August 12, 2015

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**Item 1 - Roll Call and Introductions**

Meeting called to order at 9:01 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	Newsha Ajami	QUORUM
William Kissinger		
Margaret Abe-Koga (left at 10:05 a.m.)		
John Muller (left at 10:05 a.m.)		
Vice-Chair James McGrath		
Chair Terry Young		

Senior Scientist Christine Boschen introduced Seasonal Clerks Pancho Torrez and Maddy Dills. Senior Engineering Geologist Brian Thompson introduced Water Resources Control Engineer Yan Nusinovich. Water Resources Control Engineer Robert Schlipf introduced Scientific Aide Manda Au.

**Item 2 - Public Forum**

Monty Heying spoke about water quality problems in Alameda’s Finger Lagoons, chemical usage, and possible impacts to migrating sea birds. He also showed a number of photos. Executive Officer Bruce Wolfe agreed to look into the situation and report back to the Board. Jennifer Strohfus, a Milpitas resident, asked the Water Board to look into issues at Newby Island. She asked that water testing include TCE. She requested that this item be put on a Board meeting agenda. Robyn Chen, a Silicon Valley resident, requested an update on the extent of TCE pollution near Newby Island. Mr. Wolfe agreed to report back to the Board when monitoring results become available.

**Item 3 - Minutes of the June 10, 2015 Board Meeting**

Mr. Wolfe recommended adoption of the Minutes of the June 10, 2015 Board Meeting with the correction that “Resolution R2-0094” be changed to “Resolution R2-2004-0094” in two places.

Board Member Abe-Koga moved for adoption of the corrected Minutes; Vice Chair McGrath

seconded the motion.

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

Nos: none

ITEM ADOPTED

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

Board Member Abe-Koga noted that she attended a June 18 workshop on sea level rise sponsored by Assembly Member Rich Gordon. Chair Young reported on the Chairs' call and noted that they are looking into ways for Board members to have more meaningful input on statewide priority setting. On June 24, she met with Water Board staff, Vice Chair McGrath, and SFEI staff and discussed the need for a region-wide overview of trash problems.

Mr. Wolfe gave an overview of this month's Executive Officer's Report. He highlighted that staff are kicking off the Basin Plan triennial review process on August 4 with a stakeholder meeting. He also summarized the TMDL-related items in this month's report. He reported that the State's budget was signed and a trailer bill was passed that provides a mechanism for consolidating small water supply agencies. He noted that next month the Board will have an item on priority setting and a closed session for his annual review. Vice Chair McGrath asked that a template for conducting the performance review be distributed to Board members.

#### **Consideration of Uncontested Items**

**Item 5A – Tesoro Refining and Marketing Company, Tesoro Martinez Refinery, Martinez, Contra Costa County** — Reissuance of NPDES Permit

**Item 5B – Novato Sanitary District, Novato Sanitary District Wastewater Treatment Plant, Novato, Marin County** — Reissuance of NPDES Permit and Rescission of Cease and Desist Order

**Item 5C – General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Marine Sand Washing, and Sand Offloading Facilities to Surface Waters** — Reissuance of General NPDES Permit

Mr. Wolfe recommended adoption of items 5A, 5B, and 5C.

Vice Chair McGrath moved for adoption of items 5A, 5B, and 5C; Board Member Muller seconded the motion.

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

Nos: none

ITEMS ADOPTED

**Item 5D – Cleanup Programs** – Status Report including Case Closure

This item was for informational/discussion purposes and no action was taken.

**RECESS at 9:48 a.m.; RECONVENE at 10:03 a.m.**

## Other Business

**Item 6 – 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** – Hearing to receive testimony on Tentative Order, Provision C.10, Trash Load Reduction and any additional items carried over from the June 10 discussion

Board members Muller and Abe-Koga recused themselves from this item and left the Board Meeting.

Chair Young invited Board members to provide tentative comments and recommendations on last month's subcommittee meeting that included testimony on all aspects of the Tentative Order except Provision C.10, which is the subject of today's hearing. Chair Young reiterated that all of her comments are tentative and that she discussed her comments with Board Member Lefkovits, a subcommittee member present at the last Board Meeting, who would also be providing input today. Chair Young noted support for the timeframe for submittal of green infrastructure plans and the requirement to have approval at a high level within each agency. She stated that it seemed like a good idea for staff to develop a framework for the approval process, but that it should not be a mandatory requirement to follow the framework. She also noted support for the numerical load reduction requirements and timelines. She noted concern that two major elements require permittees to develop analyses and methodologies upon which later compliance is based. She stated a preference that the permit and fact sheet include default allocations if acceptable alternatives are not submitted by a certain time. Chair Young expressed concern about group compliance and noted a preference that individual permittees be held to their allocation and suggested that offsets may be a cost-effective way to make this work. She noted that while several commenters asked for a clear path to compliance, the subcommittee members present find that the draft permit includes sufficient detail in regard to PCBs compliance options and a sufficient ramp up period for these projects.

Board Member Lefkovits noted that a number of commenters spoke about the administrative burden of reporting and suggested that staff should clarify options for electronic submittal of documents. He also noted support for revising language to allow for alternative ways to use social media to advertise or educate citizens.

Legal Counsel Yuri Won asked for clarification on recommendations. Chair Young clarified that she and Board Member Lefkovits shared emails regarding this report back but that Board Member Ajami is out of the country and therefore the input does not necessarily represent that of the full subcommittee. Vice Chair McGrath stated that he reviewed the Tentative Order and part of the transcript, and he gave preliminary feedback on PCBs and green infrastructure and noted that green infrastructure is not necessarily a solution for *fully* controlling PCBs loads. He added that while LID and green infrastructure cannot hurt, dust transport may still need to be addressed. He noted the need for additional science to help better understand PCBs fate and transport. He suggested that legal staff look into the questions raised regarding vested rights. Vice Chair McGrath also urged staff to look for a compromise on the timeframe and process for approval of green infrastructure plans. He also asked for more information from staff on the LID policies and

projects in Contra Costa County referenced in the Staff Report and Dan Cloak's presentation.

Senior Engineer Dale Bowyer gave the staff presentation to the Board. He reviewed the trash requirements in the existing Municipal Regional Stormwater Permit in (MRP 1.0) and some of the changes proposed in the Tentative Order (MRP 2.0).

Chair Young put forth clarifying questions and comments for the commenters to respond to as appropriate. She noted that she felt strongly that there needed to be enforceable percent trash reduction limits by 2019 or 2020. She suggested the limit should be 85% by 2019 or 90% by 2020. She also noted that the State Board's recently adopted Trash Policy allows for 10 years of implementation, while Region 2 may be allowing for more than 12 years. Chair Young stated that the permit needs to do a better job of spelling out the consequences of non-compliance. She suggested that the permit state upfront that if compliance with the 2017 70% limit is not documented then the Executive Officer may require full trash capture. She also suggested a likewise requirement for the 2019 or 2020 deadlines. She noted that she did not support the option of extrapolating the effectiveness of trash management areas but would like to see the requirement to visually assess 10% of street miles retained, unless effectiveness is documented by receiving water observations. She noted support for the credit and offset proposals and added that the cumulative sum of a 20% credit is generous. However, she noted that either the permit or fact sheet should discuss phase out and suggested direct discharge credits phase out last. Chair Young identified a series of requirements that lacked clarity, such as: visual assessment frequencies, receiving water observations, monitoring requirements for areas serving full trash capture devices and "green areas", the definition of full trash capture systems, and requirements for private lands that discharge into stormwater systems and how they relate to the 2017 and 2019 equations.

Board Member Lefkovits asked whether there are more opportunities to work on changing cultural norms and encouraging innovation and education. Vice Chair McGrath discussed the challenges and progress in addressing trash and noted that after spending time "on" the Bay, he has observed that we are nowhere near meeting the 40% load reduction. He highlighted opportunities associated with redevelopment and agreed with Chair Young's comment that we need to do a better job of monitoring. He also noted support for the more prescriptive measures included in the Tentative Order. Board Member Kissinger noted his interest in hearing more about what the right solutions are for solving the problem. He noted that MRP 2.0 is a big improvement and supported giving credit for land cleanups. He noted the need for the permit to have predictable metrics that are clear, consistent, enforceable, and coherent.

Chair Young stated that commenters will have a three minute time limit, except for those who are giving a group presentation.

Matthew Fabry, Chair of the Bay Area Stormwater Management Agencies Association (BASMAA), gave a presentation to the Board and provided an overview of BASMAA's comments. He highlighted the financial limitations of the BASMAA agencies and constraints on raising additional funds. He summarized the BASMAA agencies' achievements since MRP 1.0 was adopted. Board

Member Lefkovits asked for clarification on a comment relating to ways to improve the Board's participation on land use and transportation decision making. Allison Chan, representing Save the Bay, gave a presentation to the Board and suggested that Board staff should have a more active role in certifying permittees' plans for achieving mandatory reductions. She advocated for permit requirements for full trash capture for permittees that do not meet mandatory reductions. She provided recommendations for improving permit requirements related to receiving water monitoring, visual assessments, trash characterization, and direct discharge and source control credits.

Mayor Bob Simmons, City of Walnut Creek, encouraged the Board to keep the credit for direct discharge cleanups and source control efforts such as bag bans. He suggested that more work may be needed by Caltrans, BART, and public schools. He asked the Board to consider an approach that is more like a partnership. Council Member Paul Morris, City of San Pablo, asked the Board to help identify funds to comply with permit requirements and consider more reasonable requirements. Chair Young described the Board's underlying philosophy about finding a balance between flexibility and accountability. Board Member Kissinger suggested that staff and permittees consider some type of credit trading options to help address high priority areas. Vice Mayor Laura Hoffmeister, City of Concord, noted that MTC is financially constrained. She clarified that trash control measures are funded by stormwater fees and cannot be used outside of an agency's jurisdiction. She asked the Board to prioritize what needs to be done and emphasized that there are not enough resources to do it all. She advocated for flexibility in the permit.

Mayor Pro Tem Loella Haskew, City of Walnut Creek, expressed concern for the maintenance certification requirements. She also questioned whether agencies that were early adaptors are getting hurt by the proposed credit system. Diane Burgis, Executive Director of Friends of Marsh Creek and an East Bay Regional Park District Board Member, spoke about the multiple benefits of creek cleanups and stated that more support for cleanup efforts will provide additional incentives.

**RECESS at 12:33 p.m.; RECONVENE at 1:15 p.m.**

Timm Borden, Public Works Director for the City of Cupertino, requesting that rewards and incentives continue for those efforts shown to be successful. He requested flexibility to develop and implement a customized approach and stated that the next two years should be focused on planning for green infrastructure and that the deadline for mapping should be postponed. Mr. Borden also requested that the PCBs targets be revised. Vice Chair McGrath asked about the level of detail in the City's maintenance O&M manual. Kerrie Romanow, Director of Environmental Services for the City of San Jose, described the City's investments to comply with the permit. She noted that additional requirements will create additional unfunded mandates. She requested that Board consider reevaluating the source reduction requirements and would like to see maximizing offsets in the 25% range. Miriam Gordon, State Director of Clean Water Action, stated that the final compliance limits are vague. She also commented that source reductions can achieve higher reductions than given credit and recommended a 15% incentive. She suggested that the permittees explore a litter fee assessment. Tom Dalziel, Manager of the Contra Costa Clean Water Program, requested more time to attain the 70% trash reduction goal.

Lesley Estes, Watershed Program Manager for the City of Oakland, highlighted that every city wants to have a path to compliance and advocated for more credit for source control and cleanup efforts. James Scanlin, Manager of the Alameda Countywide Clean Water Program, described the benefits of outreach and education programs and requested that more credit be given because of the long term benefits. He also expressed uncertainty about the visual assessment tool and stated it should not be used for compliance. Vice Chair McGrath asked about education programs. Heidi Geiger, Associate Engineer for the City of San Jose's Department of Transportation, described the work her staff does to comply with the permit and some of the difficulties encountered in the field. She recommended flexibility and the ability to do site-specific assessments. George Torgun, Managing Attorney for San Francisco Baykeeper, stated they will be providing written comments that propose an alternative compliance approach that includes end of pipe monitoring. He stated that he supports requiring specific measures and control actions if noncompliance continues. Karineh Samkian, Environmental Program Analyst for the City of San Pablo, described why she opposed *Provision C10.A. ii.b.*, which requires large properties plumbed directly to the storm drain to install trash capture devices or an equivalent measure. She added that the mapping requirement for these areas is also unreasonable. Vice Chair McGrath asked a number of clarifying questions.

Elisa Wilfong, Water Pollution Control Administrator for the City of Hayward, noted that the City has limited locations to install trash capture devices and requested alternative means of compliance in these areas. She requested credit for outreach and education efforts or suggested that *Provision C.7* be removed. She also stated that the maximum credit of 5% for creek and shoreline cleanups is not enough. Vaikko Allen, Regulatory Management Director for Contech Engineered Solutions, discussed difficulties in assessing the benefits of trash controls implemented under the Los Angeles TMDL and the lack of information demonstrating improvements. He suggested that photos can be powerful tool for monitoring effectiveness. Eric Anderson, Environmental Safety Coordinator for the City of Mountain View, described the results of a study evaluating costs and benefits of full trash capture devices. He noted support for increasing credits for other efforts. Kirsten Struve, Environmental Control Programs Manager for the City of Palo Alto's Public Works Department, urged the Board to increase the source control credit up to 25%. She described the results of the City's efforts to reduce trash. Nancy Humphrey, Environmental Programs Supervisor for the City of Emeryville, described how 30% of her stormwater time is spent on reporting and how that time could be better spent if reporting could be reduced. Board members noted that they were very open to ways to reduce reporting. Chris Sommers, Managing Scientist representing the Santa Clara Valley Urban Runoff Pollution Prevention and San Mateo Countywide Water Pollution Prevention Programs, commented on monitoring, specifically the receiving water monitoring requirements and the need to better refine protocols. He described efforts under the California Trash project and the difficulty in developing standardized methods.

Gene Waddell, Special Assistant for the City of Fremont's Environmental Services Division, described the City's experience with trash capture devices. He suggested that the expansion of the trash capture devices on private lands be limited to new developments. He also noted that the prescribed maintenance intervals proposed should be modified. Vice Chair McGrath asked about

the range of costs. Dan Cloak, Scientist for the Contra Costa Clean Water Program, described the difficulties in detecting a trend and why there should be more credit given to education and source control. He described how LID can achieve trash capture and the need to further investigate this. Michele Mancuso, Watershed Planner for Contra Costa County, expressed concerns regarding maintenance requirements for full trash capture devices and the certification requirement that the devices be maintained. Jon Konnan, Managing Engineer representing BASMAA, discussed aspects of the PCBs requirements.

John Steere, Watershed Planner for the Contra Costa County Watershed Program, gave a presentation to the Board and requested that more credit be given for participation in community engagement and education programs. He noted that the best source control is changing human behavior. Gary De Jesus, representing the City of San Mateo, suggested that more credit be given for public involvement programs. He also noted that there is opportunity to rely on experts in the field to develop maintenance plans as opposed to specifying requirements. Cece Sellgren, Stormwater Manager for unincorporated Contra Costa County and the County Flood Control District, discussed approaches to addressing trash in trash-challenged communities. Obaid Khan, Transportation and Operations Manager for the City of Dublin, stated that the 10% visual assessment requirement is a burden without supporting rationale and protocols. He requested additional incentives for source control measures. Brett Calhoun, Senior Water Quality Specialist for the Santa Clara Valley Water District, highlighted the benefits of source control efforts and cleanups and requested additional credits for these actions. He also noted the need for more Caltrans actions and additional California redemption value increases. Michelle Daher, Management Analyst for the City of East Palo Alto, discussed legal constraints to accessing creeks and the implications for cleanups. Laura Hoffmeister, Stormwater Program Manager for the City of Clayton, expressed concern about requirements to validate that mapped green areas remain green. She described the costs associated with documenting performance of trash capture devices.

**RECESS at 3:08 p.m.; RECONVENE at 3:22 p.m.**

Chair Young gave the Board members the opportunity to ask questions. Board Member Kissinger asked staff's perspective on increasing incentives for source control. Assistant Executive Officer Tom Mumley clarified that the source control incentives are "double" counted because in addition to the 5% there are the reductions that are realized when monitoring the trash management areas.

Board Member Kissinger also asked staff if they agreed there is sufficient flexibility to allow for alternative approaches to compliance. Dr. Mumley responded that the permit allows for alternative actions as long as the effectiveness is demonstrated and that the permit also allows for outcome-based demonstrations. Board Member Kissinger also asked for clarification on reporting intervals. Dr. Mumley described the conversations staff have been having with the permittees regarding reporting requirements and noted that they will continue this dialogue to make sure all reports submitted will be used.

Board Member Lefkovits noted the number of activities required that do not have clear outcomes

and raised the question about allowing additional credits. Mr. Bowyer clarified that in 2014 very few municipalities claimed more than 1-2% based on educational programs. Dr. Mumley clarified the difficulties of quantifying the benefits of these programs. Dr. Mumley also described the intent behind the requirement to map private lands and agreed to continue to work with stakeholders on this requirement.

Chair Young invited the Board members to put forth their ideas related to offsets. Vice Chair McGrath noted his interest in supporting new source control approaches and encouraged cities to look for innovative fee mechanisms. He further noted his support for creek cleanup programs and stewardship because of long term benefits. Board Member Kissinger noted that given the uncertainty in our ability to measure the effectiveness of source control, double counting, if it occurs, may be acceptable if progress is being made. He also noted support for alternative ways for reaching the ultimate goals and that the Board should support innovation. Board Member Lefkovits noted that there is a lot of uncertainty, and he is interested in how others may be approaching this problem. He noted that he was struck by the complexities involved in addressing the trash problem. Chair Young discussed the cleanup and direct discharge offsets and the basis for her statements that these may need to be phased out as water quality improves. She noted that while source reduction credits could be phased out, others may be needed for alternative products. She expressed concern about credits for education. Mr. Wolfe described the C.7 education requirements.

Chair Young noted that Caltrans requirements do not appear to be effective. With respect to reporting burdens, she asked for a way to phase in any streamlined approaches that may emerge. With respect to flexibility on the maintenance schedules, she suggested that the permit allow for alternative site-specific methods. In regard to receiving water observations, she emphasized the need to have a strong program initiated under this permit. Chair Young reiterated the need for an enforceable compliance point in 2020.

Vice Chair McGrath expressed that more detail on monitoring requirements is needed. He discussed priorities and noted that he expected to see more action by Caltrans. He noted that we may be overly prescriptive on maintenance.

Chair Young thanked everyone for their testimony.

This item was for informational/discussion purposes and no action was taken.

### **Item 11 - Adjournment**

Meeting adjourned at 4:10 p.m. until the next Board Meeting – August 12, 2015