

STATE OF CALIFORNIA

**REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

MEETING DATE: September 11, 2019

ITEM:

4

SUBJECT:

MINUTES OF THE JULY 10, 2019 BOARD MEETING

San Francisco Bay Regional Water Quality Control Board

July 10, 2019 Board Meeting
ADOPTED September 11, 2019

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.

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 9:06 a.m. in the Elihu M. Harris Building, First Floor Auditorium.

Board Members Present	Board Members Absent	Status
Acting Chair James McGrath Cecilia Ogbu William Kissinger Jayne Battey Steve Lefkovits Newsha Ajami		QUORUM

Toxics Cleanup Division Supervisor Cheryl Prowell introduced Aristeo Pelayo (Resty) who joins the Division as an Engineering Geologist.

Toxics Cleanup Division Geologist Ron Goloubow introduced Madjid Delkash who joins the Division as a Water Resource Control Engineer.

Planning Division Supervisor Kevin Lunde introduced Jenna Rais who joins the Division as a Scientific Aid.

Watershed Management Division Engineer Devender Narala introduced Sooren Moosavy who joins the Division as a Scientific Aid.

Planning Division Chief Xavier Fernandez introduced Jiachang Fan who joins the Division as a Scientific Aid.

Watershed Management Division Chief Keith Lichten introduced Annabelle Hurley who joins the Division as a Seasonal Clerk.

NPDES Wastewater Division Supervisor Robert Schlipf introduced Samuel Plummer who joins the Division as a Water Resource Control Engineer.

Michael Montgomery, Executive Officer, recognized Stephen Hill, former Toxics Cleanup Division Chief, for his recent retirement after 37 years of state service. He said that Mr. Hill contributed to many programs and policies of the Board, addressed complex problems effectively, and was mission- and results-driven. Board members commented on Mr. Hill's professionalism, calm demeanor and good judgement and wished him well as he moves on to new adventures. Mr. Hill commented on all the changes over the past several years and said he valued working with great colleagues and the mission to keep water clean.

Item 2 – Public Forum –

Robert Doty, legal counsel representing owners of property at 411 High Street in Oakland, commented on the status of cleanup. He said there are three points in the Executive Officer's Report with which they disagree.

- (1) The EO report misrepresents land use and development plans as the City of Oakland's Estuary Plan calls for roadways to bisect the property.
- (2) The EO report suggests there is not a conflict between land use and the current environmental status of the site, but there is; for example, building 455 is zoned commercial and cannot have a worker in it because vapors are so bad.
- (3) The EO report is missing the fact that no enforcement has been issued for failure to characterize the plume dating back to 1991.

He said this is a situation where the responsible parties have refused to comply with Water Board directives, and the Water Board has allowed continued non-compliance based on false narratives which he believes are documented in the State Board he submitted to the Board at this meeting. He argued that the false narratives are that this is a tiny problem, mother nature is curing the problem, and dual phase extraction will solve the problem. He recommended the following:

- (1) Recognize what is happening: persistent and flagrant failure to remediate to save money and failure to compel cleanup with enforcement actions
- (2) Send a message to the consultant and responsible party that the Board won't put up with this
- (3) Direct staff to come back with a maximum penalty for failure to characterize the plume, lying about residual mass, and misrepresenting effectiveness of remedial remedy
- (4) Direct staff to bring an order with daily penalties as per a case in the San Diego region

He concluded that it shouldn't take 35 years to cleanup a site like this and mentioned Pier 64 in San Francisco was similar and was cleaned up quickly with cooperation of oil companies.

Board Member Kissinger asked if Mr. Doty thought attenuation is junk science or just at this site. Mr. Doty responded that he meant at this site where too much petroleum exists to be

attenuated due to the site conditions. Board Member Kissinger asked if they offered an alternative remedy. Mr. Doty said they recommended excavate and treat residual petroleum to dispose of it as was done at Pier 64, Terminal 1, and other sites.

Acting Chair McGrath asked what Mr. Montgomery planned to bring to the next Board meeting. Mr. Montgomery said he issued an order requiring ARCO to report on comprehensive evaluation of remediation to date by August 31, 2019. Staff will be ready to respond to that report in September or October. He said staff is prepared to change the remedy if the data indicates that is necessary. Board Member Ajami suggested looking at examples and that we should expect more cases like this so it would be helpful to determine a path forward. Mr. Montgomery said we will meet with the City to learn about development plans. Board Member Kissinger suggested an update in the August Executive Officer's Report on status and a September or October report that will include conclusions from the required report due in August and next steps. Board Member Battey said she wanted to understand the enforcement history and options for non-compliance, whether other sites like this are out of compliance and how we handle them or could handle them. Acting Chair McGrath said he wanted to understand the geology, groundwater flow path, if vapor or water is migrating, and if pollution is migrating to the Bay. Mr. Montgomery said that he'd report back with a progress update in the August Executive Officer's Report and a more detailed response/summary in the fall after staff have had time to fully review the August 31st remediation effectiveness evaluation report.

Rhoda Fry, citizen on environmental review committee for City of Cupertino, commented on enforcement and asked for public meetings on the Stevens Creek Quarry. She said that Lehigh Quarry is out of compliance with Air Board requirements and the Water Board did not act to enforce for Lehigh discharges and non-compliance. She said that Item 7 should be postponed as the report does not illustrate changes and decisions made since the draft permit documents were published. Acting Chair McGrath asked what enforcement she would like the Board to take. She said that the Board issued a Notice of Violation this week for sediment discharges.

Item 3 – Minutes of the May 8, 2019 Board Meeting

Board Member Battey recommended adoption of the minutes from the May 8, 2019, Board Meeting. Board Member Kissinger seconded the recommendation.

Acting Chair James McGrath asked if all were in favor of adoption of the minutes – all Ayes. Acting Chair James McGrath then asked if anyone was opposed - none opposed.

ITEM ADOPTED

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

Board Member Jayne Battey wished Happy Birthday to her father and spoke of his inspiration for her service on the Board.

Board Member Ajami said she just joined the National Academy Board on Water and Technology and said that recent discussion came up about our Board's involvement with water quality and quantity and the opportunities to improve for the future.

Acting Chair McGrath noted that former Chair Terry Young is absent because she resigned due to the reappointment process and this is a big loss. He also spoke of discussions with the City of Berkeley about flooding and water quality issues and showed photos of creeks in the flats and encountering trash and pollution, specifically related to homeless encampments. He said he has asked staff to try and use the monitoring program to assess the magnitude of the problem.

State Board Member Tam Doduc congratulated California on passage of SB 200 which allocates millions of dollars for safe and clean drinking water. She said the Governor issued an Executive Order for development of a water resilient portfolio.

Mr. Montgomery discussed a few items in the Executive Officer's report. He asked for feedback from Board members about preferences for a field trip, one to West Marin or one to San Francisco. Board members expressed openness to either but leaned towards visiting sites in West Marin. Board Member Battey recommended Pescadero Watershed as a good field trip location both based on water resiliency and Total Maximum Daily Loads. Mr. Montgomery also mentioned the plan to launch a social media presence. Board Member Ajami said she is thrilled about this.

Acting Chair McGrath administered the oath.

Consideration of Uncontested Items

Item 5A – Sonoma Valley County Sanitation District, Sonoma Valley County Sanitation District Wastewater Treatment Plant and Wastewater Collection System, Sonoma, Sonoma County – Reissuance of NPDES Permit

Item 5B – City of Suisun City, Pierce Island Dredged Material Disposal Site, Solano County – Reissuance of Waste Discharge Requirements and Rescission of Order No. 90-071

Item 5C – Cities of South San Francisco and San Bruno and North Bayside System Unit, South San Francisco/San Bruno Water Quality Control Plant and Wastewater Collection Systems, South San Francisco, San Mateo County – Reissuance of NPDES Permit

Item 5D – Chevron USA Products Company, Bay Cities Oil Marketers, Inc., Dillingham Construction N. A., Inc., Texaco, Inc., Equiva Services, LLC, Phillips Petroleum Company, ExxonMobil Oil Corporation, ExxonMobil Corporation, Atlantic Richfield Company, Napa County Flood Control and Water Conservation District, Napa, Napa County – Rescission of Site Cleanup Requirements

Mr. Montgomery pointed out that there are changes to the dates for item 5A because it was bumped from the June Board meeting to the July Board meeting. He also said that Item 5D is related to Item 6 but he did not place Item 6 with the Uncontested Items so staff could make a presentation.

Acting Chair McGrath suggested moving Item 5D off the Uncontested Items so it can be considered with Item 6. Mr. Montgomery concurred.

Board Member Ajami moved adoption of Items 5A, 5B and 5C, with date changes. Board Member Ogbu seconded the motion.

Ayes: McGrath, Ogbu, Kissinger, Battey, Lefkovits, Ajami

Nos: None

ITEMS ADOPTED

Waste Discharge Requirements

Item 6 – Napa County Flood Control and Water Conservation District, Stream Maintenance Program, Napa County – Reissuance of Waste Discharge Requirements and Water Quality Certification and Rescission of Order No. R2-2012-0063

Environmental Scientist Agnes Farres made the presentation.

Board Member Lefkovits asked about implementation, if the District does the maintenance or hires contractors. Ms. Farres invited Rick Thomasser with Napa County District to answer and he said the District does both. Board Member Lefkovits asked about training and ensuring that the Stream Maintenance Manual is implemented, and Mr. Thomasser said he meets regularly with his staff to review the practices that apply to projects. Board Member Lefkovits asked if he has any concerns about training and ability to implement the manual over time. Mr. Thomasser said these are routine activities and the staff that implement them are experts who do this for a living. Mr. Lichten acknowledged that Napa and Sonoma have both changed the culture of how maintenance is done and ensured the training and skills to implement the changes.

Mr. Thomasser thanked the Board and staff as the action today was the culmination of a lot of coordination over many years. He said Ms. Farres has been very helpful. He also noted that this permit incorporates the Napa River Flood Control Project which has been successful because of Leslie Ferguson and A.L. Riley. He also thanked Bill Cook for his work on the petroleum contamination cleanup.

Board Member Ajami moved adoption of both Item 6 and Item 5D, including the change of a date on pg. 6, Finding 34 to June 1 rather than May 1. Board Member Kissinger seconded the motion.

Acting Chair McGrath commented on the significance of the Napa River Flood Control Project as a shining light for agency cooperation, the great work of Leslie Ferguson and A.L. Riley, and how to do nature-based projects. Board Member Ajami echoed these comments and further thanked staff.

Ayes: McGrath, Ogbu, Kissinger, Battey, Lefkovits, Ajami

Nos: None

ITEM ADOPTED

NPDES Permit

Item 7 – Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc., Permanente Plant, Cupertino, Santa Clara County – Reissuance of NPDES Permit

Mr. Montgomery introduced the item. Engineer John Madigan made the presentation.

Board Member Lefkovits asked if groundwater resources are from wells. Mr. Madigan said there are no private wells in the area; the facility's discharge recharges the aquifer where Santa Clara Valley Water District has public supply wells.

Board Member Battey asked staff to describe **the monitoring program and monitoring frequencies**. Mr. Madigan explained the monitoring frequencies associated with some of the constituents. NPDES Wastewater Division Chief, Bill Johnson, added that the monitoring frequencies vary based on discharge points and constituents and he indicated where in the agenda package that information is presented.

Board Member Battey asked questions about the costs of treatment systems and enforcement penalties and if staff thinks Lehigh is doing everything they can to run the facility responsibly. Mr. Johnson said they have substantially improved water quality through the treatment system and are complying with the permit conditions.

Board Member Ajami noted that staff removed the limit for **dissolved solids** and asked about control of dissolved solids. Mr. Madigan and Mr. Johnson explained how the operations and treatment system address dissolved solids and how they handle brine that results from treatment. Board Member Kissinger asked why the dissolved solids limit was removed from the permit. Mr. Johnson explained that the dischargers provided sufficient evidence to show that dissolved solids are not a problem in the discharge and explained the methods staff use to set effluent limits and determine which constituents to monitor.

Acting Chair McGrath said he is concerned about selenium and chromium. He noted that the past monitoring for chromium has not occurred over a long enough period of time to show the treatment system is effectively removing chromium from discharges. Mr. Johnson

indicated that monitoring is monthly for chromium and twice a month for selenium and that we see that when the system is treating fully for selenium, chromium is adequately treated too. Therefore, he suggested increasing the frequency of monitoring for selenium to weekly rather than increasing the monitoring frequency for chromium. Acting Chair McGrath also suggested adding a provision for Lehigh to be able to request a reduction in monitoring frequency once enough data is collected to **establish confidence in the treatment system** before the permit is reissued.

Nicole Granquist, legal counsel for Lehigh, provided an explanation of the treatment system. Board Member Ajami and Acting Chair McGrath asked about solids remaining from the treatment and how they are removed or disposed. Ms. Granquist offered to submit a report further explaining this.

Board Member Battey asked about the shift in leadership related to past permit violations and why that happened. Ms. Granquist discussed the Water Board's shift in regulatory oversight from the industrial stormwater permit to an individual discharge permit. She explained that as Lehigh conducted further discharge characterization for the individual permit, they also began exploring treatment technologies to control the metals discharges. She said Erika Guerra, the environmental manager, was hired then and has dedicated herself to figuring out how to deal with the site.

Board Member Battey commented that the environmental leadership needs to be transferred throughout the organization to be successful. Ms. Granquist said that Ms. Guerra is working on this and supported by the company. She also thanked staff.

Rhoda Fry, community resident, commented that Lehigh has been discharging industrial water right in the creek and has a poor labor safety record being poor (bottom in state). She asked the Board to use their authority to enforce and be proactive about the plans to expand. She said the executive summary does not show modifications to the permit in response to Lehigh's request. She asked for the item to be continued because of the difficulty seeing changes staff made to the document in response to comments. She requested monthly testing be retained for selenium and does not support the reduction in frequency of monitoring. She said that the limits for selenium were increased and should be more stringent, 3.0 milligrams per liter. She said flow should be restored in Permanente Creek.

Kit Gordon, representing Sierra Club, commented on discharge of quarry pit water. She said it was originally discharged at point 001 near the upper treatment plant (elevation 1000 feet) and this permit will allow the quarry water to be discharged near the lower treatment plant (elevation of 500 feet and 1 mile downstream). She recommended that all discharge be at the upper discharge location. She also commented that the requirement for discharge at the upper location is at Lehigh's discretion whether a minimum level of flow is maintained year-round. She also commented that staff issued a letter signed by Mr. Johnson to Lehigh saying maintenance of discharge to the creek is necessary to support beneficial uses since the quarry pit reduces in-stream flow by drawing water off the creek into the pit via subsurface flow.

Danielle Burnett-Foster, Cupertino resident, commented that she is concerned about the permit not being protective enough of groundwater and surface water.

Acting Chair McGrath asked staff to review and respond to comments. Mr. Madigan mentioned the Notice of Violation issued per the Waste Discharge Requirements and noted that the Board is putting Lehigh on notice. He said the changes in selenium limits are protective of drinking water and aquatic life and are more stringent than the previous permit. He also said the in-stream flow provision is a result of study to protect existing beneficial uses that the Board required in the last permit when it allowed the point of discharge to be moved downstream. Mr. Johnson explained that from an engineering standpoint, it does not make sense to pump water uphill to discharge upstream in the wet season, a time when there is already water in the creek. Mr. Johnson said that drinking water is protected because there is no evidence of selenium in downstream wells, Lehigh is discharging to shallow groundwater and not deep water where wells are located, and the water quality limits are set at drinking water levels at the point of discharge so they protect the downstream groundwater drinking water source.

Board Member Ajami pointed out that she would have liked to see “before and after” data to show the treatment system is working to provide more confidence in the discharger’s ability to comply with the permit.

Acting Chair McGrath said the Notice of Violation indicates that their compliance record is not good enough yet. He said he wants the frequency of selenium monitoring increased to weekly as a better check on effectiveness of treatment and water quality protection. He said that he is interested in the ultimate fate of solids as they come through the treatment system and the brine is burned, etc. He said he wants a report that explains this. He proposed the following change to the Order: selenium monitoring weekly for at least two years and then the frequency can be reduced if enough monitoring demonstrates the treatment system is working. He also said he wants a report on treatment processes related to the brine from the reverse osmosis and accounting of solids removed, maybe with a 13267 Technical Report Order.

Board Member Battey also wanted to know of any violations or an annual report of compliance because the current compliant behavior is new. She also wanted to know what Lehigh is doing for community engagement and whether that can be added to the permit. Mr. Montgomery indicated that the permit already has a reopener if problems are anticipated. Mr. Johnson said that staff can present enforcement updates. Board Member Ajami asked for an explanation of all recent exceedances of limits and Ms. Granquist explained that these are from system calibration. Board Member Ajami asked for an Executive Officer’s Report on status of compliance annually. Board Member Battey asked for a community meeting and if staff can participate. Ms. Granquist said they do community engagement and have held two meetings in the last few months and will invite Board staff in the future.

Mr. Johnson indicated staff recommends the following changes: those in the supplemental information; Page E.4, table E.2, change to weekly monitoring frequency for selenium, add new footnote 4 that says the discharger may reduce monitoring after two years with confirmation from Executive Officer; same changes on Page F.30 and F.31, table F.9 and in new footnote 9. Mr. Montgomery said additionally we will require the report on solids and present an annual status of compliance overall, including participation in any community events.

Board Member Ajami moved adoption of staff's recommendation with revisions to the tentative order detailed by Mr. Johnson, and Board Member Ogbu seconded the motion. Attorney Yuri Won reminded the Board that the adoption includes rescission of the Cease and Desist Order, which requires four affirmative votes. There was a roll call vote and the order was adopted.

Ayes: McGrath, Ogbu, Kissinger, Battey, Lefkovits, Ajami

Nos: None

ITEM ADOPTED

Item 8 – Correspondence – There were no correspondence items.

Item 9 – Closed Session – Personnel

The Board did not meet in closed session to discuss personnel matters.

[Authority: Government Code section 11126(a)]

Item 10 – Closed Session – Litigation

The Board did not meet in closed session to discuss litigation.

Item 11 – Closed Session – Deliberation

The Board did not meet in closed session to deliberate.

Item 12 - Adjournment

Meeting adjourned at 12:51 p.m. until the next Board Meeting – The August 14, 2019 Board meeting was cancelled. The next Board Meeting will be September 11, 2019.