

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

December 13, 2006

Note: Copies of orders and resolutions and information on obtaining tapes or transcripts may be obtained from the Executive Assistant, Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, California 94612 or by calling (510) 622-2399. Copies of orders, resolutions, and minutes also are posted on the Board's web site (www.waterboards.ca.gov/sanfranciscobay).

Item 1 - Roll Call and Introductions

The meeting was called to order on December 13, 2006 at 9:30 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Margaret Bruce; Shalom Eliahu; William Peacock; Clifford Waldeck.

Board member absent: Mary Warren.

John Muller welcomed William Peacock who was recently appointed to serve on the Board.

Mr. Peacock made introductory remarks.

Bruce Wolfe introduced Anna Torres, new staff, who serves as Chief of the Management Services Division.

Mr. Wolfe introduced Rob Egel, Chief of the State Board's Legislative Affairs Office.

Mr. Egel made introductory remarks and said the Legislative Affairs Office works with the Legislature and represents the State Board and all regional boards. In reply to questions by Board members, Mr. Egel described work conducted by the Office.

Nancy Woo, Associate Director, U.S. EPA, said she would like to recognize efforts staff and the Board made during 2006 to reissue expired NPDES wastewater permits. She said 95% of the expired permits have been reissued. She said the percentage of reissued permits meets U.S. EPA's national target for currently issued permits.

Mr. Muller thanked Mr. Wolfe, Lila Tang, and staff for their work on reissuing permits.

Item 2 – Public Forum

Gary Grimm, attorney representing Bay Area Stormwater Management Agencies Association, said BASMAA is committed to the development of a municipal regional stormwater permit that consolidates the six county-wide stormwater programs. He thanked Mr. Wolfe for agreeing to BASMAA's request to hold a workshop at the March 2007 Board meeting to discuss permit issues.

Mr. Grimm suggested staff and BASMAA members work together to establish an agenda for the workshop. He recommended the workshop include discussion of stormwater controls that permittees can implement feasibly during the five year permit term. He requested the workshop be held before staff issues a draft Municipal Regional Permit.

Margaret Bruce expressed appreciation for BASMAA members' dedication to developing a regional permit. She suggested the workshop include a discussion on how to develop the permit in ways that leverage municipal resources and experiences.

Mr. Wolfe said staff held two stakeholder workshops during November 2006 to discuss developing a regional permit and many issues were resolved. However, he said a number of issues remain unresolved. He said the March workshop would provide an opportunity for further discussion and to include Board members in the discussion.

Amy Chastain, San Francisco Baykeeper, expressed concern that an update on the Bay Area refineries' mercury study is not included in the Executive Officers Report or the meeting agenda. She said the study focuses on the fate of mercury in the refineries' air emissions. She emphasized the importance of a transparent study process and requested monthly progress reports be made.

Mr. Wolfe said he recently met with representatives of the five Bay Area refineries and Western States Petroleum Association. He said he learned the refineries have successfully conducted a pilot project to determine how mercury in air emissions can be monitored and that refinery representatives anticipate initiating a consolidated monitoring program at all of the facilities. He concurred with the request to promote transparency during the study process and said staff will provide an update in January.

In reply to a question from Clifford Waldeck, Mr. Wolfe said staff requested the refinery representatives submit a written report that documents actions that have been taken on the study and a schedule for future actions.

Item 3 – Minutes of the November 13, 2006 Board Meeting

Mr. Waldeck said the proposed minutes did not reflect his comments regarding Josephine De Luca's leaving the Board.

Yuri Won recommended staff add a summary of Mr. Waldeck's comments to the minutes and the minutes be considered for adoption at the January 2007 Board meeting.

Mr. Muller concurred and said consideration of adoption would occur at the January 2007 Board meeting.

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

Mr. Waldeck said on December 5, 2006 he was honored to receive, on behalf of his firm, one of the Governor's 2006 Environmental and Economic Leadership Awards. He said 14 individuals, organizations, and businesses operating in California were selected to receive awards for taking action to protect the state's natural resources.

Mr. Muller congratulated Mr. Waldeck for being honored and for integrating environmental values into the operation of his business.

Margaret Bruce reported participating as a member in a collaborative of water agencies and businesses from Northern and Southern California. She said the collaborative is addressing ways to deal with potential failures of Delta levees.

Mr. Muller commended staff for participating recently in a disaster training exercise.

Mr. Wolfe said the next Board meeting would be held on Tuesday, January 23, 2007. He said a regularly scheduled February Board meeting would not be held. He said Board meetings for the rest of the year would be held on the second Wednesday of the month.

Mr. Wolfe said on December 19, 2006, staff will participate in a stakeholder workshop sponsored by the Clean Estuary Partnership. He said the workshop will seek to identify approaches to reduce human health risks resulting from the consumption of Bay fish.

Mr. Wolfe reported recently participating in the 10th Anniversary Celebration of the San Francisco Bay Joint Venture. He said the Joint Venture is a group of public and private agencies, conservation groups, development interests, and others committed to restoring wetlands and wildlife habitat in San Francisco Bay watersheds.

Mr. Wolfe reported that on February 6, 2007 he will make a presentation to the State Board that will highlight program activities in Region 2.

Mrs. Bruce and Mr. Wolfe discussed the relationship between land use decisions and water quality and the importance of recognizing and understanding the relationship.

Mr. Waldeck recommended staff be aware of regional planning efforts. He and Mr. Wolfe discussed funding mechanisms for regulatory agencies.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Muller said he is a Board member of the Sewage Authority Mid-Coastside and would recuse himself on Item 5D. Mrs. Bruce said Items 5A and 5F pertain to a member company of the Silicon Valley Leadership Group and she is employed by the Leadership Group. She said to avoid the appearance of a conflict, she would recuse herself on Items 5A and 5F.

Mr. Wolfe said, with the recusals, the Board would not be able to consider Items 5A, 5D, and 5F due to lack of a quorum. He recommended the Items be continued until a quorum is present.

Mr. Wolfe recommended adoption of the uncontested calendar with the exception of Items 5A, 5D, and 5F.

Mr. Eliahu made a motion, seconded by Mr. Peacock, to adopt the uncontested calendar as recommended by the Executive Officer.

In reply to a question from Clifford Waldeck, Mr. Wolfe said the Tentative Resolution in Item 5H allows the Executive Officer to make minor corrections to resolutions pertaining to the Long Term Management Strategy for the Disposal of Dredged Material in San Francisco Bay. He said he would report to the Board if corrections are made.

Mrs. Bruce said several public comment letters included in materials for items on the uncontested calendar complimented staff's work. She said she would like to recognize the compliments and add her appreciation for staff's accomplishments.

Mr. Muller said he would like to acknowledge the role of the regulated community in regard to items on the uncontested calendar. He said substantial financial resources have been committed to solving problems.

The Board voted unanimously to adopt the motion of Mr. Eliahu, seconded by Mr. Peacock, to adopt the uncontested calendar as recommended by the Executive Officer.

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) to the San Francisco Bay Region to Establish New Water Quality Objectives and Implementation Plan for Cyanide in San Francisco Bay – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Naomi Feger said the Board held the first public hearing on the proposed Amendment at its October 2006 meeting. She said the second hearing would be held today, and at the conclusion of the hearing, the Board will consider adoption of the Amendment.

Ms. Feger said currently both the chronic and acute water quality objectives for cyanide in San Francisco Bay are 1 microgram per liter. She said the Amendment would increase the chronic objective to 2.9 micrograms per liter and the acute objective to 9.4 micrograms per liter.

Ms. Feger said the proposed objectives are specific to the San Francisco Bay region and are based on data for crab species found locally.

Ms. Feger said the Basin Plan Amendment requires that NPDES permits for wastewater and industrial treatment facilities include cyanide effluent limits. She said the Amendment provides for establishment of cyanide dilution credits for permittees that discharge effluent to shallow waters. She said a credit would be taken into account in establishing a permittee's cyanide limits.

Ms. Feger said in the Bay Area, 13 permittees complied with requirements in the State Implementation Policy in order to demonstrate eligibility for a dilution credit. She said each permittee conducted a mixing zone study. She said each permittee demonstrated that the mixing zone complied with 11 conditions specified in the State Implementation Policy, including: not dominate the receiving water body; not adversely impact sensitive habitats, and not cause acutely toxic conditions to aquatic life.

Ms. Feger said U.S. EPA commented favorably on the proposed objectives. However, she said the agency expressed concern with some aspects of the Amendment. She said since the October Board meeting, staff has met with U.S. EPA representatives to discuss the concerns. She said the agency expressed concern about the size of proposed mixing zones. In reply, she said staff revised seven of the 13 mixing zones to make the zones as small as practicable.

Ms. Feger said U.S. EPA questioned whether mixing zone studies complied with provisions in the State Implementation Policy. In reply, she said staff conducted additional research to verify compliance. She said U.S. EPA questioned whether the proposed mixing zones protect sensitive habitats for the Central California Coastal steelhead and the delta smelt. In reply, she said staff looked at each mixing zone to confirm that habitats for the fish species would be protected.

Ms. Feger said U.S. EPA expressed concern that cyanide levels in effluent released in mixing zones would exceed the proposed chronic objective. In reply, she said staff found that about 95% of cyanide data collected near points of effluent release had concentrations less than the proposed objective.

Nancy Woo, U.S. EPA, spoke in favor of the site specific cyanide objectives. She said U.S. EPA, before taking action of the proposed objectives, will consult with federal resource agencies concerning effects the objectives may have on endangered species. She expressed concern that, in some cases, a mixing zone may dominate the receiving water. She said U.S. EPA will review the use of a mixing zone for an individual permittee at the time the agency reviews each NPDES permit issued by the Board to a wastewater or industrial facility.

Mrs. Bruce asked whether cyanide dissipates more slowly in effluent dominated water where there is a slow rate of dilution.

Nancy Yoshikawa, U.S. EPA, said current scientific studies do not address the specific question. However, she said it is known that some dissipation occurs because microbes utilize cyanide.

Amy Chastain, San Francisco Baykeeper, requested the Board not adopt the Basin Plan Amendment and questioned whether the proposed objectives will protect Bay water. She concurred with concerns expressed by U.S. EPA in its September 29, 2006 letter to staff.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, requested the Board adopt the Basin Plan Amendment. She said wastewater agencies accept requirements to conduct pollution prevention and source control activities and to monitor for cyanide.

Mr. Eliahu said the Staff Report to the proposed Amendment ~~used~~ substituted the term attenuation, ~~a~~ for the term ~~that included~~ dilution, to describe the decline in cyanide concentrations in the Bay.

William Peacock asked for clarification of the term dilution credit.

Mr. Wolfe said dilution credit is not used to denote an economic benefit that can be sold in the market place. He said dilution describes a physical process that occurs when effluent is released to receiving water. He said cyanide in effluent is diluted by the receiving water. He said a credit is given depending upon the amount of dilution that occurs.

Mr. Waldeck asked staff to discuss concerns expressed by representatives from U.S. EPA and Baykeeper.

Mr. Wolfe said Baykeeper expressed concern that the proposed water quality objectives are less stringent than current objectives. He reiterated that the proposed objectives are specific to the Bay and are based on recent studies. He said U.S. EPA and Baykeeper expressed concern that effluent released to some receiving waters may result in effluent dominated waters. He said staff has used the best available science to calculate mixing zones and dilution credits and to protect Bay water.

Mr. Wolfe recommended adoption of the Resolution to Amend the Water Quality Control Plan for the San Francisco Bay Region to Adopt Site-Specific Objectives for Cyanide for San Francisco Bay and an Implementation Plan.

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

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Mr. Waldeck; Mr. Muller

No: None

Motion passed 5 – 0.

Item 9 – Closed Session – Litigation

At 11:15 a.m., the Board met in closed session in Room 15-30A to discuss pending litigation.

The meeting was adjourned at the completion of the closed session.

Adjournment

The Board meeting was adjourned at 12:11 p.m.