

**California Regional Water Quality Control Board**  
**San Francisco Bay Region**  
**EXECUTIVE OFFICER'S REPORT**  
**A Monthly Report to the Board and Public**  
**June 2004**

**New Power Plant Rules (Alexa LaPlante)**

U.S. EPA recently promulgated new rules that will significantly impact NPDES permits for power plants. We currently permit three power plants in this Region. This fall, we plan to bring to the Board the permit reissuance for Potrero Power Plant in San Francisco, which will implement these new rules.

The new rules are contained in Clean Water Act Section (CWA) 316(b). They address the impacts of a power plant's intake water structure on aquatic organisms. An intake water structure is a screen (usually with 3/8 inch openings) used to withdraw water from the Bay. The Bay water is then used to cool the power plant. Section 316(b) requires that the location, design, construction, and the capacity of the intake water structure reflect Best Technology Available for minimizing environmental impacts, such as impingement and entrainment. Impingement occurs when aquatic organisms are trapped in these screens and are injured or killed. Entrainment occurs when smaller aquatic organisms pass through the screens into the heat exchangers and are injured or killed. The new rules require all large existing power plants to reduce impingement and entrainment by 60-95%.

This new rule is a very significant action by U.S. EPA in that it has taken nearly 30 years to overcome past challenges on this issue. Since the Potrero Power Plant permit reissuance will be the first in this Region to implement the new rule, we are making an extra effort to seek input from other agencies, organizations, and community groups, by establishing a stakeholder group. We hope that this will allow us to resolve all issues prior to the planned permit reissuance this fall.

**Fine Tuning San Jose's Urban Runoff Management Policy (Bruce Wolfe)**

I met early this month by phone with Board staff and representatives of the City of San Jose to discuss resolution of issues concerning the City's implementation of the new and redevelopment provisions of the stormwater permit you issued to the Santa Clara Valley Stormwater Program. The issues relate to some provisions in the City's October 2003 policy, which implement the permit's requirements differently than I believe that you intended. We agreed to establish a working group that would include both City and Board staff members and that would communicate regularly over the coming months on how to effectively implement the permit's provisions in San Jose. As a result, I anticipate that either I may be bringing some minor permit amendments to you, and/or the City may amend its policy to implement the permit requirements in a fashion closer to what I believe was your intent in adopting the permit.

**Changes in Leaking Fuel Tank Cleanups Oversight in Santa Clara County (Chuck Headlee)**

In March, we reported to you that the leaking underground fuel tank oversight program in Santa Clara County would be transferred from the Santa Clara Valley Water District to the County of Santa Clara's Department of Environmental Health by July 1, 2004. However, in recent weeks, the County has said that it will not be ready to assume oversight responsibilities by July 1. This is a potentially serious problem because the District currently oversees about 430 leaking fuel tank cases, including a significant number of high-threat MTBE cases, in a groundwater basin that supplies water to 1.7 million people. In order to avert this problem, Assemblyman Dutra has sponsored legislation (AB 430) that will extend the sunset date of last year's emergency legislation on oversight responsibility for one more year to June 30, 2005. This would have the effect of allowing the District to continue its

oversight activities for another year. We have indicated our strong support of this bill to the appropriate parties.

We are still working closely with the State Board, the District, and the County to provide technical and regulatory support during any transition period between the District and the County. If, however, the legislation does not pass, there could be serious water quality consequences. Because of Board staff attrition, budget cuts over the past few years, and the ongoing hiring freeze, we are not in a good position to temporarily assume oversight responsibilities, as this would more than double our leaking fuel tank caseload. A lapse in regulatory oversight could allow some groundwater plumes to threaten existing drinking water supply wells. We will update you on the situation in future reports.

#### **North Bay Salt Ponds** (Tobi Tyler)

In March of this year, the Board issued Waste Discharge Requirements (WDRs) for the initial phase of the restoration of the "Cargill" or South Bay Salt Ponds. Staff has prepared, and is currently circulating for public comment, draft WDRs for the restoration of the North Bay Salt Ponds. The North Bay ponds are likewise former Cargill ponds and cover more than 7000 acres on the west side of the Napa River north of Highway 37 and San Pablo Bay. Staff plans on presenting these proposed WDRs to the Board for its consideration at its July hearing.

During the March hearing on the South Bay ponds, there was reference to problems that had occurred at the North Bay ponds after their 1994 purchase from Cargill that allowed some of the ponds to accumulate excess salt, making them unsuitable habitat. Those problems in the North Bay ponds occurred a few years ago and have been corrected. The current proposal is to manage some of the North Bay ponds as open water ponds, which are beneficial to some bird species. Other ponds will be slowly restored to tidal marsh. The proposed WDRs will regulate both options to assure minimal impacts on the ponds, the Napa River, or the Bay. Board staff have been meeting with the State Department of Fish and Game, which owns and will manage the ponds, and other interested parties. At this time it appears that all the parties have agreed on the proposed wording of the WDRs. Therefore we expect little, if any, controversy at the July hearing on this issue.

#### **Ford Aerospace Update** (Michelle Rembaum-Fox)

In mid-April, Ford Motor Company filed a petition with the State Board seeking review of Water Board staff's approval of a risk management plan (RMP) for a mixed-use residential development in Palo Alto. The proposed development is located downgradient of solvent contamination at the former Ford Aerospace site and is in the path of several other groundwater contamination plumes from unknown sources. The developer, Bridge Urban Infill Land Development, proposes to build senior housing and other sensitive land uses on a 4 acre parcel that was formerly part of the Ford Aerospace site.

At issue is whether the Water Board should require a more robust RMP to protect future residents from potential vapor intrusion. Vapor intrusion refers to the migration of groundwater contaminants through unsaturated soils and into homes, offices, or other occupied structures. Solvent concentrations in groundwater at this site are high enough to justify our concern about this exposure pathway, in the event that the Bridge parcel is developed for residential use.

Bridge's proposed RMP included both design features and post-construction risk management activities to address potential vapor intrusion. Design features include a prohibition on "slab on grade" construction, a foundation type that increases the vapor-intrusion threat. Alternative designs present a

lower threat (e.g., "podium parking" design, where residences are located above ground-level parking). Risk management activities include a deed restriction, regular monitoring of key design features (e.g., passive venting of crawl spaces), a contingency plan for soil-gas monitoring, and a trust fund account to pay for these activities.

We approved the RMP in two letters dated March 17 and April 5. This approval is part of a larger set of actions to facilitate the safe redevelopment of the Bridge parcel while shielding the developer from liability for off-site groundwater contamination. Bridge addressed the "safe redevelopment" aspect by preparing an acceptable RMP. We addressed the liability aspect by (1) amending the site cleanup requirements to exclude the Bridge parcel from the former Ford Aerospace site and (2) issuing a "comfort" letter. We administratively issued the SCR amendment in August 2003. Water Board staff also issued a "comfort" letter on April 5, once we had an acceptable RMP. The "comfort" letter states that the Water Board does not generally pursue enforcement action against a property owner whose land overlies contaminated groundwater if that contamination is solely the result of the migration of groundwater from off-site sources. The "comfort" letter also notes that we may retract the letter and take appropriate enforcement action if we conclude that the RMP is not being implemented as approved or if residents are being exposed to unsafe concentrations of contaminants.

On April 15, Ford petitioned the RMP approval to the State Board, arguing that the RMP is not adequate to protect future residents of the proposed development from vapor intrusion impacts. Ford fears that it may be held responsible for any such impacts, since it is taking responsibility for cleanup at the former Ford Aerospace site. Ford's petition repeated arguments it made during review of the draft RMP. We had already considered Ford's comments prior to approving the RMP and disagree with Ford's overall conclusion. Ford requested that its petition be held in abeyance for up to two years, and the State Board granted this request in late April. This means that the underlying action (RMP approval) remains in effect but gives Ford time to try to resolve its issues before activating the petition.

Bridge objects to the State Board's abeyance action since it casts a cloud over Bridge's efforts to secure local permits and project financing. Bridge has asked Water Board staff to support its effort to have the petition dismissed immediately. We have declined to get involved in the abeyance issue since our action is still in force and since Bridge had an opportunity to make its argument directly to the State Board. At this point, we expect Bridge to press the State Board for a dismissal. We will keep you informed of any significant future developments.

#### **California Ocean Summit (Bruce Wolfe)**

On May 6, I attended the Ocean Summit in Sacramento, chaired by Secretary Mike Chrisman of the Resources Agency and Secretary Tamminen of Cal EPA. The purpose of the Summit was to hear a presentation by William Ruckelshaus, first Administrator of U. S. EPA and current member of the U. S. Commission on Ocean Policy, on the release in April of the long-awaited report of the Commission. All states were provided an opportunity to comment on the ocean protection measures, approaches, and regulatory changes proposed in the report, and the Summit provided an opportunity to focus California's response. Technical panels on marine research and technology, ocean and coastal industries, and public interests followed Mr. Ruckelshaus' presentation, and included commentary by the Honorable Leon Panetta, past chair of the Pew Oceans Commission. In general, the Commission's report was favorably received, but it was emphasized that California was already implementing many of the measures identified in the report. The Secretaries noted that the release of the report provided an opportunity for California to rededicate itself to ocean protection, a high priority of the Governor.

### **Legislative Symposium for Groundwater Issues** (Mary Rose Cassa)

Mary Rose Cassa and Sarah Raker participated in a Legislative Symposium and Lobby Day, held in Sacramento on May 19. This was the sixth annual legislative event organized by the Groundwater Resources Association of California. The theme for this symposium was "Water Quality Standards: Reliability and Consumer Confidence." The focus for the day was AB 2528 (Lowenthal). This measure is intended to eliminate confusion associated with the existing statutory term of "action level" by replacing it with clearer statutory direction for public water system operators who discover "new" (sometimes called "emerging") contaminants in water delivered for human consumption. Currently, the California Department of Health Services sets two non-regulatory levels. An "action level" is an advisory level currently defined in statute to mean the concentration of a contaminant in potable water that the Department has determined provides an adequate margin of safety to prevent potential risks to human health. Though not formally defined, the Department also uses an additional level at which it recommends that steps be taken to reduce public exposure to a contaminant – usually 10 to 100 times the action level. AB 2528 would define a new statutory term of "response level" to describe this level of contamination and clarify when the Department should recommend that water system operators take proactive steps to address contamination – such as removal of a source from service, blending of water, or treatment.

The symposium also included a panel discussion by regulators and the regulated community to address water system treatment challenges and costs. Members of the Regulators panel included Art Baggett, Chairman of the State Water Resources Control Board, Val Siebal (Office of Environmental Health Hazard Assessment), and Steven Book (Department of Health Services). Members of the Regulated Community panel included Edgar Dymally (Metropolitan Water District of Southern California), Hover Ng (Water Replenishment District of Southern California), and William Gedney (American States Water Company/Southern California Water Company).

Assembly Member Greg Aghazarian (26th District, Stockton) and Senator Mike Machado (District 5, Linden) also addressed the group and fielded questions. The day wrapped up with lobby visits to legislators. Each participant had the opportunity to visit with four or five legislators or staffers and discuss AB 2528, as well as bring up additional issues. The Symposium and lobby visits were useful in providing a glimpse as to how legislators perceive groundwater issues and how interested persons can frame relevant information for the Legislature.

### **In-house Training**

Our May staff training consisted of a site visit to Sunol Regional Park to observe various watershed management activities, including grazing management, amphibian monitoring, endangered species habitat protection, stream restoration, and dam removal. Our June staff training will be on our interactions with the State Board. Recent brown-bag topics include a June 2 session on the Wetlands Restoration Program Design Review Workgroup and a June 9 session on air toxics from the perspective of the Bay Area Air Quality Management District.

### **Staff Presentations**

On May 21, Richard Looker and I spoke at the Brake Pad Partnership's Annual Meeting in Oakland. The Partnership is a stakeholder effort to understand and address environmental impacts that may arise from brake pad wear debris generated during vehicle use. Stormwater can convey copper in such debris to the Bay. I provided the keynote address, emphasizing how this stakeholder effort provided a model on how to address impacts in an open, consensus-based fashion. Richard presented a regulatory update on "Copper in San Francisco Bay".

On May 25, Richard Looker gave a presentation on the San Francisco Bay Mercury TMDL at the San Francisco Bar Association Environmental Section Lunch Seminar. Also speaking at this event was Michael Levy of the State Board, who gave a TMDL/permitting primer.

On May 25, Habte Kifle and Keith Lichten of our Watershed Management Divisions gave presentations at an annual workshop of San Mateo County's stormwater program. Habte discussed the current status of the Program's New Development and Construction Controls. Keith discussed implementation of new requirements for development projects.

On May 28, Sandi Potter gave a presentation on the San Francisquito Creek TMDL to the San Francisquito Creek Joint Powers Authority (JPA) Board, during a special meeting at the East Palo Alto City Council chambers. Her presentation focused on recent results from an Aquatic Habitat Study and Limiting Factors Analysis and the Water Board's approach to developing sediment TMDLs. About 30 people attended the meeting, including representatives from the cities of Palo Alto, East Palo Alto, Menlo Park, San Mateo County, Santa Clara Valley Water District, Stanford University, San Francisquito Watershed Council, and Clean South Bay - as well as interested members of the public.

On June 3, Richard Looker presented a regulatory update on "Copper in San Francisco Bay" at a Bay Planning Coalition Meeting. The presentation covered the current regulatory status of the use of copper treated wood in Bay piers and pilings. John West also presented information about the Water Board's permitting of projects that employ treated wood.