California Regional Water Quality Control Board
San Francisco Bay Region

EXECUTIVE OFFICER'S REPORT

A Monthly Report to the Board and Public

July 2010

The next regular scheduled Board meeting is July 14, 2010.
*See **http://www.waterboards.ca.gov/sanfranciscobay/** for latest details and agenda*

Items in this Report (Author[s])

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Court of Appeal Affirms Board's ACL Against TWC Storage (Yuri Won and Max Shahbazian)

On June 3, the Court of Appeal for the Sixth District of California affirmed the Superior Court of Santa Clara's June 25, 2008, judgment upholding the Board's imposition of an administrative civil liability against TWC Storage, LLC (TWC). The Board imposed a $25,000 liability against TWC after a hearing on May 10, 2006, for a 250 gallon release of the solvent PCE from an abandoned transformer on its property, a former federal Superfund site, during the course of demolition activities.

The Court held that TWC was strictly liable for causing or permitting the discharge of a hazardous substance into waters of the State and that it cannot be absolved because its contractors were negligent or also could be held liable for the discharge. The Court also affirmed the Water Code's absolute bar of discharges—planned or unplanned—prior to filing a report of waste discharge. Finally, the Court held that the Board did not violate TWC's due process rights and afforded TWC a fair hearing. Specifically, the Court held that the Board indisputably afforded TWC adequate notice and a hearing at which it could be represented by counsel, present favorable evidence, and confront and cross-examine adverse witnesses, and that the Board's attempts to encourage TWC to streamline its presentation did not deprive TWC of this opportunity. The Court also found no due process violation for Yuri Won's role as prosecutor after having served as the Board's legal advisor in other unrelated matters on the same day as the TWC hearing.

The Court's decision will become final in early July. TWC may petition for rehearing prior to then. If the decision becomes final, it is unknown if TWC will petition for review by the California Supreme Court.

Enforcement – Complaints and Settlements (Brian Thompson/Keith Lichten)

On May 25, the Assistant Executive Officer issued a revised administrative civil liability (ACL) complaint to the California Water Service Company (Cal Water) for discharges of potable water to Polhemus Creek in 2007 and 2009. Cal Water signed the ACL waiver and agreed to pay the proposed liability of $200,000. The comment period expired without any public comments and Cal Water has paid the $200,000 liability.

On June 21, the Assistant Executive Officer issued an amended ACL complaint at the request of Alameda County. The original complaint proposed liability of $102,600 for alleged violations, at two projects, of Alameda County's Municipal Storm Water Permit and the Statewide Construction Storm Water Permit. The amended complaint separates the liability assessments for each project: a library project in Castro Valley ($81,880) and the Fairview Avenue pathway project in unincorporated Alameda County ($20,720). The total proposed liability remained unchanged. A copy of the amended complaint can be found on our web site:
http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml

The Assistant Executive Officer has made available for public comment a tentative Cease and Desist Order (CDO) for the City of Pacifica. The CDO would require the City to address issues with its sanitary sewer collection system that led to sanitary sewer overflows and the issuance of an ACL complaint to the City proposing $2.3 million in liability. Following the close of the public comment period on July 28, and based on progress of ongoing negotiations to settle matters related to the ACL complaint, the Assistant Executive Officer will propose a Board hearing date. A copy of the tentative CDO can be found on our web site:
http://www.waterboards.ca.gov/sanfranciscobay/board_decisions/tentative_orders.shtml

I have publicly noticed one tentative order setting ACL for a case in which the Board's Prosecution Team reached a settlement with West Valley Charter Line, Inc., Santa Clara County (West Valley Charter), for its late submittal of an annual report under the Statewide Industrial Storm Water Permit. West Valley Charter has agreed to pay $2,475 in accordance with the settlement agreement. I intend to sign the agreement and issue the ACL order if no significant comments are received within the 30-day comment period. A copy of the tentative order can be found on our web site at:
http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml

I issued seven ACL orders in the past month after settlement agreements were reached with the Board's Prosecution Team and 30-day public comment periods did not did generate any opposition to issuing the orders. Dischargers at these seven facilities will pay the following fines for alleged untimely submittal of an annual report required by the Statewide Industrial Storm Water Permit:

- Atlanta Auto Dismantling, Alameda County ($3,300);
- E D Coat, Alameda County ($1,750);
- Fairvac A T Wrecking, Solano County ($4,725);
- Garda, Alameda County ($13,300);
- Greg S Trucking, San Mateo County ($1,425);
- JT Truck Center, Santa Clara County ($2,950); and
- Norcal Metal Fabricators, Alameda County ($7,550).

I also issued an ACL order to OG Property Owner, LLC (OG) after it reached a settlement agreement with the Board's Prosecution Team. The order requires OG to pay a fine of $530,000 to the State's Cleanup and Abatement Account for alleged violations of the Statewide Construction Storm Water Permit at its residential construction project in the City of Orinda (Contra Costa County).

During the public comment period on the OG order, I received and reviewed five comment letters. The primary comment made in these letters was that the order should mandate that OG implement a supplemental environmental project (SEP) to satisfy a portion of its obligation to pay a fine. Additionally, some of the comment letters provided specifics on potential SEPs. The comment letters indicated that OG and the Prosecution Team had attempted to identify a SEP that would both satisfy the Enforcement Policy and be effectively implemented. However, OG and the Prosecution Team were unable to identify and reach agreement on such a SEP during their settlement negotiations.

While it has always been the position of this Board that SEPs are an appropriate means for dischargers to satisfy a portion of their obligations to pay fines, there is nothing in the Enforcement Policy or the Water Code that would allow the Board to require their use. Thus, since OG and the Prosecution Team considered including a SEP in their settlement agreement and draft order but failed to do so, I did not find any water quality benefit in revisiting this issue during a public hearing conducted by the Board when such a hearing would be unlikely to result in the inclusion of a SEP in any order the Board would adopt. As such, I signed the order as originally circulated for public comment.

Conditional Waiver for Vineyard Facilities (Tina Low)

We are making progress towards development of a conditional waiver of waste discharge requirements for vineyard facilities in the Napa River and Sonoma Creek watersheds. The goals of this conditional waiver program are to reduce discharges of sediment, nutrients, and pesticides to the Napa River and Sonoma Creek, and to protect stream and riparian areas. As noted in the May report, this program, along with the grazing waiver program described in the next item, is key to implementing TMDLs for these two watersheds.

We have begun the process of meeting with a technical advisory committee comprised of local experts, to vet focused technical issues such as performance standards and monitoring strategies. We convened a kickoff meeting on June 2, and will be holding follow-up meetings.

We are also continuing our stakeholder outreach efforts. On June 22, Board staff Tina Low gave a presentation on the vineyard facility waiver program at the North Bay Watershed Association Watershed Council meeting. Her presentation provided an introduction to the conditional waiver program, and described the framework and main elements of the program. The presentation focused on the development and elements of a farm plan to address surface erosion, storm water runoff, sediment delivery from roads, pesticide use, nutrient management, and protection of stream areas. Later that same week, on June 24, Tina also presented at the Napa Watershed Information Center & Conservancy's Board meeting. At both meetings, Board staff Susan Gladstone and Rico Duazo gave an overview on why staff are recommending a conditional waiver for implementing TMDLs in these watersheds and a presentation on the Board's grazing program (see next item).Staff presentations were well received and yielded thoughtful and constructive comments that should help guide their efforts. As noted in May, we anticipate bringing draft waivers to the Board for its consideration in mid-year 2011.

Conditional Waiver for Grazing Facilities (Rico Duazo)

In addition to the vineyard waiver described above, we are also moving forward with development of a conditional waiver of waste discharge requirements for grazing facilities in the Napa River and Sonoma Creek watersheds. The goals of the conditional waiver program are to reduce the discharge of sediment, nutrients, and pathogens to the Napa River and Sonoma Creek, and to protect stream and riparian areas. As noted in the May report, these programs are keys to implementing TMDLs for these two watersheds.

Technical advisory committee meetings for the grazing waiver were held on December 10 and February 24. On June 22, Board staff Rico Duazo joined Tina Low and Susan Gladstone to give an invited presentation at the North Bay Watershed Association Watershed Council meeting. The presentation provided an introduction to the conditional waiver program, and described the framework and main elements of the program. The grazing presentation focused on the development of a Ranch Plan to address surface erosion, storm water runoff, sediment delivery from roads, nutrient management, and protection of stream areas. The presentation also described the Tomales Bay grazing waiver that the Board adopted in 2008. We emphasized the idea that we wanted to build on the successes of the Tomales grazing wavier as part of the new Napa/Sonoma grazing waiver.

Later that week, on June 24, the same staff also gave similar presentations at the Napa Watershed Information Center & Conservancy's Board meeting. We received thoughtful and constructive comments at both meetings and look forward to continuing our work with stakeholders.

Guadalupe River Watershed Mercury TMDL Update (Carrie Austin)

On June 1, U.S. EPA issued official approval for this TMDL and the fish tissue water quality objectives in it, which the Board adopted in October 2008. As is the Board's practice, staff does not wait for final approval of TMDLs to begin monitoring and implementation. This TMDL encourages responsible parties to coordinate monitoring for

the TMDL with similar requirements in the Downtown Guadalupe Flood Control Project, and the Municipal Regional Permit for urban stormwater runoff. On June 15, the responsible parties submitted their proposed Coordinated Monitoring Plan for loads of mercury to San Francisco Bay and trends in fish mercury concentrations. In effect, this is a mini-Regional Monitoring Program between Santa Clara County Parks and Recreation Department, Santa Clara Valley Water District (both TMDL and Flood Control requirements), Midpeninsula Regional Open Space District, and Guadalupe Rubbish Disposal Company. Additionally, local Municipal Regional Permittees may join in the coordinated effort for Guadalupe River watershed mercury monitoring.

The next milestone in this TMDL project is expected at the end of the calendar year, the due date for mine owners to submit mining waste investigation reports. Shortly thereafter (i.e., early in 2011), staff plans to provide you the second annual progress report on implementation.

LID Workshop and Tour (Jennifer Krebs and Marcia Brockbank)

On June 9, the San Francisco Estuary Partnership (SFEP) hosted an informational workshop on Low Impact Development (LID). The workshop was organized as a tour of LID projects throughout the City of Emeryville; that city has been a pioneer in requiring LID for new and redevelopments as an outgrowth of its Brownfields clean-up program. The purpose of the workshop was to inform public officials and high-ranking municipal staff about LID, and to try to speed its implementation. Among the presenters were Emeryville's Mayor, Council Members, and Shin-Roei Lee of Board staff. Emeryville has many exciting LID projects, including those visited: Age Song Retirement Living-Care Facility (with a green roof and a cistern to collect rain water for summertime irrigation), Glashous (a residential complex with bioswales, permeable pavement and stormwater flow-through planters), and the Doyle-Hollis Park that was transformed from a warehouse and a parking lot and treats street runoff in a rain garden. As a follow-up to the tour, SFEP will organize a LID and LEED (Leadership in Energy and Environmental Design) session for an organization of Bay Area planning directors as well as an LID early adopters/leadership group.

Signature at the Estuary, Oakland (Cleet Carlton)

Board staff is continuing efforts to address vapor intrusion potential and a shoreline seep at this five-acre site fronting on the Oakland Estuary. We have ramped up our public outreach effort to explain the issue to site residents and to seek their participation in necessary sampling efforts. On June 10, we met with site residents to discuss pending work plans.

The site was previously used as a bulk fuel distribution terminal. As a result of those operations, petroleum and related chemicals leaked from above-ground and underground storage tanks into soil and groundwater. In 2003, the site was acquired by Signature at the Estuary (a subsidiary of Signature Homes) for redevelopment into town homes. In 2003-04, the new owner removed contaminated soil, added an oxygen-releasing compound to help cleanup the groundwater, and replaced the soil with imported clean fill to grade. This

work was done with Board oversight. In 2004, the Board adopted a final Site Cleanup Requirements Order for the site. The Order set cleanup standards, required ongoing monitoring, and required implementation of risk management measures to protect the Oakland Estuary and future residential occupants. Signature constructed the town homes during 2004-06, and they were then sold and occupied. Since then, we have identified two issues at the site: potential vapor intrusion and a shoreline seep.

Potential vapor intrusion
Vapor intrusion refers to the migration of volatile organic compounds from soil or groundwater into occupied buildings. Signature intended to address the issue by performing active cleanup in 2003-04 and by installing risk management measures in the new town homes (passive ventilation and vapor barriers). In 2008, during discussions with Signature representatives, we discovered that the risk management measures were mistakenly omitted from the building construction. In early 2009, Signature proposed alternative measures at the now-occupied buildings, specifically installation of a sub-slab depressurization system (SSDS), similar to those used elsewhere to address radon gas. However, plans to pilot test the SSDS stalled due to residents' concerns over allowing Signature's representatives access to several town homes for a period of several days. Pending litigation between the homeowners association and Signature has contributed to the access difficulties.

Shoreline seep
In 2009 Board staff confirmed a shoreline seep of residual petroleum, as a result of resident odor complaints, our own inspections, and initial investigation efforts by Signature. We required Signature to submit a work plan to investigate the source of the seep and recommend follow-up actions. Signature submitted a responsive work plan in February 2010. Again, residents' concerns regarding access by Signature's representatives have stalled progress on this issue.

In light of these two issues and related access concerns, we have opted for a more deliberate approach. With respect to potential vapor intrusion, we have required Signature to provide an updated work plan that includes both sub-slab vapor sampling (to see if there is a potential problem) and pilot testing of the SSDS (to allow for proper system design). Signature submitted a combined work plan in early June. With respect to access concerns, we have expanded our public participation efforts, to better understand residents' concerns and to explain the two issues directly to the residents. We circulated a fact sheet to site residents and other interested persons in early June. On June 10, we attended a special meeting of the homeowners association to discuss the pending work plans and seek resident input. We received positive feedback from residents who attended the meeting. Residents will have until July 10 to comment on the draft work plans. We intend to meet again with the residents prior to acting on the draft work plans. We are encouraged by recent efforts by the homeowners association and Signature to set up joint fact finding on these issues.

Board staff concludes that we're on the right path to address the potential vapor intrusion and shoreline seep issues. We will update you about significant developments on this case.

Progress on Cleanup at United Technologies Corporation (Keith Roberson)

In April, Board staff approved the Human Health and Ecological Risk Assessment Work Plan ("RAWP") for the former United Technologies Corporation / Pratt & Whitney Rocketdyne ("UTC") site located in Santa Clara County southeast of San Jose. In May, staff also approved the Revised Supplemental Final Remedial Action Plan ("SFRAP") for the UTC site. Together, these two documents lay out the methodology for implementation of an extensive risk-based cleanup of this former rocket motor manufacturing facility. Although UTC has been performing groundwater and soil cleanup at the site for many years under older remedial action plans initiated while the facility was operating, the regulatory approval of these new documents represents a significant milestone towards the final phase of environmental cleanup following permanent closure of the site in 2004.

The RAWP describes the methods by which risk to human and ecologic receptors from perchlorate and other contaminants present in soil and water at the site will be evaluated. Because of the large size of the site (over 5,000 acres) and the fact that different research and industrial processes were performed in different areas of the site (called "stations"), risks will be assessed independently for each station (or group of adjacent stations). The SFRAP summarizes the results of recent investigations at the site and describes the various types of remedial actions that were selected to reduce contamination of soil, groundwater, and surface water to levels that pose acceptable risk.

In the next few months, UTC will submit another milestone document that summarizes the environmental cleanup work that has been performed to date at the site. This report will identify those portions of the site where risk-based cleanup standards have been achieved in accordance with the newly approved RAWP and SFRAP, and identify stations where additional remediation is still needed. Following receipt of that remediation summary report, the Board will consider revising the Site Cleanup Requirements Order to mandate implementation of the remedies and cleanup standards proposed in the 2010 SFRAP and establish a timeframe for completion of site restoration.

Innovative Cleanup at the Plains Products Terminals (Vic Pal)

Plains Products Terminals, LLC (Plains) has operated its Martinez tank farm facility since November 2005. The facility stores (or has stored) crude oil and refined petroleum products, including gasoline, jet fuel, diesel, and methyl tert-butyl ether (MTBE). Innovative remediation at the Plains facility has helped reduce petroleum hydrocarbons in groundwater and limit their migration at three impacted areas.

Bioaugmentation in central area

In December 2004, an enhanced bioremediation system was installed to address dissolved-phase petroleum hydrocarbons and MTBE. The system includes a four step

process: (1) groundwater extraction; (2) removal of hydrocarbon mass from the extracted water via a bioreactor; (3) addition of nutrients, oxygen, and microbes to the extracted groundwater capable of further degrading residual hydrocarbon contaminants (a process known as bioaugmentation); and (4) reinjection of the bioaugmented groundwater at a location upgradient of the contaminant source areas. Additionally, removal of petroleum product from the water table using a skimmer pump was initiated in May 2005. About 1,000 gallons of petroleum product were removed in the first 6 months of operation and the extent of product has decreased significantly since 2004.

Bioenhancement in gasoline release area

In September 2007, about 4,000 gallons of gasoline were released in the west-central portion of the site. Emergency response actions removed a majority of the released gasoline. In October 2007, an interception trench was installed to capture gasoline, extract gasoline-impacted groundwater, and inhibit further spreading. The extracted groundwater is treated by carbon filtration, and then enhanced with dissolved oxygen and nutrients and reinjected at the same location as the bioaugmented groundwater in the Central Area. No migration of gasoline-impacted groundwater has been observed and concentrations are decreasing in wells installed in the release area.

Installation of the interception trench in Gasoline Release Area

Phytoremediation in southwest area

In 2007, a phytoremediation system was installed in the southwest area of the site to mitigate migration of dissolved-phase petroleum hydrocarbons to an adjacent marsh. Phytoremediation is a process utilizing trees, shrubs, or other plants whose roots can tap into and uptake contaminated groundwater. Petroleum hydrocarbons in the groundwater taken up by the plant are broken down within the plant and/or transpired to the atmosphere. In this case, the phytoremediation system consists of two rows of cottonwood trees planted on the bank above the marsh and a row of willow trees planted along the boundary of the marsh. A backup groundwater extraction system was also

installed to aid in containing contaminated groundwater while the tree roots fully establish themselves. Once that occurs, the groundwater extraction system can be slowed or turned off. It is anticipated that the tree root system will be adequately established by the end of the 2010 growing season.

Installation of Cottonwood trees along marsh boundary

Board staff continues to work closely with the facility to oversee the design, implementation, and optimization of methods to cleanup petroleum hydrocarbon contamination in soil and groundwater to the extent practicable.

In-house Training

Our June training addressed site inspections. We have no training scheduled in July or August. Brownbag seminars included a June 10 session on salt management in the Livermore valley (with a speaker from the Alameda County Zone 7 Water Agency) and a June 15 session on geotechnical aspects of the Haiti earthquake earlier this year.

Staff Presentations

On June 10, Shin-Roei Lee gave a presentation on Wetland Tracker at the CLE International 10th Annual Conference on California Wetlands.

Lila Tang and Wil Bruhns gave presentations on June 22 to a South Korean delegation of 30 government officials from Gyeonggi Province. They covered the organization and budget of the Water Boards and the San Francisco Bay Region's surface water protection programs. These included the National Pollutant Discharge Elimination System, Total Maximum Daily Load, and non-point source control programs.

On June 23, I participated in the Alameda County Water District's dedication of a new fish screen and fish passage facility on Alameda Creek in Fremont. This new facility will

improve the upstream migration of salmonids and support the Board's goal of expanding this creek's beneficial uses of fish migration and spawning habitat.