

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES

February 11, 2009

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Item 1 – Roll Call and Introductions

The meeting was called to order on February 11, 2009 at 9:02 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; Steven Moore; William Peacock; Dr Singh.

Board members absent: none.

Tam Dudoc, Chair, State Water Resources Control Board, said on February 3, 2009 the State Board adopted a Policy for Water Quality Control for Recycled Water.

Item 2 – Public Forum

There were no public comments.

Item 3 – Minutes of the October 8, 2008 Board Meeting

Motion: It was moved by Mr. Peacock, seconded by Mr. McGrath, and it was voted unanimously to adopt the Minutes of the October 8, 2009 Board Meeting.

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

Mr. Wolfe addressed the Board.

Mr. Muller, Mr. Moore, Mr. McGrath, and Mr. Wolfe commented on the environmental contributions made by the late Janice Delfino. Mr. Muller requested at the conclusion of the meeting, the Board adjourn in the memory of Mrs. Delfino.

Item 5 – Consideration of Uncontested Item Calendar

Mr. Wolfe recommended adoption of the uncontested item calendar.

Motion: It was moved by Dr. Singh, seconded by Mr. Moore, and it was unanimously voted to adopt the uncontested item calendar as recommended by the Executive Officer.

Item 6 – Evaluation of Water Quality Conditions for the San Francisco Bay Region – Proposed Revisions to Clean Water Act Section 303(d) List of Impaired Waters – Hearing to Consider Recommendations for Proposed Revisions

Richard Looker said the Regional Board would consider adopting a Resolution (1) approving proposed revisions to the San Francisco Bay Region Section 303(d) list and (2) authorizing the Executive Officer to transmit the revisions to the State Water Resources Control Board. He said the Regional Board held a testimony hearing on the proposed revisions at the January 14, 2009 Board meeting.

Mr. Looker said in December 2006, stakeholders were requested to submit water quality data for staff to consider when preparing proposed revisions. He said February 28, 2007 was set as the deadline for data submittal.

Mr. Looker said staff recommends the Section 303(d) list include twenty-six new listings for waters impaired by trash and fourteen new listings for waters impaired by other pollutants. He said staff recommends removing three segments of the Bay currently listed as impaired by nickel. He said staff recommends revising the regulatory action applicable to one impaired water body. He said U.S. EPA has approved certain TMDLs and staff recommends revising the Section 303(d) list to reflect that fact.

Mr. Looker said stakeholders discussed five general issues about trash in their written comments and oral testimony. He described the issues and gave staff's reply.

First, he said commenters expressed concern that entire water bodies are proposed to be listed for trash impairment when trash assessments were conducted at specific sites. In reply, he said trash is transported easily and if trash is found at one location of a water body it is likely to be found at other locations. He said staff does not mean to imply that every inch of a water body proposed to be listed is impaired. He said the listings will be refined when more assessment data are available.

Second, Mr. Looker said commenters expressed concern that a sampling plan was not used to select sampling sites. He said the commenters said a sampling plan would describe the rationale for selecting sites to assure samples were spatially representative of a water body. In reply, he said staff obtained trash data by following the Rapid Trash Assessment method developed through the Surface Water Ambient Monitoring Program. He said staff determined the quality of the data was sufficient to use to make listing decisions.

Third, Mr. Looker said commenters expressed concern that staff relied on photographs to assess trash impairment in some cases. In reply, he said staff systematically inspected the photographs and took into account the quantity and quality of the photographs when applying the trash assessment methodology.

Fourth, Mr. Looker said commenters expressed concern about the scientific integrity of the Rapid Trash Assessment method. In reply, he said the method was subjected to peer review, and reviewers did not identify major scientific concerns. He said the method has been applied by various field staff and resulting assessment scores showed consistency. He said trash found above the high water line is included in trash assessments. He said the trash adversely affects people recreating at a water body and the trash may injure wildlife. He said wind or runoff may transport trash located above the high water line into waters.

Fifth, Mr. Looker said commenters expressed concern that some of the trash data staff used to assess impairment do not reflect current conditions. He said commenters said conditions have improved because trash control programs have been implemented. In reply, he said staff's task was to use readily available data to identify waters not meeting water quality standards. He said staff was not able to determine if the data had become outdated. He said data that documents changes can be submitted in future listing cycles.

Mr. Looker said trash control programs that are based on cleanups conducted by hand may not remedy problems. He said sources of trash may need to be addressed if ongoing cleanup is required.

Mr. McGrath recommended the word "intolerant" replace the word "tolerant" in the second sentence of the third paragraph on page 9 of Appendix D to the Staff Summary Report.

Mr. Wolfe concurred with Mr. McGrath's recommendation.

Lesley Estes, Stormwater Program Manager, City of Oakland, requested the Board not approve the recommendation to list Sausal Creek for trash impairment. She said trash assessment data indicated that in 2004 and 2005, a site along the Creek was the location of illegal dumping and was a trash hotspot. She said the City took action to stop the dumping by constructing physical barriers and initiating a trash enforcement program.

Ms. Estes said data from trash assessments conducted at two other sites along the Creek indicated levels of trash were low.

Ms. Estes said Board staff were given recent photographs that illustrate the trash problem along Sausal Creek has been corrected. She said staff did not accept the photographs as evidence because the deadline for data submittal had passed.

Ms. Estes said the City has spent substantial funds to develop a trout restoration program in the Creek and is seeking additional funds to complete restoration. She said the City will be required to disclose a trash impairment listing to potential funding agencies and could be placed at a competitive disadvantage by an impairment listing.

Tom Mumley said accepting data submitted beyond the deadline would create issues about consistent application of the deadline. He offered to help the City answer questions funding agencies might ask about trash data and the listing process.

Mr. Looker said staff would evaluate any data submitted according to rules applicable to the Rapid Trash Assessment method.

In reply to a question from Mr. Eliahu, Ms. Estes said before the City took enforcement action, a lot of illegal dumping occurred at the problem site.

Mr. Muller recommended the Board not impede efforts of people who are working to improve the environment.

In reply to a question from Mr. McGrath, Mr. Looker said staff reviewed trash data for Sausal Creek and found one site had a persistent problem.

Mr. Moore said when he was employed by the Water Board, he was the lead author of a report summarizing trash assessment data. He said he was not involved in evaluating the assessment data for the purpose of making a listing recommendation. He said based on assessment data, he believed the Board could find trash is a problem in lower Sausal Creek. He said, however, he respected staff's concern with listing sections of a creek as compared to an entire creek.

Dr. Singh spoke against listing Sausal Creek for trash impairment. He said the City has made an effort to address the trash problem and recommended the Board encourage the effort. He said staff's listing recommendation is based on old data.

Dr. Young said she was not in favor of removing Sausal Creek from the proposed list. She said evidence was not received into the record that trash in the Creek had been cleaned up.

Dr. Young discussed how the City might work around the problem that the record lacks recent evidence. She said staff might write a letter to funding agencies on the City's behalf stating that recent data indicating the trash problem at Sausal Creek has been cleaned up was not allowed into the record because a submittal deadline had passed.

Dr. Young said the State Water Resources Control Board will consider the Section 303(d) list for approval after Regional Board action. She said the State Board might review new evidence as part of its consideration.

Jill Jung, Legal Counsel, on behalf of Citizens for East Shore Parks, requested the Section 303(d) list be revised to require that impairment at Stege Marsh be addressed through development of a Total Maximum Daily Load.

Mr. McGrath and Ms. Yung discussed impairment at Stege Marsh.

David Lewis, Executive Director, Save the Bay, requested the Board approve the proposed Section 303(d) list. He spoke in favor of including new listings for trash impairment. He said approval of the listings would represent a step in acknowledging trash problems in Bay Area waters.

In reply to questions from Mr. McGrath and Mr. Moore, Mr. Wolfe discussed cleanup of Stege Marsh.

In reply to a question from Mr. Peacock, Mr. Wolfe said staff recognizes the importance of making the public aware that trash impairs regional waters.

Mr. McGrath spoke in favor of adopting the Tentative Resolution. He said there is substantial evidence waters in the Bay Area are impaired by trash. He discussed actions jurisdictions might take as a means to reduce trash levels.

Mr. Moore said the purpose of the Section 303(d) list is to identify waters in which water quality standards are not met. He commended staff for its work in developing the proposed revisions and said proposed revisions reflect priority issues in the Region.

Dr. Singh expressed concern that some proposed listings for trash impairment may be based on data that is no longer current.

Dr. Young spoke in favor of adopting the Tentative Resolution and said trash is a problem in Bay Area waters. She said it is unfortunate some water bodies may be unjustly listed for trash impairment due to the time lag between when data is required to be submitted and when listing revisions are considered for approval. She recommended staff develop a procedure that jurisdictions may follow to request water bodies be removed from the Section 303(d) list.

Dr. Young and Mr. Moore discussed concerns regarding PBDEs.

Mr. Wolfe discussed how staff might help the City of Oakland work around the problem that recent trash data was not allowed in the record. He recommended the Board adopt the Tentative Resolution Recommending Changes to the List of Water Bodies as Required in Section 303(d) of the Clean Water Act. He recommended the word "intolerant" replace the word "tolerant" in the second sentence of the third paragraph on page 9 of Appendix D to the Staff Summary Report.

Motion: It was moved by Mr. Peacock, seconded by Dr. Young, and it was voted to adopt the Tentative Resolution and to correct the second sentence of the third paragraph on page 9 of Appendix D to the Staff Summary Report as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Young; Mr. Muller

No: None

Abstain: Dr. Singh

Motion passed 6 – 0 with 1 abstention.

[The Board took a recess at 11:11 a.m. and resumed the meeting at 11:23 a.m.]

Item 7 – Implementation of Memorandum of Agreement Among the California Environmental Protection Agency, the Water Boards, and the Department of Toxic Substances Control Regarding Brownfields (“Brownfield MOA”) – Status Report

Stephen Hill said Brownfield sites are under-utilized properties that owners may be discouraged from redeveloping because of real or suspected contamination. He discussed successful implementation of a Memorandum of Agreement between the Department of Toxic Substances Control, the State Water Resources Control Board, and the Regional Water Quality Control Boards that applies to the regulatory oversight of Brownfield cleanups. He said the MOA limits oversight of a Brownfield site to a single agency and provides procedures for selecting the agency.

Mr. Hill replied to questions from Board members.

Item 8 – Review of Wetland Compensatory Mitigation in California – Status Report

Eric Raffini, Environmental Scientist, U.S. EPA, Region IX, discussed compensatory mitigation for activities authorized under the Clean Water Act Section 401 and Section 404. He discussed third-party compensatory mitigation in California and the performance of mitigation banks and in-lieu fee programs.

Mr. Raffini replied to questions from Board members.

Item 13 – Adjournment

The Board meeting was adjourned at 12:20 p.m. in memory of the late Janice Delfino.