

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
September 21, 2005

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Item 1 - Roll Call and Introductions

The meeting was called to order on September 21, 2005 at 9:05 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce; Shalom Eliahu; Clifford Waldeck; and Gary Wolff.

Board member absent: Josephine De Luca.

Shin-Roei Lee introduced Brendan Thompson who is a new employee.

Bruce Wolfe introduced Sandi Potter, a current employee who has been appointed Communications Coordinator.

Mr. Wolfe introduced Richard Condit who will be retiring after nearly 30 years of employment with the Water Board.

Item 2 - Public Forum

Sejal Choksi, BayKeeper, expressed interest in working with staff to resolve issues raised by the State Board in the remand of the mercury TMDL.

Michelle Pla, Executive Director, Bay Area Clean Water Agencies, said many sewer collection agencies would prepare sanitary sewer management plans during the next couple of years. She said the plans would be based on a handbook that BACWA prepared in order to help reduce sewer overflows and protect the watershed.

Ms. Pla said BACWA believes the mercury TMDL is based on sound science, and that the recent remand identifies policy differences between the State Board and Regional Board. She said BACWA would like to work with the Regional Board to resolve policy issues.

Item 3 – Minutes of the July 19 and 20, 2005 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was voted to adopt the minutes of the July 19 and 20, 2005 Board meeting.

Dr. Wolff abstained because he did not attend the July Board meeting.

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

Gary Wolff, Shalom Eliahu, Margaret Bruce, and John Muller discussed the recent WQCC meeting held in Sacramento.

Clifford Waldeck suggested the Water Board and Air Board work together to reduce pollutants that enter waterways through air deposition. He said a number of municipalities have enacted ordinances to ban wood burning fireplaces in residential construction and rehabilitation projects.

Mr. Muller reported attending the White House Conference On Cooperative Conservation held in August in Saint Louis. He said he attended the September 7, 2005 State Board hearing on the mercury TMDL.

Mr. Wolfe said the biennial State of the Estuary Conference would be held during the first week of October. He said the Board would host a “Celebration of Partnerships and Restoration” at the Gambonini Mercury Mine on October 21, 2005.

Mr. Wolfe said the State Board remanded the mercury TMDL to the Regional Board and requested a number of policy decisions be reconsidered. He said the State Board made it clear that the scientific basis of the TMDL was sound. He said staff plans to hold a workshop at the November Board meeting to discuss compliance with the remand.

Dr. Wolff said staff could consider the State Board was incorrect to remand the TMDL or the Regional Board was incorrect in adopting the TMDL. He asked the Board and staff to keep an open mind as they consider how to comply with the remand.

Mr. Eliahu said he thought the Board was right when it adopted the TMDL as presently written.

Dr. Wolff said he was not a Board member when the TMDL was adopted and he was not criticizing Board members. He reiterated his hope that the Board and staff would consider the remand with an open mind.

Mr. Waldeck said he enjoyed the point and counterpoint made by Dr. Wolff and Mr. Eliahu. He suggested all parties work together and look at the remand with a fresh set of eyes.

Dorothy Dickey said Union Bank currently requests the Board name three additional parties to the cleanup order for 327 Moffet Boulevard, Mountain View. Mr. Wolfe and Ms. Dickey suggested the Board discuss the case at the November Board meeting.

Mr. Wolfe said Dr. Wolff and Mrs. Bruce, who serve on a Board stormwater subcommittee, recommended staff hold workshops to address issues that will be covered

in the proposed regional stormwater permit. He said the subcommittee also recommended that the workshops address broader stormwater issues and include all stakeholders and not just the regulated community.

Ms. Dickey told Board members that ex parte rules apply to communications regarding the proposed regional permit. She said public notice would be given for the workshops and proceedings would be tape-recorded.

Dr. Wolff said the workshops might include discussion on stormwater issues that are not related to the proposed regional permit. He said he would ask for clarification on the application of ex parte rules to such discussion.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar with the following exception: Item 5C be removed.

Motion: It was moved by Mrs. Warren, seconded by Dr. Wolff, and it was voted to adopt the uncontested calendar as recommended by the Executive Officer.

Mrs. Bruce recused herself from Item 5D.

Item 5C – Tesoro Refining & Marketing Company, Martinez, Contra Costa County – Reissuance of NPDES Permit

Mr. Wolfe said Tesoro currently owns the refinery. He said Tosco owned the refinery when the NPDES permit was reissued in 2000. He said legal challenges have been brought regarding the 2000 permit.

Mr. Wolfe said staff would not make a presentation but would reply to questions.

Sejal Choksi, BayKeeper, said the tentative order retains the dioxin limit that was required in the 2000 permit. She suggested Tesoro be required to install new technology to reduce the pollutant.

Ms. Choksi said the tentative order requires Tesoro to meet a final dioxin limit of “no net loading” if a dioxin TMDL is not prepared. She said the no net loading requirement should not be met through an offset program. She requested Tesoro be required to make its plan on how to achieve no net loading available to the public.

Adrienne Bloch, Staff Attorney, Communities for a Better Environment, stressed the importance of reducing the dioxin level in the Bay. She said the dioxin level in the refinery’s discharge was not reduced during the last permit cycle. She said the tentative order includes the same interim limit and the same compliance schedule as the previous permit.

Ms. Bloch said the previous permit violated antibacksliding provisions and the tentative order does too. She requested the public have an opportunity to evaluate Tesoro’s plan on how to achieve no net loading if a plan is prepared.

Greg Karras, Senior Scientist, Communities for a Better Environment, said the dioxin level in the Bay is an environmental justice issue because tests have shown an elevated level of dioxin in fish tissue. He said CBE believes Tesoro could meet a more stringent limit than the tentative order requires. He said sediments in the refinery's canal have the highest level of dioxin measured in the Bay Area.

Marcus Cole, Water Compliance Engineer, Tesoro Refinery, requested that the Board adopt the tentative order. He said Tesoro places environmental protection second only to employee safety.

Mr. Cole said in the 1990's Tesoro investigated why waters it discharges to the Bay contain dioxin. He said the company has an unusual situation because both effluent from its wastewater treatment plant and stormwater are routed to a "Clean Canal". He said Tesoro's investigation found that dioxins enter the Clean Canal through stormwater. He said Tesoro's treated effluent does not contain dioxin until it commingles with stormwater.

Kevin Buchan, Western States Petroleum Association, requested the Board adopt the tentative order. He said Tesoro is committed to complying with the tentative order. He said BayKeeper and Communities for a Better Environment did not file comments during the public comment period and waited to the last minute to raise concerns.

Craig Johns, Project Director, Partnership for Sound Science in Environmental Policy, urged the Board to adopt the tentative order. He said U.S. EPA was responsible for listing dioxin as a pollutant impairing the Bay. He said, however, the agency has not begun to prepare a dioxin TMDL. He said the Board could take enforcement action if Tesoro does not prepare a plan on how to achieve "no net loading."

Yuri Won said the courts reviewed the previous permit issued to Tosco and ruled: the interim limit for dioxin does not violate antibacksliding requirements; the compliance schedule is legal; and the final limit based on a TMDL or no net loading is legal.

Mr. Wolfe said the tentative order requires Tesoro to submit a plan proposing a mass offset program (in order to achieve no net loading) if the dioxin TMDL is not completed by 2009. He anticipated staff would bring Tesoro's plan to the Board for a workshop before it is considered for approval.

Dr. Wolff asked if staff could comply with the request from BayKeeper and CBE that they have an opportunity to comment on the plan.

Mr. Wolfe replied affirmatively and said documents submitted to staff are public documents.

In reply to questions, Robert Schlipf said tests show the level of dioxin in effluent from the wastewater treatment plant at nondetect except on one occasion. He said Tesoro's wastewater effluent is commingled with stormwater in the Clean Canal before being discharged to the Bay. He said the stormwater runoff is from Tesoro's property and from adjacent properties.

Staff said sedimentation in the Clean Canal removes dioxin. They said the level of dioxin in Tesoro's discharge to the Bay is much lower than the level of dioxin found in stormwater originating in street runoff at various locations around the Bay.

Dr. Wolff asked if adoption of the tentative order would restrict the Board from taking future action to cleanup the canal.

Lila Tang said the Board would not be precluded from taking action. She pointed out that groundwater cleanup at the refinery is being handled as a separate matter.

Mr. Waldeck asked if Tesoro allows environmental groups to enter refinery property to sample for dioxin.

Ms. Tang said she would defer the question to the refinery. She said, however, stakeholders often rely on the same data and interpret it differently.

Mr. Muller asked whether all parties had an opportunity to comment on the tentative order during the public comment period.

Mr. Wolfe answered affirmatively. He said it is difficult to evaluate fully comments made for the first time on the day of the Board meeting.

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. Brouhard; Mrs. Bruce; Mr. Eliahu; Mrs. Warren; and Mr. Muller

No: Mr. Waldeck

Abstain: Dr. Wolff

Motion passed 5 – 1 with 1 abstention

Dr. Wolff said he believed staff's recommendation was probably based on appropriate science. He said he abstained out of respect for the environmental groups who ~~felt their comments were based on science~~ [usually also understand the science](#). He said he could not oppose the tentative order because the last minute comments by the environmental groups did not leave room for analysis and discussion. [He criticized the environmental groups for not submitting comments in writing.](#)

Item 6 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Tomales Bay Watershed Pathogens Total Maximum Daily Load and Implementation Plan – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Dyan Whyte introduced Farhad Ghodrati and Rebecca Tuden, staff who have worked on the pathogens TMDL. She said the proposed TMDL regulates Tomales Bay and its main tributaries, Walker Creek and Lagunitas Creek. She said shellfish harvesting is a beneficial use in Tomales Bay. She said water contact recreation is a beneficial use in Tomales Bay and the tributaries.

Ms. Whyte said the TMDL uses fecal coliform concentrations to indicate pathogen presence. She said the TMDL establishes the following numeric targets:

1. 14 fecal coliform MPN/100 mL of Bay water;
2. 200 fecal coliform MPN/100 mL of main tributary water;
3. Shellfish harvest closure target of less than 30 days per year;
4. Zero discharge of human waste.

Ms. Whyte said the first proposed pathogens TMDL was distributed for public comment in March 2005. She said public hearings were held in April and July 2005 and the TMDL was revised in response to comments. She said the revised TMDL was circulated for public comment once again. She said the TMDL was revised further after the second public comment period.

Ms. Whyte said language was added to the TMDL stating that targets and load allocations would not be directly enforceable. She said the implementation plan would be the enforceable TMDL component.

Ms. Whyte said staff does not believe that wildlife makes a significant contribution to pathogen levels in the watershed. She said language was added to the TMDL to state that regulated parties would not be held responsible for reducing pathogen levels from wildlife.

Ms. Whyte said a shellfish harvest closure target was added to the TMDL.

Ms. Whyte discussed actions that are being taken to facilitate the implementation of the TMDL. She said staff has worked with dairies in the Tomales Bay watershed and the dairies currently comply with conditions in waivers of waste discharge requirements. She said staff will work with technical experts and stakeholders to develop a waste discharge requirements waiver program for horse and cattle ranchers.

Steve Kinsey, Marin County Board of Supervisors, thanked the Board and staff for addressing pathogen issues in the Tomales Bay watershed. He said it is important that the TMDL regulate activities in a balanced way. He spoke in favor of measuring compliance through achievement of implementation actions and not through achievement of targets and allocations. He said substantial Board staff and County staff resources would be needed to help implement the TMDL.

David J. Lewis, U.C. Cooperative Extension, thanked Dyan Whyte, Farhad Ghodrati, and Rebecca Tuden for their work on the TMDL. He requested the level of staff involvement in the Tomales Bay watershed continue as the TMDL is adaptively managed. He said Board staff could help with the TMDL monitoring component and in the development of a waste discharge requirements waiver program for equestrian facilities and grazing lands.

Mr. Muller thanked staff for their work on the TMDL. He said it was important that the TMDL be managed in a flexible and cautious manner.

In reply to a question, staff said federal and state grant funds are being used to implement the TMDL.

Dr. Wolff said horse and cattle ranchers would be required to comply with waste discharge requirements or waivers of the requirements. He asked whether there were procedures to ensure individual parties would be able to consider the full range of potential implementation measures.

Rebecca Tuden said staff is working with technical experts from several conservation organizations to establish the conditions that must be met for granting waivers of waste discharge requirements. She said staff would establish a group of third-party experts to help ranchers become aware of options and to help ranchers develop facility-specific plans.

Tom Mumley said all parties would benefit from a watershed-based forum of experts who bring technical expertise on how to implement measures.

Mr. Waldeck asked what future TMDLs would be prepared for the Tomales Bay watershed.

Ms. Whyte said a mercury TMDL for Walker Creek would be next. She said staff would prepare sediment TMDLs for Lagunitas Creek and Walker Creek in the next two or three years.

Mr. Wolfe concurred with the speakers who said staff resources would be needed to help implement the pathogens TMDL. He said staff recognizes the need for adaptive management.

Mr. Wolfe recommended adoption of the resolution amending the water quality control plan for the San Francisco Bay Region to establish a total maximum daily load and implementation plan for pathogens in Tomales Bay watershed.

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

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 7 – 0

Item 7 – East Bay Municipal Utility District, Special District No. 1, Wet Weather Facilities, Oakland, Richmond, Alameda and Contra Costa Counties – Reissuance of NPDES Permit

Item 8 – East Bay Municipal Utility District, Special District No. 1, Wet Weather Facilities, Oakland, Richmond, Alameda and Contra Costa Counties – Hearing to Consider Adoption of Time Schedule Order

Mr. Wolfe said staff would give one presentation for Items 7 and 8. He said the Board would vote on each item separately.

Ann Powell said East Bay Municipal Utility District's wastewater facilities include a main treatment plant, an interceptor, and three wet weather facilities.

Ms. Powell said EBMUD's wastewater facilities serve nine East Bay communities. She said by 1978 most of the combined stormwater and sanitary sewer system that had served the communities had been separated. She said, however, that many cross connections between stormwater and sewer pipes still remain.

Ms. Powell said in the 1980's the East Bay communities experienced sewer overflows during winter months. She said EBMUD and the communities took action to reduce the overflows by undertaking an inflow and infiltration program. She said EBMUD also built three wet weather facilities.

Ms. Powell said in 1986 U.S. EPA determined that discharge from EBMUD's wet weather facilities would not be required to meet secondary treatment standards. She said the three wet weather facilities were constructed based on that determination. She said the facilities presently meet primary treatment standards. She said, however, U.S. reconsidered its determination and now states Publicly Owned Treatment Works are subject to secondary treatment standards.

Ms. Powell said the effluent limits in the tentative order for the NPDES permit are basically the same as the previous permit. She said the tentative time schedule order requires studies be conducted to understand how to meet secondary standards at the wet weather facilities. She said EBMUD is required: (1) to look at ways to reduce the amount of discharge; (2) to investigate new treatment technologies; and (3) to evaluate alternative regulatory approaches, such as pollutant offset programs.

Ms. Powell said Our Children's Earth Foundation filed a lawsuit against the Water Board for failure to reissue the NPDES permit. She said EBMUD and Our Children's Earth Foundation have entered into a settlement agreement and she expects the lawsuit against the Board will be dismissed if the tentative orders are not substantially modified.

Nancy Yoshikawa, U.S. EPA, requested the tentative order for the NPDES permit be modified to ensure: (1) only discharge of effluent from the wet weather facilities is authorized; (2) every discharge from the facilities is monitored; and (3) there is certainty about operating parameters.

Christopher Sproul, Our Children's Earth Foundation, commended Ann Powell for her work on the tentative orders. He said EBMUD and staff have met with the environmental groups many times over the last year. He said Our Children's Earth Foundation entered into a settlement agreement with EBMUD and agreed not to appeal the NPDES permit as long as no other group does.

Sejal Choksi, BayKeeper, thanked Lila Tang and Ann Powell for their work on the tentative orders. She said BayKeeper has some concerns, but is willing to accept the tentative orders. She said the environmental community participated in hundreds of hours of discussion and negotiation with EBMUD and staff. She said she hoped the process would serve as a model to be used in developing future NPDES permits.

Dave Williams, Director of Wastewater, EBMUD, urged the Board to adopt the tentative orders without modification. He thanked Sejal Choksi, Christopher Sproul, U.S. EPA, and staff for their work. He said U.S. EPA determined that effluent from the facilities should meet secondary treatment standards after the facilities were built.

Mr. Williams said staff helped establish a collaborative process in which stakeholders considered how EBMUD could move forward toward achieving secondary treatment. He said the collaborative process would continue as EBMUD develops studies required in the Time Schedule Order.

Gary Wolff said the inflow and infiltration program of EBMUD and the communities has improved public health significantly. He recommended EBMUD consider two issues: (1) the extent to which communities are willing to pay for reductions in sanitary sewer overflows and (2) the most cost effective way to manage overflows created by storms exceeding five year events. He suggested a possible compensatory environmental project might address the processing of stormwater, on a selected basis, in EBMUD's wastewater treatment system.

Kristina Brouhard asked staff to reply to U.S. EPA's concerns.

Lila Tang said the tentative order for the NPDES permit states that the permit would regulate effluent from the three wet weather facilities. She said monthly monitoring is sufficient because historical monitoring data is available and TSO studies would provide additional information. She said the tentative order requires that EBMUD comply with an operation and control plan.

Yuri Won said that as the Board considers changes requested by U.S.EPA, it should be aware that the benefits of the settlement agreement between EBMUD and Our Children's Earth Foundation would not become effective if the Board substantially modifies the tentative orders.

Dr. Wolff suggested U.S. EPA reconsider its decision that effluent from wet weather facilities be required to meet secondary standards.

Mr. Wolfe said TSO studies would help determine actions that need to be taken to protect the Bay. He said he believed the tentative order for the NPDES permit adequately addresses U.S. EPA's concerns.

Mr. Wolfe recommended adoption of the tentative order for reissuance of the NPDES permit - Item 7.

Mrs. Warren thanked EBMUD and staff for their work on the tentative orders.

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. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 7 – 0.

Mr. Wolfe recommended adoption of the tentative time schedule order - Item 8 as supplemented.

Motion: It was moved by Mrs. Warren, seconded by Dr. Wolff, and it was voted to adopt the tentative time schedule order as supplemented and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 7 – 0.

Adjournment

The Board meeting was adjourned at approximately 12:15 p.m.