

Adopted as Submitted 3/16/05

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
February 16, 2005

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Item 1 - Roll Call and Introductions

The meeting was called to order on February 16, 2005 at 8:58 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

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

Board member absent: None.

Lila Tang introduced Tong Yin who is new staff in the NPDES Division.

Item 2 - Public Forum

There were no public comments.

Item 3 - Minutes of the January 19, 2005 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mrs. De Luca, and it was unanimously voted to adopt the minutes of the January 19, 2005 Board meeting.

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

Mr. Muller said the U.S. EPA's Local Governmental Advisory Committee recently held a three-day meeting in Half Moon Bay.

Mr. Wolfe said staff has prepared a tentative order for a desalination plant to be developed by the Marin Municipal Water District. He said the tentative order would be considered at the March Board meeting.

Mr. Wolfe said the San Jose City Council voted to revise the City's Urban Runoff Policy. He said he appeared before the Council and spoke in favor of the revisions.

Mr. Wolfe said cleanup has been occurring at the 20-acre marsh on the former Zeneca site in Richmond. He said work was scheduled to stop February 1 to allow for the clapper rail nesting season. However, he said the U.S. Fish and Wildlife Service, the

Army Corps of Engineers, and staff agreed to a time extension to allow work to continue until March 1.

In reply to questions, Mr. Wolfe said cleanup of the marsh involves removing toxic material, replacing it with clean fill, and re-vegetating the area. He said material removed from the marsh is being transported to landfills. He said some of the material has been designated hazardous waste.

Mr. Wolfe described cleanup and restoration activities being carried out at the Former Hamilton Army Airfield. He said the Corps of Engineers is working to get the wetland area ready to receive sediment dredged from the Port of Oakland. He said staff expects to bring a tentative order to the Board in June or July to regulate the Corps' restoration activities.

Item 5 – Cargill Incorporated, Pond A18 Low Salinity Salt Pond, Santa Clara County – Issuance of Waste Discharge Requirements

Robert Schlipf gave the staff presentation. He said the tentative order regulates discharge of low salinity water from Pond A18. He said Cargill plans to sell Pond A18 to the City of San Jose. He said the pond is located near ponds Cargill sold to U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Mr. Schlipf said water would be discharged from Pond A18 in order to phase out salt making. He said the tentative order regulates (1) the initial discharge from the pond, followed by (2) continuous circulation of bay water into and out of the pond.

Mr. Schlipf said Pond A18 covers 1.3 square miles. He said intake of bay water would occur near Coyote Creek and water would be discharged to Artesian Slough at an outfall located near the San Jose-Santa Clara Water Pollution Control Plant.

Mr. Schlipf said the tentative order establishes a salinity limit for Pond A18 at 135 parts per thousand. He said calcium sulfate precipitates at a salinity level of 146 parts per thousand.

Mr. Schlipf said the tentative order establishes a dissolved oxygen limit of 5.0 milligrams per liter and a dissolved oxygen trigger of 3.3 milligrams per liter. He said Cargill is required to take corrective action when dissolved oxygen in Pond A18 drops below the trigger.

Mr. Eliahu asked if there was an accumulation of salt at the bottom of Pond A18.

Mr. Schlipf said the pond is about three feet deep, gets a lot of wind-driven mixing, and little salt is at the bottom.

Mr. Schlipf said the salinity level in Pond A18 is about 110 parts per thousand. He said bay waters would circulate through the pond for about three years to allow time for the owner of the pond to develop a long-term management strategy.

Teri Peterson, Environmental Manager, Cargill Salt, thanked Mr. Schlipf, Steve Moore, and Shin-Roei Lee for their work on the tentative order. She said Cargill expects to sell Pond A18 to the City of San Jose after initial discharge of saline water.

In reply to a question, Ms. Peterson said the public had an opportunity to comment on the proposed activities at the pond. She said the City of San Jose circulated a mitigated negative declaration as part of the CEQA review process. She said there were no substantial comments.

Mr. Wolfe said it is important that water from Pond A18 be discharged fairly soon because salinity levels in bay water are lower in the spring.

Mrs. Addicks said San Jose might be interested in buying Pond A18 to use as a credit for future marsh restoration projects.

Mr. Wolfe said under the Initial Stewardship Plan activities at Pond A18 would be coordinated with activities at other nearby ponds. He said the long-term management of the ponds would also be coordinated with other nearby ponds.

Dan Bruinsma, City of San Jose and San Jose-Santa Clara Water Pollution Control Plant, said San Jose intends to buy Pond A18. He said Pond A18 would provide a buffer for the Water Pollution Control Plant. He said San Jose would establish a long-term management plan for the pond.

Mr. Wolfe said the San Jose-Santa Clara Water Pollution Control Plant discharges fresh water to Artesian Slough. He said San Jose has been required to provide mitigation for impacts of the fresh water discharge.

Mr. Wolfe recommended adoption of the tentative order.

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

Roll Call:

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

No: None.

Motion passed 6 – 0.

Item 6 – East Bay Municipal Utility District, Oakland, Alameda County – National Award Winning Pretreatment and Pollution Prevention Program – Information Presentation by the District on its U.S. EPA – Recognized Program

Lila Tang introduced Michael Chee, the Board's pretreatment coordinator, and Linda Rao, the Board's pollution prevention program manager.

Ms. Tang said U.S. EPA recently awarded East Bay Municipal Utility District first place for its Pretreatment and Pollution Prevention Program. She said the award was part of U.S. EPA's National Clean Water Act Recognition Award Program. She said the award

is the fourth that U.S. EPA has given to EBMUD for an outstanding Pretreatment and Pollution Prevention Program.

Ben Horenstein, Manager of EBMUD Environmental Services, said source control improves water quality and is cost effective. He said source control includes pretreatment and pollution prevention programs.

Mr. Horenstein said federal law requires wastewater agencies conduct pretreatment programs. He said EBMUD issues permits to industrial businesses and enforces numeric limits as part of its pretreatment program. He said EBMUD's pretreatment program has resulted in a significant reduction of heavy metals in wastewater influent.

Mr. Horenstein said the Water Board requires wastewater agencies conduct pollution prevention programs. He said EBMUD issues permits based on Best Management Practices to twelve types of businesses, including: auto repair companies, dry cleaners, dentists, and restaurants. He said EBMUD provides outreach to residential customers on pollution prevention activities.

Mr. Horenstein said some source control activities are directed towards specific pollutants, such as mercury, fat, oil, and grease. He said EBMUD requires that dentists install amalgam separators to reduce mercury loadings. He said fat, oil, and grease are a major cause of sanitary sewer overflows. He said EBMUD requires that restaurants install grease interceptors. He said Save the Bay and EBMUD recently conducted a mercury thermometer exchange program.

Mrs. Warren complimented EBMUD on its source control activities and said EBMUD has provided leadership on many programs. Mr. Waldeck, Mrs. Addicks, Mr. Muller, Mrs. De Luca, and Mr. Eliahu concurred.

In reply to a question, Mr. Horenstein said EBMUD has begun converting food waste from restaurants into methane gas. He said EBMUD uses the methane gas to generate power for its plant.

Item 7 – Letter to Petroleum Refineries Requiring Investigation of Fate of Mercury in Air Emissions – Notice of Intent to Issue CWC 13267 Letter

Richard Looker gave the staff report. He estimated 380 kilograms of mercury enter the five Bay Area refineries every year. He estimated one kilogram of mercury a year leaves the refineries in wastewater and another five kilograms of mercury a year leave the refineries in auto fuels. He said the refineries are not able to account for the balance of mercury that leaves the plants in (1) air emissions; (2) petroleum products other than auto fuel; and (3) solid waste.

Mr. Looker said staff has prepared a Water Code section 13267 letter to require the refineries to report on how much mercury their plants emit into the air annually and the fate of that mercury once emitted. He said the air emission pathway is important because the mercury might be deposited on the Bay.

Mr. Waldeck suggested the refineries investigate all the pathways of mercury leaving the plants.

In reply to a question, Tom Mumley said the Air Board does not require the refineries to monitor for mercury emissions.

Mr. Waldeck said the refineries' draft report on air emissions is not due until 2007. He suggested the report could be prepared sooner.

Mr. Looker said staff would like to give the refineries time to investigate and monitor intra-annual variability in emissions.

Mr. Wolfe said staff might require the refineries to submit interim data as it becomes available.

Mrs. Addicks said the air emissions study might produce information about other pathways. She said it might be efficient if the refineries also investigated other pathways.

Kevin Buchan, Western States Petroleum Association, spoke in favor of the 13267 letter prepared by staff. He said the report the letter requires should focus on air emissions and not include other pathways. He said WSPA would coordinate one air emissions report prepared by the five refineries. He said WSPA would give Board staff progress updates as the refineries learn new information.

Mr. Buchan said the refineries have difficulty in calculating exactly how much mercury enters the plants each year. He said the amount of mercury in crude oil varies from field to field and well to well. He said the American Petroleum Institute is studying the amount of mercury in crude oil and the study has not been concluded.

Mr. Looker described how he estimated 380 kilograms of mercury enter the refineries each year. He said the State of California records the number of barrels of oil that the refineries process each year. He said, relying on a technical article, he found that the mean concentration of mercury in crude oil was ten parts per billion. He said he multiplied the mean concentration times the number of barrels of oil the Bay Area refineries process annually.

In reply to a question, Mr. Looker said 380 kilograms of mercury weigh about 800 pounds.

Andria Ventura, Clean Water Action and Environmental Justice Coalition, requested the refineries be required to investigate all mercury pathways. She said staff must consider all mercury loads to the Bay in order to implement the Mercury TMDL.

Michael Wara, Mill Valley, expressed concern that the mercury emissions report would not be prepared for a long time. He recommended the refineries be required to develop an interim estimate of mercury in air emissions. He said remediation strategies could be developed if the interim estimate showed emissions are a problem.

Mr. Eliahu suggested focusing on air emissions was a reasonable way to gain further information on mercury leaving the refineries.

Amy Chastain, Natural Resources Defense Council, read comments prepared by Dr. Gina Solomon. Dr. Solomon said mercury is a health threat to people who eat fish from the Bay. She said the Water Board has correctly identified crude oil refining as a source of mercury. She said limiting the refineries report to airborne emissions would miss important pathways. She said the report should investigate the mass balance of mercury entering and leaving the refineries.

Sejal Choksi, San Francisco BayKeeper, asked that the refineries be required to study all mercury pathways from the plants. She asked that the 13267 letter include a reasonable time frame to conduct the studies. She said it was necessary to understand the mass balance of mercury entering and leaving the refineries.

Ms. Choksi said the environmental community and the Clean Estuary Partnership did not have an opportunity to participate in the development of the 13267 letter.

Mrs. Addicks suggested the environmental community should be involved in discussions regarding the refineries' mercury mass balance.

Mr. Wolfe said the role of the Clean Estuary Partnership in the TMDL Program would be discussed in the next item.

Mr. Muller expressed disappointment with a letter written by Ms. Choksi that was published in the San Francisco Chronicle. He said the letter was critical of action the Board might take in regard to the 13267 letter even though the Board had not had an opportunity to meet and review the letter.

Craig Johns, Partnership for Sound Science, said staff is only able to estimate the number of kilograms of mercury that enter Bay Area refineries annually. He said the American Petroleum Institute and U.S. EPA currently are conducting a study to calculate how much mercury refineries take in. He said the amount of mercury in crude oil varies depending upon the origin of the oil.

Mrs. Addicks suggested Water Board and Air Board staff might like to meet to discuss mercury emissions from the refineries.

Mr. Johns said the refineries have committed to study other mercury pathways if the other pathways can reasonably be studied.

Mr. Wolfe said staff intends to have refineries eventually study all mercury pathways and intends to use a phased approach in completing gaps in the refineries' mercury mass balance. He said staff would like to focus initially on air emissions. He recommended the 13267 letter be sent to the refineries.

Mrs. Addicks spoke in favor of sending the 13267 letter. She suggested in the next several months staff discuss time lines for refineries' studies of additional mercury pathways.

Mr. Wolfe said staff could report to the Board through the Executive Officer's Report on measures to implement the Mercury TMDL.

At the request of the Chair, Board members indicated they were in favor of the Executive Officer sending the 13267 letter to the refineries to require the air emissions study.

[Mrs. Addicks left the meeting at approximately 11:30 a.m.]

Item 8 – Total Maximum Daily Load (TMDL) Program – Status Report

Dyan Whyte gave the staff report. She said states identify waters that are impaired by particular pollutants. She said impaired waters are placed on a Clean Water Act Section 303(d) list. She said Total Maximum Daily Loads are prepared for waters on a 303(d) list.

Ms. Whyte said a TMDL includes the following components: (1) problem statement; (2) pollutant sources; (3) numeric targets; (4) allocations that define reductions needed to attain targets; and (5) implementation plans that specify actions.

Ms. Whyte said it can take several years for staff to develop a TMDL. She said two Board hearings are scheduled for each TMDL: (1) the first is a testimony hearing to give interested parties an opportunity to make comments; and (2) the second is an adoption hearing at which the Board votes on adoption of a TMDL.

Ms. Whyte said staff would bring seven TMDLs to the Board for adoption during the next year and one-half. She said the TMDLs cover: (1) Tomales Bay Watershed pathogens (2) San Francisco Bay urban creek diazinon and pesticide-related toxicity; (3) San Francisco Bay PCBs; (4) Napa River pathogens; (5) Sonoma Creek pathogens; (6) Walker Creek mercury; and (7) Napa River sediment.

Michele Pla, Executive Director of the Bay Area Clean Water Agencies, said BACWA is composed of Bay Area wastewater agencies. She said BACWA is a member of the Clean Estuary Partnership. She said other CEP members include stormwater agencies, non-governmental organizations, and the Water Board. She said the CEP is producing technical information to help develop TMDLs.

Ms. Pla said BACWA is supportive of the Mercury TMDL the Board adopted in September 2004, and is especially appreciative of the adaptive management section.

Ms. Pla said it would take a long time before implementation of a TMDL for a pollutant like mercury would show results. She said non-governmental organizations ask what can be done in the interim to help people who eat fish caught from the Bay. She said BACWA recommended the CEP set up a work group focusing on risk exposure reduction.

Ms. Pla said BACWA has met with state and federal environmental officials, and with federal elected officials, to speak in support of the Mercury TMDL.

Mrs. De Luca asked whether staff has resolved with U.S. EPA outstanding issues regarding the Mercury TMDL.

Mr. Wolfe said when the Board adopted the Mercury TMDL in September 2004 there were two outstanding issues: (1) whether the allocation method would allow for an

increase in the mercury load to wastewater dischargers, and (2) whether the numeric objective for mercury would be met in bay water.

Mr. Wolfe said U.S. EPA and staff have resolved the first issue regarding mercury loads for wastewater dischargers.

Tom Mumley discussed the second issue. He said U.S. EPA and staff agree the numeric objective for mercury set out in the Basin Plan is outdated and should be amended. He said there is general agreement that the second issue can be resolved once the mercury objective in the Basin Plan is amended.

Item 11 – Closed Session – Litigation

At approximately 12:10 p.m., the Board went into closed session to discuss exposure to litigation. The meeting was adjourned at completion of the closed session.

Adjournment

The Board meeting was adjourned at approximately 12:40 p.m.