

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
December 18, 2002

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Item 1 - Roll Call and Introductions

The meeting was called to order on December 18, 2002 at approximately 9:04 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

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

Board members absent: Doreen Chiu; Shalom Eliahu; and William Schumacher [Note: Mr. Schumacher arrived at approximately 9:10 a.m.]

Gary Carlton, member of the State Water Resources Control Board, gave an overview of several issues before the State Board: the state budget; waivers for waste discharge requirements; and water rights in Southern California involving the Colorado River and the Imperial Irrigation District.

Item 2 - Public Forum

Leo O'Brien, WaterKeepers of Northern California, discussed the public comment period applicable to NPDES permits.

Yuri Won noted Board procedures comply with Federal requirements.

Item 3 - Minutes of the November 20, 2002 Board Meeting

The Board unanimously approved the minutes.

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

There was no discussion.

Item 5- Uncontested Calendar

Ms. Barsamian recommended adoption of the uncontested calendar with the following exception: she recommended Item 5A be dropped from the calendar.

Motion: The Board unanimously voted to adopt the uncontested calendar as recommended by the Executive Officer.

[Mr. Schumacher arrived at approximately 9:10 a.m.]

Item 6 – Contra Costa Clean Water Program, Contra Costa County – Amendment of Order 99-058, NPDES Municipal Stormwater Permit No. CAS0029912

Ms. Barsamian said the tentative orders for the next three items concern municipal stormwater permits. She said each tentative order includes an updated provision covering new development and redevelopment projects. She said the tentative orders for the Contra Costa Clean Water Program and the San Mateo Countywide Stormwater Pollution Prevention Program amend existing stormwater permits. She said the tentative order for the Alameda Countywide Clean Water Program reissues an existing stormwater permit.

Ms. Barsamian said staff would make presentations on the updated new development and redevelopment provision and the presentations would be applicable to all three tentative orders. She said public testimony on the updated provision to the tentative orders then would be received. After that, she said staff would make a presentation on other aspects of the Alameda permit reissuance.

Bruce Wolfe said stormwater is (1) a major source of urban pollution and (2) a cause of stream erosion. He said controls are necessary to protect water quality and to reduce erosion.

Mr. Wolfe said NPDES requirements are different for point source and non-point source dischargers. He said point source dischargers must comply with numeric effluent limits. He said non-point dischargers must meet a narrative standard that includes implementation of best management practices carried out to the maximum extent practicable.

Mr. Wolfe said stormwater permits include six components. He said one component regulates stormwater from new development and redevelopment projects. He said the tentative orders on today's calendar include an updated provision regulating stormwater from new development and redevelopment projects.

Mr. Wolfe said the updated provision requires use of permanent stormwater treatment controls. He said treatment controls would be designed based on hydraulic sizing criteria. Also, he said the updated provision requires hydrograph modification management plans be prepared. He said the plans would deal with peak runoff flow and runoff volume.

Mr. Wolfe said the date to implement the updated provision depends upon the size of a project. He explained Group 1 includes new development and redevelopment projects that create one acre or more of impervious surface. For Group 1 projects, he said implementation of treatment controls would be scheduled to begin August 15, 2004. He said Group 2 includes projects that create 5,000 square feet or more of impervious surface. For Group 2 projects, he said implementation of treatment controls would be scheduled to begin November 15, 2005.

Mr. Schumacher asked if new development and redevelopment projects would be required to build treatment facilities similar to wastewater treatment facilities.

Mr. Wolfe replied negatively. He said the updated provision requires on-site treatment controls unless a project meets conditions set out in a local waiver.

Mr. Schumacher asked about the cost of on-site treatment controls. Mr. Wolfe replied control measures are estimated to cost about 1% to 2% of total project cost.

Mr. Schumacher asked whether the Regional Board would be involved in the design of treatment controls. Mr. Wolfe replied staff would not be involved in design.

Ms. Barsamian said the tentative orders do not include numeric discharge limits. She said the updated provision requires implementation of best management practices to the maximum extent practicable.

Mrs. De Luca asked about numeric sizing criteria. Mr. Wolfe said the sizing criteria for a volume design treatment control would be based upon approximately the 85th percentile of a 24-hour storm.

Mrs. De Luca noted “numeric” refers to sizing of treatment controls and not to a pollutant limit for stormwater runoff.

Ron Gervason said staff had made changes to the tentative orders in response to comments received. He said the changes included: (1) requirements for vector control plans; (2) extension of deadlines for program implementation; (3) allowances for dischargers to prioritize watersheds for which the hydromodification management plans apply; and (4) exemptions for road maintenance projects that remove less than 50% of the vertical profile of roads.

Mr. Gervason said comments on the tentative orders raised other issues in addition to those listed above. He said the tentative orders were not changed in response to the following comments: (1) costs to municipalities to implement stormwater programs and costs to developers to implement treatment controls; (2) whether stormwater permits should be amended before the end of the 5 year term; (3) the size of developments for which treatment controls should be required; (4) whether treatment controls should be required in redevelopment and ministerial projects; (5) whether reliance on the maximum extent practicable standard is enforceable and measurable; (6) whether the time delay before implementation is required is too long.

Mr. Schumacher asked about treatment controls for road maintenance and reconstruction projects. Mr. Gervason replied.

John Muller noted stormwater programs often involve techniques to slow water velocity.

Mr. Gervason concurred. He said cleansing action that occurs through infiltration also is important.

Ms. Barsamian said the tentative orders allow dischargers to develop waiver programs. She said waivers might be requested if on-site treatment controls are not cost effective.

Mr. Wolfe said staff from permittees of the Alameda Program recommended road maintenance projects be exempted from the updated provision if less than 50% of the vertical profile is removed.

Mrs. De Luca asked whether the tentative orders are measurable and enforceable.

Mr. Gervason said he believed the orders are enforceable. He said dischargers are required to give the Regional Board annual reports that set out program accomplishments.

Mrs. De Luca asked about the Board's authority to regulate municipal stormwater programs.

Ms. Dickey and Ms. Won reviewed applicable sections of the Clean Water Act. They said municipal stormwater permits are being regulated through an iterative approach. They said the permits require use of best management practices to the maximum extent practicable.

Gwen Regalia, Mayor, City of Walnut Creek and President, Association of Bay Area Governments, expressed concern that the updated provision would affect municipalities' ability to provide affordable housing. She suggested a cost benefit analysis be done.

Charlie Abrams, Council Member, City of Walnut Creek, opposed amending the Contra Costa Clean Water Program permit before the term of the permit is completed. He suggested Board staff calculate the cost to municipalities to implement the updated provision.

Kristen Addicks questioned whether specific costs could be calculated. She noted the updated provision requires use of best management practices to the maximum extent practicable.

Ms. Barsamian said best management practices to the maximum extent practicable include consideration of financial feasibility. She said waiver programs might take into account situations where costs to develop treatment controls are prohibitive. She said staff have prepared cost analyses of treatment controls used in other jurisdictions.

Mrs. Addicks asked if developers are required to use specific treatment controls when implementing best management practices. Ms. Barsamian replied developers are not required to implement specific controls.

Mary Warren asked speakers to discuss how their jurisdictions would cover costs to implement the updated new development and redevelopment provision.

Mike Parness, City Manager, City of Walnut Creek, said a consulting firm had prepared a report showing the cost to the City to implement the updated new development and redevelopment provision. He quoted specific cost estimates from the report and asked that the report be placed in the record.

Ms. Dickey, Mr. Schumacher, Mr. Muller and Ms. Barsamian discussed whether a written report should be accepted into the record during a public hearing on an NPDES permit.

Tom Haas, City Attorney, City of Walnut Creek, was concerned about the lack of information on the cost to municipalities to implement the updated provision. He opposed amending the stormwater permit before the term of the existing permit is completed.

John Gioia, Chair, Contra Costa County Board of Supervisors, discussed how the updated new development and redevelopment provision would impact in-fill development. He suggested Board staff give guidance to dischargers on how to develop local waiver programs.

Mitch Avalon, Deputy Public Works Director, Contra Costa County, was concerned about the cost to implement the updated provision.

Rob Schroder, Mayor, City of Martinez, opposed amending the stormwater permit before the term of the existing permit ends. He said the City needs time to be prepared to implement the updated provision.

Dave Hudson, Council Member, City of San Ramon; Mike Shimansky, Mayor, Town of Danville; Ed Balico, Mayor, City of Hercules; and Joe Calabrigo, Town Manager, Town of Danville, requested the stormwater permit not be amended prior to reissuance in the year 2004.

Jeff Roubal, Stormwater Program Coordinator, City of Concord; and Linda Pappas, Acting City Manager, City of Antioch, were concerned about the cost to implement the updated provision.

Janet Abelson, Council Member, City of El Cerrito, said some treatment controls might produce habitats that are protected by agencies such as U.S. Fish and Wildlife Service and California Department of Fish and Game. She requested postponement of adoption of the updated provision until protected habitat issues are resolved.

Leo O'Brien, WaterKeepers of Northern California, urged the Board to adopt the tentative orders. He expressed strong support for stormwater controls for new development and redevelopment projects.

Phil Harrington, Public Works Director, City of Antioch, was concerned about costs to municipalities to implement the updated provision. He also was concerned about municipalities' ability to maintain treatment controls.

Tinker Vanek, Mayor, City of Oakley, opposed the time schedule to implement the updated provision.

Erling Horn, Vice Mayor, City of Lafayette, requested the public hearing on the tentative order be continued until January in order to allow local representatives and Board staff to discuss stormwater issues further.

Laura Hoffmeister, Council Member, City of Concord, requested more time to review Board staffs' response to comments on the tentative order. She said it would be costly to have treatment controls in redevelopment and in-fill areas. She requested local representatives and Board staff form a working team in order to reach solutions on the updated provision.

Joe Brandt, Community Development Director, City of Antioch, was concerned about availability of funds to maintain treatment controls.

Adele Ho, City Engineer, City of San Pablo, was concerned about implementation costs. She requested the updated provision not apply to road maintenance projects. She commended staff for including a waiver provision.

Mike Sakamoto, City Manager, City of Hercules, discussed the general plan amendment process. He requested Board staff recognize constraints in the amendment process when imposing requirements in the updated provision.

Michael Flake, Division of Environmental Analysis, Caltrans, requested the Board delay acting on the tentative orders. He suggested staff from local jurisdictions, Caltrans, and the Board form a working group to develop an updated provision that is consistent from jurisdiction to jurisdiction. He requested treatment controls not be required for road maintenance projects.

Shana Lazerow, San Francisco BayKeeper, expressed support for the updated provision. She suggested the tentative orders include a definition from the San Diego stormwater permit concerning environmentally sensitive areas, and also include a list of acceptable best management practices. She opposed compensatory mitigation at off-site locations.

Mike Vogan, Director of Public Works, City of Concord, discussed the general plan process. He suggested the implementation schedule in the updated provision be consistent with procedural aspects of the general plan process.

Jim Forsberg, Planning and Economic Development Director, City of Concord, discussed the current fiscal situation. He requested road maintenance projects and some types of redevelopment projects be excluded from stormwater requirements. He suggested local representatives and Board staff meet before the Board takes action on the tentative order.

Jason Vogan, City Engineer, City of Oakley, thought Board staff had not made sufficient outreach efforts to the discharger community. He suggested local representatives and Board staff form a work group.

Susan Schwartz, Friends of Five Creeks, spoke in support of the updated provision. She discussed the importance of limiting peak stormwater runoff discharge rates.

Jonathan Kaplan, Natural Resources Defense Council, spoke in support of the updated provision.

Donald Freitas, Program Manager, Contra Costa Clean Water Program, opposed adoption of the updated provision. He suggested representatives from local jurisdictions and the Board meet to address stormwater issues in a collaborative process.

John Wolfe, Executive Vice President, Contra Costa Taxpayers Association, opposed amending the permit before the term of the existing permit ends. He said implementation of the updated provision would have a significant financial impact on Contra Costa County.

Karl Malamud-Roam, Environmental Projects Manager, Contra Costa Mosquito and Vector Control District, said he did not speak in opposition or in support of the updated provision. He was concerned that treatment controls be developed in ways to protect the public from vector-transmitted disease.

Pamela Romo, Friends of the Creeks, recommended the Board delay amending the stormwater permit until the end of the permit term. She recommended representatives from local jurisdictions, the environmental community, and the Regional Board form a work group to discuss implementation of the updated provision.

Igor Skaredoff, Friends of Alhambra Creek, recommended stormwater programs take into account runoff on a watershed basis.

Melissa Ayres, Planning Manager, City of Pittsburg, recommended Board staff conduct training sessions with staff from local jurisdictions to explain how to implement the updated provision.

Todd Teachout, NPDES Program Administrator, City of Pleasant Hill, requested the Board defer taking action on the tentative order.

Mr. Muller noted all speakers on Item 6 had been heard. Ms. Barsamian recommended the Board hear testimony on all three tentative orders before voting on an individual order. She noted all three tentative orders involve the updated new development and redevelopment provision.

Mr. Waldeck asked whether testimony on the tentative orders could be received today, and then the Board could vote on the tentative orders at the January meeting.

Mr. Reininga suggested staff from local jurisdictions and the Board meet before the January meeting to discuss outstanding issues.

Ms. Barsamian said staff would try to arrange meetings with local representatives. She said it would be helpful to receive information regarding activities municipalities are able to do, given current fiscal constraints. She said a local waiver program could allow stormwater activities to be carried out on an incremental basis. She suggested public hearings on the three tentative orders be continued to the January Board meeting. She suggested the Board vote on the tentative orders at the February Board meeting.

Mr. Schumacher and Mrs. Warren expressed concern about costs to municipalities to implement the updated provision. Mrs. Warren noted it would be helpful to receive information from municipalities on what stormwater activities might be implemented given current constraints.

Mr. Waldeck noted the Bay is impaired, and suggested staff from local jurisdictions and the Board need to work together to improve its water quality. He pointed out that testimony received today tended to lack suggestions of positive actions municipalities could take to deal with stormwater pollution.

[The Board took a lunch break at approximately 1:00 p.m. Mrs. Addicks and Mrs. Warren left the meeting at approximately 1:00 p.m.]

[The Board resumed the meeting at approximately 1:45 p.m.]

Item 7 – San Mateo Countywide Stormwater Pollution Prevention Program, San Mateo County – Amendment of Order 99-059, NPDES Municipal Stormwater Permit No. CAS00299321

Bob Davidson, Program Coordinator, San Mateo Countywide Stormwater Pollution Prevention Program, opposed amending the stormwater permit before completion of the existing permit in 2004. He suggested stakeholders form a workgroup to discuss stormwater issues.

Lee Thompson, Deputy County Counsel, San Mateo County, questioned the legality of amending the stormwater permit in midterm. He thought a stormwater workgroup should be formed.

Richard Napier, Executive Director, City and County Association of Governments, San Mateo County, was concerned about implementation costs to municipalities. He requested the provision be incorporated into the permit when it is reissued in 2004.

Patrick Sweetland, Director, Water and Wastewater Resources, City of Daly City requested a delay in adoption of the updated provision. He suggested stakeholders meet as a task force to address stormwater issues.

Mr. Schumacher asked whether the requirement for treatment controls would interfere with the development of transit village housing located near BART stations.

Ms. Barsamian said a local waiver program could allow developers to provide equivalent water quality benefits in place of treatment controls.

Leo O'Brien, WaterKeepers of Northern California, opposed placing reliance on stakeholder groups to resolve stormwater issues. He noted environmental groups have difficulty participating because the stakeholder process is time intensive.

Shana Lazerow, San Francisco BayKeeper, spoke in support of the updated provision. She believed requirements in the provision should be more stringent.

Karl Malamud-Roam on behalf of Robert Gay, District Manager, San Mateo County Mosquito Abatement District, requested the tentative order give the vector control district authority to gain access to inspect treatment controls.

Item 8 – Alameda Countywide Clean Water Program, Alameda County – Reissuance of NPDES Permit to Discharge Stormwater Runoff from Municipalities

Ms. Barsamian said the tentative order reissues the complete stormwater permit for the Alameda Countywide Clean Water Program. She said the updated new development and redevelopment provision is one component of the tentative order.

Lorin Jensen, Supervising Civil Engineer, City of Berkeley, suggested staff reconsider stormwater controls applicable to street maintenance projects. He discussed difficulties of incorporating treatment controls into street maintenance work.

James Scanlin, Program Manager, Alameda Countywide Clean Water Program, spoke in support of most of the updated new development and redevelopment provision. He requested the provision not apply to: (1) Group 2 projects; (2) road maintenance projects; (3) redevelopment projects that replace existing impervious surfaces.

Gary Grimm, Attorney, Alameda Countywide Clean Water Program, asked procedural questions.

A discussion among Ms. Dickey, Mr. Schumacher, Ms. Barsamian, and Mr. Muller followed. Ms. Dickey said the oral testimony on the updated new development and redevelopment provision would be part of the administrative record for all three tentative orders. It was determined the administrative record for all three tentative orders would include additional cost estimates submitted by municipalities. It was discussed to keep the record open to a date certain to receive additional cost estimates.

Gary Grimm asked about operation and maintenance of treatment controls. He suggested a stakeholder group meet to discuss vector control issues. He noted the tentative orders under consideration differ from Southern California stormwater permits. He requested portions of the Southern California permits not be used in tentative orders for this region. He discussed fiscal constraints facing local governments.

Joni Pattillo, representative from the Alameda County City Managers Association, and Assistant City Manager, City of Dublin, discussed budget constraints municipalities face. She requested the updated provision not apply to Group 2 projects and to road maintenance projects.

Darren Greenwood, Water Resources Manager, City of Livermore, spoke in support of using landscape based treatment controls in Group 1 projects. He was concerned about requiring treatment controls in Group 2 projects. He requested the updated provision not apply to road maintenance projects and to redevelopment projects that simply replace impervious surfaces.

John Rusmisl, District Manager, Alameda County Mosquito Abatement District, requested the tentative order give the vector control district authority to have access to inspect and treat stormwater controls. He said some ponds might provide habitat for endangered species.

Karl Malamud-Roam, Environmental Projects Manager, Contra Costa Mosquito and Vector Control District, expressed concern about the ability of vector control districts to inspect large numbers of small treatment controls that may be used in Group 2 projects.

He suggested staff initiate a Section 7 consultation with the U.S. Fish & Wildlife Service in order to address issues regarding endangered species habitat.

Ms. Barsamian said waiver programs could be developed if dischargers find Group 2 projects of 5,000 square feet are impracticable

Shana Lazerow, San Francisco BayKeeper, said implementation of total maximum daily loads might place limits on pollutant loads from urban stormwater.

Igor Skaredoff, Friends of Alhambra Creek, recommended that treatment of stormwater be carried out on more of a regional basis, instead of utilizing many small treatment controls.

Board members and staff discussed procedural issues. It was noted the Board had heard testimony on the updated new development and redevelopment provision of the Alameda Program tentative order. It was decided to receive testimony on the rest of the provisions of the Alameda tentative order at the January Board meeting.

It was decided Board staff would respond at the January Board meeting to the oral testimony that had been given today. It was discussed that the Board would vote on the three tentative orders at the February Board meeting. It was discussed that in the next 60 days staff might hold meetings with interested parties to discuss stormwater issues.

Mr. Waldeck discussed the importance of stormwater controls and the need to protect water quality. He noted municipalities face fiscal constraints. He also noted tentative orders might need to be changed in response to public testimony heard today.

Mrs. De Luca asked why staff recommended amending two stormwater permits before the permit terms are completed.

Ms. Barsamian said the Board expressed some concerns at the time it adopted the updated new development and redevelopment provision for San Clara County. She said the concern centered on the fact that a jurisdiction that is regulated by the updated provision might be placed at a competitive disadvantage to jurisdictions that are not so regulated. She said the tentative orders do not require implementation of treatment controls for Group 1 projects until August 15, 2004.

Mr. Reininga noted the updated provision centers around the use of best management practices to the maximum extent practicable. He said certain parts of the tentative orders might need to be changed in response to public testimony heard today.

Mrs. De Luca asked legal counsel to address the issue of whether stormwater permits can be amended before permit terms are completed.

Ms. Won said federal regulations allow permits to be amended even though the term of the permit has not been completed. She said amendments that make permits more stringent are allowed. She said state law allows waste discharge requirements to be amended at any time. She said the Board adopts stormwater permits as part of waste discharge requirements.

Ms. Barsamian said the record for the public hearings would be held open until January 10, 2004 for receipt of additional written cost estimates.

Adjournment

The meeting was adjourned at approximately 3:20 p.m.