

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, California 92123

MINUTES OF MEETING
AUGUST 12, 2009

At 9:00 a.m. Chairman Wright called to order the meeting of the California Regional Water Quality Control Board, San Diego Region at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call and Introductions: Board Members Present: Chairman Richard Wright, David King, Eric Anderson, Wayne Rayfield, Grant Destache, Gary Thompson, and George Loveland.

Staff Present: John Robertus, Michael McCann, Lori Costa, David Barker, Julie Chan, David Gibson, John Anderson, Craig Carlisle, Brian Kelley, Chiara Clemente, Bruce Posthumus, Jeremy Haas, Brian McDaniel, Frank Melbourne, Chris Means, Laurie Walsh, Lisa Honma, Barry Pulver, Cathryn Henning, Wayne Chiu, Pete Peuron, Sean McClain, Cheryl Prowell, Joann Cofrancesco, Lynn Berlad, Kristin Schwall, Whitney Ghoram. Others Present on behalf of the Regional Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, Cris Carrigan, Reed Sato, and Molly Munz. Kennedy Court Reporters: Brenda Martinez.

Public Attendance: Laura Hunter- Environmental Health Coalition; Gabriel Solmer- San Diego Coastkeeper; John Lormon- Procopio, Cory, Hargreaves & Savitch; Kathy O'Brien- Sun Harbor/Clean Marinas; Robert Hillstrom, Michael Chee- NASSCO; Kelly Richardson, Jennifer Caster- Latham & Watkins; Michael Welch- self; Cindy Lin- U.S. Environmental Protection Agency; Cory Briggs- Briggs Law Corporation; John List- Flow Science Inc.; Allen Burton- University of Michigan; Brian Gordon, Joseph Stuyvesant, Chuck Katz, Bart Chadwick, Nate Cushman- U.S. Navy; Cameron Durckel- Governor's Office; Patti Krebs- Industrial Environmental Assoc.; Larry Blumberg- San Diego Military Advisory Council; Eric Nichols, Rick Ahlers- LFR; Richard Jackson- Intera; Richard Opper- Opper & Associates; Marsi Steirer, Greg Cross- City of San Diego; Wesley Danskin- U.S. Geological Survey; Lisa O'Neal- Brown & Winters; Todd Novacek- Moulton Niguel Water District; Bill Rocco- CPDA; John Fields- Brown & Caldwell; Cleve Hardouer- RBOC; Stephanie Bauer- POSD; Shaun Halvax- BAE Systems; Marlan Hoffman- CA Professional Diver Association; Karen Holman- Port District; Harvey Porter- Northrop Grummon; Christa Zacharias- Nautilus Environmental; Mo Lahsaie, Frank Quan- City of Ocean Side; Gabrielle Skipper, Jeremy Jungreis, Hugo Burchartz- Camp Pendleton; Ryan Verschour- MACTEC.

Item 2 – Public Forum

Laura Hunter, Environmental Health Coalition, talked about her concern with the South Bay Power Plant's application for renewal of their NPDES permit. She urged staff to recommend a prohibition of the discharge due to significant adverse impacts to San Diego Bay.

Mr. Robertus said there was a backlog of permit reissuances and did not have the resources to reissue the permit upon its expiration. He also said he directed staff to delay reissuance of the permit until the State Board gave a determination on the Once Through Cooling Policy.

Chairman Wright said he felt the matter was a high priority item and asked the Board for their opinion. Mr. Rayfield agreed and asked for a brief status report on the item at the September Board meeting. Mr. Loveland also agreed and said the Board should set some workload priorities. Mr. Destache said the permit matter needed to be addressed and resolved. Chairman Wright said that if the Board deemed that the item was a high priority, they would proceed with further action.

Gabriel Solmer, San Diego Coastkeeper, expressed her concern with the continued delay of the San Diego Bay Sediment Cleanup mediation process. She also said they were not being informed of mediation dates and had not been receiving information from the meetings.

Item 3 – Minutes of Board Meetings of July 1, 2009

This record of the minutes of the meeting on this date is not intended as the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the Regional Board office for assistance.

Mr. King moved approval of the July 1, 2009 minutes. The motion was seconded by Mr. Rayfield and approved by unanimous vote.

Item 4 – Chairman's, Board Members', State Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

Mr. Thompson announced that he accepted a position with a city that was an NPDES co-permittee in Riverside County and since the 10 % income rule would disqualify him from serving on the Regional Board, he had to resign from the Board effective August 30, 2009.

Chairman Wright reported that during the August 3rd Chair's conference call, they discussed the October 26 & 27, 2009 Water Quality Coordinating Committee

meeting and also sustainability as it related to the availability of water and the impacts of recycled water on water quality. He said he suggested that the U.S. Environmental Protection Agency speak at the WQCC to help educate Regional Board Members about the relationship between the U.S. EPA and the Regional Boards on water quality matters.

Mr. Anderson referred to the recycled water activities item and said he would like to take the City up on their offer to give the Board an update on their program.

Chairman Wright announced that Item 10 was postponed.

Mr. Robertus reported on Item 7 in his July 9, 2009 Executive Officer's Report and Item 9 in his August 12 report. Also, he reported that the Tijuana River Valley team would be meeting on August 28, 2009.

Consent Calendar:

Item 5 – CONSIDERATION OF SETTLEMENT: Administrative Assessment of Civil Liability against Ametek Inc. (former Ametek/Ketema Aerospace Manufacturing Facility) for violation of Cleanup and Abatement Order No. R9-2002-0201. The Regional Board will consider adoption of an Order Assessing Administrative Civil Liability in accordance with the terms of a settlement agreement between the Regional Board Prosecution Team and Ametek, Inc. The Order would resolve violations alleged in Complaint No. R9-2008-0033. The settlement includes: (1) payment of \$600,000 to the Regional Board for reimbursement of staff costs and to the State Water Resources Control Board Cleanup and Abatement Account; and (2) suspension of the remaining civil liabilities pending Ametek, Inc.'s completion of specified actions set forth in an agreed upon Cleanup and Abatement Order to the satisfaction of the Regional Board. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2009-0091) *(Laurie Walsh)*

Item 6 – CONSIDERATION OF SETTLEMENT: William and Heidi Dickerson; Larry and Penelope Gunning; and Perry and Papenhausen, Inc. (Dischargers). Written public comments will be accepted until 5 p.m. on August 3, 2009. If the Regional Board rejects either proposed settlement, then the Petition for Writ of Mandate matter will return to Superior Court and consideration of Administrative Civil Liability (ACL) will be rescheduled for a future public hearing. *(Frank Melbourne)*

a. Settlement of Petition for Writ of Mandate (San Diego County Superior Court Case No. 37-2007-00075848-CU-WM-CTL, September 27, 2007) (tentative Resolution No. R9-2009-0125) Dischargers challenged the Regional Board's adoption of Amended Cleanup and Abatement Order (CAO) Nos. R9-2006-0101 and R9-2006-0102. In the proposed settlement the Regional Board will rescind the CAOs in exchange for the Dischargers dismissing the Superior Court case

with prejudice, paying the Regional Board \$67,000 in staff costs, replacing riprap, and replanting eelgrass; and

b. Settlement of Administrative Civil Liability (Tentative Order No. R9-2009-0084). In the proposed settlement the Dischargers will pay a \$61,200 ACL that includes: \$24,000 in satisfaction of ACL Complaint No. R9-2008-0019 for eight alleged mandatory minimum penalty violations of the Dickerson's General NPDES Groundwater Dewatering Permit; and \$37,200 for alleged violations of Regional Board Basin Plan Prohibitions, the Clean Water Act, and Regional Board Water Quality Certification No. 05C-041.

Item 7 – Rescission of Waste Discharge Requirements: Oglebay Norton Industrial Sands, Inc., Mission Viejo Sand Plant, Orange County; Verger Dairy, San Diego County; and Vulcan Materials, Sloan Canyon Sand Plant (Tentative Order No. R9-2009-0106 rescinding Order Nos. 88-55, 94-126, and 96-51)
(Cathryn Henning)

Mr. Thompson moved approval of the Consent Calendar. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 12 – Status Report: Statewide Marina Permit: A status report on the tiered, risk-based general permitting mechanism being developed by the State Water Resources Control Board to capture discharges of waste associated with saline and brackish Marina activities. Marinas and mooring area in saline and brackish waterbodies along the California-coast, bays and estuaries that contain slips or mooring locations for 10 or more boats shall be subject to this General Permit Marinas Permit. The status report will describe the tentative requirements and the public process for consideration of adoption of the General Marinas Permit, the nexus with control of exotic invasive species, and the relationship of the statewide General Marinas Permit with adopted TMDLs. (David Gibson)

Senior staff member David Gibson introduced the item. Molly Munz, State Board, gave the presentation.

Board Members made comments and asked questions of Ms. Munz.

Other speakers included:

Laura Hunter – Environmental Health Coalition

Kathy O'Brien – Sun Harbor Marina

Item 8

a) NPDES Permit Reissuance: Waste Discharge Requirements for General Dynamics National Steel and Shipbuilding Company (NASSCO) Discharge to San Diego Bay (Tentative Order No. R9-2009-0099, NPDES No. CA0109134) *(Kristin Schwall)*

b) Time Schedule Order: An Order Requiring General Dynamics National Steel And Shipbuilding Company (NASSCO) Discharge to the San Diego Bay to Comply With Requirements Prescribed in Order No. R9-2009-0099 (NPDES No. CA0109134) (Tentative Order No. R9-2009-0117) *(Kristin Schwall)*

Staff member Kristin Schwall gave the presentation.

Other speakers included:

Kelly Richardson – Latham & Watkins

Robert Hillstrom – NASSCO

Cindy Lin – U.S. EPA

Cory Briggs – Briggs Law Corporation

Gabriel Solmer – San Diego Coastkeeper

Laura Hunter – Environmental Health Coalition

Mr. Richardson made a closing comment on sediment chemistry monitoring and the toxicity standard.

John List, Flow Science Inc., responded to Ms. Hunter's comment on the drinking water standard.

Mr. Barker responded to Mr. Richardson's comment on sediment chemistry monitoring.

Mr. Robertus also commented on sediment monitoring then recommended adoption of the orders with errata.

Mr. Rayfield made a motion to approve Order No. R9-2009-0099 with errata and supplemental information. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Mr. Destache made a motion to approve Order No. R9-2009-0117 with errata and supplemental information. The motion was seconded by Mr. Thompson and approved by unanimous vote.

Item 9 – NPDES Permit Reissuance: Waste Discharge Requirements for the U.S. Navy, Naval Base San Diego (including the Graving Dock) Discharge to San Diego Bay (Tentative Order No. R9-2009-0100, NPDES Permit No. CA0109169) *(Vicente Rodriguez)*

Staff member Vicente Rodriguez gave the presentation.

Chairman Wright expressed his concern with the letter that was sent by Linda Adams, Cal EPA, and received by the Regional Board the morning of the meeting that Mr. Rodriguez said he had not reviewed or commented on. Mr. Rodriguez said he would do so after his presentation.

Other speakers included:

Allen Burton – consultant, University of Michigan
Brian Gordon – U.S. Navy
Captain Joseph Stuyvesant – U.S. Navy
Cameron Durckel – Governor's Office
Patti Krebs – Industrial Environmental Association
Larry Blumberg – San Diego Military Advisory Council
Cindy Lin – U.S. EPA
Cory Briggs – Briggs Law Corporation
Gabriel Solmer – San Diego Coastkeeper
Laura Hunter – Environmental Health Coalition

The meeting recessed for lunch and Closed Session at 12:45.

Item 13 – *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

Civil Actions

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Carlos Marin, an individual in his capacity as Commissioner of the International Boundary and Water Commission, United States Section, et al., Complaint for Violations of the Clean Water Act and Related State Law Claims, United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (John Robertus)*
- b. *Surfrider Foundation v. California Regional Water Quality Control Board -- San Diego Region and California State Water Resources Control Board; (Cabrillo Power I, LLC, Real Party-in-Interest), Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37 2007-00069621-CU-PT-CTL (filed July 2007). (Brian Kelley)*
- c. *William G. Dickerson and Heidi Dickerson, Husband and Wife; Larry Gunning and Penelope L. Gunning, Husband and Wife; and Perry & Papenhausen, Inc., a California Corporation v. San Diego Regional Water Quality Control Board, a Public Entity, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2007-00075846-CU-WM-CTL (filed September 2007). (Frank Melbourn)*

- d. *In re: Test Claim on California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES No. CAS0108758) Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority adopted on January 24, 2007. Test Claim filed by San Diego County, et al., with Commission on State Mandates, No. 07-TC-09 (filed June 2008). (Catherine George Hagan)*
- e. *William and Lori C. Moritz v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate. San Diego County Superior Court, Case No. 37-2009-00093097-CU-WM-CTL (filed June 2009) (Christopher Means)*

Petitions for Review Pending Before State Water Resources Control Board

- f. *Petition of San Diego Gas & Electric Company, Reconsideration of Clean Water Act Section 401 Water Quality Certification No. 06C-026 and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials fo 5393 - SDG&E Access Road Repairs TM 3010, Torrey Pines, San Diego County, SWRCB/OCC File No. A-1951, filed September 2008 (in abeyance). (Mike Porter)*
- g. *Petition of Natural Resources Defense Council and San Diego Coastkeeper (Executive Officer Approval of Countywide Model Standard Urban Stormwater Mitigation Plan for Development Applications), SWRCB/OCC File No. A-2010, filed April 2009 (in abeyance). (Eric Becker)*
- h. *Order No. R9-2009-0038 (Poseidon Resources Corporation, Carlsbad Desalination Plant, Order Amending Waste Discharge Requirements No. R9-2006-0065 [NPDES No. CA0109223])*
 - (i) *Petition of San Diego Coastkeeper, SWRCB/OCC File No. A-2024, filed June 2009; and*
 - (ii) *Petition of Surfrider Foundation, SWRCB/OCC File No. A-2024(a), filed June 2009. (Michelle Mata)*
- j. *Petition of Department of the Navy (Waste Discharge Requirements Order No. R9-2009-0081 [NPDES No. CA0109185] for the United States Department of the Navy, Naval Base Coronado, San Diego County), SWRCB/OCC File No. A-2032*

The Closed Session was held.

Item 14 – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to Litigation

The Regional Board may meet in closed session to initiate or consider initiating litigation against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]

(John Robertus)

The Closed Session was not held.

Item 15 – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing

The Regional Board may meet in closed session to consider evidence received in an adjudicatory hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]

The Closed Session was not held.

Item 16 – *Closed Session* - Personnel

The Regional Board may meet in closed session to consider personnel matters involving public employees [Authorized under Government Code Section 11126(a)]

The Closed Session was held.

The meeting reconvened at 1:30 p.m.

Ms. George announced that Item 13(h) and Item 16 were discussed during the Closed Sessions.

Item 9 – Continued

Captain Stuyvesant made closing comments.

Mr. Rodriguez made closing comments and responded to the question asked by Cal EPA in their letter received the day of the meeting.

Board Members made comments and asked questions of the Navy and staff.

Mr. Robertus made comments then recommended adoption of the Order with errata.

Mr. Destache made a motion to approve Order No. R9-2009-0100 with errata and supplemental document no. 10 without errata 5. The motion was seconded by Mr. Wright. The motion failed due to a 5-2 vote.

Mr. Loveland made a motion to continue the item for 30 days to allow time to address the four points that were presented by the Navy. The motion was seconded by Mr. Rayfield.

Mr. King amended Mr. Loveland's motion to continue the item for 90 days. The motion was seconded by Mr. Thompson and approved by unanimous vote.

Mr. King left the meeting at this time.

Item 10 – NPDES Permit Reissuance: General Waste Discharge Requirements for Discharges of Hydrostatic Test Water and Potable Water to Surface Waters and Storm Drains or Other Conveyance Systems Within the San Diego Region (Tentative Order No. R9-2009-0094, NPDES No. CAG679001) *(Michelle Mata)*

Item 10 was postponed.

Item 11 – Information Item: Mission Valley Terminal Cleanup Status Report. Kinder Morgan Energy Partners is in the process of cleaning up gasoline constituents in soil and groundwater that leaked from the Mission Valley Terminal to the adjacent Qualcomm Stadium property. The Board will hear reports from staff, Kinder Morgan Energy Partners, and the City of San Diego on the status of the cleanup. (Cleanup and Abatement Order No. 92-01) *(Sean McClain)*

Mr. Robertus introduced the item. Staff member Sean McClain gave the presentation.

Other speakers included
Eric Nichols – Kinder Morgan

Mr. Rayfield left the meeting at this time.

Richard Opper – Opper & Associates
Marci Steirer – City of San Diego
Wesley Danskin – U.S. Geological Survey
Richard Jackson – Intera

Board Members asked questions of staff and Kinder Morgan.


Craig Carlisle, Sr. staff member, made a comment.

Mr. Robertus made closing comments.

Item 17 – Arrangements for Next Meeting and Adjournment
Wednesday, September 9, 2009 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

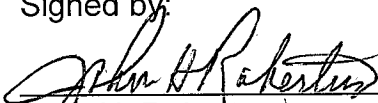
With there being no further business, the meeting was adjourned at 4:10 p.m.

These minutes were prepared by:



Lori Costa
Executive Assistant

Signed by:



John H. Robertus
Executive Officer