

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
June 16, 2004

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Item 1 - Roll Call and Introductions

The meeting was called to order on June 16, 2004 at 9:07 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: Clifford Waldeck, Chair; Mary Warren, Vice-Chair; Doreen Chiu; **Josephine De Luca**; Shalom Eliahu; John Muller; John Reininga; and William Schumacher.

Board member absent: Kristen Addicks.

Item 2 - Public Forum

Cynthia Barnard, Marin County Department of Environmental Health Services, delivered letters from the Marin County Board of Supervisors and the Marin County Local Enforcement Agency. She said the letters requested the Water Board consider appealing a recent judicial decision regarding closure requirements at the West Marin Sanitary Landfill.

Leo O'Brien, WaterKeepers Northern California, said Shana Lazerow would be leaving her duties as Baykeeper to pursue educational opportunities. He introduced Sejal Choksi who will serve as the new BayKeeper.

Item 3 – Minutes of the May 19, 2004 Board Meeting

Motion: It was moved by Mr. Reininga, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the May 19, 2004 Board Meeting.

Mrs. De Luca and Mr. Muller abstained because they did not attend the May Board meeting.

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

John Muller reported he had been appointed to serve on U.S. EPA's Local Government Advisory Committee. He said the Committee met in Kansas City in May and one of the topics discussed was the management of water infrastructure in small communities.

Clifford Waldeck referred to the Attachment to the Memorandum of Understanding between San Francisco Bay Conservation and Development Commission, State Water Resources Control Board, and San Francisco Bay Regional Board that the Board adopted in May. He said BCDC adopted the Attachment to the MOU at its last meeting.

Bruce Wolfe said a Southern Californian was reported to have contracted West Nile virus. He said water agencies are concerned about controlling mosquito borne diseases and said staff would try to keep the Board informed on the issue.

Item 5 - Uncontested Calendar

Mr. Wolfe recommended adoption of the uncontested calendar with the following change: Item 5C be removed.

Motion: It was moved by Mrs. De Luca, seconded by Mr. Muller, and it was unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer.

Item 5C – California Department of Transportation, Devil's Slide Tunnel Project, County of San Mateo – Issuance of Waste Discharge Requirements and Water Quality Certification

Carmen Fewless gave the staff report. She said the Devil's Slide area of Route 1 is subject to closure because of landslides, rockfalls, and a subsiding grade. She said Caltrans proposes to build a project to bypass the area. She said a 4,000-foot long double bore tunnel would be constructed through San Pedro Mountain and two bridges would be built at the north end of the project. She said the bridges would span the steep Shamrock Ranch watershed.

Ms. Fewless said the project would affect temporarily or permanently about 0.97 of an acre of wetlands, subsurface seepages, and intermittent coastal drainages. In mitigation, she said Caltrans would create 1.19 acres of wetlands, restore 3.4 acres of wetlands habitat, and enhance 0.50 of an acre of wetlands. She said mitigation activities would occur on-site in the Shamrock Ranch area and off-site at Charthouse located in the Montara Mountain watershed.

Ms. Fewless said Caltrans would address construction and post-construction stormwater impacts through use of treatment and detention basins. She said the basins would be located at the north and south portals. She said vegetated swales and a bioswale also would be used at the north portal.

Ms. Fewless said it is anticipated the project will be completed in 5 years.

Skip Sowko, Caltrans Project Manager for Devil's Slide Project, said tunnel bores would be about 30 feet wide, and would include a 12-foot wide travel lane, pedestrian walkways and shoulders.

Mr. Sowko said the project would be funded with federal monies allocated to emergency projects. He said project construction would begin in Fall 2004 and tunnel construction would begin in Fall 2005. He said the entire project, including mitigation, is estimated to cost \$270 to \$275 million.

Chuck Kozak, Devil's Slide Aesthetic Review Committee; Lennie Roberts, Committee for Green Foothills; and April Vargas, representing MidCoast Community Council, spoke in favor of the tentative order. They said Caltrans had worked with the community to address environmental issues.

Mrs. De Luca congratulated all of the parties who planned the project. She said the project addresses safety problems and environmental concerns, and serves the public interest.

Mr. Muller concurred with Mrs. De Luca and complimented stakeholders for their work on the project.

Mr. Schumacher said the Devil's Slide project has been an issue in San Mateo County for many years, and it was a tremendous day to see the project about to begin.

Motion: It was moved by Mr. Muller, seconded by Mrs. De Luca, and it was voted to adopt the tentative order.

Roll Call:

Aye: Mrs. Chiu; Mrs. De Luca; Mr. Eliahu; Mr. Muller; Mr. Reininga; Mr Schumacher; Mrs. Warren; and Mr. Waldeck

No: None

Motion passed 8 – 0.

Item 6 – Monsanto Company, Vishay General Semiconductor, Inc., SmithKlineBeecham Corporation dba GlaxoSmithKline, and Gould Electronics, Inc., 3400 Hillview Avenue, Palo Alto, Santa Clara County – Hearing to Consider Imposition of Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Monsanto Company, Vishay General Semiconductor, Inc., SmithKlineBeecham Corporation dba GlaxoSmithKline, and Gould Electronics, Inc. signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the dischargers agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000.

Item 7 – Orinda Gateway LLC, Montanera Project, Orinda, Contra Costa County – Issuance of Waste Discharge Requirements and Water Quality Certification

Mr. Eliahu recused himself from consideration of this item.

Elizabeth Morrison gave the staff presentation. She said the proposed project, including mitigation, would be developed on contiguous parcels located at the western edge of the City of Orinda: the 978 acre Gateway Valley parcel and the 205 acre Indian Valley parcel.

Ms. Morrison said the applicant proposes to build 245 homes on 216 acres of the Gateway Valley parcel. She said there would not be any residential construction on the Indian Valley parcel.

Ms. Morrison said the proposed project would impact 1.37 acres of creek channels and 2.66 acres of seasonal wetlands, ponds, and seeps. She said most creek channel impacts would be to ephemeral, non-riparian tributaries.

To mitigate, Ms. Morrison said the applicant proposes to create 5.32 acres of seasonal wetlands and .46 of an acre of creek channel. In addition, she said the Indian Valley parcel and 769 acres of the Gateway Valley parcel would be placed under a permanent open space conservation easement. She said cattle grazing would continue in open-space areas during the dry season. She said water troughs would be installed and streams and wetlands would be fenced.

Ms. Morrison said East Bay Municipal Utility District, East Bay Regional Park District and the City of Orinda's Geologic Hazard Abatement District would manage portions of the open-space areas.

Ms. Morrison said the City of Orinda asked that the applicant use artificial turf on playfields. However, she said grass would be used if stormwater pollutants from the turf could not be treated.

Replying to questions, Ms. Morrison said the applicant deleted a proposed 18-hole golf course from the project in order to meet concerns of various parties. She said ephemeral streams are seasonal and carry water during the rainy season. She said preliminary investigation indicates artificial turf might generate fewer stormwater pollutants than grass.

Michael Olson, Vice-President of Montanera Project, said a number of consultants who worked on the project were in the audience and available to answer questions.

Arthur Feinstein, Director of Conservation for Golden Gate Audubon Society, said environmental groups were negotiating with the applicant. He anticipated an agreement would be signed in about a week, and said he would not endorse the project until the agreement was signed.

Mrs. De Luca and Mr. Muller said they participated in a tour of the project site several years ago. They congratulated staff and the applicant for their cooperative efforts.

Mrs. Warren spoke in favor of the project and said she also had toured the site. She expressed regret that a golf course was not included.

Mr. Reininga asked why environmental groups were negotiating with the applicant.

Mr. Feinstein said the groups negotiated with the applicant in order to protect the environment and to avoid filing a lawsuit.

Mr. Wolfe recommended adoption of the tentative order.

Motion: It was moved by Mr. Schumacher, seconded by Mr. Reininga, and it was voted to adopt the tentative order as recommended by the Executive Officer. (Mr. Eliahu recused himself from consideration of the item.)

Roll Call:

Aye: Mrs. Chiu; Mrs. De Luca; Mr. Muller; Mr. Reininga; Mr. Schumacher; Mrs. Warren; and Mr. Waldeck

No: None

Motion passed 7 – 0.

Item 8 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for San Francisco Bay Region to Establish San Francisco Bay Mercury Total Maximum Daily Load (TMDL) and Implementation Plan – Hearing to Receive Testimony on Proposed Amendment

Bruce Wolfe said thirty parties submitted written comments when the TMDL was distributed for public review. He said a public hearing would be held today. He anticipated the Board would take action on the TMDL at the September Board meeting.

Bill Johnson said mercury binds to sediments that move throughout the Bay. He said bacteria convert mercury into methylmercury. He said methylmercury enters the food web when taken up by small organisms. He said methylmercury bioaccumulates when organisms higher in the food web consume it. He said people and wildlife eating fish from the Bay could experience health risks from methylmercury.

Mr. Johnson said the TMDL identifies mercury sources and allocates mercury loads to source categories. He said allocations would be phased in over a 20-year period.

Mr. Johnson said the TMDL includes numeric targets for mercury in fish tissue (0.2 parts per million); bird eggs (less than 0.5 parts per million); and sediment (0.2 parts per million). Staff said loads were allocated using the suspended sediment target as a basis. They said source categories with higher mercury concentrations in sediment are required to reduce mercury levels more than source categories with lower mercury sediment concentrations.

Richard Looker said the TMDL will be implemented by (1) reducing controllable mercury loads, (2) reducing production of methylmercury, (3) utilizing an adaptive implementation approach, and (4) encouraging actions that address multiple pollutants.

Mr. Schumacher asked how methylmercury production would be controlled.

Mr. Looker said some researchers think methylmercury might be produced in wetlands around the periphery of the Bay. He said researchers are trying to understand the process better.

Mr. Eliahu asked how mercury from bed erosion would be reduced.

Mr. Looker said erosion of sediment buried beneath the Bay is a naturally occurring process that will occur over time.

Mr. Eliahu asked if mercury from the surface of the Bay evaporates.

Staff replied affirmatively and said mercury is a volatile metal.

Mrs. De Luca was concerned that the TMDL did not include strategies to control atmospheric deposition of mercury in the Bay.

Mr. Looker said estimating local emission sources is difficult. He said factories in Asia probably are a major source of mercury in Bay Area air.

Mr. Reininga was interested in the cost to reduce mercury loads.

Carl Mosher, Director, Department of Environmental Services, City of San Jose, questioned whether a relationship exists between reduction of mercury laden sediment and reduction of methylmercury in fish tissue. He was concerned that wastewater allocations might affect the City's economic growth. He said the amount of mercury in urban runoff might be overestimated. He suggested a Legacy Pollutant Stakeholder Collaborative be formed to resolve TMDL technical issues.

Lisa Killough, Director, Department of Parks and Recreation, Santa Clara County, congratulated staff for their work on the TMDL. She said studies have not shown there is a relationship between reduction of total mercury and reduction of methylmercury. She said the TMDL proposes the largest reduction of mercury loadings from the Guadalupe River compared to other sources. She said the TMDL uses a single box model for the entire estuary. However, she said the Bay does not operate as a single system and the South Bay differs from the North Bay.

Dave Chesterman, Guadalupe Watershed Manager, Santa Clara Valley Water District, said cost effective methods should be identified before stakeholders are required to comply with allocations.

Jim Kelly, Director of Operations, Central Contra Costa Sanitary District, suggested that wastewater allocations to individual dischargers take into account voluntary source control programs.

Michelle Pla, Bay Area Clean Water Agencies, and Debbie Webster, Partnership for Sound Science in Environmental Policy, said wastewater allocations to municipal dischargers could limit growth. They suggested there be a five-year compliance averaging period for municipal dischargers.

Ellen Johnck, Executive Director, Bay Planning Coalition, thanked staff for their work on the TMDL. She said dredged material that is disposed of in the Bay is required to have a mercury concentration that is the same as or less than the baywide ambient mercury

concentration. She was concerned about the definition of the phrase “ambient mercury concentration.”

Josh Borger, Environmental Law Foundation, was concerned about impacts from mining operations on mercury levels in the Bay. He was interested in regulatory actions that might be taken regarding North Bay mercury mines.

[The Board took a lunch break at approximately 11:41 a.m. and went into closed session to discuss litigation issues. The closed session and lunch break were completed at approximately 12:39 p.m., at which time the general meeting resumed.]

[Mrs. Warren left the meeting at approximately 12:10 p.m.]

Dorothy Dickey summarized the Board’s action taken in closed session: (1) In *State of California by and through the Regional Water Quality Control Board, San Francisco Bay Region v. West Marin Sanitary Landfill et al.* a decision was made not to appeal the trial court judgment; and (2) In *Napa Sanitation District et al. v. State Water Resources Control Board et al.* and *Napa Sanitation District v. California Regional Water Quality Control Board, San Francisco Region and State Water Resources Control Board* direction was given to the Executive Officer regarding terms the Board would like to see in a settlement agreement; authorization was given to the Chair to work with the Executive Officer in finalizing a settlement agreement; and authorization was given to the Chair to sign a settlement agreement that conforms with the Board’s direction.

Gary Darling, General Manager, Delta Diablo Sanitation District, said the District’s mercury wasteload allocations and the mercury limits in the District’s current NPDES permits differ substantially. He said the limits in the permits are much higher. He suggested allocations to individual dischargers take source control programs into account.

Darren Greenwood, Water Resources Manager, City of Livermore, said wastewater allocations are based on dischargers’ past performance. He said the city anticipates substantial growth and the allocation method does not provide for growth.

Robert Falk, attorney representing Santa Clara Valley Urban Runoff Program, commended staff for their work on the TMDL. He said recent technical literature does not indicate there is a relationship between reduction of mercury-laden sediment and reduction of methylmercury in fish tissue. He said reducing the mercury in stormwater as required by the TMDL would be costly.

Larry Bahr, Senior Environmental Scientist, Fairfield-Suisun Sewer District, said wastewater allocations would place a cap on growth. He said the District would violate allocations when its treatment plant is expanded.

Todd Maiden, attorney representing Guadalupe Rubbish Disposal Company, said U.S. EPA has developed a number of methods to allocate wasteloads. He said potentially relevant methods were not considered in the TMDL. He was concerned about implementation costs.

David Yam, Chief, Office of Water Quality, Caltrans District 4, talked about allocation of stormwater loads to Caltrans. He said Caltrans would try to establish the relationship between mercury loads and highway runoff.

Sejal Choksi, San Francisco BayKeeper, asked that allocations to wastewater dischargers be reduced. She requested fishermen be warned about elevated mercury concentrations in fish. She suggested staff look at ways other jurisdictions are remediating mercury contaminated soil.

Shana Lazerow, San Francisco BayKeeper, spoke about the importance of controlling local air emission sources.

Marvin Rose, Director of Public Works, City of Sunnyvale, said the City's mercury wasteload allocation and the mercury limits in the City's current NPDES permit differ substantially. He said limits in the permit are higher. He said the City has conducted a source control program for more than 20 years. He suggested allocations to individual dischargers take source control programs into account.

[Mr. Schumacher left the meeting at approximately 1:30 p.m.]

Mr. Muller suggested staff evaluate whether the TMDL is based on sound science. He suggested the record for public comment remain open.

Mr. Reininga was concerned about the cost benefit ratio between expenditure of funds and reduction of mercury. He was concerned about whether the TMDL was based on current scientific information.

Mrs. De Luca thanked stakeholders for their testimony. She was concerned that the TMDL does not target controlling methylmercury formation. She suggested the Board work with the Air Resources Board to control local mercury emission sources.

Mr. Waldeck said a joint meeting with the Bay Area Air Quality Management District would be helpful once specific discussion topics are identified. He spoke in favor of using the load allocations in the TMDL and said the document was based on a large amount of scientific work. He suggested the TMDL might focus on methylmercury formation.

Mr. Wolfe said it was helpful to hear comments from the Board and stakeholders. He said staff would review the comments and make necessary changes to the TMDL. He said the public comment period could be reopened for comments on the changes.

Dr. Mumley said the initial implementation scheme of the mercury TMDL does not involve a substantial increase in expenditures. He said significant expenditures should benefit multiple water quality concerns.

Mr. Eliahu asked about allocations to municipal wastewater dischargers.

Dr. Mumley said the current group allocation to wastewater dischargers is 14 kilograms per year. He said allocations to individual dischargers were made on the basis of the percentage of individual wasteloads compared to total wasteloads in the years 2000 -

2003. He said individual allocations penalize those who have reduced mercury discharge through activities like source control programs. He said the allocation scheme is being reviewed.

Staff said they are working on a Regional NPDES Permit. They said permit limits would be based on wasteload allocations. They said the Regional NPDES Permit would be considered after the Board takes action on the mercury TMDL.

Mr. Reininga asked how a violation of an aggregate wasteload limit would be enforced among individual dischargers.

Staff said if the aggregate wasteload limit were exceeded, enforcement would be taken against dischargers that exceeded individual allocations and caused the violation.

Dr. Mumley said staff is working with experts focusing on the issue of methylmercury.

Mr. Eliahu asked how production of methylmercury could be controlled.

Dr. Kolb said ways to control methylmercury production are not known. He said reducing the amount of mercury in sediments is the best available method.

Mr. Wolfe said staff would set up meetings with stakeholders and members of the Clean Estuary Project to discuss the comments received.

Mr. Waldeck asked if mercury TMDLs have been adopted elsewhere.

Dr. Mumley said mercury TMDLs have been adopted for Clear Lake, California and Savannah River, Georgia.

Mr. Wolfe recommended the public hearing on the TMDL be closed.

Motion: It was moved by Mrs. De Luca, seconded by Mr. Muller, and it was unanimously voted to close the public hearing as recommended by the Executive Officer.

Adjournment

The Board meeting was adjourned at approximately 2:30 p.m.