

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

MEETING DATE: June 8, 2022

ITEM: 3

SUBJECT: **Minutes for the May 11, 2022 Board Meeting**

**May 11, 2022 Board Meeting
Draft Minutes for Board Consideration**

Note: Copies of orders, resolutions, and minutes are posted on the Regional Water Board's website (www.waterboards.ca.gov/sanfranciscobay). Information about obtaining copies of audio recordings of Board meetings may be obtained by calling the Board's file review coordinator at (510) 622-2430. Written transcripts of Board meetings may be obtained by calling California Reporting, LLC, at (510) 313-0610.

Note: **Bold text** in paragraphs for each item represent topics Board members focused on and were discussed more extensively than others.

Item 1 – Roll Call and Introductions

Meeting called to order at 9:05 a.m. at Elihu H. Harris Building, First Floor Auditorium.

Board Members Present	Board Members Absent	Status
Chair James McGrath	William Kissinger	QUORUM
Vice-Chair Jayne Battey	Donald Young	
Alexis Hacker		
Dr. Andrew Gunther		

New Staff Introduction

Section Leader Laurent Meillier introduced new staff member Lauren Kahapea.

Item 2 – Public Forum

No members of the public spoke during the Public Forum.

Item 3 – Minutes of the of April 13, 2022, Board Meeting

Chair McGrath asked for a motion to approve the minutes.

Motion: Board Member Hacker

Second: Board Member Gunther

Ayes: all

Nos: none

ITEM APPROVED

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

Chair McGrath asked for reports and no Board Members made any.

Item 5 – Consideration of Uncontested Items

5A. Schnitzer Steel Industries, Inc., Schnitzer Steel Products Company, Oakland, Alameda County – Reissuance of NPDES Permit

5B. Sonoma Resource Conservation District, Petaluma River and Sonoma Creek Levee Maintenance Program, Sonoma County – Issuance of Waste Discharge Requirements and Water Quality Certification

Interim Executive Officer (EO) Mumley introduced the Items.

Vice-Chair Battey commented that she appreciates the important and good work the Resource Conservation Districts do for water quality.

Chair McGrath asked for a motion to approve the Uncontested Items.

Motion: Board Member Hacker

Second: Board Member Gunther

Ayes: all

Nos: none

ITEMS APPROVED

Item 6 – NPDES

Municipal Regional Stormwater NPDES Permit – Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and Solano County – Reissuance of NPDES Permit [Keith Lichten, 510-622-2380, keith.lichten@waterboards.ca.gov]

Chair McGrath introduced the item and asked people to stick to time commitments for public comments. He said the Water Board has heard about stormwater before and understands the issues.

Division Chief (DC) Keith Lichten and EO Mumley made the presentation.

Bay Area Municipal Stormwater Collaborative (San Mateo County Program - Reid Bogert and Santa Clara County Program - Chris Sommers), representing all permittees, presented comments and specific revisions related to the following:

- regulation of single-family homes, road repairs and utility construction
- equity of green infrastructure
- water quality monitoring per increased costs and infeasible to implement
- trash load reduction- credits and offsets, direct discharge controls and lack of time to revise plans
- PCB controls and monitoring to demonstrate compliance

Elected officials, including Concord Mayor Dominic Aliano, Orinda City Councilperson Amy Worth and Danville Mayor Newell Arnerich, commented on the costs and

challenges of green infrastructure associated with road maintenance and construction, and trash control at private properties.

Eric Buescher of San Francisco Baykeeper commented on inadequate monitoring, lack of accountability, and lack of bacterial controls. Josh Quigley of Save the Bay commented that trash control monitoring and compliance is inadequate.

Representatives for several permittees commented as follows:

- Kevin Marstall of Concord - road maintenance
- Jim Scanlin of Newark and the Alameda County Clean Water Program - PCB requirements and load targets
- Matthew Nguyen of San Jose - PCB requirements
- Sean Rose of Woodside - single-family LID requirement burdensome and not applicable to rural, forested communities
- Howard Young of Portola Valley - same comments as Woodside
- Bart Broome of Valley Water - trash controls interfere with flood protection projects, utility trench requirements, mapping unhoused encampments is problematic since they are transitory (and funds not available for addressing unhoused)
- Melody Tovar of Sunnyvale - trash control partnerships with CalTrans are heavy lift, MRP timing not helpful
- John Allen of unincorporated San Mateo County - road-related requirements and specific revisions
- Elisa Wilfong of Hayward - trash reduction - allow credits for true source control to ban plastic items

Chair McGrath reviewed the main issues Board members heard from commentors so far and indicated his expectation that staff respond. He identified these issues: green infrastructure requirements, requests for delays, focus on PCB sites, existing green infrastructure or road plans being cumulative, monitoring and road repair costs, trash controls on private property, accountability for compliance.

Representatives for several permittees continued commenting as follows.

- Amanda Booth of San Pablo - trash, road and PCB requirements affect disadvantaged communities significantly; requested keeping credits and delaying submittal of direct discharge plans to allow time for public process; explained that communities with older roads were built with lower quality so need to be completely rebuilt so cost more even without MRP requirements; where groundwater high in low lying areas, can't meet structural requirements for green infrastructure required; encouraged staff to come meet with disadvantaged communities and learn the struggles and ways to address those struggles.
- Daniel Matlock of Fremont - extend due dates for direct discharge and trash reduction plans, costs of requirements
- Lisa Austin of Geosyntec representing Contra Costa County Clean Water Program Permittees - PCB control will take more time and areas needing treatment are not properly established

- Paul Salop of Applied Marine Sciences representing Alameda County Clean Water Program Permittees - monitoring requirements too extensive
- Coleen Winchester of San Jose - environmental leadership can be supported by offsets and City is leading in green infrastructure, funded with public funding
- Melissa Thorne of Downey Brand, legal counsel to Sunnyvale and Mountain View- legal definition and clarification related to bacteria being “effectively prohibited”
- Bob Falk, legal counsel to Santa Clara Countywide Program, - asked for a minute to speak on public comments not on this item. He thanked EO Mumley for always connecting what is in permits and what is on the ground, and for doing the most of anyone in the Bay Area for water quality, particularly related to stormwater. He commented on inadequate public participation opportunity and trash control changes.
- Gary Grimm, legal counsel to Alameda Countywide Program - requested continuation of the item due to limited public participation opportunities and complex proposed changes.

Other commenters offered the following.

- Vaiko Allen of Contech Inc. - proposed amendment to permit to allow innovative bioretention and not just conventional bioretention
- Greg Williams of Stormwater Equipment Manufacturers Assoc. - supports the proposal to add innovative bioretention
- Mary Lynn Coffee of Coalition for Clean Stormwater - supports the amendment to allow innovative bioretention
- Patricia Lamborn, resident of Alameda who does trash cleanup at Martin Luther King Shoreline Park - wants full trash capture and dedicated cleanup, as credits not working
- Diane Livia, resident of Oakland who does trash cleanup at Martin Luther King Shoreline Park - supports comments of Patricia Lamborn to keep trash out of the Bay
- Anne Christie of SPUR - change development requirements to reduce costs and better support housing and equity
- Cornelius Burke of California Building Industry Association - include alternative stormwater treatment for sites with constraints when planning and building sites, incorporate economic considerations
- Steve Stenzler of Housing Action Coalition and YIMBY - delay adoption, make development requirements more feasible to support housing
- David Swartz of PG&E- utility trench requirements problematic
- Matt Reagan of Bay Area Council - concerned with requirements for new housing developments
- Chris Koenig, real estate developer and investor - allow alternative site treatment methods for sites with constraints
- Tyler Hess, real estate developer- supports adding option for innovative bioretention

- Ross Hillshine, Contra Costa Planning Commissioner - supports innovative options for new developments
- Kelly Abreu - define what is a stream and protect them

Luisa Valiela of USEPA commented in support of the permit and found it consistent with the Clean Water Act, appreciated the collaborative process and acknowledged it contains some brave requirements, including flexible requirements, and time to come into compliance. She also stated they are supportive of green infrastructure, acknowledged the burden on and indicated by underserved communities, and suggested more collaborations with the communities through a workgroup on this requirement. She said USEPA supports fire-fighting best management practices and acknowledges that requirements on discharges associated with unhoused populations are a first step and may cross into a realm beyond agency expertise. She also mentioned that new funding is available for infrastructure improvements to help fund compliance costs.

EO Mumley presented a letter from Senator Scott Weiner and Assembly Member Buffy Wicks about risk of permit requirements preventing housing development and asks for delay in permit decision. Chair McGrath agreed to accept this letter into the record. EO Mumley stated that staff has responded to this issue as raised by other commentors.

EO Mumley, DC Lichten and Attorney Yuri Won itemized staff responses to issues identified including the following:

- Monitoring requirements- commenter's costs and staffing overstated, e.g., wet weather monitoring has been light in recent permits and staff minimized additional costs. Staff finds the increase in requirements is commensurate with the value. Some commentors expressed concerns that there is not enough monitoring; there is no monitoring for some constituents. Trash monitoring proposed is limited to test new methods. Monitoring can be adjusted by issuing a new monitoring order. Monitoring helps determine effectiveness of treatment best management practices and in response to high levels of PCBs still in the Bay. Staff recognizes compliance for working with private properties to control PCB discharges.
- Trash controls- staff disagrees with commentor's representation of the State Trash Amendments; timeframes in the permit are allowable and appropriate (Attorney Won explained the legal basis). Staff offered more time to get an approved direct discharge plan given challenge to get approval from governing bodies of permittees and acknowledge challenges working with Caltrans.
- Green infrastructure requirements- time to develop plans provided and retain per capita approach to phase in.
- Development requirements- added more time to comply and a workgroup to develop alternative treatment approaches for rural, forested areas, or areas with constraints, but did not carve out these communities from requirements as staff finds complying to be reasonable and manageable. Staff encourages innovative controls, such as innovative bioretention, but could not find a better balance between preventing hydromodification and controlling pollutants picked up as

stormwater runs off sites. The permit limits hydromodification controls in dense urban areas, which is where low-income housing is most commonly developed.

- Road-related requirements- Staff finds the requirements for gravel roads reasonable and flexible. The permit provides credit for retrofitting when a road is repaved and other flexibility to meet retrofit requirements. For utility trenching and road reconstruction projects, the permit does not require redesign or implementation of projects already in the pipeline. Staff finds the concerns on road and trench requirements excessive since the permit builds in time and a workgroup to address issues that arise and flexibility in how requirements implemented. Related to road reconstruction, we will address possible unintended consequences on disadvantaged communities by providing time to comply and a workgroup to consider alternative requirements for these communities and neighborhoods.
- Discharge prohibition related to bacteria- compliance with the illegal and illicit discharge requirements is expected to result in prohibiting discharges.
- Legal issues- response to legal comments explained by Attorney Won
- Sediment control requirements- staff agrees with San Mateo County's recommended change and Senior Staff Derek Beauduy stated the specific section and edits.
- Private property issues- permit provides authority and opportunity for permittees to require property owners to control PCBs and trash, and credits compliance for working with property owners even if controls not fully implemented on site.

Board members asked or commented on the following:

- reviewing and reopening the permit
- PCB controls related to focusing on most contaminated sites and acreage targets
- trash control timeframes and relation of credits and offsets in MRP 2.0 compared to this permit, which eliminates them to emphasize controls that will meet trash control targets on schedule
- finding opportunities to influence bans on plastic, non-compostable products
- green infrastructure incentives, ways to integrate with other planning and make affordable, whether to phase in per capita, how to resolve interest in more innovative site controls
- limiting hydromodification requirements and grandfathering approved projects for low-income housing
- monitoring flexibility and staffing to implement requirements
- considerations to extend timeframes to meet some requirements
- unintended consequences of road-related requirements; concern that green infrastructure requirements will result in limiting road repair in disadvantaged communities
- unintended consequences on housing and communities with disparate capacities to afford compliance
- our requirements adaptive for climate change impacts
- trash controls and clarification of encouraging versus requiring credits and offsets
- challenges to getting private properties to address PCBs and trash

Board Member Hacker directed staff to bring status report on workgroup progress back to Board and consider reopening. EO Mumley said staff can plan to present a status report and discuss need for changes at the time. Board Member Battey asked for confirmation that staff has considered all avenues for disadvantaged communities and DC Lichten responded yes and open to future considerations, e.g., balancing implementation of green infrastructure and repairing roads. Board Member Battey also asked for clarity that housing needs balanced with requirements. EO Mumley and DC Lichten gave examples of cost and project flexibility and pollutant trading opportunities to provide for this.

Chair McGrath made a motion to adopt the permit as is with changes read into the record, including language regarding low impact development, and with direction for staff to come back to Board with results from workgroups.

Motion: Chair McGrath

Second: Board Member Gunther

Ayes: all

Nos: none

ITEM APPROVED

Item 8 – Closed Session – Personnel

Item 9 – Closed Session – Litigation

Item 10 – Closed Session – Deliberation

Item 11 – Adjournment at 5:00 p.m.