

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

July 21, 2004

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Item 1 - Roll Call and Introductions

The meeting was called to order on July 21, 2004 at 9:08 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: Clifford Waldeck, Chair; Mary Warren, Vice-Chair; Kristin Addicks; Josephine De Luca; Shalom Eliahu; John Muller; and John Reininga.

Board member absent: Doreen Chiu.

Clifford Waldeck reported William Schumacher had moved from the Bay Area and was in the process of resigning from the Water Board.

Nancy Sutley, State Board member, said negotiations on the 2004/2005 budget are taking place. She said the California Performance Review's report on reforming state government is expected to be released after the Governor signs a budget. She said the report is anticipated to include recommendations that would affect Cal/EPA and boards under its authority.

Mrs. De Luca said some publications anticipate the report will recommend eliminating regional water boards. She questioned whether government services would be delivered more effectively if that were to happen. She said the public would lose an opportunity to participate in the decision making process if boards were eliminated.

Mr. Muller said Board members represent many facets of society and spoke in favor of keeping regional boards intact.

Mrs. Addicks said discussions about changing the state's environmental regulatory structure could be valuable. However, she said the public's opportunity to have a voice in the regulatory process should be protected.

Ms. Sutley thanked Board members for their comments.

Item 2 - Public Forum

Pamela Sihvola, Committee to Minimize Toxic Waste; L.A. Wood, Berkeley; and Gene Bernardi, Berkeley, asked the Board to issue an order requiring the U.S. Department of Energy to clean up soil and groundwater contamination originating from the Lawrence Berkeley National Laboratory.

Mr. Wolfe said staff would investigate the speakers' request and make a report to the Board.

Mrs. De Luca thanked the speakers for bringing the matter to the Board's attention.

Mrs. De Luca asked that the Board be given an update about when construction on the Devil's Slide Tunnel Project would begin.

Stephen Hill described a flood management project being conducted by the Napa County Flood Control and Water Conservation District and the U.S. Army Corps of Engineers along a 7-mile stretch of the Napa River. He said one phase of the project included remediation of properties for petroleum contamination. He said the remediation was completed in January 2004 and thanked the District and the Corps for their work in improving water quality.

Mr. Waldeck read a Proclamation of Appreciation commending the remediation project and presented the Proclamation to Jill Techel, Napa County Flood Control and Water Conservation District Vice-Chair; Heather Stanton, District Flood Project Manager; and Larry Dacus, U.S. Army Corps of Engineers Project Manager.

Ms. Techel thanked Board members and invited them to tour the project. She thanked project staff, Daisy Lee and Rick Thomassen.

#### Item 3 – Minutes of the June 16, 2004 Board Meeting

Mr. Wolfe said there was a Supplement to the minutes.

Mrs. De Luca requested the minutes be corrected to show that she was present at the June 16, 2004 meeting.

The Board unanimously adopted the minutes as supplemented and corrected. Mrs. Addicks abstained because she did not attend the June Board meeting.

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

Clifford Waldeck said the League of California Cities magazine, Western Cities, recently featured a series of articles about stormwater programs being conducted in the City of San Diego, City of Orange, City of Sacramento, Long Beach, Fresno-Clovis, and Ventura County.

Bruce Wolfe said on July 19, 2004 he and a number of staff joined a group gathered at the South Bay salt ponds to watch as floodgates were opened and pond water was released to the Bay. He said release of pond water and circulation of bay water through the salt ponds are part of the initial stewardship phase of the wetland restoration project.

Item 5 - Uncontested Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 6 – City and County of San Francisco, Sheriff’s Department, Sanitary Sewer System, San Mateo County – Hearing to Consider Administrative Civil Liability for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe recommended this item be continued to the September Board meeting.

Item 7 – ConocoPhillips San Francisco Refinery, Rodeo, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said ConocoPhillips San Francisco Refinery signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the discharger agreed to pay a Mandatory Minimum Penalty in the amount of \$3,000. He said \$3,000 would be used for a supplemental environmental project.

Item 8 – Contra Costa Clean Water Program, Contra Costa County – Second Amendment of Order 99-058, NPDES Municipal Stormwater Permit

Item 9 – San Mateo Countywide Stormwater Pollution Prevention Program, San Mateo County – Second Amendment of Order 99-059, NPDES Municipal Stormwater Permit

Item 10 – Contra Costa Clean Water Program, Contra Costa County – Third Amendment of Order 99-058, NPDES Municipal Stormwater Permit

Item 11 – San Mateo Countywide Stormwater Pollution Prevention Program, San Mateo County – Third Amendment of Order 99-059, NPDES Municipal Stormwater Permit

Wil Bruhns gave an overview of Items 8, 9, 10 and 11.

Mr. Bruhns said San Francisco BayKeeper filed a lawsuit in San Francisco Superior Court challenging permits the Board adopted in 1999 for Contra Costa Clean Water Program and San Mateo Countywide Stormwater Pollution Prevention Program. He said in 2003 the Court issued a Writ of Mandate. He said the Court found:

- (1) The permits must include monitoring programs.
- (2) Substantive modifications to stormwater management plans must go through a public notice and comment period. This is required because the permits incorporate stormwater management plans.
- (3) The Board must approve substantive modifications to permits and stormwater management plans. Approval authority may not be delegated to the Executive Officer.

Mr. Bruhns said tentative orders for Items 8 and 9 amend the stormwater permits to comply with the Writ of Mandate. He said tentative orders for Items 10 and 11 give the Board an opportunity to adopt modifications to stormwater management plans the Executive Officer and staff previously approved.

Yuri Won discussed the Court order and the proposed tentative orders.

Habte Kifle gave the staff presentation for Items 8 and 9. He said the tentative orders include monitoring programs that specify the type, interval and frequency of monitored activities. He discussed past monitoring activities the Programs have conducted and monitoring activities to be conducted in the future.

Sejal Choksi, San Francisco BayKeeper, said monitoring plans required by the tentative orders would not lead to data representative of monitored activities. She said BayKeeper anticipates monitoring plans will be improved when stormwater permits are reissued in the next cycle.

Mr. Reininga said he appreciated the fact that BayKeeper participated in stakeholder discussions. He said, on several other permits, BayKeeper did not participate in stakeholder discussions and raised objections late in the process.

Gary Grimm, attorney representing Alameda Countywide Clean Water Program, spoke in favor of the tentative orders. He said municipalities are concerned about costs to conduct monitoring programs.

Robert Davidson, San Mateo Countywide Stormwater Pollution Prevention Program, said the Program did not object to Items 9 and 11.

Mr. Wolfe recommended adoption of Items 8 and 9.

Mr. Wolfe anticipated the next permit reissuance cycle would begin in September 2005. He said staff is developing a single stormwater permit to apply to each of the programs in the region.

Mr. Muller said it was important to find a balance between stormwater activities and associated costs.

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

Roll Call:

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

No: None

Motion passed 7 – 0.

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

Roll Call:

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

No: None

Motion passed 7 – 0.

Christine Boschen gave the staff presentation for Items 10 and 11. She said the tentative orders give the Board an opportunity to adopt modifications to stormwater management plans the Executive Officer and staff previously approved.

Mr. Wolfe recommended adoption of tentative orders for Items 10 and 11.

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

Roll Call:

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

No: None

Motion passed 7 – 0.

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

Roll Call:

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

No: None

Motion passed 7 – 0.

Item 12 – California Department of Fish and Game, Napa River Salt Marsh Restoration, Lower Ponds Project, Napa and Solano Counties – Issuance of Waste Discharge Requirements and Water Quality Certification

Tobi Tyler gave the staff presentation. She said in 1994 the State of California purchased 12 ponds in the North Bay that formerly were used to produce salt. She said nine of the ponds, known as the lower ponds, are the subject of the tentative order. She said the lower ponds would be restored to fresh water ponds and tidal marsh habitat.

Ms. Tyler said the tentative order provides effluent limits for discharge of pond water and authorizes excavation and fill to create tidal marsh habitat. She said reducing salinity levels in the ponds is an immediate objective. She said a levee would be breached to allow for intake of Napa River water and discharge of diluted pond water.

Ms. Tyler said the Department of Fish and Game is named as discharger because the Department owns the ponds. She said the California Coastal Conservancy will fund part of the project and the U.S. Army Corps of Engineers may provide funds also.

Mr. Wolfe said the restoration process was not started sooner due to lack of funds. He said the initial levee breach would occur in the winter when the Napa River water level is high and rainwater has diluted the salinity level in pond water.

Replying to questions, Mr. Wolfe said an adaptive management approach would be used in the restoration project. He said monitoring results would provide direction for further project work.

Amy Hutzell, California Coastal Conservancy, said the Conservancy has been working on the restoration project since 1997. She said the Conservancy would provide monitoring funds during the next ten years.

Mr. Wolfe recommended adoption of the tentative order.

Motion: It was moved by Mr. Muller, seconded by Mr. Reininga, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

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

No: None

Motion passed 7 – 0.

Item 13 – Shore Terminals and Wickland Oil Company, for the property located at 90 San Pablo Avenue, Shore Selby Facility, Crockett, Contra Costa County – Issuance of Site Cleanup Requirements

Curtis Scott said contaminants have been found in two areas of the Shore-Shelby bulk fuel storage facility: the Main Terminal Area and the Rail Transfer Area.

Michael Rochette said the dischargers are named in the tentative order because they each operated the facility and are the only entities that have operated the facility. He said the tentative order includes tasks to be completed and a time schedule to investigate and remediate soil and groundwater for petroleum and MTBE contamination.

Mr. Rochette said tasks must be completed at the Rail Transfer Area, the Main Terminal Area, and properties located down gradient from the Main Terminal Area. He said each discharger has tasks for specific contaminants in specific areas of the facility.

Mr. Rochette said Wickland Oil objects to being required to cleanup MTBE at the Rail Transfer Area. Replying to Wickland's contention, Mr. Rochette said both dischargers performed the same MTBE unloading operations at the Rail Transfer Area. He said soil and groundwater data show that MTBE is throughout the area and is the result of multiple releases over time.

Mr. Rochette said Shore contends Wickland should be required to cleanup petroleum found in parcels down gradient from the Main Terminal Area. Replying to Shore's contention, Mr. Rochette said groundwater monitoring at the Main Terminal Area during Wickland's operation did not indicate offsite petroleum migration occurred. However, he

said in 2001 Shore released petroleum in the Main Terminal Area that had offsite impacts.

Mr. Reininga said the Board seems to be brought into a dispute that the dischargers should resolve between themselves. He said the dischargers might have entered into an agreement allocating responsibility for environmental matters when Shore bought the Main Terminal Area from Wickland.

Yuri Won said the Board generally does not look to private agreements that allocate responsibility between dischargers. She said the Board generally names parties based on responsibility for discharge.

Ms. Won said she understood the dischargers plan to petition the State Board based on their written objections to the tentative order. She said she also understood they would not be speaking at the hearing.

Mrs. Addicks said it would be helpful if the dischargers presented their point of view at the hearing.

Replying to a question, Ms. Won said she did not know if the dischargers were business partners.

Mr. Muller expressed hope the dischargers would resolve their differences about cleanup responsibility.

Mr. Wolfe recommended adoption of the tentative order.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Reininga, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

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

No: None

Motion passed 7 – 0.

#### Item 16 – Closed Session – Litigation

At approximately 11:25 a.m., the Board went into closed session to discuss litigation issues. The meeting was adjourned at the completion of the closed session.

#### Adjournment

The Board meeting was adjourned at approximately 12:10 p.m.

