

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

August 9, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on August 9, 2006 at 9:00 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Margaret Bruce; Josephine De Luca; Shalom Eliahu; Clifford Waldeck.

Board member absent: None.

Item 2 - Public Forum

Gary Wolff, State Board member, reported the State Board held two hearings to receive testimony on the feasibility of setting numeric effluent limits in NPDES stormwater permits. He said stormwater from municipal, industrial, and construction activities is regulated.

Item 3 – Minutes of the July 12, 2006 Board Meeting

Motion: It was moved by Mrs. Bruce, seconded by Mrs. De Luca, and it was unanimously voted to adopt the minutes of the July 12, 2006 Board meeting.

Mrs. Warren abstained from voting because she did not attend the meeting.

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

John Muller said State Board Chair Tam Doduc held an August telephone conference call with Regional Board Chairs. He said pending legislation was a topic of discussion.

Margaret Bruce said staff is in the process of scheduling a Stormwater Subcommittee Workshop to be held in September.

Mr. Wolfe said the State Board Office of Chief Counsel recently sent Board members a memorandum regarding ex parte communications and a memorandum summarizing regulations that govern adjudicative proceedings before the Water Boards.

Mr. Wolfe advised stakeholders that the usual schedule for Board meetings may be changed in order to meet quorum requirements.

Mr. Wolfe said emerging contaminants will be a key topic at the annual meeting of the San Francisco Estuary Regional Monitoring Program to be held in Oakland on September 12, 2006.

Mr. Muller thanked staff and stakeholders for the tremendous amount of work they did to prepare for today's meeting. He said the items on the agenda are among the most significant the Board has considered in many years.

Item 5 – Consideration of Uncontested Items Calendar

Dyan Whyte said the resolution in Item 5A requests that the State Board join with the Bay Area Clean Water Agencies to establish a joint powers authority, the San Francisco Estuary Authority. She said public agencies could use the Estuary Authority to pool funds to be used for scientific studies. She said the Estuary Authority would be administered by the San Francisco Estuary Institute.

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 6 – Cargill Incorporated, 7220 Central Avenue, Newark, Alameda County – Hearing to Consider Imposition of Administrative Civil Liability for Discharge of Bittern in Violation of the State Water Resources Control Board's Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS 000001

Mr. Wolfe said Cargill Incorporated signed a waiver of the right to a hearing on the proposed ACL. He said no Board action was necessary. Mr. Wolfe said Cargill agreed to pay an Administrative Civil Liability in the amount of \$71,000. He said up to \$43,000 will be used for a supplemental environmental project.

In reply to a question, Mr. Wolfe said parties are required to pay the full ACL amount if they do not complete supplemental environmental projects. He said at a future Board meeting staff will report on the status of supplemental environmental projects developed in the Region.

Item 7 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish New Water Quality Objectives and a Revised Total Maximum Daily Load and Implementation Plan for Mercury in San Francisco Bay – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Shalom Eliahu reported having an ex parte communication about the TMDL with Craig Johns.

Carrie Austin said in September 2004 the Regional Board adopted a mercury TMDL. She said the State Board remanded the TMDL back to the Regional Board. She said in June 2006 the Regional Board held a public hearing on a revised mercury TMDL and further revisions were made as a result of public comments received.

Ms. Austin said at this hearing, the Board will consider a Resolution to revise the 2004 Basin Plan Amendment to incorporate the revised TMDL and new mercury water quality objectives.

Ms. Austin said the proposed mercury water quality objectives are: (1) 0.2 ppm mercury in large predator fish and (2) 0.03 ppm mercury in small prey fish.

Ms. Austin said allocations to urban stormwater agencies will be implemented through NPDES permits. She said the revised TMDL deleted the following sentence: “An urban runoff management agency that complies with these permit requirements shall be deemed to be in compliance with receiving water limitations relative to mercury.”

Ms. Austin said the proposed aggregate mercury load allocation for municipal and industrial wastewater dischargers is 12 kilograms a year. She said the allocation was reduced by 33% from the allocation adopted by the Board in 2004.

Ms. Austin said the Board will issue a San Francisco Bay watershed mercury NPDES permit to implement allocations to municipal wastewater dischargers. She said the watershed permit will include: (1) an aggregate mercury limit applicable to all dischargers; (2) an individual mercury limit applicable to an individual discharger; and (3) an individual mercury trigger applicable to an individual discharger.

Ms. Austin said the Board will take enforcement action: (1) when a discharger exceeds a mercury trigger and does not take reasonable corrective actions or (2) when a discharger exceeds an individual mercury limit and the aggregate group limit also is exceeded.

Tom Mumley said U.S. EPA must approve the San Francisco Bay watershed mercury NPDES permit.

Doug Eberhardt, U.S. EPA, recommended the Board adopt the TMDL. He said U.S. EPA’s concern with the TMDL can be addressed during the NPDES permitting process.

Mr. Eberhardt said the Board may issue a watershed permit for municipal wastewater dischargers that provides for tiered enforcement. He said the watershed permit also should include mercury limits that are not part of a tiered system. He said limits for individual dischargers that are enforceable without regard to a group limit are necessary in order to prevent adverse localized effects.

Dr. Mumley said staff believes that the watershed permit for the municipal wastewater dischargers can be crafted to address the concern raised by Mr. Eberhardt.

At the request of Sejal Choksi, San Francisco Baykeeper, an August 3, 2006 email from David Smith, U.S. EPA, to Tom Mumley was entered into the record.

Ms. Choksi recommended removal of a provision in the TMDL allowing for tiered enforcement in the watershed permit. She said an individual limit that is violated should be enforceable even if a group limit is not violated. Further, she said third parties should be able to enforce an individual limit.

Ms. Choksi recommended the proposed TMDL require, in the watershed permit, that on an interim basis an individual municipal wastewater discharger be given a mercury limit that is based upon current performance. She said third parties should be able to enforce the limit.

Ms. Choksi recommended the Water Code Section 13267 letter that staff issued to Bay Area petroleum refineries be revised. She requested the refineries be required to account for a mass balance of mercury in crude oil.

Mr. Wolfe said the mercury TMDL adopted by the Board in 2004 required Bay Area petroleum refineries to investigate the fate of mercury in crude oil. He said in the next few months staff will present a status report to the Board describing where the refineries are in their investigation.

Amy Chastain, California Coastkeeper Alliance, said third parties should be allowed to enforce mercury limits for individual dischargers. She requested greater specificity on actions that will be taken: (1) to identify and cleanup old mercury mines and hot spots; (2) to address air deposition of mercury from sources like crematoria and cement producers; and (3) by Bay Area refineries to account for the mass balance of mercury in crude oil.

Michael Wall, Senior Attorney, Natural Resources Defense Council, requested that the TMDL require, in the watershed permit, that a municipal wastewater discharger be given a mercury limit that is based on an individual wasteload allocation. He requested U.S. EPA, the Board, and third parties be allowed to enforce the individual limit. He suggested the TMDL initially require, in the watershed permit, that a discharger be given a limit based on current performance. He reiterated his request that U.S. EPA, the Board, and third parties be allowed to enforce the individual limit.

Mr. Wolfe said staff would not have a problem requiring that an individual municipal wastewater discharger be given a mercury limit based on current performance.

Jim Kelly, Director of Operations, Central Contra Costa Sanitary District, described water quality programs that the Clean Water Agencies have developed on their own initiative. He said the programs include pollution prevention programs, local effects monitoring programs, and the Clean Estuary Partnership. He spoke, on behalf of his District, in favor of including in the watershed permit a mercury limit that is based on current performance.

Amy Vanderwarker, Outreach Coordinator, Environmental Justice Coalition for Water, said subsistence fishers and their families are at the heart of the TMDL discussion. She said reducing health impacts from mercury in fish is an environmental justice issue and communities need help now. She requested the TMDL require each category of dischargers to mitigate public health risks.

Mrs. Bruce asked what actions subsistence fishers would like the Water Board to take to reduce health risks.

Ms. Vanderwarker said (1) it is important to develop a collaborative process with affected communities and (2) it is important that the affected communities understand steps the Board is taking to reduce mercury levels.

Mr. Wolfe said the TMDL requires municipal and industrial wastewater dischargers to “Develop and implement effective programs to reduce mercury-related risks to humans and wildlife and quantify risk reductions resulting from these activities.” He said the Clean Estuary Partnership hired an individual to work with affected communities and determine community needs.

Mrs. De Luca recommended public agencies work collaboratively to address health risks.

Kevin Buchan, Western States Petroleum Association, recommended the Board adopt the TMDL. He said in October the refineries will update staff on the status of the air deposition study they have conducted to comply with staff’s Section 13267 letter.

Andria Ventura, Program Manager, Clean Water Action, said it will take decades to reduce mercury levels in the Bay. She said a question in the interim is: What can be done to help communities dependent on fish for sustenance? She suggested the Board and dischargers participate in a collaborative process and provide assistance through expertise, facilitation, and financial means.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, recommended the Board adopt the TMDL. She said BACWA looks forward to moving from a command and control approach in regulating mercury towards an approach that emphasizes shared responsibility for the watershed. She discussed, as an example of the Board’s enforcement authority, actions the Board may take to enforce triggers applicable to individual dischargers.

Mike Connor, Executive Director, San Francisco Estuary Institute, said it is important the TMDL includes an adaptive implementation approach because scientists' understanding of the watershed is changing at a fast rate.

Craig Johns, Partnership for Sound Science and Environmental Policy, recommended the Board adopt the TMDL. He said refineries would have difficulty calculating a mercury mass balance because it is difficult to compute the amount of mercury entering facilities. He said the amount of mercury in crude oil varies from well to well and field to field. He suggested concern should focus on the amount of mercury that leaves refineries.

Chuck Weir, General Manager, East Bay Dischargers Authority, recommended the Board adopt the TMDL. He said, as a result of the Remand Order, municipal wastewater dischargers agreed to reduce mercury loads from 17 kilograms a year to 11 kilograms a year. He said the dischargers understood the watershed permit would include a tiered enforcement system.

Mr. Weir said if the watershed permit does not include a tiered enforcement system, the mercury load from municipal wastewater dischargers should remain at 17 kilograms a year and limits for individual dischargers should be based on current performance.

Mr. Waldeck expressed concern about enforcement provisions in the TMDL.

Mr. Muller asked for staff's recommendations.

Mr. Wolfe reiterated the fact that the TMDL requires wastewater dischargers to develop and implement programs to reduce health risks of mercury in Bay fish. He recommended language in the Basin Plan Amendment about reducing health risks not be changed.

Mr. Wolfe reiterated the fact that the refineries will update staff in October on the status of their mercury air deposition study. He recommended language in the Basin Plan Amendment about refineries investigating the environmental fate of mercury in crude oil not be changed.

Mr. Wolfe said speakers have requested that individual mercury limits for municipal wastewater dischargers be based on current performance during the first ten years of TMDL implementation. He said Ms. Won would read language that he recommended be added to the Resolution being considered for adoption.

Ms. Won suggested page 3 of the Resolution be amended to include: BE IT FURTHER RESOLVED that the Water Board does not intend for the Basin Plan to preclude the Water Board from incorporating performance-based effluent limitations in NPDES permits where warranted.

Mr. Wolfe said speakers have requested the Basin Plan Amendment be amended to specify third party enforcement of mercury limits. He recommended

language regarding third party enforcement be added in the permitting process and that language in the Basin Plan Amendment not be changed.

Mr. Wolfe recommended adoption of the Resolution to adopt the Basin Plan Amendment with the amendment as suggested by Ms. Won.

Mr. Eliahu, Mrs. Warren, Mrs. De Luca, and Mr. Muller thanked everyone for participating in the hearing. They spoke in favor of staff's recommendation.

Motion: It was moved by Mrs. Bruce, seconded by Mrs. Warren, and it was voted to adopt the Resolution as amended and as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mrs. Warren; Mr. Muller

No: Mr. Waldeck

Motion passed 5 – 1.

Item 8 – East Bay Dischargers Authority (EBDA), EBDA Common Outfall, San Leandro; City of Hayward, Hayward Water Pollution Control Facility, Hayward; City of San Leandro, San Leandro Water Pollution Control Plant, San Leandro; Oro Loma Sanitary District and Castro Valley Sanitary District, Water Pollution Control Plant, San Lorenzo; Union Sanitary District, Raymond A. Boege Alvarado Wastewater Treatment Plant, Union City; Livermore-Amador Valley Water Management Agency; Alameda County – Reissuance of NPDES Permit

Item 9 – Dublin San Ramon Services District (DSRSD), DSRSD Wastewater Treatment Plant, Pleasanton; Livermore-Amador Valley Water Management Agency; East Bay Dischargers Authority (EBDA), EBDA Common Outfall, San Leandro; Alameda County – Reissuance of NPDES Permit

Item 10 – City of Livermore, City of Livermore Water Reclamation Plant, Livermore; Livermore-Amador Valley Water Management Agency; East Bay Dischargers Authority (EBDA), EBDA Common Outfall, San Leandro; Alameda – Reissuance of NPDES Permit

Item 11 – Vallejo Sanitation and Flood Control District, Wastewater Treatment Plant, Vallejo, Solano County – Reissuance of NPDES Permit

Bill Johnson's presentation covered Items 8, 9, 10, and 11.

Mr. Johnson said the six treatment plants regulated under Items 8, 9, and 10 release effluent to the Bay through a single outfall. He said the plants are permitted to release just over 100 million gallons a day.

Mr. Johnson said the treatment plant regulated under Item 11 is permitted to release almost 16 million gallons a day.

Mr. Johnson discussed issues raised in public comments to the tentative orders: blending; copper limits; sanitary sewer overflows; bacteria limits; and compliance schedules.

Mr. Johnson said treatment plants in Vallejo, Oro Loma-Castro Valley, and San Leandro blend effluent. He said the amount of water received by the plants during wet weather exceeds the amount of water that secondary treatment units can treat without disrupting biological processes. He said some wastewater is diverted around the secondary treatment units. He said the diverted water is blended with wastewater that received secondary treatment and the blended effluent must meet all limits.

Mr. Johnson said staff revised tentative orders (1) to include flow rate thresholds below which blending may not occur and (2) to require preparation of an infeasibility analysis to demonstrate that no alternatives to blending exist.

Mr. Johnson said U.S. EPA expressed concern with how staff calculated copper limits. He said new data was developed as part of a copper site specific objectives project. He said the new data was used to calculate the limits.

Mr. Johnson said the State Board recently adopted a General Order that applies to sanitary collection systems and sanitary sewer overflows. He said staff revised the tentative orders to clarify provisions between the General Order and the tentative orders.

Mr. Johnson said U.S. EPA raised concerns about the bacteria limit for effluent discharged through the EBDA outfall. He said the Basin Plan establishes use of a total coliform limit. He said fecal coliform is a better indicator of human pathogens. He said the Basin Plan allows for use of fecal coliform if it is demonstrated that beneficial uses are protected.

Mr. Johnson said EBDA conducted extensive monitoring and demonstrated that the fecal coliform limit protects beneficial uses.

Mr. Johnson said staff uses compliance schedules and interim limits in tentative orders when dischargers are not able to comply with restrictive final limits. He said use of the schedules and interim limits is authorized under the Basin Plan and the State Implementation Policy.

In reply to a question, Mr. Johnson said copper levels in effluent from treatment plants are not expected to change because pollutant minimization and pretreatment programs will remain effective.

Doug Eberhardt, U.S. EPA, said the agency's concerns did not rise to the level to cause U.S. EPA to object to adoption of the tentative orders.

Mr. Eberhardt said a site specific objective has two components: a water effects ratio and a species recalculation. He said staff used only one component, the water effects ratio, in calculating copper limits. He urged staff to incorporate both components when calculating limits in future permits.

Mr. Eberhardt said U.S. EPA is not generally in favor of the way the fecal coliform limit was established for effluent discharged through the EBDA outfall. He recommended the Board update the Basin Plan and formalize permitting procedures for bacteria limits.

Chuck Weir, General Manager, East Bay Dischargers Authority, recommended the Board adopt tentative orders for Items 8, 9, and 10. He said EBDA agencies are in the process of upgrading treatment plants, and none of the plants will blend effluent at the time of the next permit reissuance.

Amy Chastain, Baykeeper, said the California Toxics Rule prohibits use of compliance schedules and interim limits in tentative orders adopted after May 18, 2005.

Ms. Chastain requested treatment plants that blend effluent be required: (1) to monitor for more than total suspended solids and (2) to make aggressive efforts to reduce the volume of wet weather discharges.

Ms. Chastain requested the tentative orders incorporate the requirements set out in the State Board's General Order applicable to sanitary collection systems and sanitary sewer overflows.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, recommended the Board adopt the tentative orders. She disagreed with staff's response to comments concerning: (1) the template used to prepare the tentative orders and (2) the use of both mass and concentration values for all limits.

Mr. Johnson said the Vallejo Sanitation District monitors blended effluent for total suspended solids. He said the District conducted a special study that demonstrated TSS could serve as a proxy for all pollutants.

Ms. Won said U.S. EPA approved provisions in the State Implementation Policy and the Basin Plan that authorize use of compliance schedules and interim limits.

Mr. Wolfe said the Board would vote on each Item separately.

Mr. Wolfe recommended adoption of the tentative order for Item 8 as supplemented.

Motion: It was moved by Mrs. De Luca, seconded by Mrs. Warren, and it was voted to adopt the tentative order for Item 8 as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren;

Mr. Muller

No: None

Motion passed 6 – 0.

Dan Gallagher, Operations Manager, Dublin San Ramon Services District, thanked staff for preparing the tentative order for Item 9 and recommended the Board adopt it.

Mr. Wolfe recommended adoption of the tentative order for Item 9 as supplemented.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Waldeck, and it was voted to adopt the tentative order for Item 9 as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren;
Mr. Muller

No: None

Motion passed 6 – 0.

Darren Greenwood, Water Resources Manager, City of Livermore, thanked staff for preparing the tentative order for Item 10 and recommended the Board adopt it.

Mr. Wolfe recommended adoption of the tentative order for Item 10 as supplemented.

Motion: It was moved by Mrs. Warren, seconded by Mrs. Bruce, and it was voted to adopt the tentative order for Item 10 as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren;
Mr. Muller

No: None

Motion passed 6 – 0.

Ron Matheson, General Manager, Vallejo Sanitation and Flood Control District, thanked staff for preparing the tentative order for Item 11 and recommended the Board adopt it.

Mr. Wolfe recommended adoption of the tentative order for Item 11 as supplemented.

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was voted to adopt the tentative order for Item 11 as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mrs. De Luca; Mr. Eliahu; Mr. Waldeck; Mrs. Warren;

Mr. Muller
No: None

Motion passed 6 – 0.

Item 12 – City of Calistoga, Dunaweal Wastewater Treatment Plant, Calistoga, Napa County – Reissuance of NPDES Permit

Tong Yin said the Dunaweal Wastewater Treatment Plant treats domestic, commercial, and some industrial wastewater.

Ms. Yin said effluent limits in the City's current NPDES permit are based on a 10:1 dilution ratio. She said effluent is released from the plant to Napa River during the wet season through two outfalls.

Ms. Yin said staff did not use a dilution ratio to calculate limits in the tentative order. She said a dilution ratio was not used because the outfalls are not equipped with deep water diffusers and the discharge is considered incompletely mixed. She said the tentative order requires the City to perform either a mixing zone study or a deep water diffuser study.

Ms. Yin said the permit term proposed in the tentative order is three years and five months. She said the permit will be reissued after the City's study is completed.

Ms. Yin said public commentors raised issues that were similar to issues raised for tentative orders considered earlier. She said discussion of the issues would not be repeated. She said the City does not blend effluent.

Paul Wade, Public Works Director, City of Calistoga, discussed the City's concerns with the tentative order. He said expiration dates for interim limits are specified in the tentative order, and the expiration dates are beyond the proposed permit term. He said the dissolved oxygen limit for receiving water is raised from the current level of 5 milligrams per liter to 7 milligrams per liter. He said dilution considerations are discussed in the Fact Sheet. He objected to including a discussion that relates to a future permit reissuance.

Mr. Johnson said interim limits in the tentative order would apply only during the proposed permit term. He said the Basin Plan requires that the dissolved oxygen limit be set at 7 milligrams per liter. He said discussion contained in the fact sheet would be helpful when the permit comes up for reissuance.

Some Board members expressed concern that the parties' discussion of the issues might be incomplete.

Mrs. Warren suggested continuing the item.

Mr. Wolfe recommended adoption of the tentative order as supplemented.

Motion: It was moved by Mr. Waldeck, seconded by Mrs. Bruce, and it was voted to adopt the tentative order as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mr. Waldeck

No: Mrs. De Luca; Mr. Eliahu; Mrs. Warren; Mr. Muller

Motion defeated 2 – 4.

Adjournment

The Board meeting was adjourned at 2:45 p.m.