

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

MEETING DATE: July 10, 2019

ITEM: 4  
SUBJECT: **EXECUTIVE OFFICER'S REPORT**

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**Salmonid Restoration Federation: Integrating Flood management, Steelhead, Beaver and Wildlife Habitat Restoration in the Napa River Watershed (Leslie Ferguson)**

On March 23, 2019, Water Board Staff Ann Riley, Leslie Ferguson, Setenay Boskurt-Frucht and Mike Napolitano organized and led a tour of Napa River restoration projects and the Napa River Flood Management Project as part of the 37th annual Salmonid Restoration Federation (SRF) Conference. The tour was co-led by the Napa County Flood Control and Water Conservation District (District) and their ESA consultants, restoration designers Jorgen Bloomberg and Jason White. Additionally, the Occidental Arts and Ecology Center (OAE), which serves as the consultant to the District on beaver habitat ecology and protection, led beaver habitat related elements of the tour. The sold-out tour took attendees to the following project types in the Napa River watershed: 1) river and riparian restoration sites on agricultural land in the mid to upper Napa Valley; and 2) environmentally sensitive flood management sites in urbanized downtown Napa City. Attendees included representatives from all sectors including non-profit organizations, public agencies, and environmental consulting companies.

The mid to upper Napa River restoration tour sites, known as the Rutherford Dust and Oakville to Oak Knoll Projects (Projects), were graciously and enthusiastically hosted by the Honig Vineyard and Winery, Cakebread Cellars, and Missimer Vineyards. Their representatives provided qualitative insights into the benefits of river and riparian restoration for both the vineyards and the environment. The environmental goals of these Projects are to enhance stream and riparian habitat complexity and floodplain connectivity to: 1) improve habitat for threatened steelhead, Chinook, and a large variety of aquatic, amphibian and terrestrial species; and 2) reduce sediment delivery associated with channel incision and accelerated rates of bank erosion, in accordance with the Napa River sediment TMDL. To accomplish this, forty-four landowners with 61 vineyard parcels along the River have voluntarily contributed over \$13 million in productive vineyard acreage to the Projects (i.e., removed vines, relocated flood berms, and moved roads to provide room for a more functional river corridor). The benefits to the landowners include helping to prevent Pierce's disease (a grapevine pathogen) by replacing invasive riparian plants that host Pierce's disease with native riparian plants that do not host Pierce's disease host, and providing a consistent flood protection level (about the 10-year flood event) by replacing semi-functional top-of-bank bank levees with setback levees that provide flood storage capacity and improved river and riparian habitat.

During the tour, Honig representatives indicated that their vineyards in the restoration areas have had a significant decrease in Pierce's disease, such that pesticides are no longer used in these areas. In addition, OAE staff pointed out the signs of beaver activity that manifested after completion of restoration. These Projects demonstrate that while the Napa River, through thoughtful design and committed partners, significant improvements to river and riparian functions and values can occur. The Federally funded (US EPA) 319 grant program, managed by the Regional Water Board, has provided over \$3.7 million to the Projects.

The second tour component featured the Napa River Flood Management Project reach along Napa Creek (Creek Project) in downtown Napa. This Creek Project demonstrates

the feasibility of implementing an environmentally sensitive flood management project in a highly constrained, urbanized commercial and residential area. This was achieved by select removal of infrastructure (parking lots/ bridges and rerouting roads), biotechnical bank stabilization methods, and creek daylighting to create complex channel and riparian habitat for steelhead and other wildlife. Following Creek Project construction, beavers have colonized the project site, increasing ecologic diversity and providing an opportunity to develop and implement co-existence strategies in Napa creek. The Napa Creek project was approved by the Army Corps of Engineers to provide protection for the 100-year flood, demonstrating that biotechnical and wildlife sensitive flood control projects can be safely constructed in highly urbanized area.

Lastly, Leslie Ferguson was awarded the SRF Lifetime Achievement Award honoring her lifetime of work and contribution to the salmon restoration field in California. During the award ceremony, speakers noted her tireless dedication and innovation as principle drivers in advancing the science of salmon and river restoration.



Photo 1: SRF tour at Honig Vineyard and Winery Project site. Honig winemaker, Kristin Belair, identifying ecological and vineyard Project benefits. Site is located where a steep eroding 15 foot Napa River bank had previously existed and has been graded/converted to an inset floodplain that promotes fine sediment deposits removing them from the River channel. Site also provides slow velocity winter habitat beneficial to steelhead and chinook.



Photo 2: Salmon Restoration Federation Tour at Napa Creek Flood Management Project site. Occidental Arts and Ecology Center staff, Kate Lundquist and Kevin Swift, are discussing beaver ecology and signs of beaver presence. Site demonstrates use of biotechnical bank stabilization (large wood) and creation of vegetated inset floodplains to manage flood waters. Vegetated floodplain was previously a parking lot. Site is location of frequent beaver dams which are blown out during high flood flows and therefore do not cause flooding.



Photo 3: Leslie Ferguson receiving the 2019 SRF “Lifetime Achievement Award” from Dana Stolzman, Salmonid Restoration Federation Executive Director, at Annual banquet. This award “honors a lifetime of work and contribution to the salmon restoration the field in California”.

## **Wastewater Mercury and Polychlorinated Biphenyls Load Update – (James Parrish and Matias Tejero-Leon)**

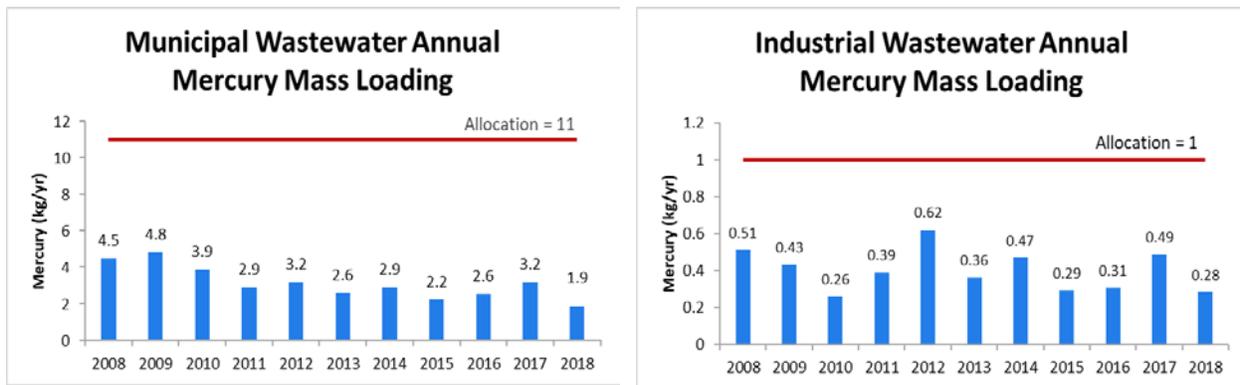
### **Introduction**

San Francisco Bay is impaired by mercury and polychlorinated biphenyls (PCBs), which led to the Board adopting total maximum daily loads (TMDLs) for mercury and PCBs in 2006 and 2008. These TMDLs define wasteload allocations that determine how much mercury and PCBs can be discharged to San Francisco Bay and still meet water quality standards. In 2018, mercury and PCBs loads in wastewater discharges continued to be below the wasteload allocations set in the TMDLs. These allocations are implemented through a regionwide watershed permit the Board reissued most recently in 2017.

### **Mercury Loads**

As shown in Figure 1, 2018 mercury loads for municipal and industrial wastewater discharges decreased from the previous year and were 83 and 72 percent below the allocations.

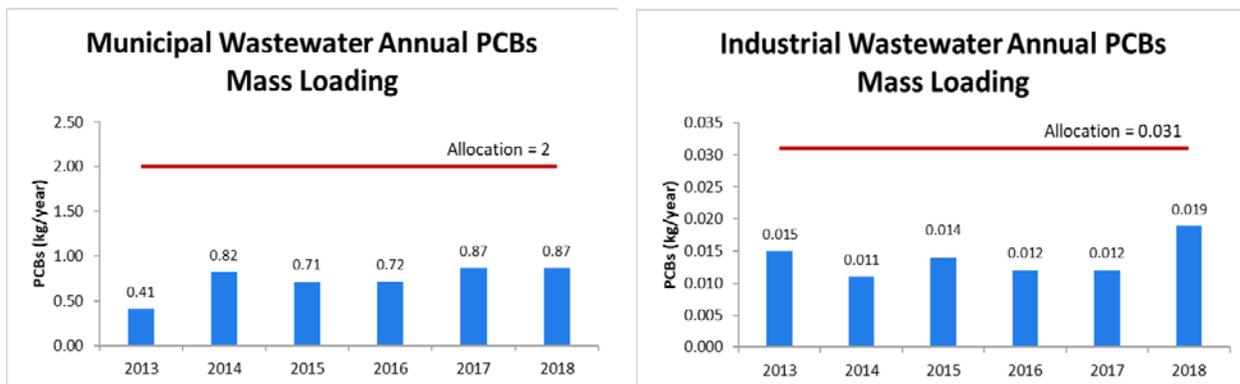
Figure 1. Municipal and Industrial Mercury Loads from 2008 to 2018



### PCBs Loads

As shown in Figure 2, 2018 PCBs loads from municipal and industrial wastewater discharges were 57 and 39 percent below the allocations. Compared to the previous year, PCBs loads from municipal wastewater discharges are about equal, while PCBs loads from industrial wastewater discharges increased slightly.

Figure 2. Municipal and Industrial PCBs Mass Loads from 2013 to 2018



### Findings

The 2018 decrease in mercury loadings from municipal and industrial discharges could be attributed to less precipitation compared to the previous year. The increase in PCBs loadings from industrial wastewater discharges can be traced mostly to the Chevron Richmond Refinery. This increase may be attributed to analytical variability. In 2018, the Chevron Richmond Refinery had no effluent limit violations, no major changes to facility equipment or operation practices, and no wet weather bypasses.

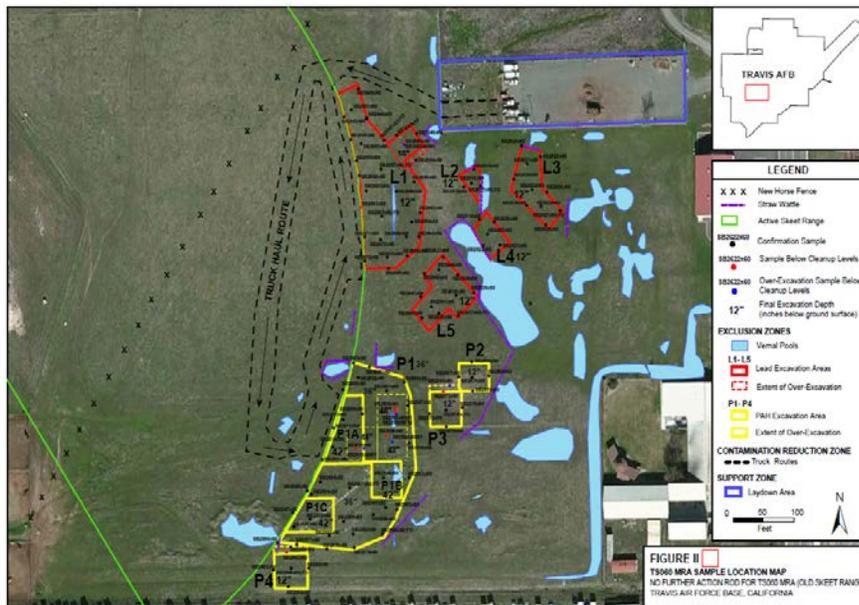
### No Further Action Record of Decision for Site TS060 (Old Skeet Range) at Travis Air Force Base – (Adriana Constantinescu)

I recently signed a Final No Further Action (NFA) Record of Decision for the Travis Air Force Base (AFB) Munitions Response Area TS060, which is also called the Old Skeet Range. The site is located in the west-central portion of Travis AFB (Site Map below).

The Air Force (AF) manages the remediation of munitions-related contamination at Travis AFB in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act and as required by the Military Munitions Response Program (MMRP).

The Old Skeet Range occupies 9.2 acres of flat and grassy land in the west-central portion of Travis AFB in a Grazing Management Unit that is used for horseback riding and as a horse pasture. It was used as a shooting range between 1952 and 1964. The chemicals of concern (COCs) in connection with the Old Skeet Range included lead (bullets) and polycyclic aromatic hydrocarbons (clay pigeons), both of which were present in the surficial soils at high concentrations.

Between June and August 2017, the Air Force excavated and disposed of 1,694 tons of lead-contaminated soil and 5,497 tons of PAH contaminated soil.



In conjunction with the U.S. Fish and Wildlife Service we required that mitigation measures be implemented to protect sensitive species and mitigate unavoidable impacts to vernal pools during excavation.

Site Map Showing the Excavation Areas in Relation to Vernal Pools

The mitigation measures included limiting work to the dry season, using straw wattles and fencing to protect endangered California tiger salamanders and vernal pools, monitoring by an onsite biologist, and designing the layout of the heavy equipment and truck routes around the excavation area to avoid damage (Figure 2).

Confirmation sample collection and laboratory analysis demonstrated that the removal action attained residential soil cleanup levels for both classes of COCs and does not require any environmental land use controls.

### Carmelia Street Properties – (David Tanouye)

The Carmelia Street Properties site is in a mixed-use, commercial and residential area of West Berkeley. The property includes a large 1940s-era brick building with multi-tenant retail, office, and warehouse space. A Canada Dry Ginger Ale Bottling Plant operated there until 1978. Perc-Serve, Inc., a wholesale laundry and dry cleaning supply business occupied the southern part of the site from 1978 to 1983. Records show two railroad track spurs running north-south along the west side of the property through the suspected contaminant source area, where a loading dock and a parking area currently exist.

Environmental investigations from 2000 to 2010 indicate that a PCE release caused significant impacts to soil and groundwater at the site and in the downgradient southwest direction. PCE was detected at a depth of 90 feet and a groundwater plume extends 400 feet downgradient beneath several commercial properties. Based on the data collected, groundwater impacts do not appear to extend to the south which is predominantly a residential neighborhood (Figure 1).



**Figure 2.** Carmelia Street Properties location and surrounding properties color-coded by land use in the project area.

We recently reviewed a Draft Scope of Work from the property owners that will help State Board staff finalize an oversight grant agreement under the Site Cleanup Subaccount Program (SCAP), which is a funding program established by Senate Bill (SB) 445 in 2015. The site is grant eligible based on the significant threats to human health and the environment and the property owner's lack of financial resources. The work budget has been preapproved for \$1.2 million. This includes additional characterization, remediation, and potential vapor intrusion mitigation. Remediation activities may require removal of the loading dock and rail spur to excavate source area

soils down to groundwater depth, and in-situ treatment of groundwater with injections of chemical reagents.

In the next month, staff will participate in a Joint Execution Team meeting with the owner and State Board staff that administer the SCAP grant to provide final comments before the grant agreement is signed. This is one of just a handful of SCAP grant sites in our Region supported by SB445 funds.

### **Underground Storage Tank Case Closures – (Laurent Meillier)**

The Board provided feedback on this topic at its February meeting. Since then we have taken a closer look at the situation and developed a strategy to improve our case-closure rates (see below).

The Underground Storage Tank (UST) program is one of three cleanup programs run by the Board. It focuses on investigating and cleaning up leaking fuel underground storage tank sites in our region. The State Water Board has established a UST low threat closure policy to guide program implementation. Funding for both UST cleanups and agency oversight is provided by the State Water Board's UST Cleanup Fund which is funded by a gasoline tax. Both the Water Boards and county health agencies oversee fuel UST cases; in our region the Board currently has about 240 open cases and the local agencies have about 410 open cases. The number of open cases is trending downward; increases are due to the ongoing discovery of new cases and the transfer of local agency cases to the Board; decreases are due to case closures.

We have two performance measures in the UST program: number of *cases starting cleanup* and number of *cases closed*. At the start of each fiscal year, we set performance targets for these and other performance measures. Our February status report on cleanup programs noted that we were behind on UST case closures and offered several reasons for this situation. Board members wished to hear more about this situation, specifically if there were steps we could take to increase closure rates. You also wished to know if we would be able to complete cleanup and case closure for all UST cases before the funding mechanism, the UST Cleanup Fund, sunsets at the end of 2025. We promised to report back in summer 2019.

The Water Boards have significant flexibility in how they set performance targets. Historically, we set UST case closure targets based on recent results and best professional judgement. Starting in FY 14-15 we set closure targets as a fixed percentage of open cases – 13% per FY. This 13% target translates to 35 cases per year. We started to be challenged with case closures starting in FY 17-18 when we closed 31 cases, short of our target of 35. As of mid FY 18-19, we had closed 7 cases and were on track to fall well short of our full-FY target of 35 case closures.

We have identified several reasons for the declining case closure rates. The key reason is that the remaining UST cases tend to be more difficult. Most have one or more closure impediments such as a recalcitrant discharger, access issues, complex geology, or commingled plumes. These cases take longer to clean up and close. In addition, our region is more conservative than other regions in how it interprets some aspects of the UST policy (e.g., vapor intrusion potential in onsite and offsite buildings); this can slow

case closure. Lastly, Alameda County Water District, our “consultant” for Fremont-area UST sites, has struggled to meet its own case closure targets for the last several years.

In response, we have developed a UST case closure strategy with both short-term and longer-term solutions. In the *short term* we have:

- Devoted more permanent staff resources to UST cases. We currently have five staff who work primarily on UST cases. This spring we shifted one more person over to work primarily on UST cases. We have also used our own Scientific Aids to handle the more administrative steps that precede case closure, such as public notifications.
- Made greater use of outside resources (such as the State Water Board's UST consultant).

As a result of these short-term solutions and increased attention to the issue, we were able to significantly increase UST case closures in the second half of the FY and met our FY 18-19 target of 35 case closures.

However, additional measures will be needed to maintain this closure rate. In the *longer term* we will:

- Expand our internal tracking efforts, to help staff focus on the “path to closure” for the UST cases they oversee. Staffs' annual and monthly workplans are a valuable tool in this respect.
- Interpret the UST policy more consistently with the State Water Board and other regions when this does not undermine health-protective cleanups (e.g., don't require source control beyond what's needed to attain other UST policy criteria).
- Remind UST dischargers of the advantages of completing case cleanup and closure before January 2026, the current “sunset date” for the gasoline tax that funds the work.

We have projected UST *case closures* and *cases open at the end of the FY* through FY 25-26, when the gasoline tax is scheduled to expire. Before 2025/26 we expect to receive 23 new UST cases from local agencies (which shut down their UST oversight programs when their caseloads get too small). We also project that we will receive 57 new UST cases, mainly due to mandatory upgrades of single-wall USTs.

Based on the 13% target for annual closures, we anticipate having about 150 open UST cases at the end of FY 25-26. Assuming no further extensions of the gasoline tax, these cases will transfer over to the Site Cleanup Program (SCP). To put this in perspective, UST cases are not usually high-threat or high-priority cases when compared to other cleanup cases we oversee. Therefore, having some residual number of UST cases when the UST Cleanup Fund “sunset” does not in our view constitute a problem. Nonetheless, we will continue to look for ways to expedite UST case cleanup and closure – and will update you on our progress periodically.

### **Mission Clay Update (Ralph Lambert and Kevin Brown)**

The Mission Clay site is located in Niles Canyon, on the eastern edge of Fremont (see figure 1). Alameda Creek is located about 250 feet northwest of the site. Between 1907 and 1992, three different companies manufactured brick and sewer pipe at the site, using clay from an onsite open-pit mine. Various petroleum products were stored and used at the site in the manufacturing process. In the late 1980s, several fuel underground storage tanks were removed. In 2000, fuel vaults were removed along with some petroleum-impacted soils. Substantial petroleum impacts to soil and groundwater were discovered during subsequent investigations. Groundwater contamination extends several hundred feet to the north and northwest of the source area, crossing beneath the railroad line and extending toward Alameda Creek.

In August 2018 we issued a Cleanup and Abatement Order (CAO) to the landowner to investigate and abate an unauthorized discharge of petroleum from the Site to Alameda Creek. Surface water from Alameda Creek recharges the Niles Cone Groundwater Basin, a source of drinking water supplied by the Alameda County Water District to tens of thousands of residents. We first briefed you on this case in September 2018. Since then, there have been several activities worth mentioning:

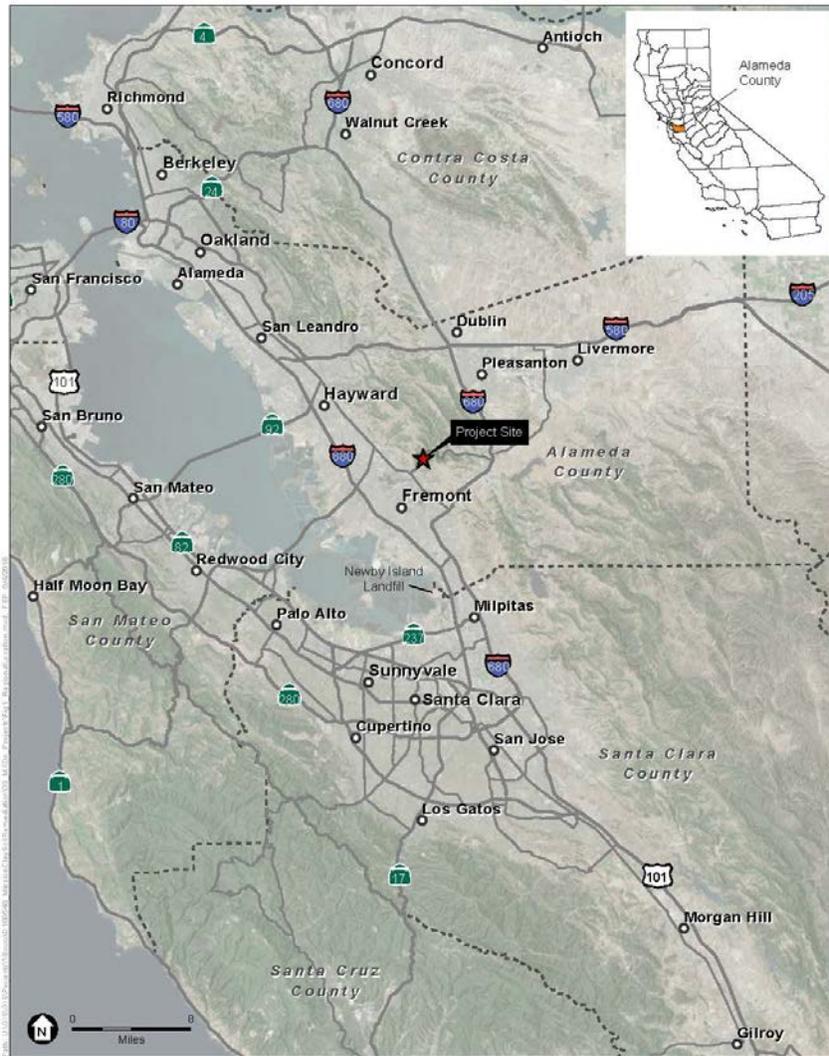
*Onsite Cleanup:* Two large soil excavations were completed in areas where considerable petroleum contamination was found (see figure 2). Confirmation soil samples generally meet cleanup goals, except in the southwest corner of the larger excavation near the active Niles Canyon Railroad. This excavation extended into bedrock at about 35 feet deep and below the water level of Alameda Creek, and groundwater flowed from the creek into the excavation. Over 3.5 million gallons of groundwater pumped from the excavations were treated onsite to remove contamination, and then discharged to the land where it could not run off to the creek. The southwest corner of the larger excavation was treated with an oxidizing agent to clean up residual petroleum contamination in soil. The excavations were backfilled, and interim grading was completed. About 28,000 cubic yards of impacted soil was transported to the Newby Island landfill for disposal. However, about 50,000 cubic yards of excavated soil remains onsite to be treated or removed (see figure 3).

We required the landowner to submit a report documenting the remedial excavation and restoration by December 28, 2018, but the work took longer than anticipated due to adverse weather and a change in consultant. In late May we issued a Notice of Violation to the landowner for failure to submit the required report. We received the report at the end of May.

*CAO Compliance:* The CAO requires immediate abatement of the petroleum discharge to Alameda Creek. Field work consists of placing staked straw wattles and absorbent pads, daily observations, weekly sampling, and subsequent reporting. Despite delays in implementing approved near-creek investigation and abatement work plans, the landowner is cooperative and generally complying with the CAO's requirements. Interstitial pore water and various points in an isolated creek channel are contaminated with petroleum globules and sheens. Petroleum was consistently detected in these samples at concentrations exceeding screening levels for drinking water and freshwater toxicity thresholds. Water samples from the main creek channel do not exceed the

screening level of 200 µg/L. Seventeen consecutive weeks of sampling and reporting were completed before the work was halted in the rainy winter of 2019 due to accessibility issues. Creek sampling resumed in May, and petroleum concentrations in water are below 100 µg/L.

We are currently awaiting the completion of a soil and groundwater investigation along the railroad spur to determine the magnitude of the contamination remaining in this area. This work will also help with the design of near-creek cleanup measures. The landowner recently advanced soil borings and installed two monitoring wells. Additional field work near the railroad will be conducted in July 2019.



SOURCE: Esri, 2015; ESA, 2018

Mission Clay Products Soil Remediation Project

Figure 1  
Regional Location



Figure 2 – Photo of onsite excavation. Note the bedrock surface.

### **Berkeley Firefighting Water Discharge to Codornices Creek (Zachary Rokeach)**

On the morning of April 3, 2019, a garbage truck fire in the City of Berkeley (City) was controlled by the City's Fire Department, resulting in the discharge of about 6,000 – 7,000 gallons of water and firefighting foam over about 10-15 minutes. After the fire was extinguished, the City's Public Works staff cleaned the water and foam from the street using a vactor truck and street sweepers.

Approximately 4 hours later, the City was notified that the firefighting water and foam had discharged to a reach of Codornices Creek two blocks away from the spill, and staff from the City's Environmental Health, Toxics Management, Fire, and Public Works departments responded, attempting to remove the foam.

Cleanup continued the following day, April 4. California Department of Fish and Wildlife (CDFW) staff took water samples and counted the dead fish (63 steelhead trout and 1 sculpin). Their analysis showed no trace of the foam. In a May 2 letter to the Water Board, the City reported that CDFW believes that the trout will likely repopulate the creek over time.

In response to the discharge and resulting fish kill, staff met with City staff and staff from other municipalities and fire departments, with the goals of understanding this incident and using it as a spur to review existing firefighting best management practices (BMPs) and consider how they could be improved or reinforced.

The garbage truck fire is an example of the challenges of appropriately managing the water quality impacts of emergency actions to protect public safety and property. While fire departments can often quickly and effectively control vehicle fires, control actions can discharge firefighting water, which can be a combination of potable water, firefighting foam, and materials from the fire. While a speedy response appropriately protects public health, that speed can limit opportunities to control the resulting discharge's water quality impacts. Our discussions with municipal staff focused on reviewing the materials used to control fires and on reviewing expected actions to minimize the impacts of firefighting discharges.

The City is concerned about the impacts of this fire and has been collaborating across its departments to examine how they can improve their response to similar fires in the future. The following are four actions the City is taking to address this:

- The City's Fire Department recently adopted a new policy that for any discharge in the public right of way, the Fire Department will immediately report the fire to the City's Public Works Department. Public Works will implement BMPs in nearby storm drains and receiving waters as soon as possible. Water Board staff suggested that Public Works staff should – as soon as they are notified – assess which receiving waters are likely to receive the firefighting water and foam, and immediately implement BMPs to protect those receiving waters.
- The City is developing a standard operating procedure related to garbage truck fires. The procedure will include training City staff on the characteristics of various trucks being used by the City and by others within the City, such as UC Berkeley.
- The City is researching methods to plug storm drains and divert firefighting water into the sanitary sewer, and is exploring the applicability of additional containment supplies and equipment to improve its response to fires. Parts of Berkeley are hilly, so firefighting discharges can flow quickly downhill into storm drains and receiving waters. However, Fire Department staff have noted that fires in the public right of way are mostly small, so addressing firefighting discharges there can be more manageable.
- The City is updating its firefighting foam procedure, including training Fire Department personnel to reinforce when the use of foam is warranted.

The above approach primarily would address vehicles fires on public streets. The City is focusing on those because, while more firefighting water is generated from structure fires, that water tends to stay on-site, and to the extent they have a longer duration, they may provide more opportunity to implement downstream controls.

Staff will work with municipal stormwater program managers to identify whether existing regionwide practices around firefighting discharges need to be updated. We will coordinate with Bay Area municipalities to consider improved response actions that may involve:

- Informing public works staff at the time of fire response, so that they can respond to plug storm drains and collect firefighting water before it discharges to receiving waters. This is a race against time and will not always be successful. The larger the fire, and bigger the threat, however, the more time is likely to be available to react.
- Considering whether guidance around the use of firefighting foams should be clarified.
- Identifying the receiving water(s) for discharges, opportunities to intercept the water *en route*, and inspecting the receiving water(s) to identify opportunities and implement measures to minimize impacts.

Modifications to those practices may result in an update to Municipal Regional Stormwater Permit Provision C.15, Exempted and Conditionally Exempted Discharges—Emergency Discharges, when the permit is reissued.

#### **Clover Flat Landfill Update (Alyx Karpowicz)**

In April, staff issued an Emergency Cleanup and Abatement Order (CAO, R2-2019-0014) to the Clover Flat Landfill in Calistoga for numerous observed violations of the landfill's Waste Discharge Requirements (WDRs), including discharge of landfill leachate (and stormwater mixed with leachate) into the creek adjacent to the site. The CAO required that all leachate discharges from the active landfill area and to the creek cease immediately, and prohibited the spraying of leachate for "dust control" during rain events.

Since receiving the CAO, the landfill has made significant improvements in an effort to come into full compliance with the WDRs and other regulations regarding management of leachate. The landfill successfully stopped the discharge of leachate from the active landfill area, as well as from the lowermost leachate collection area, where the runoff into the creek was occurring. The landfill has submitted work plans to re-design the leachate collection and recovery system, and to improve stormwater management. They have also been submitting analytical data from site water samples for our review as it becomes available. The Discharger has also brought on a new management team that is improving and updating general housekeeping and best management practices throughout the facility. These improvements will have both short- and long-term benefits for stormwater and leachate management and other aspects of site operations.



Bench 1, Ponded leachate Before- 3/26/19



Bench 1 After - 5/21/19



Lower Leachate Collection System area, where leachate was discharging to the creek (LCS)  
Before- 3/26/19



After- 6/4/19

### **In-house Training (Carrie Austin)**

In April and June, staff were trained in stream restoration science and policy. The April training was held in a classroom-style setting at the Elihu M. Harris Building. We followed up this training in June with a field session to see restoration sites along the Napa River.

In the April training, semi-retired Senior Scientist Dr. A. Riley presented a “Creek Restoration Primer” and Senior Engineer Leslie Ferguson presented on “Restoration for Species Enhancement.” Setenay Frucht provided case studies along Butano Creek that implement the Pescadero-Butano Watershed Sediment TMDL you adopted in December 2018. Lastly, Mike Napolitano provided case studies along Napa River in preparation for the June field trip to see these sites.

In June, the field trip clearly illustrated land use and management constraints in this region of extraordinarily high-value agricultural land. With explanations from Andy

Collison of ESA and Mike Gordon of Napa County Flood Control District, Mike Napolitano, and Leslie Ferguson, we viewed specific approaches to stream, riparian, and floodplain habitat enhancement being implemented in the Rutherford and Oakville reaches of the Napa River.

**Enforcement Actions (Jessica Watkins and Brian Thompson)**

The following table shows proposed enforcement actions since last month's report. In addition, enforcement actions are available on our website at:

[http://www.waterboards.ca.gov/sanfranciscobay/public\\_notices/pending\\_enforcement.shtml](http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml)

**Settled Actions**

On behalf of the Board, the Executive Officer approved the following:

<b>Discharger</b>	<b>Violation(s)</b>	<b>Imposed Penalty</b>	<b>Supplemental Environmental Project</b>
City of Pacifica	Discharge limit violations.	\$3,000	None
Phillips 66 Company San Francisco Refinery	Discharge limit violations.	\$80,000	\$40,000
Planetary Ventures, LLC	Discharge limit violations.	\$6,000	\$3,000

**401 Water Quality Certification Applications Received (Abigail Smith)**

The table below lists applications received for Clean Water Act section 401 water quality certification from May 9 through June 10, 2019. A check mark in the right-hand column indicates a project that may be in BCDC jurisdiction.

<b>Project Name</b>	<b>City/Location</b>	<b>County</b>	<b>May have BCDC Jurisdiction</b>
Central Parkway Mitigation Pond Berm Repair	Dublin	Alameda	
5th and E Street Stormwater Outfall	Hayward		
Eliot Facility Arroyo del Valle Removal of Quarry impoundments and Realignment	Pleasanton		
Marginal Wharf Piling Repair and Replacement	Point Richmond	Contra Costa	✓
MOTCO Repair Barge Pier	Port Chicago		✓

<b>Project Name</b>	<b>City/Location</b>	<b>County</b>	<b>May have BCDC Jurisdiction</b>
Via Verdi Slope Stabilization	Richmond		
342 Pinehill Road Pvt Driveway Culvert Replacement	Mill Valley	Marin	
Tomasini Canyon Road Embankment Repair	Point Reyes Station		
6 Morningside Drive Retaining Wall	San Anselmo		
Marin Lagoon Maintenance Dredging	San Rafael		
USCG Yerba Buena Island Floating Pier Repairs	San Francisco	San Francisco	✓
Burlingame Point Pedestrian Bridge Construction	Burlingame	San Mateo	✓
Midcoast Multimodal Trail Construction	El Granada		
Pillar Point Johnson Pier Pile Repairs	Half Moon Bay		
PGE Repair of Vintage Pipe	Millbrae		✓
U.S. Army Corps 2019 Maintenance Dredging of Redwood City Harbor Channel	Redwood City		✓
Junipero Serra County Park Access Road Culvert Replacement	San Bruno		
Communications Hill Industrial Park Development Phases 3 & 4	San Jose	Santa Clara	
Mid-Coyote Creek Restoration	San Jose		
Sanitary Sewer Repairs on Segment 35	Santa Clara		✓

<b>Project Name</b>	<b>City/Location</b>	<b>County</b>	<b>May have BCDC Jurisdiction</b>
Lake Ranch Reservoir Culvert Repair	Saratoga		
Geotechnical Investigation for Lagunita Dam	Stanford		
City of Fairfield Annual Creek Maintenance	Fairfield	Solano	
PGE Gas Line Replacement at R-962b Line 210a	Fairfield		
Sonoma Creek Watershed Stream Maintenance	City of Sonoma	Sonoma	
Old Hill Ranch Sediment Reduction	Glen Ellen	Sonoma	
Trinity Rd Culvert Repair	Glen Ellen	Sonoma	
Lawndale Rd Repair of Three Culverts	Kenwood	Sonoma	
North River Apartments Development	Petaluma	Sonoma	

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MEETING DATE: June 12, 2019

ITEM: 4

SUBJECT: **EXECUTIVE OFFICER'S REPORT**



## EXECUTIVE OFFICER’S REPORT: *June 2019*

A Monthly Report to the Board and Public

NEXT MEETING: June 12, 2019

WEBSITE: <http://www.waterboards.ca.gov/sanfranciscobay/>

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### **Recognition from the Bay Planning Coalition for former EO Bruce Wolfe (Michael Montgomery)**

Congratulations to our former EO Bruce Wolfe on recognition from the Bay Planning Coalition. Bruce was selected for the Frank Boerger Award. The Bay Planning Coalition presents the Frank Boerger Award annually to an individual who appreciates the rigors of advocating environmental protection and economic progress, and forges the path to achieve both.

## **2019 Nonpoint Source Clean Water Act Section 319(h) Grant Awarded to San Mateo Resource Conservation District (Leslie Ferguson)**

In May 2019, the San Mateo Resource Conservation District's (RCD) *Pescadero Creek Watershed Old Haul Road Sediment Reduction Project* was approved by the State Water Resources Control Board (State Water Board) Executive Director for the Clean Water Act Nonpoint Source Grant Program. The NPS Program administers grant money it receives from US EPA through Section 319(h) of the CWA. These grant funds can be used to implement projects or programs that will help to reduce NPS pollution. Project proposals that address [Total Maximum Daily Load](#) (TMDL) implementation and those that address problems in impaired waters are favored in the statewide competitive selection process.

Pescadero Creek in San Mateo County is CWA Section 303(d) listed as impaired by sediment for fish habitat and a sediment TMDL has been adopted for this watershed. This Project directly supports actions called for in the TMDL implementation plan and will prevent as much as 32,310 cubic yards (39,310 tons) of sediment delivery to Pescadero Creek over a 20-year period. This represents 28 percent of the annual load reductions called for in the TMDL for road surface erosion, and 3.7 percent of the annual load reductions called for in the TMDL for erosion at road crossings. Specifically, this Project reduces chronic and episodic sediment delivery to mainstem Pescadero Creek by upgrading and stabilizing a very large, failing stream crossing on Old Haul Road at Dark Gulch Creek (tributary to Pescadero Creek), and making drainage improvements (stormproofing) along 2 miles of the road.

Old Haul Road is a legacy logging road constructed during the 1930s-40s that is now used for recreation, maintenance, emergency response, timber property, and fire protection access in Pescadero Creek County Park and the upper watershed. This road, which runs along the south side of Pescadero Creek, was built using what would today be considered primitive construction technology, without concern for water quality impacts or long-term stability.

Dark Gulch crossing is approximately 70 feet high and the many original crib logs have decayed and collapsed. Stream runoff percolates through cavities, causing erosion around the remaining crib logs and generating sinkholes and slope failures. There is a high likelihood that this progression of failure will continue. There is also a risk of catastrophic failure of the crossing, which would result in significant damage to the downstream channel, streamside fish habitat, and bridges. This Project proposes to remove the existing fill and replace it with a large culvert designed to pass the 100-year flow. This is an important project for reducing sediment loading to Pescadero Creek as required in the sediment TMDL and will prevent future degradation in an area which is designated by the National Marine Fisheries Service as critical habitat for threatened and endangered Steelhead and coho salmon.

The NPS Grant will fund \$800,000 with matching funds of \$1,576,655 provided by the RCD's project partner, San Mateo County Parks (Parks). For 2019, the CWA 319(h) NPS Grant Program had about \$4 million available and received applications for 12 projects totaling about \$7.4 million. San Francisco Bay Regional Water Board staff, Leslie Ferguson and Setenay Bozkurt-Frucht, worked closely with the RCD to ensure that the proposals succeed. Upon selection, CWA 319(h) grants are overseen by the Regional Water Board grant coordinator and grant managers.



*Figure 1. 1940s photo of Dark Gulch crossing construction*



*Figure 2. Example Humboldt crossing in Santa Cruz Mountains*



**Figure 3.** Cracking of Dark Gulch road prism around upstream sinkhole. The sinkhole has been covered with plastic tarp.

*Photos provided in RCD 319 grant application*

### **Petroleum Site Cleanup Near the Oakland Estuary (Katrina Kaiser and Jeff White)**

411 High Street, which is located near the Oakland Estuary northeast of the High Street bridge that connects Oakland and Alameda, is the site of a former petroleum bulk storage and distribution plant. The plant was owned by Atlantic Richfield Company (ARCO) and operated from 1946 to 1975. Since then, the property was used as a lumber yard (1975–1996), a container storage and repair shop (1996–2000) and a bus terminal (2000–present). The bulk plant included several aboveground and underground tanks and a product loading rack (Figure 1). The property is zoned commercial and there are no current redevelopment or land use change plans.

Fuel contamination was first identified in the 1980s. Since then the Board has adopted five cleanup orders (1990, 1993, 1998, 2006, and 2011) and two ACLs (2011, 2014) for failure to submit a required remedial action plan and implement the plan by the compliance due dates. Those violations have since been corrected and we are currently working with ARCO under the requirements of the 2011 cleanup order.

At the same time, the current property owner, who purchased the property in the 1970s after plant operation ended, has expressed concerns that site investigation remains incomplete, cleanup is taking too long, remediation is ineffective and incapable of removing meaningful contamination in a reasonable timeframe, and the Water Board should take additional enforcement against ARCO for delaying the cleanup. We are currently working to expedite the site cleanup.

Past remediation methods included groundwater extraction (1993–2002), ozone sparging (2006), and air sparging (2009–2010) at 411 High Street, and soil vapor extraction (2015) on an adjacent commercial property at 441/445 High Street to abate vapor intrusion concerns to a small office structure located there. To continue addressing the higher concentration source areas at the 411 High Street site, the 2011 cleanup order required submittal of a full-scale remedial design RD in order to construct and implement ARCO's approved 2010 remedial action plan (RAP). The RAP consisted of three remediation components:

1. dual phase groundwater/soil vapor extraction
2. in-situ injection of sulfate to oxidize petroleum hydrocarbons
3. air sparging to enhance petroleum soil vapor recovery

After some delay due to problems with report acceptability, the full-scale RD was conditionally approved in 2014, and implementation of the RAP started in August 2016. However, the air sparging component was immediately discontinued after subsurface contaminant vapors entered an onsite office structure. In response, we requested ARCO to submit a work plan to investigate this concern and have recently approved it. Depending on the findings, we may require ARCO to augment or replace the air sparging component of the remediation system.

In February 2019, the remaining two operating components of the remediation system were shut down because the site access agreement expired between the property owner and ARCO. On June 3, we were informed that a new site access agreement would be approved within a week allowing ARCO to restart the remediation system and resume collecting the necessary performance monitoring data.

In April 2019, we issued a Water Code Section 13267 Order to ARCO to submit a comprehensive effectiveness evaluation of the current in-situ remediation system by August 31, 2019. We intend to use this report as a basis for evaluating the system's ability to achieve cleanup standards in a reasonable timeframe. The 13267 Order also conditionally approved an investigation work plan addressing data gaps from prior investigations and required a new vapor intrusion assessment to confirm if there are remaining concerns at the adjacent 441/445 High Street office structure.

If the findings from the additional investigation and effectiveness evaluation suggest that the system is ineffective or incapable of accomplishing remedial goals in an acceptable timeframe, we will require system modifications or a new remediation remedy that will lead to a more efficient and timelier cleanup. We'll also continue monitoring the pace of progress in all areas to evaluate compliance with cleanup requirements.

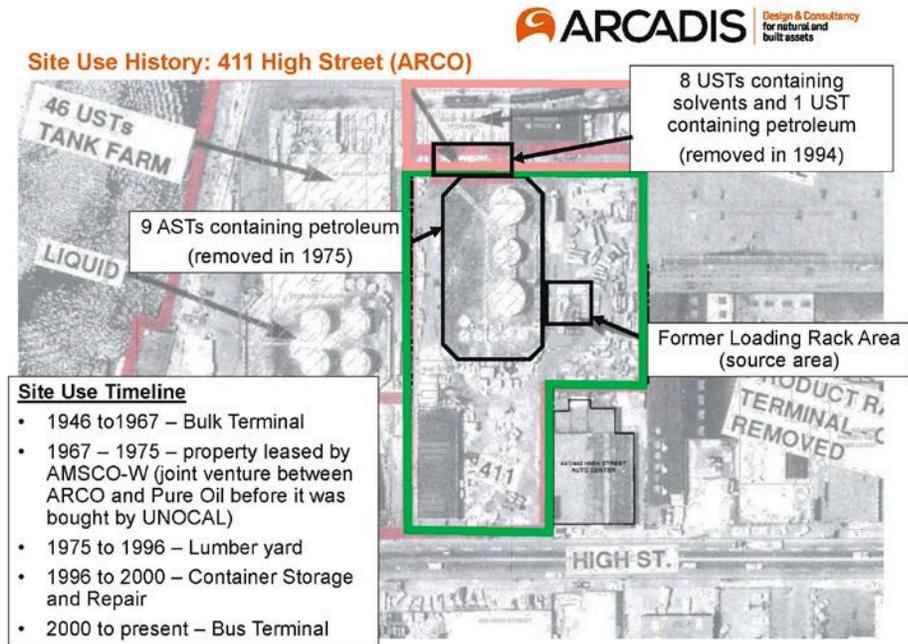


Figure 1. Historical Site Features (1959). 411 High Street is shown with a green boundary.



Figure 2. Current Site Features (2016). 411 High Street is shown with a blue boundary; the 441/445 High Street office structure is shown with a green boundary.

## Milpitas Redevelopment Projects Requiring VIMS Regulation (Nathan King and Jeff White)

In September 2018 you adopted a cleanup order ([Order No. R2-2018-0043](#)) for a large trichloroethylene (TCE) spill from the former JCI Jones (Jones) manufacturing plant at 985 Montague Expressway in Milpitas. The spill, which occurred in the 1980s, created groundwater and soil vapor plumes that affected many downgradient properties within the Milpitas Transit Area (Figure 1). This area has undergone extensive redevelopment since 2008. Similarly, another spill of chlorinated solvents occurred at Peco Controls (Peco) at 450

Montague Expressway which has affected several downgradient properties (Figure 2). The affected properties from both spills consist of fourteen residential developments both under construction and occupied, six commercially used properties and one public park.

The 2018 Jones cleanup order requires Jones to better define the extent of the groundwater and soil vapor plumes, update the previous risk assessment, and accelerate cleanup based on the changed land uses and potential TCE vapor intrusion (VI) threats to occupants of the new residential and commercial buildings. At the same time, the Jones order acknowledges that Board staff are working directly with individual property owners (mainly developers and property managers) to design, operate, and monitor building-specific VI mitigation systems (VIMS) as necessary, based on the VI risks and threats. Under the order, these owners are required to grant access to Jones for its required investigation and cleanup actions. Our intention for the Peco spill is to develop a similar cleanup order for your consideration with similar requirements.

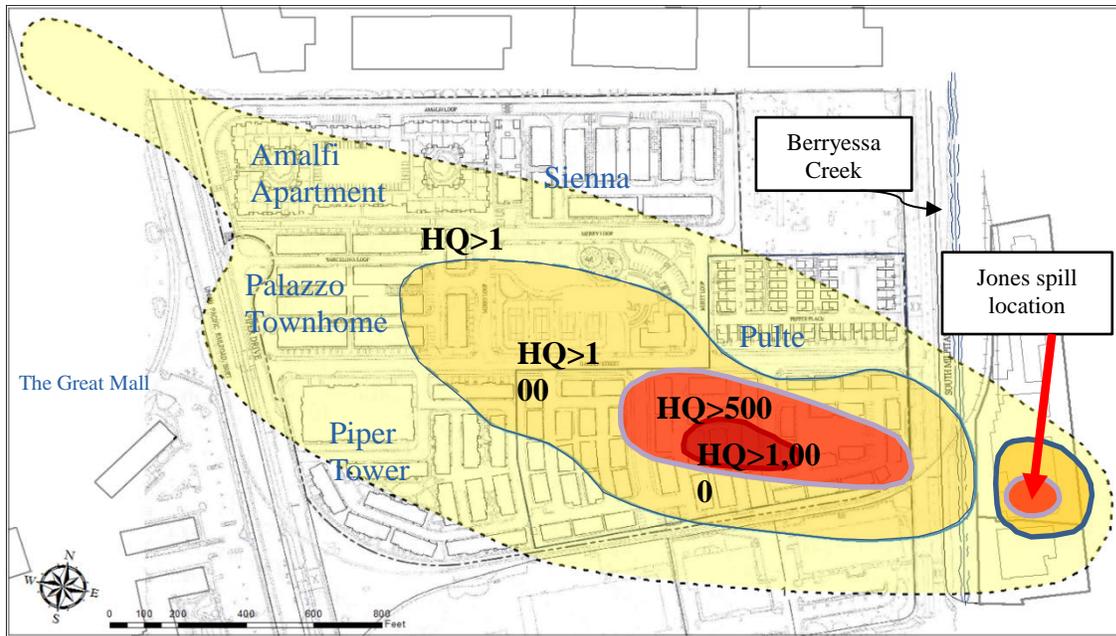
Our decision to separate cleanup and mitigation responsibilities in this manner was pragmatic considering 1) the number of properties in the affected areas, 2) the urgency for implementing building-specific VIMS for occupant protection, as opposed to the typically slower-pace of investigation/cleanup actions, and 3) existing third-party financial agreements between Jones and some of the owners/developers.

For properties where significant vapor intrusion threats exist, we are requesting VIMS using fans or blowers to actively remove contaminant vapors beneath the building foundation. Our regulatory process involves a two-step concurrence process, including reviewing VIMS design, operation, maintenance, monitoring, and financial assurance plans all of which must be prepared and certified by third-party experts. An important component of our review involves pre-occupancy indoor air monitoring to verify the VIMS effectiveness. VIMS monitoring must continue for as long as the subsurface VI threat exists. The City of Milpitas Building Department relies on our concurrence before permitting building occupancy.

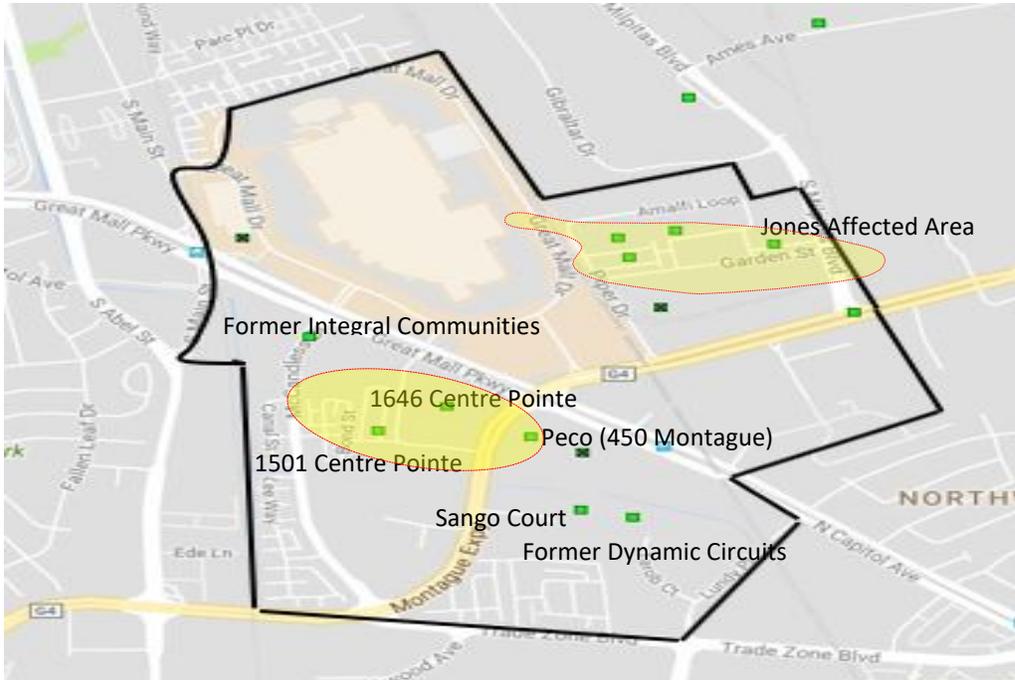
If a passive VIMS (no blowers or fans) was previously installed, we are requesting soil vapor and indoor air monitoring from the property owner to evaluate if conversion to an active system and/or higher frequency soil vapor or indoor monitoring is warranted.

For other properties where the VI threat is minimal or less defined, we are requesting expedited collection of soil vapor samples to establish the risk and evaluate what type of VIMS may be warranted.

To pay our oversight costs, we have agreements through the Site Cleanup Program with several individual developers for the VIMS work associated with their properties. Jones provides cost recovery for our time related to implementing cleanup order requirements and VIMS oversight on affected properties where we don't have separate agreements with the owners. Staff will continue to require Jones and Peco to delineate and cleanup the contamination while working with the developers to implement building-specific VIMS. Staff has collectively spent about 2,700 hours on these projects since January 2017.



**Figure 1.** Jones spill location and affected downgradient properties. HQ (Hazard Quotient) > 1 indicates a potential hazard that warrants further evaluation. TCE soil vapor concentrations over much of the affected downgradient area present significant potential vapor intrusion risk requiring building-specific vapor intrusion mitigation systems and accelerated cleanup to minimize long-term reliance on such systems



**Figure 2.** Milpitas Transit Area outlined in black, showing Jones and Peco affected areas. Groundwater flows from right (east) to left (west).

## **Update of Environmental Screening Levels (Nicole Fry)The Water Board's**

Environmental Screening Levels (ESLs) are a set of generic screening levels for several common contaminants that we have developed to facilitate the risk assessment process at our cleanup sites. The ESLs are particularly helpful for quickly and cost effectively assessing risks. The ESLs are updated every few years. The latest major update to the ESLs was recently completed and all revised ESL documents were posted to the [ESL Webpage](#) as of May 13. In addition, a notice of this update was sent out to the ESL Lyris list, which currently has about 1,000 subscribers.

The key change made in this most recent ESL update is with respect to vapor intrusion. The vapor intrusion ESLs are significantly more stringent than before. They are now based on U.S. EPA's 2015 recommended attenuation factors, which in turn are based on a national empirical database, rather than a vapor intrusion model (the U.S. EPA Johnson & Ettinger model). This change reflects the best science available to us, at least until we have a representative California-specific empirical database.

Below are other significant changes we made in this latest ESL update:

- The organization and presentation of some aspects of the ESL Excel Workbook and User's Guide were updated to improve clarity.
- The interactive tool in the ESL Excel workbook was significantly updated to allow users to more easily use the ESLs to assess site data.
- The soil ESLs for protection of terrestrial habit were restored following the 2011 update of the reference document on which they are based.
- ESLs have been added for the following chemicals/mixtures:
  - 1,2,3-trichloropropane;
  - Petroleum-jet fuel; and
  - Petroleum-hydrocarbon oxidation products, which are the biodegradation metabolites and photo-oxidation products of petroleum hydrocarbons.
- The physical and chemical property values were updated using the values from the U.S. EPA Regional Screening Levels' chemical-specific parameters table.
- The human health toxicity value hierarchy, described in Chapter 3 of the User's Guide, was revised for consistency with DTSC's new Toxicity Criteria Regulation.

Our ESLs provide a useful assessment tool to both regulators and dischargers in the cleanup programs. We will continue to update you on the ESLs as circumstances warrant.

### **Board off-Site meeting/Site visits**

The Board has expressed an interest in seeing some of the work which has been completed or is anticipated in its natural context. I have discussed some options with staff and have come up with 2 recommendations.

The first recommendation is primarily focused on our successful non-point source efforts as well as some challenges which lie ahead for us in the western portion of Marin County. We would visit locations covered under our conditional waiver program for grazing operations,

discuss monitoring and reporting provisions. This program would also include facilities covered under our Confined Animal Facility/Dairy Permit of 2016 which replaced the conditional waiver program from 2015. The requirements of the new permit program become operable in 2020. We would also visit grant funded stream/floodplain restoration projects. The sites are on park lands (NPS, State Parks, & County Parks) and Marin Municipal Water District's watershed lands.

The second recommendation would cover San Francisco watersheds, waterfront restoration and clean-up site re-use. There are a variety of locations which could be visited depending on the level of interest. These include;

- Non-point source restoration in the Historic San Francisco Presidio/Golden Gate National Recreation Area,
- Nearshore soils and in-bay sediment contamination cleanup (planned and underway) at former waterfront industrial sites and in support of commercial/residential reuse and expanded Ferry service.

I recommend we target September or October for this effort and could conduct a Board Meeting or Listening Session in conjunction with the visits.

### **Cleanup Orders Issued by Executive Officer (Kimberlee West)**

The Board has delegated to the Executive Officer the authority to issue, amend, or rescind site cleanup orders pursuant to Water Code section 13304. The choice between having these orders acted upon by the Board or by the Executive Officer hinges on the degree of controversy and urgency in each case. In general, I issue, amend, or rescind these orders in situations where there is little or no controversy or when there is some urgency (e.g., cleanup action is needed promptly to address a current or imminent threat to human health or the environment). Otherwise, we bring these types of cleanup orders to the Board for its consideration and action in a public hearing.

*Ashland Chemical* On May 21, I rescinded the 2005 site cleanup order (and the 2014 cleanup order amendment) and issued a revised site cleanup order for the former Ashland Chemical Company site located at 8610 Enterprise Drive, Newark, Alameda County. From 1973 to 2000, Ashland Inc. operated the Site as a chemical storage, blending, packing and distribution center. These activities resulted in releases of chlorinated solvents and other volatile organic compounds to soil and groundwater. Past cleanup actions include groundwater extraction from 1982 to 2005 and remedial excavation in 2005 and 2006, to meet industrial cleanup levels. The site was recently purchased and will be redeveloped into residential housing. Additional cleanup is needed to make the site safe for the more sensitive land use. The revised site cleanup order requires additional cleanup in accordance with a Board-approved cleanup plan. The cleanup plan calls for additional soil excavation, in-situ chemical oxidation, and monitored natural attenuation to achieve residential cleanup levels. The revised cleanup order names the new owner/redeveloper as the discharger. We received minor comments on the draft cleanup order and updated it prior to final issuance. Cleanup work will begin in June.

## **Board Items Issued by Executive Officer**

### **Rescission of Site Cleanup Requirements Order for Pacific Rod and Gun Club (Alan Friedman)**

Last month we reported the completion of cleanup activities at the former Pacific Rod & Gun Club at Lake Merced near Daly City. On June 5, the Executive Officer issued Order # R2-2019-0018, which rescinds the Site Cleanup Requirements Order that was adopted for the site in 2013 (Order # R2-2013-0023).

### **Prosperity Cleaners Update (Ralph Lambert)**

The Prosperity Cleaners Site is located in the Marinwood Plaza shopping center in Marinwood, north of San Rafael in Marin County. Releases of tetrachloroethene (PCE) from past dry-cleaning operations impacted soil, soil vapor, and groundwater. In 2014, the Regional Water Board adopted a cleanup order for the Site. Two source areas were identified onsite and each was treated. All confirmation soil samples collected onsite meet the Site's cleanup goals to protect human health and the environment. Onsite soil vapor concentrations still exceed commercial cleanup levels. The exceedances are not adjacent to any occupied structures. Previous extensive soil vapor sampling in the nearby residential neighborhood did not detect any PCE or breakdown products. A groundwater plume, exceeding drinking water standards of 5 µg/L for PCE, extends to the east about ½ mile and goes under the Silveira cattle ranch and land owned by St. Vincent School for Boys (Catholic Charities). The cattle ranch uses groundwater but its wells do not exceed the PCE drinking water standard of 5 µg/l.

We last updated you on this case in September 2018. Since then, there have been a few activities worth mentioning:

*Additional onsite cleanup:* Early in April 2019, the Regional Water Board approved, after public comments, Addendum #4 to the Remedial Action Plan to conduct additional treatment of elevated soil vapor onsite. This work includes additional soil excavation to abate soil vapor contamination after the upcoming demolition of the onsite buildings.

*Near site soil sampling:* In February 2019, the Regional Water Board approved a report which investigated whether surface dumping from the Site extended onto the Caltrans property (Highway 101S onramp). Results of shallow soil sampling adjacent to the fence line and along the storm drain pathway were all below the Site's Cleanup Goals. Results of the soil vapor sample adjacent to the fence was also lower than the Site's Cleanup Goals. The data show no indication that significant surface releases from the Site extend onto Caltrans property.

*Near site soil vapor sampling:* Late in 2018, the Casa Marinwood Homeowner's Association of the residential neighborhood granted access to install additional soil vapor probes on their property, located upgradient and west of the Site. The additional vapor probes were subsequently installed. Due to saturated soil conditions, sampling was delayed until early April 2019. Preliminary results indicate that PCE in one soil vapor sample slightly exceeds the Environmental Screening Level of 15 µg/m<sup>3</sup> in a residential area. The remaining sampling

locations were below this level. We are awaiting the completion report, and we understand the discharger plans to resample the vapor probes soon.

*Offsite groundwater treatment:* In February 2019, the Regional Water Board approved, after a comment period, the workplan to investigate treatment effectiveness at the offsite plume edge or fringe in agricultural areas with concentrations of PCE between 5 µg/L and 30 µg/L. New monitoring wells were installed in the fringe area in May 2019 and will be sampled in June.

In the fall 2018, offsite exploratory lithological borings were completed along each proposed treatment injection line shown in green in the figure below, forming permeable reactive barriers (PRBs). Groundwater remediation is proposed offsite by injecting finely ground zero valent iron and dechlorinating bacterial cultures to degrade PCE and its breakdown products. The discharger is evaluating the data to determine specific treatment depths along each PRB segment. Offsite groundwater treatment injections are planned for this summer.

We are continuing to keep interested parties – including offsite landowners, Marinwood community members, and the County supervisor's office – informed about site activities and reports. Over the last six months we have responded to several emails and calls from neighbors, copied interested parties on all formal correspondence, circulated two fact sheets inviting comments on proposed work, and coordinated with County Supervisor Connolly's office.

We will provide you with future updates on this case as circumstances warrant.

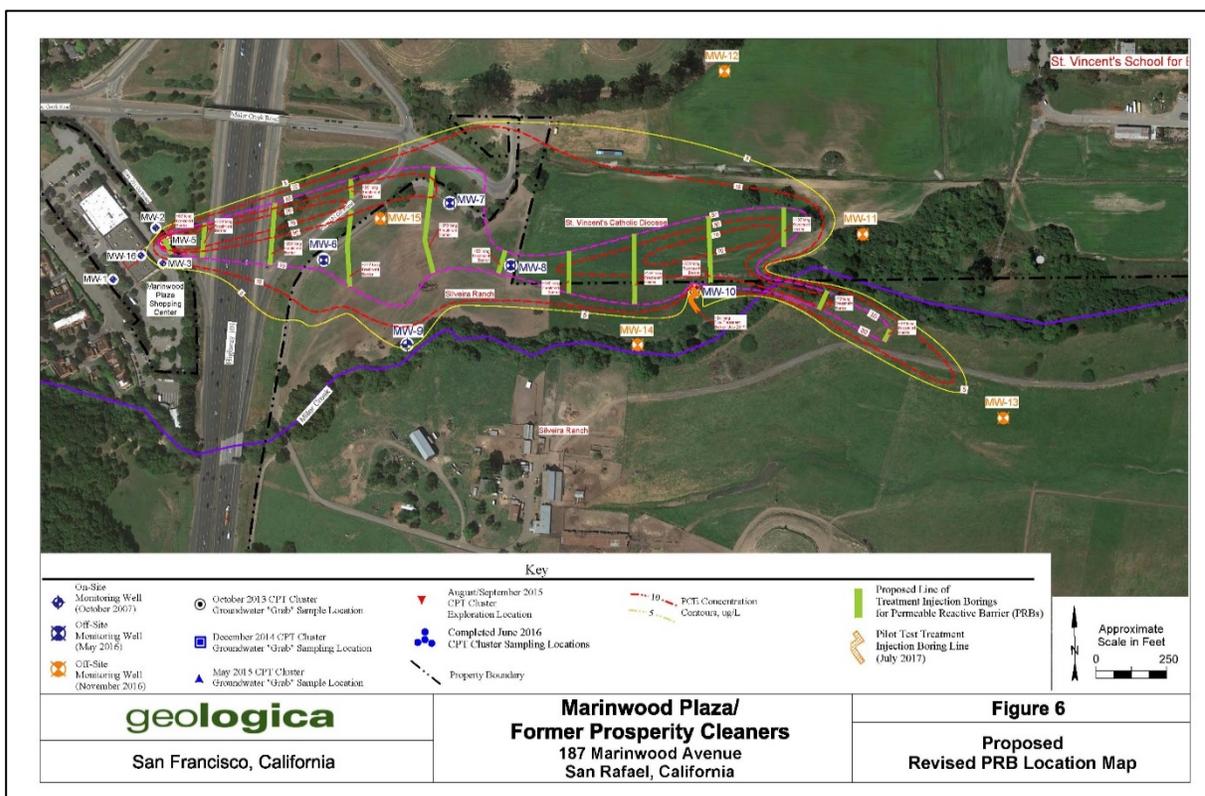


Figure 1. Offsite groundwater treatment system design

## Website Accessibility

AB 434 requires state agency Directors and their Chief Information Officers certify their agency website complies with California Government Code Section 7405 and 11135, and the Web Content Accessibility Guidelines. An accessible website means that people with disabilities can perceive, understand, navigate, and interact with the web. This is usually accomplished by a combination of assistive technology (AT) used by the person with a disability, and programing, coding, and designing by content creators and website designers to ensure the AT works with the website. All content we generate and post to the web must also be compliant. These certifications must be signed by July 1, 2019.

## Improved Outreach via Social Media

I appreciate the need for us to effectively and efficiently share information with stakeholders, media and the general population. I have been engaging with management and staff, reviewing the practices of other Water Boards and soliciting input from individual Board members on how to improve our information sharing efforts.

We will move forward with a project to make our website easier to navigate and reflective of current accomplishments. As part of this project we will establish a presence on Social Media.

Our first step will be to evaluate and implement mechanisms to improve and update website content. We will baseline our web-traffic for evaluation of the effectiveness of the

enhanced and our outreach via Social Media. We then will train managers on the use of Social Media and select a staff person to serve as part-time Social Media/Web coordinator as a collateral duty. The Social Media/Web coordinator will establish a presence on Facebook, Instagram and Twitter. For Management and Staff, we will have a Policy to ensure consistent use of Social Media. Our draft Policy is provided as follows:

*The San Francisco Water Board's desired outcome for social media use is to: make information about our work and water quality in our region available at the public's fingertips; be more transparent with our actions and information; create an efficient method to communicate with the public, and increase public awareness about water quality issues and projects in our region.*

*We will use Facebook, Instagram and Twitter as our Social Media outlets. As with all social media, "sharing" our page/posts and "liking" or "following" our social media sites helps spread the water quality word to a larger audience. While we greatly appreciate staff sharing our information on social media, this is not a requirement.*

*This Policy serves as our guide for posting to our social media sites and will help you determine what you should and shouldn't post and how much information you need to provide.*

#### WHAT TO POST

##### *DO POST:*

*Agenda Notices, EO Reports, Board Announcements and Decisions*

*Workshop Notices and Public Notices*

*Water Quality Information or Activities (e.g. Watershed Report Cards and Beach Cleanups)*

*Interesting Project Information (e.g. "The sediment cleanup will start dredging this week")*

*Water quality related posts from other social media sites (e.g. amplification of Board sponsored/funded efforts such as the recently released "Adaptation Atlas" from SFEI)*

##### *DON'T POST:*

*Information that endorses a business or person*

*Politically charged information*

*Offensive Information*

*Third party information that has not been fact checked*

We will evaluate the effectiveness of this effort after 12 months and adjust accordingly.

### **Point Buckler Trial (Marnie Ajello)**

The trial in *United States v. John D. Sweeney and Point Buckler Club, LLC* began on May 20, 2019 before Judge Kimberly Mueller and finished on June 5. The government's case is relatively straightforward: it argues that Mr. Sweeney and Point Buckler Club, LLC (Defendants) filled waters of the United States without obtaining a permit under the Clean Water Act. They argue that this conduct caused ongoing, significant harm by blocking tidal action to the interior of the island, making the island soil highly saline and acidic, eliminating

the island's habitat value, and killing the marsh vegetation. EPA requests injunctive relief requiring Sweeney to restore the island channels and marsh, per a restoration plan developed by Stuart Siegel (with input from Agnes Farres and Xavier Fernandez), and enjoining Mr. Sweeney from "conducting any activity that could result in pollutant discharges unless and until he first consults with federal regulators and shows that the proposed activity will comply with the Clean Water Act." In closing, the government indicated that implementing the restoration proposed by Dr. Siegel could be compatible with use of the island for kiteboarding, but would not be compatible with use of the island as a duck club. EPA requested that claims for compensatory mitigation and civil penalties be put in abeyance pending completion of the restoration at the island.

The government called Dr. Siegel, Peter Baye, Bruce Herbold, Dan Martel, and James Kulpa. These witnesses provided their expert opinions about the extent of harm done at the island, their observations on site visits, their measurements of island elevations and conclusions about the high tide line, and the requirements of the proposed restoration plan.

Defendants called Terry Huffman, David Mayer, and John Sweeney. Defendants did not appear to dispute that Sweeney's actions had filled some waters of the United States, and in contrast to their state claims, conceded that fill material was a pollutant under the Clean Water Act. Mr. Sweeney acknowledged that water had overtopped the levees in 2015, 2017, and 2018, but claimed this was due to "flooding," and not to tides. Defendants attempted to challenge the credibility of the government's experts, particularly Dr. Siegel, to challenge the calculation of the high tide line, and to argue that either (a) the Clean Water Act and its regulations would cause a taking or (b) that implementation of the restoration plan would result in a taking. Their requested outcome was dismissal of EPA's case and permission to develop the Island as a duck club.

The government cross-examined both Dr. Huffman and Mr. Sweeney. The government elicited from Mr. Huffman that restoration per Dr. Siegel's plan would be quicker, more efficient, and better for the environment than slower options proposed by Defendants. The government also questioned Mr. Sweeney about his prior experience with permitting at his other clubs, and elicited admissions that he was familiar with permit applications for levee work, did not receive a permit for his work at Point Buckler, and continued to do work at the island after both being told to stop by state regulatory agencies, and after submitting an RGP 3 application (never acted on) to the Corps.

The government called Daniel Leistra-Jones as a rebuttal witness and financial expert to discuss Mr. Sweeney's ability to pay for restoration. Mr. Leistra-Jones explained that he based his conclusion that Mr. Sweeney and the club have the ability to pay for restoration at the island on, among other things, Mr. Sweeney's ownership of a multi-million dollar home, Mr. Sweeney's ability to obtain \$10,000/day by renting out his landing craft, his and his wife's ability to seek employment, and the Club's ownership of land and equipment. Judge Mueller requested both supplemental briefing and proposed findings of fact, to be submitted according to a schedule that the government and Defendants have to work out. She noted, however, that she "was not going to just sign one side or the other, as apparently some state court judges do."

## Staff Presentations

There On April 25, Melissa Gunter and Maggie Monahan of the Watershed Management Division met with EPA Region 9 and Hawaii Department of Health in San Francisco to discuss water reuse in California. State Water Board managers from the Division of Water Quality, Sustainable Water Plans and Policies Section, also participated remotely. The meeting began with an open discussion on California's recycled water regulatory framework and future direction. Melissa then presented an overview of recycled water quantities, project types, and permitting approaches within the San Francisco Bay Region, highlighting the challenges of a changing landscape, both in terms of regulation and treatment technology, and how to overcome those challenges. Examples of municipal recycled water programs, industrial reuse, and onsite water reuse projects were presented, and the group discussed the potential applicability to implement in Hawaii.

On May 2, Maggie Monahan of the Watershed Management Division presented at an Alameda County Clean Water Program training workshop for the New Development Subcommittee. The workshop was on green stormwater infrastructure and construction site stormwater control. Maggie's presentation included a construction stormwater inspection case example that led to improved stormwater best management practices at the site. She also talked about common challenges observed in construction stormwater inspections, ways to achieve effective corrective actions, and opportunities for inter-agency collaboration.

## In-house Trainings

There were no in-house trainings this month.

## Enforcement Actions (Jessica Watkins and Brian Thompson)

The following table shows proposed enforcement actions since last month's report. In addition, enforcement actions are available on our website at:

[http://www.waterboards.ca.gov/sanfranciscobay/public\\_notices/pending\\_enforcement.shtml](http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml)

<b>Proposed Settlements</b>			
The following are noticed for a 30-day public comment period. If no significant comment is received by the deadline, the Executive Officer will sign an order implementing the settlement.			
<b>Discharger</b>	<b>Violation(s)</b>	<b>Proposed Penalty<sup>1</sup></b>	<b>Comment Deadline</b>
City of Pacifica	Discharge limit violations.	\$3,000	May 28, 2019
Phillips 66 Company San Francisco Refinery	Discharge limit violations.	\$80,000	May 31, 2019
Planetary Ventures, LLC	Discharge limit violations.	\$6,000	June 7, 2019

<sup>1</sup> Includes \$43,000 to supplement Regional Monitoring Program studies. The Regional Monitoring Program is managed by the San Francisco Estuary Institute to collect water quality information in support of management decisions to restore and protect beneficial uses of the region's waters.

<b>Settled Actions</b>			
On behalf of the Board, the Executive Officer approved the following:			
<b>Discharger</b>	<b>Violation(s)</b>	<b>Imposed Penalty</b>	<b>Supplemental Environmental Project</b>
3000 Broadway SPE, LLC	Discharge limit violations.	\$3,000	none
Mt. View Sanitary District	Discharge limit violations.	\$3,000	\$3,000
Stanford University	Discharge limit violations.	\$6,000	none
MedPlast Fremont	Failure to submit an annual industrial stormwater discharge report for 2017/2018.	\$1,000	\$500
Refund Recycle Center LLC	Failure to submit an annual industrial stormwater discharge report for 2017/2018.	\$1,000	\$500
Kerry Inc	Failure to submit an annual industrial stormwater discharge report for 2017/2018.	\$1,000	\$500
Hanson Aggregates, Mission Valley Rock Sunol Facility	Discharge limit violations.	\$3,000	\$3,000
Hanson Aggregates, San Francisco Pier 92 Sand Yard	Discharge limit violations.	\$12,000	\$12,000
Hanson Aggregates, San Francisco Pier 94 Sand Yard	Discharge limit violations.	\$21,000	\$18,000
Hanson Aggregates, Oakland Tidewater Sand Yard	Discharge limit violations.	\$3,000	\$3,000
M10 Development, LLC	Discharge limit violation.	\$3,000	none
East Bay Municipal Utility District	Failure to comply with monitoring requirements and a total chlorine residual discharge violation.	\$120,100	\$60,050
Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc.	Discharge limit violations.	\$6,000	\$6,000

### 401 Water Quality Certification Applications Received (Abigail Smith)

The table below lists applications received for Clean Water Act section 401 water quality certification from April 10 through May 8, 2019. A check mark in the right-hand column indicates a project that may be in BCDC jurisdiction.

Project Name	City/Location	County	May have BCDC Jurisdiction
Point Emery Shoreline Protection	Emeryville	Alameda	✓
Lake Merritt Trash Boom Replacement	Oakland		✓
Union Pacific Railroad Bridge Replacement	Oakland		✓
RYC Marginal Wharf Piling Repair	Point Richmond	Contra Costa	✓
High Canal West Bank Stabilization	Corte Madera	Marin	✓
Muir Woods Bridge Replacements	Mill Valley		
6 Bridge Avenue Upper Bank Retaining Wall	San Anselmo		
Trinitas Mixed Use Development	Napa	Napa	✓
Port of San Francisco Pier 48 1/2 Interim Ferry Landing	San Francisco	San Francisco	✓
County of San Mateo Routine Maintenance Activities	Woodside	San Mateo	
Vina Drive Culvert Repair	Los Gatos	Santa Clara	
Vallejo Marina Dredging for 2019	Vallejo	Solano	✓