

California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT

A Monthly Report to the Board and Public

March 2007

The next regular scheduled Board meeting is March 13-14, 2007.

See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda

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Santa Clara D.A. Wins Preliminary Hearing on Our Fraud Case (Yuri Won)

On February 27, the Santa Clara County District Attorney's Office prevailed in a preliminary examination hearing on felony forgery charges it brought against defendant, Gary Dawson. The defendant is charged with forging a "no further action" letter for a contaminated site in San Jose and forging the signature of former Board staff Roger Brewer on that letter. Trend Plastics owned the site and hired the defendant and his company Environex to clean up hydraulic oils at the site. Board staff became aware of the forged letter in 2004 when the San Jose Fire Department, which was overseeing the site's cleanup, forwarded a case closure packet containing a copy of the letter to the Board's office. Board staff promptly referred the matter to the Santa Clara County District Attorney for prosecution. Since then, the Alameda County District Attorney's Office, which is separately investigating and prosecuting the defendant on other charges, located the original forged letter in the defendant's home.

Success at the preliminary examination hearing means the defendant will now be arraigned and the case will go to trial. No dates have been set. Board staff thank Roger Brewer for traveling from his current residence in Hawaii to provide crucial testimony at the preliminary hearing. Staff will report the trial's outcome.

January NPDES Permits Petitioned to State Board (Lila Tang)

The State Board has received petitions for three NPDES permits the Board adopted in January. The petitioners include all parties who testified at the January hearing. These are the permittees, San Francisco BayKeeper, and the Bay Area Clean Water Agencies (BACWA). Some of the issues petitioned include the bases for limits for dioxins, mercury, and copper; the validity of compliance schedules; and the allowance of blending during wet weather peak flows.

Of the nine petitions filed, eight are being held in abeyance at the request of the petitioners. As this is written, the South Bayside System Authority has not yet requested that its petition be held in abeyance, but may consider doing so shortly.

We appear to be entering another phase of having many permits petitioned. The first phase occurred from 2000 to 2003 when new state regulations on toxic pollutants were first implemented. During that time, a total of about 20 permits were petitioned. Most were held in abeyance with only a handful considered by the State Board, and two of those going through to the courts. This current phase of petitions started last year with three permits petitioned. This current phase is not unexpected as the permits from the first phase come up for reissuance five years later. One added complexity to these permits in this permit cycle is the issue of compliance schedules. Many of the schedules approved in the last permit cycle five years ago will be coming to an end within this current phase of permits, while the BayKeeper is challenging the legality of any schedules.

The most immediate effect of petitions is that we may not meet our permit milestone commitments to U.S. EPA because of delays in upcoming permit actions. Though nearly all the petitions currently are in abeyance, Board staff must still prepare an interested parties list and compile the administrative records for these permits. Also, as in the case of the Potrero Power Plant petition (see July 2006 EO Report), if the South Bayside System Authority decides against abeyance, staff must also prepare a point-by-point detailed response to the petition and prepare for a State Board hearing. We will keep you apprised of developments on these and other petitions in future EO reports.

Hamilton Wetland Restoration Project (Elizabeth Christian)

A major milestone for the Hamilton Wetland Restoration Project begins this month. The Project will receive its first delivery of dredged sediment to begin the restoration of 630 acres of tidal and seasonal wetland habitat at the former Hamilton Army Airfield in Marin County. The initial 200,000 cubic yards of clean sediment is coming from the Bel Marin Keys Community Services District, Hamilton's immediate neighbor to the north. Because of the Bel Marin community's close proximity to Hamilton, the mud can be hydraulically dredged (sucked up from the bottom as if with a vacuum cleaner) and pumped through an over-land pipeline to an area of Hamilton designed to receive it. Once the dredged material has settled and reached its design elevation, the outboard levee to the Bay will be breached, so that tidal wetlands will begin to form. Ultimately, about five million cubic yards of dredged material will be imported from dredging projects all around the Bay. Next fall, the U.S. Army Corps of Engineers plans to start delivering about 1.5 million cubic

yards of sediment from the deepening of the Port of Oakland's harbor. The Corps will use a system that can pump material directly off a barge into an "off-loader" and a five-mile long pipeline that will extend offshore from the Hamilton project, as the Bay outboard of Hamilton is too shallow for barges to approach the shoreline. We will keep you updated regarding the development of this sediment delivery system and progress in the construction of wetland habitat at Hamilton.

Updating Environmental Screening Levels (Elizabeth Allen)

Board staff is currently in the process of updating the Board's February 2005 document *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater*. Environmental Screening Levels (ESLs) are intended to help expedite the preparation of environmental risk assessments at sites where impacted soil and groundwater has been identified. Data collected at a site can be directly compared to the ESLs and the need for additional work evaluated. This approach is much faster and simpler than the alternative, which is to prepare "site-specific" screening levels or to quantify risk in a more formal risk assessment. ESLs are especially beneficial for use at small- to medium-size sites, where the preparation of a more formal risk assessment may not be warranted or feasible due to time and cost constraints.

As part of the update, we have sought the input of the regulated community regarding what changes they would like to see, and what changes might be appropriate to make the site evaluation process easier to understand for responsible parties and the public. At this point, we anticipate making several changes in the ESLs as part of the update:

- Update the underlying toxicity criteria (factors derived by others which are used in the ESLs and which can change over time)
- Modify the tiered structure, so that ESLs can be derived without knowing current land use or groundwater potability, and so that site-specific risk assessments can be tailored to site conditions
- Modify the ESL calculations for vapor intrusion and construction worker exposure to reflect evolving U.S. EPA and Cal/EPA guidance on these topics
- Remove the soil-*matrix* ESLs for vapor intrusion (since they are not good predictors of potential vapor-intrusion issues and have been replaced by the soil-*vapor* ESLs for vapor intrusion)

We anticipate completing the revisions to the ESLs and the associated guidance document by July, when we will invite the public to comment on the proposed revisions.

Stream and Wetlands System Protection Policy (Ben Livsey)

Board staff conducted a public workshop in early February regarding the proposed Stream and Wetlands System Protection Policy (Policy). The staff presentation consisted of an overview of the scientific and technical principles underlying the Policy and potential elements that are being considered, including new water quality standards and an implementation plan to achieve these standards. Approximately 80 stakeholders attended, including representatives from city governments, water districts, flood control agencies,

state and federal resource agencies, homebuilder associations, environmental consulting firms, and environmental creek and open space groups. This public workshop offered stakeholders an opportunity to learn about the current status of the Policy and to provide comments on all aspects of the Policy, including implementation planning.

The main themes of public comments included Policy approach, Policy need, stream and wetlands system science, Board authority, interagency coordination, Policy implementation, and available funding. The following are several representative public comments:

- How would existing Board permits and programs be affected by this Policy?
- Vegetated riparian corridors provide bank stability, reduce erosion and sediment transfer, moderate stream temperatures, and protect the physical, chemical, and biological characteristics of stream systems.
- Any methodology to determine permit conditions needs to be cost-effective, provide useful information, and be able to be applied region-wide.
- What resources (i.e., financial, technical) will be available for local jurisdictions to implement the Policy?

Staff is currently working on draft Basin Plan amendment language and the supporting Staff Report and will hold a Staff Report workshop in summer 2007. As part of this effort, we will be clearly addressing all comments, including those above. A copy of the presentation given at the public workshop and other information and documents related to the proposed Stream and Wetlands System Protection Policy are posted on the Board's website at: www.waterboards.ca.gov/sanfranciscobay/streamandwetlands.htm.

Site-specific objectives for Copper in the Bay (Richard Looker)

On March 2, staff notified the public of plans to consider a Basin Plan amendment designed to manage copper in San Francisco Bay. The amendment will establish both acute and chronic site-specific water quality objectives for dissolved copper for Bay segments north of the Dumbarton Bridge and establish translators, or ratios of dissolved copper to total copper, that will be used to compute effluent limits in permits for wastewater dischargers in the same Bay segments. It also includes implementation measures for wastewater discharges, urban runoff, anti-fouling boat paint, and lagoon management to attain the objectives.

The proposed Basin Plan amendment and supporting staff report were posted for public review and comment on March 2 on the Board's website, <http://www.waterboards.ca.gov/sanfranciscobay/basinplan.htm#amendments>. A 45-day comment period will continue until 5 pm on Monday, April 16. The notice proposes a testimony hearing at the May 9 Board meeting, and an adoption hearing by the Board in June.

Transfer of Salt Pond to US Fish & Wildlife Service (Keith Roberson and Naomi Feger)

The U.S. Fish & Wildlife Service (USFWS) has agreed to accept ownership of Cargill Salt Pond SF-2, a former salt evaporation pond located in Menlo Park on the southwest side of the Dumbarton Bridge. USFWS plans to incorporate the 250-acre pond into the Don Edwards National Wildlife Refuge as part of the South Bay Salt Pond Restoration Project. About 12 acres of the pond and its south levee had been contaminated with lead shot and other materials through decades of use of the site as the Peninsula Sportsman's Club skeet range. The San Francisco Public Utilities Commission owned the property on which the Peninsula Sportsman's Club operated, and was responsible for cleanup of the site under Board oversight. Board staff approved the cleanup of the pond and levee portion of the gun club property in September 2006. USFWS reviewed the site cleanup report and has concurred that the pond has been remediated to a level that will pose little or no risk to wildlife. The South Bay Salt Pond Restoration Project released its Environmental Impact Statement/Report in March, which includes the proposed plan for Pond SF-2.

Regional Monitoring Program and Mercury TMDLs (Carrie Austin)

Carrie Austin opened the fourth annual San Francisco Bay Mercury Research Coordination Meeting on February 22, with a discussion of our four mercury TMDLs (Walker Creek and San Francisco Bay, both already adopted by the Board; Guadalupe River, which is well underway; and Tomales Bay, in early stages of development). Carrie was followed by Michelle Wood of the Central Valley Water Board, who described the Central Valley region's Bay-Delta methylmercury TMDL project. Other presentations included updates on mercury loading from various sources, fate and transport of methylmercury, mercury in wetlands, mercury in fish, and mercury in birds. The annual meeting is a key part of the ongoing coordination between the regions.

Potrero Hills Landfill Expansion Project Status Report

(Jolanta Uchman and Keith Roberson)

Plans to expand the Potrero Hills Landfill in Solano County have been put on hold. On February 26, a ruling by the Solano County Superior Court found that certain environmental impacts were not adequately considered in the Environmental Impact Report (EIR), which was certified by the Solano County Board of Supervisors on September 13, 2005. The Court ordered the County to vacate and set aside its certification of the final EIR and the County's resolution approving the modification of a conditional use permit, pending further evaluation of potential impacts to air quality, hydrologic changes caused by increased well pumping, and the adequacy of the expansion project's alternatives analysis and proposed mitigation measures. The ruling was in response to a lawsuit brought against the County of Solano by *Protect the Marsh*, a coalition of neighbors and environmental groups.

The expansion project, as proposed, would expand the existing 190-acre landfill into an adjacent 242-acre area located within the secondary management area of the Suisun Marsh. This expansion would result in the discharge of fill into 2.42 acres of wetlands and creeks, eliminate the Spring Branch Creek headwaters, and replace the creek with a

pipeline of approximately 5,500 feet and a new surface channel. The proposed expansion would quadruple the landfill's size and extend its life by about 35 years.

The landfill is located in the area identified by the Suisun Marsh Protection Plan (SMPP) as a buffer for the unique Suisun Marsh wetlands habitat. The SMPP allowed for the possibility of a landfill at that location, if no other practical, reasonably accessible alternative site was available to Solano County. Neighbors and environmental groups have strongly opposed the proposed expansion because of the project location in the environmentally sensitive area with important wetlands and a breeding and feeding ground for many species of fish, birds, and reptiles. Other opposition groups have emphasized the fact that the relatively low cost of disposing trash at the landfill discourages recycling. In 2005, Potrero Hills accepted 900,000 tons of garbage, only 157,000 tons (less than 20%) of which was generated in Solano County.

The applicant has already applied to the Board for a Clean Water Act Section 401 water quality certification. The decision to issue certification is a discretionary decision that would be made by the Board based on an application filed by the applicant and the associated record and public comment. However, until the County is able to certify an EIR for the project, the Board cannot act. At this point, Board staff has determined that the application for the Section 401 certification does not contain sufficient information to demonstrate that the proposed project will comply with the Board's Basin Plan policy of avoiding impacts to wetlands and other waters of the State, and will not violate State water quality standards.

San Mateo County Stream Management (Ann Riley)

Board staff has been responding to increasing local interest in San Mateo County for better stream management programs and activities. The County has sought guidance from staff on how to advance multi-objective flood damage reduction and stream bank restoration projects which are more effective and less failure prone, while being more compatible with water quality and habitat protection, as well as easier to permit. The first of numerous workshops was held last June for the San Mateo County and City Engineers Association in the City of Belmont by Ann Riley, the Board's Watershed and Stream Protection Advisor. This was followed by an August 21 field trip with the project manager and staff for the San Francisquito Creek Joint Powers Authority (JPA), formed to coordinate two counties and several cities to develop a multi-objective flood damage reduction plan through a partnership with the U.S. Army Corps of Engineers. This plan has multiple objectives to improve water quality, improve and protect fish habitat and passage, and reduce flood damages to Menlo Park, Palo Alto and East Palo Alto.

Based on potential project measures developed during the August interactive field trip, Ann Riley was requested to present a summary of watershed management possibilities and information from cases involving other cities in the Bay Area and the State that have successfully prepared and implemented multi-objective plans. Paul Amato joined her for an afternoon workshop involving the JPA board members, which also included staff from the Corps. The JPA requested future interaction with us as the development of the plan moves ahead. This workshop was followed by one on February 14 sponsored by the San Mateo Countywide Stormwater Pollution Prevention Program, which was attended by 30

local engineers and planners from San Mateo County. Board staff Leslie Ferguson, Habte Kifle and Ann Riley explained our regulatory programs, advised on how to attain permits rapidly and described factors to consider in the design of stream projects. The Board's 2003 circular, "A Primer on Stream Protection for the Regulator and Program Manager," is now getting wider distribution in the County, and the project proposals requiring permitting should be gaining in quality.

Groundwater Staff Attendance at Groundwater Course (Lindsay Whalin)

Linda Rao, Erich Simon, and Lindsay Whalin, all of the Groundwater Protection and Waste Containment Division, attended the Princeton Groundwater Pollution and Hydrology Course held in San Francisco in early February. The course covered fundamental and advanced concepts in groundwater hydrology; techniques for proper program design, well installation, and performance of groundwater monitoring; characterization of groundwater pollutants; and remediation strategies with updates on emerging technologies and designs. We encourage staff to attend this and similar trainings to advance their skills and stay current with evolving technology.

In-house Training

Our March staff training will address current research by the San Francisco Estuary Institute in three areas (watershed planning, mercury studies, and wetland assessments).

Staff Presentations and Outreach

On February 26 and 27, Dyan Whyte and Richard Looker made presentations to the California Water Environment Association's 34th Annual Pretreatment, Pollution Prevention, and Stormwater Conference and Exhibition at the Napa Marriot.

Dyan spoke on "Protecting Water Quality in the San Francisco Bay Region: Recent accomplishments and future challenges" She described a number of recently adopted TMDLs, implementation strategies for specific pollutants, the stream and wetlands protection policy currently under development, and ways local and state government agencies can work together to protect water quality in the face of urbanization and global climate change.

Richard's talk was entitled "Bay Area Regulatory Strategy for Copper in San Francisco Bay: Why copper is still an issue and what it means for dischargers." He described the technical background for the upcoming Basin Plan amendment setting site-specific objectives for copper in the Bay north of Dumbarton, as well as the proposed permit conditions for wastewater and urban runoff management agencies to implement the objectives.

On March 2, I spoke at the North Bay Watershed Association's board meeting. Among the Board activities that I updated the Association on, I emphasized the challenge of developing TMDLs and achieving final effluent limitations, and offered the Board's

assistance to local agencies in addressing the problem of inflow and infiltration in sanitary sewer collection systems.

On March 2, Richard Looker gave the first of two scheduled presentations to the Implementation Committee of the San Francisco Estuary Project's relative to the update of the Comprehensive Conservation and Management Plan's (CCMP) Pollution Prevention chapter. Richard has facilitated the committee charged with updating the pollution prevention chapter.

The CCMP serves as the blueprint for restoring and monitoring the health of the Bay – Delta's ecosystems, providing the basis for regular reports on the integrity of shellfish, fish, and wildlife communities, pollution prevention initiatives, land uses, and recreational and commercial activities in the estuary. The document is in the process of its first major update since 1992. The CCMP is available online at <http://sfep.abag.ca.gov/reports/ccmp/table.html>. Printed copies are available from the San Francisco Estuary Project, 510.622.2304. More information about the update is at <http://sfep.abag.ca.gov/projects/ccmp.html>.