

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES

January 23, 2007

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Item 1 - Roll Call and Introductions

The meeting was called to order on January 23, 2007 at approximately 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; Margaret Bruce; Shalom Eliahu; William Peacock; Clifford Waldeck; Dr. Young.

Board member absent: None.

John Muller welcomed Terry Young who was recently appointed to serve on the Board.

Dr. Young made introductory remarks.

Stephen Hill introduced Nathan King, new staff in the Toxic Cleanup Division.

Robert Schlipf introduced Adrienne Miller, new staff in the NPDES Permit Division.

Item 2 – Election of Chair and Vice-Chair

Mr. Muller requested nominations for Chair for year 2007.

Mary Warren nominated Mr. Muller. Margaret Bruce seconded the nomination. No further nominations were made.

Mr. Muller requested Mrs. Warren, as Vice-Chair, conduct the vote. Mrs. Warren asked for a roll call vote.

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Mr. Waldeck; Mrs. Warren;

Dr. Young; Mr. Muller

No: None

Mr. Muller was elected Chair.

At that point, Mr. Muller began serving as Chair for year 2007.

Mr. Eliahu nominated Mary Warren to serve as Vice-Chair. Mr. Muller seconded the nomination. No further nominations were made.

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Mr. Waldeck; Mrs. Warren;

Dr. Young; Mr. Muller

No: None

Mrs. Warren was elected Vice-Chair for year 2007.

Mr. Muller said he felt privileged to serve as Chair and thanked Board members for giving him the opportunity to serve.

Mr. Waldeck said he appreciated Mr. Muller's work as Chair over the years and thanked him for continuing to serve. Mr. Waldeck encouraged recently appointed Board members to consider serving as Chair in future years.

Item 3 – Public Forum

David Lewis, Executive Director, Save the Bay, said trash in Bay Area waterways presents a significant problem. He said trash is an eyesore and it affects the quality of water in the Bay and creeks. He said wildlife, like seabirds, can be killed by eating plastic trash.

Mr. Lewis said staff is preparing a municipal regional stormwater permit that will consolidate regulation of six county-wide stormwater programs. He requested the regional permit require permittees take action to reduce the amount of trash entering waterways.

In reply to a question from Margaret Bruce, Mr. Lewis said some municipalities have taken steps or are in the process of taking steps to ban non-biodegradable items like styrofoam cups and plastic grocery bags.

Mr. Wolfe said at the March Board meeting, staff will present a status report on the municipal regional permit that will include discussion of trash management.

Robert Feinbaum, Director, Hydro Nova, said he did not believe regulatory agencies should require owners of on-site wastewater systems to maintain operating permits. He requested the Board amend the Region 2 Basin Plan and specify that regulatory agencies may use a flexible approach to manage on-site systems. He requested the Chair of the Board send a letter to counties to update them after the amendment is adopted.

Mr. Wolfe said staff would work with Mr. Feinbaum to address his concerns. Mr. Wolfe reviewed the fact that in the 1950's and 1960's the Regional Board delegated oversight of on-site wastewater systems to counties. However, he

said the Regional Board retains ultimate oversight responsibility. He said pursuant to recent legislation, statewide standards for on-site wastewater systems are being developed.

Item 4 – Minutes of the November 13, 2006 Board Meeting and Minutes of the December 13, 2006 Board Meeting

Mr. Eliahu requested the third paragraph from the top on page 6 of the Minutes of December 13, 2006 be amended to read "...the proposed Amendment substituted the term attenuation for the term dilution to describe the decline in cyanide concentrations in the Bay."

Mr. Peacock and Dr. Young abstained from voting on the Minutes of the November 13, 2006 Board meeting because they did not attend the meeting and Mrs. Warren and Dr. Young abstained from voting on the Minutes of the December 13, 2006 Board meeting because they did not attend the meeting.

Motion: It was moved by Mrs. Bruce, seconded by Mr. Eliahu, and it was unanimously voted to adopt the Minutes of the November 13, 2006 Board Meeting as supplemented in accordance with the Board's direction at the December Board Meeting and the Minutes of the December 13, 2006 Board Meeting as amended.

Item 5 – Chairman's, Board Members', and Executive Officer's Reports

Mr. Wolfe recommended the Board hold a closed session during the lunch break to discuss potential exposure to litigation that could affect Items 9, 10, and 11. He recommended Items 9, 10, and 11 be heard after the lunch break.

Mr. Wolfe said Board meetings will be scheduled to be held on the second Wednesday of each month starting in March. He said a February Board meeting will not be held.

Mr. Wolfe gave an update on the hiring process for two Assistant Executive Officers. He said the Wastewater Division recently met the second of four milestones in a schedule set to achieve U.S. EPA's goal of zero permit backlogs. He said U.S. EPA approved the Tomales Bay Watershed Pathogens Total Maximum Daily Load that staff prepared.

Mr. Wolfe said he had been invited to make a presentation to the State Board on February 20, 2007 to give an update on current and future activities in Region 2.

Yuri Won said a recent court case held that a permitting agency has wide discretionary authority when regulating stormwater runoff. She said the case held an agency may require use of non-numeric Best Management Practice in appropriate situations.

Mr. Waldeck spoke in favor of measuring permittees' results when Best Management Practices are used.

Item 6 – Consideration of Uncontested Items Calendar

Mr. Muller recused himself from consideration of Item 5B and Mrs. Bruce recused herself from consideration of Items 5A and 5F.

Mr. Wolfe said there were no supplemental changes to items on the uncontested calendar and recommended adoption.

Mr. Muller requested Mrs. Warren, as Vice-Chair, conduct the vote. Mrs. Warren asked for a motion.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Peacock, and it was voted to adopt the uncontested calendar as recommended by the Executive Officer.

Roll Call:

Mrs. Bruce: Aye (recusal on Items 5A and 5F)

Mr. Eliahu: Aye

Mr. Peacock: Aye

Mr. Waldeck: Aye

Mrs. Warren: Aye

Dr. Young: Aye

Mr. Muller: Aye (recusal on Item 5B)

Motion passed 7 – 0 (recusals noted).

Item 7 – City of Benicia Wastewater Treatment Plant, Benicia, Solano County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said there was a supplemental to Item 7.

Mr. Wolfe said the City of Benicia Wastewater Treatment Plant signed a waiver of the right to a hearing on the proposed MMP and no Board action was necessary. Mr. Wolfe said the City agreed to pay a Mandatory Minimum Penalty in the amount of \$6,000. He said \$6,000 may be used for a supplemental environmental project.

In reply to a question from Shalom Eliahu, Mr. Wolfe said the Water Code does not impose a Mandatory Minimum Penalty for every violation of an NPDES permit. He said two of the City's violations are subject to mandatory penalties of \$3,000 each.

Item 8 – City of American Canyon, Wastewater Treatment Plant, American Canyon, Napa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said the City of American Canyon Wastewater Treatment Plant signed a waiver of the right to a hearing on the proposed MMP and no Board action was necessary. Mr. Wolfe said the City agreed to pay a Mandatory Minimum Penalty

in the amount of \$66,000. He said up to \$40,500 may be used for a supplemental environmental project.

Item 12 – Union Pacific Railroad Company, Daniel C. and Mary Lou Helix, Elizabeth Young, John V. Hook, Nancy Ellicock, Steven Pucell, and Contra Costa County Redevelopment Agency, for the property referred to as Hookston Station and located at 228 Hookston Road, Pleasant Hill, Contra Costa County – Adoption of Final Site Cleanup Requirements

Mr. Peacock and Dr. Young recused themselves from consideration of this Item.

Mary Rose Cassa said about 30 years ago a tenant at the Hookston Station site used trichloroethylene in a manufacturing process and TCE was released to the environment and created a groundwater plume. She said the plume has migrated down gradient, and contaminated groundwater is located under Colony Park, a residential neighborhood.

Ms. Cassa said the Tentative Order sets cleanup standards and an implementation schedule to accomplish cleanup. She said two remediation technologies will be used. She said a permeable reactive barrier will be installed in shallow A-Zone groundwater. She said groundwater from the Hookston Station site moving down gradient towards Colony Park will be cleaned after passing through iron particles in the barrier. She said a chemical oxidation program will be developed to remediate deeper B-Zone groundwater. She said chemicals would be injected into the B-Zone beneath the Hookston Station site and would react with chemicals in the groundwater to produce cleaner groundwater.

Ms. Cassa said the Tentative Order also addresses two environmental concerns: people coming in contact with the groundwater and soil vapor containing TCE entering Colony Park residences. She said vapor intrusion prevention systems will be installed in residences where indoor TCE air concentrations are elevated. She said backyard wells in Colony Park will be taken out of use and installation of future wells in the area will be prohibited until groundwater meets drinking water standards. She said deed restrictions regarding soil management and groundwater use will be placed on the Hookston Station site.

Ms. Cassa estimated it will take 30 years to achieve the long term objective of restoring groundwater to drinking water standards. She estimated the potential risk of elevated indoor air concentrations in Colony Park will be reduced to acceptable levels in 3 to 4 years.

Ms. Cassa said staff is investigating two other contaminated plumes located in the Hookston Station area and is attempting to identify responsible parties.

Mr. Eliahu asked who is responsible for the cleanup of the Hookston Station plume and whether the parties caused the contamination.

Ms. Cassa said the Tentative Order names Union Pacific Railroad Company,

Mr. Helix and Contra Costa County Redevelopment Agency as responsible parties. She said the manufacturer that used TCE is no longer in business. She said Southern Pacific Railroad owned the Hookston Station site when TCE was released. She said Union Pacific Railroad merged with Southern Pacific Railroad.

Ms. Cassa anticipated injection of chemicals into the B-Zone will begin in February 2008 and construction of the permeable reactive barrier will begin in May 2008.

Janet Wolff, Trustee, Welch Family Trust, said her mother and sister reside in Colony Park. She expressed hope that actions taken to remediate TCE also will clean up pollutants in the other contaminated plumes. She said the health and safety of residents should be taken into account when chemicals are injected into the B-Zone groundwater. She said the first status report to evaluate effectiveness of remediation is required to be submitted to staff by December 21, 2009 and recommended evaluation occur sooner.

Ms. Wolff said the Water Board is the lead agency on the project and should coordinate with other agencies about residents' health concerns. She requested a state toxicologist evaluate impacts resulting from exposure to contaminants and from cleanup actions.

Stephen Hill said action taken to cleanup TCE will also cleanup other contamination because the contaminated plumes have mixed with the Hookston Station plume. He said a Health and Safety Plan will be prepared as part of the chemical oxidation program and chemical injection will occur at the Hookston Station site. He said a full range of remediation technologies were considered and the two selected are appropriate for soil characteristics. He recommended allowing some time for the technologies to operate before assessing effectiveness.

Don Mount, Spokesperson, Colony Park Neighbors Association, said soil beneath the building where TCE was released may be contaminated and may serve as a source that feeds groundwater. He recommended an active remediation program be conducted within the Colony Park neighborhood. He said vinyl chloride, a breakdown product of TCE, was discovered in Colony Park groundwater. He stressed the importance of having TCE completely degrade to non-toxic residue and not letting it stall at an intermediate stage.

Mr. Mount thanked Ms. Cassa for her work on the project and for developing a Community Working Group, a forum where residents may discuss documents. However, he expressed displeasure about the amount of time that has elapsed between the Water Board's receipt of the case and the development of a cleanup plan that can be implemented. He said residents have lived with concerns about elevated indoor air concentrations. He recommended the Water Board recuse itself from overseeing cleanup of land uses like residential properties.

Mary Rose Cassa said the Tentative Order requires additional work be accomplished in the event of demolition of the building where TCE was released.

She said conducting active remediation within Colony Park would be difficult because access to many private properties would be required. She said staff was concerned about the recent discovery of vinyl chloride and has requested additional monitoring wells to characterize the situation.

Mr. Hill said the Water Board became involved in this case in late 2000.

Mr. Waldeck said he understood the importance of remediation to residents and felt staff was doing a good job overseeing the project.

Ronald Block, Homeowner, Colony Park, requested residential air sampling in homes be conducted on a 12 hour rather than a 24 hour basis. He recommended daytime monitoring because residents may keep windows closed during the day. He requested staff work with toxicologists in another state agency.

Richard Welch, son of a Colony Park resident, questioned whether the source of TCE had been identified. He questioned whether the permeable reactive barrier would be located in a way that would treat groundwater migrating to all parts of Colony Park. He reported reviewing a document that recommended additional studies be conducted concerning residents' exposure to cancer risk.

Ms. Cassa said the source of TCE was identified through a remedial investigation. She said location of the permeable reactive barrier will be based on a pre-design investigation. She said the recommendation of additional studies dealt with the design and evaluation of the remedial system. She said the Tentative Order addresses the design and evaluation issues. She said the purpose of taking air samples on an on-going basis is to monitor changes in TCE concentrations.

Mr. Wolfe said staff recognizes the importance of communicating with residents. He said the Water Board hired a toxicologist in June 2006 and the toxicologist will be responsible for future oversight of the project.

In reply to a question from Clifford Waldeck, Mr. Hill discussed coordination between the Water Board and another state agency on Brownfield issues.

Mr. Muller requested staff update the Board on a regular basis regarding this project.

Mr. Wolfe recommended adoption of the Tentative Order.

Motion: It was moved by Mrs. Bruce, seconded by Mrs. Warren, and it was voted to adopt the Tentative Order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mr. Waldeck; Mrs. Warren; Mr. Muller

No: Mr. Eliahu

Motion passed 4 – 01.

Item 13 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish New Water Quality Objectives and a Total Maximum Daily Load (TMDL) and Implementation Plan for Mercury in the Walker Creek Watershed – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Jill Marshall said Walker Creek is located in Marin County and drains to Tomales Bay. She described the main sources of mercury in the Walker Creek watershed:

1. Gambonini Mine site – The mine is the largest former mercury mine in the watershed and the site includes a former processing facility.
2. SoulaJule Watershed Mines – Two former mercury mines are located on the Reservoir floor.
3. Downstream Depositional Areas – Mercury-laden sediments are found in areas like floodplains that are located downstream of former mines.

Ms. Marshall said fish in the watershed contain elevated levels of mercury and the health of birds that eat some of the fish is at risk. She said the Basin Plan Amendment vacates an outdated water quality objective and adds two new objectives.

Ms. Marshall described allocations of mercury loads to source categories and described implementation of the TMDL. She said owners of the Gambonini Mine site and the downstream depositional areas will be called on to minimize the release of mercury-laden sediment. She said the Marin Municipal Water District will be called on to evaluate water conditions in SoulaJule Reservoir and Arroyo Sausal Creek and determine whether controls to reduce production of methylmercury can be developed and implemented.

Ms. Marshall showed a slide depicting mercury levels in fish tissue of similar sized large mouthed bass from Nicasio Reservoir, Bon Tempe Reservoir, and SoulaJule Reservoir. She said the bass from SoulaJule Reservoir contained the highest mercury levels. She said SoulaJule Reservoir contains former mercury mines and Nicasio Reservoir and Bon Temple Reservoir do not.

Doug Eberhardt, U.S. EPA, requested the Board adopt the Basin Plan Amendment. He spoke in favor of the TMDL and the new water quality objectives.

Paul Helliker, General Manager, Marin Municipal Water District, said the District would like to conduct a sampling program in SouleJule Reservoir. He objected to a provision in the implementation plan requiring the District to develop and implement controls for methylmercury production. He used aeration as an example of why the District may not be able to achieve compliance with the load allocation. He expressed concern regarding laboratory capability to measure the minimum detection limit for samples.

Mr. Helliker referred to the slide comparing mercury levels in large mouthed bass caught from Nicasio Reservoir, Bon Tempe Reservoir, and Souljule Reservoir. He said staff compared one bass caught from each reservoir. He said mercury levels in the fish from the three reservoirs would be much closer in value if average mercury levels were compared.

Ms. Whyte said the implementation plan requires the District to characterize fish tissue, water, and suspended sediment mercury concentrations in Souljule Reservoir and Arroyo Sausal Creek. She said the implementation plan requires the District to evaluate reasonable and effective controls that could be used to reduce methylmercury production.

Ms. Whyte said laboratory analyses have been conducted on water column concentration values at levels similar to the load allocation. She said the load allocation to Soulejule Reservoir is 0.04 nanograms methylmercury per liter of water.

Ms. Whyte said staff must use fish of the same size when comparing mercury concentrations. She said staff had data for single fish samples of the same size of large mouthed bass caught in the three reservoirs.

In reply to questions from Clifford Waldeck, Ms. Whyte discussed how the implementation plan applies to the Water District.

Mr. Muller encouraged staff to use a flexible approach in the implementation of regulatory requirements.

Mr. Wolfe said the TMDL will be reviewed every five years and will be implemented adaptively.

In reply to a question from Dr. Young, Ms. Whyte said the District is required to submit by 2009 to the Executive Officer a plan describing how the sampling of fish tissue, water, and suspended sediments will be accomplished.

Mr. Wolfe recommended adoption of the Tentative Resolution Amending the Water Quality Control Plan for the San Francisco Bay Region to Establish New Water Quality Objectives and a Total Maximum Daily Load and Implementation Plan for Mercury in the Walker Creek Watershed.

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

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Mr. Waldeck; Mrs. Warren;

Dr. Young; Mr. Muller

No: None

Motion passed 7 – 0.

[The Board took at lunch break at 11:55 a.m. and went into closed session to discuss significant exposure to litigation. The meeting resumed at 12:57 p.m. at the completion of the closed session.]

Item 14 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Total Maximum Daily Load (TMDL) for Sediment in Napa River, and an Implementation Plan to Achieve the TMDL and Related Habitat Enhancement Goals – Hearing to Consider Adoption of Proposed Basin Plan Amendment

The minutes of this item will be prepared in a supplemental.

[Mrs. Warren left the meeting at approximately 1:30 p.m.]

Item 9 – South Bayside System Authority, Wastewater Treatment Plant and Its Conveyance System, Redwood City, San Mateo County – Reissuance of NPDES Permit

John Madigan said South Bayside System Authority treatment plant provides advanced secondary treatment for wastewater from the cities of Belmont, San Carlos, Redwood City, and Woodside, and parts of unincorporated San Mateo County.

Mr. Madigan said limits for dioxins were calculated from a narrative bioaccumulative objective in the Basin Plan. He said staff used best professional judgment to translate the objective into numeric limits. He said he would use the term dioxins to refer to the specific dioxin chemical and the approximately 210 related compounds.

Mr. Madigan said Bay Area Clean Water Agencies and the permittee submitted written comments questioning legal bases for limits for dioxins included in the Tentative Order.

Mr. Madigan replied by saying staff followed federal regulations when translating the narrative objective to numeric limits. He said the specific dioxin chemical and related compounds have been detected in the Bay and in fish tissue at levels that threaten human health if the fish are eaten. He said although the specific dioxin chemical has not been detected in the permittee's effluent, low levels of dioxin related compounds have been.

Mr. Madigan said U.S. EPA and Baykeeper submitted written comments stating that compliance schedules should include a sequence of actions that must be accomplished. He said Baykeeper questioned whether the permittee had shown it was infeasible to immediately comply with final limits for dioxins and cyanide.

Mr. Madigan replied by saying staff revised the Tentative Order to more clearly identify tasks and deadlines in compliance schedules. He said staff believes the permittee cannot immediately comply with final limits. He said the permittee's

cyanide pretreatment program already has reduced sources significantly and the permittee is not able to control sources of dioxins.

Daniel Child, Manager, South Bayside System Authority, requested the Board not adopt the Tentative Order and he spoke against including limits for dioxins. He spoke against using best professional judgment to translate a narrative objective into numeric limits.

Mr. Child said air emissions from combustion sources are the primary source of dioxins in the Bay Area. He said diesel exhaust and residential wood burning are the main combustion sources.

Mr. Child said the main sources of dioxins in municipal wastewater are laundry grey water and human waste. He said POTWs cannot control dioxins in wastewater sources or in combustion. He said POTWs currently are not able to meet limits for dioxins and are not able to see a way to meet limits in the future.

Replying to a question from Margaret Bruce, Mr. Child said dioxins adhere to suspended solids. He said wastewater treatment processes that remove the solids also remove dioxins. He said about 99% of suspended solids in SBSA's wastewater are removed. He said removing more dioxins would be difficult with existing plant technology.

Jodene Isaacs, Environment Advocates, speaking on behalf of Baykeeper, said her comments addressed Items 9 and 10. She said the law does not authorize use of compliance schedules. She expressed concern about releasing blended wastewater during wet weather. She objected to allowing the Executive Officer to unilaterally modify permit conditions.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, said POTWs will be subject to mandatory minimum penalties and citizen lawsuits for failing to comply with final limits for dioxins. She reiterated the agencies are not able to control sources of dioxins.

Ms. Plá said the Tentative Order includes a compliance schedule for dioxins that requires the permittee to reduce dioxins through source control measures. She said if source control measures are insufficient for the permittee to meet limits by July 1, 2009, the permittee is required to develop a plan on how to achieve the limits. She suggested a regional approach may be required to accomplish reduction of dioxins.

Monica Oakley, President, Oakley Water Strategies, requested final limits for dioxins be removed from Items 9, 10, and 11. She said her comments also were applicable to Item 10. She said wastewater treatment plants are not significant sources of dioxins and the plants are not designed to remove dioxins.

Dr. Young asked if there were opportunities to create offset programs.

Ms. Tang answered affirmatively. She said wastewater plants might receive offset credits for treating stormwater.

Mrs. Bruce expressed concern that permittees may not be able to meet limits for dioxins. She suggested the development of an offset program with a multimedia focus. She said the program could include replacing inefficient combustion sources like old diesel generators.

Mr. Peacock asked why the Tentative Order included limits for dioxins at levels permittees cannot meet.

Mr. Wolfe said federal law regulates how limits are set. He said the Tentative Order must comply with requirements in the federal Clean Water Act. He said staff understands the need to work with permittees on complementary programs to help them achieve compliance. He said, at this point, an offset program has not been developed.

Yuri Won reiterated federal law requires the Tentative Order include final limits for dioxins.

In reply to a question, Mr. Wolfe said staff is not certain permittees will be able to comply with final limits for dioxins.

In reply to a question, Ms. Won said there is not much law that deals with offset programs.

Ms. Tang said the maximum term for compliance schedules authorized under the Basin Plan is ten years. She said SBSA's last permit included a compliance term for dioxins that exceeded the ten years and the Tentative Order includes the longer compliance term. She recommended the Tentative Order be amended to correct the situation. She recommended Footnote (6) on page 12 read "Final limits for dioxin-TEQ will take effect on January 1, 2011" and the deadline for Task 6 on page 19 read "January 1, 2011."

Mr. Wolfe reiterated that the Tentative Order has been drafted to comply with the Clean Water Act. He said staff should help permittees achieve compliance. He said development of an offset program for dioxins is one option.

Mr. Wolfe recommended adoption of the Tentative Order as amended by Ms. Tang.

Mr. Waldeck said he would like to move to adopt staff's recommendation. He said he would like to include in the motion a provision requiring staff to look at creative and collaborative ways to foster compliance with final limits for dioxins.

Mr. Wolfe said the Board could establish, without including a provision in the motion, a priority that staff look at compliance issues regarding dioxins in a way that recognizes multimedia benefits.

Mrs. Bruce said she would like to see staff commit to fostering a multi-agency approach that focuses on multimedia collaboration and benefits. She said she

would like to see agencies move forward with a collaborative process that deals with multimedia issues.

Mr. Peacock suggested the Board adopt Tentative Orders for Items 9, 10, and 11 and separately consider a motion that captures the spirit of issues addressed by Mr. Waldeck and Mrs. Bruce.

Dorothy Dickey said the motion suggested by Mr. Peacock should be placed on a future meeting agenda before being considered by the Board. She said, alternatively, the Board could express its collective wishes to staff today and a motion would not be required.

Mr. Peacock expressed, on behalf of the Board, the direction that staff addresses issues raised by Mr. Waldeck and Mrs. Bruce regarding multimedia collaboration.

Mr. Muller said there was a motion to adopt the Tentative Order as amended. The motion was seconded by Mr. Peacock.

Roll Call:

Aye: Mrs. Bruce, Mr. Eliahu, Mr. Peacock, Mr. Waldeck, Dr. Young Mr. Muller

No: None

Motion passed 6 – 0

Item 10 – Central Marin Sanitation Agency, Wastewater Treatment Plant and Its Force Main, San Rafael, Marin County – Reissuance of NPDES Permit

Vince Christian said Central Marin Sanitation Agency owns and operates a wastewater treatment plant in San Rafael that serves the City of San Rafael and surrounding areas. He said four independent agencies own the satellite collection system.

[Mr. Waldeck left the meeting at 3:21 p.m.]

Mr. Christian said during wet weather rainwater gets into the sewer collection system through a process known as inflow and infiltration and the amount of influent can increase dramatically.

Mr. Christian said the permittee blends effluent when the amount of water received by the plant during wet weather exceeds secondary treatment capacity. He described the blending process. He said some wastewater is diverted around the secondary treatment units and then is recombined with wastewater that received secondary treatment. He said the blended effluent must meet all limits before being released.

Mr. Christian said U.S. EPA submitted written comments requesting the permittee not be allowed to blend effluent prior to showing a lack of feasible alternatives. He said, in reply, the permittee prepared a no feasible alternatives analysis and is developing a Wet Weather Improvement Project. He said the Improvement Project, expected to reduce blending by about 50% and expected

to cost \$60 million, will include: two new primary clarifiers; a new polymer facility; two new chlorine contact tanks; a new effluent pump station, and an expansion of storage pond capacity.

Mr. Christian said the Tentative Order includes a schedule the permittee must meet when completing the Wet Weather Improvement Project.

Mr. Christian said staff received written comments from U.S. EPA and Baykeeper concerning compliance schedules and limits for dioxins. He said he would not discuss the schedules and limits because comments and staff's reply are similar to those covered in Item 9.

Jason Dow, General Manager, Central Marin Sanitation Agency, thanked Lila Tang, Robert Schlipf, and Vince Christian for their work on the Tentative Order. He said design of the Wet Weather Improvement Project should be completed by the summer and construction should begin by the end of the calendar year. He said CMSA is able to comply with all provisions in the Tentative Order except for limits for dioxins. He reiterated concerns expressed by earlier speakers.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, disagreed with staff's method of calculating copper limits because the water effects ratio was not used. She expressed appreciation for the Board's earlier discussion about the need to look at creative ways to address permittees' compliance with dioxin limits. She expressed hope that staff and permittees could work together in a regional way to address compliance issues with limits for dioxins and other pollutants.

Ms. Plá said BACWA recognizes a permittee should develop a plan on how to minimize blending events. However, she said BACWA does not agree that a Tentative Order should include a schedule to implement the plan.

Mr. Wolfe recommended the Board amend Table 7 of the Supplemental to the Tentative Order to read: the maximum daily limit for Dioxin-TEQ is 2.8E-08 and the average monthly limit is 1.4E-08. He recommended the Board amend Table 3, page 1 of the Tentative Order to read: the adoption date of the Tentative Order is January 23, 2007; the effective date is April 1, 2007; and the expiration date is March 31, 2012.

Mr. Wolfe recommended adoption of the Tentative Order as supplemented and as amended.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Peacock, and it was voted to adopt the Tentative Order as supplemented, amended and recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Dr. Young; Mr. Muller

No: None

Motion passed 5 – 0.

Item 11 – Central Contra Costa Sanitary District, Wastewater Treatment Plant and Its Sewage Collection System, Martinez, Contra Costa County – Reissuance of NPDES Permit

Derek Whitworth said Central Contra Costa Sanitary District treatment plant serves nearly a half a million residents.

Mr. Whitworth said final copper limits in the Tentative Order are the same as final copper limits in the District's existing NPDES permit. He said the District has complied with limits in the existing permit.

Mr. Whitworth said the District and Bay Area Clean Water Agencies submitted written comments requesting staff use new site specific information when calculating copper limits. He said copper limits calculated with the new information would be less stringent than the limits in the Tentative Order and in the existing permit.

Mr. Whitworth said, under anti-backsliding provisions of the Clean Water Act, final copper limits in the Tentative Order cannot be less stringent than existing final limits unless exceptions apply. He said the District has not shown exceptions apply.

Mr. Whitworth said the law allows that new site specific information can be used to calculate less stringent limits for POTWs that do not have final copper limits in their existing permits.

Mr. Whitworth said staff received written comments concerning compliance schedules and limits for dioxins. He said he would not discuss the issues because the comments and staff's reply are similar to those covered in Item 9.

Douglas Craig, Director of Operations, Central Contra Costa Sanitary District, said anti-backsliding provisions allow including less stringent limits than the copper limits in the Tentative Order. He said he had a handout written by U.S. EPA that clarifies anti-backsliding provisions. He said the District cannot control sources of dioxins and objected to numeric limits.

After a discussion with legal counsel regarding late submittal of written comments for NPDES permits, Mr. Muller said the handout would not be accepted.

Mr. Wolfe reiterated the Tentative Order complies with the Clean Water Act. He said copper limits may be revised in the future if the District demonstrates an exception to anti-backsliding provisions applies.

Kent Alm, General Counsel, Central Contra Costa Sanitary District, said anti-backsliding rules would not prohibit less stringent copper limits that were consistent with the water effects ratio. He referred to a flow chart attached to a September 1989 memorandum from James R. Elder, U.S. EPA, entitled "The

Interim Guidance on Implementation of Section 402(o) Anti-Backsliding Rules for Water Quality Based Permits.” He said there was a path on the flow chart that leads to the conclusion that revision of copper limits would be consistent with anti-backsliding provisions.

Mr. Alm said the narrative objective in the Basin Plan, translated to numeric limits, applies to controllable pollutants. He said POTWs are not able to control the amount of dioxins in wastewater.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, reiterated anti-backsliding rules would not prohibit less stringent copper limits that were consistent with the water effects ratio. She spoke against translating a narrative objective into numeric limits. She said her comments regarding the July 1, 2009 deadline in the dioxins compliance schedule in Item 9 also apply here.

Mr. Wolfe recommended adoption of the Tentative Order.

Motion: It was moved by Dr. Young, seconded by Mr. Eliahu, and it was voted to adopt the Tentative Order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Bruce; Mr. Eliahu; Mr. Peacock; Dr. Young; Mr. Muller

No: None

Motion passed 5 – 0.

Adjournment

The Board meeting was adjourned at 4:04 p.m.