

**California Regional Water Quality Control Board**  
**San Francisco Bay Region**  
**EXECUTIVE OFFICER'S REPORT**  
**A Monthly Report to the Board and Public**  
**March 10, 2004**

**Proposed Legislation**

(Mary Rose Cassa / Stephen Hill)

A sizable number of bills have been proposed in the Legislature that may potentially affect our Region. The current key bills are summarized in Attachment 1. We will keep you informed on major developments.

We are especially following several "Brownfields" bills that are making their way through the Legislature, with adoption of some new "Brownfields" legislation expected this year. "Brownfields" are properties where real or suspected contamination discourages owners or buyers from redeveloping, thereby pushing development to the urban fringe. We have seen a flurry of bills that are intended to encourage Brownfield redevelopment. The Governor's office has also shown significant interest in this issue. Below is a quick summary of the two that most affect the Board.

- SB 493 (Cedillo) – This bill would relieve "innocent" landowners and prospective purchasers of cleanup liability if they meet certain tests. For example, these "innocent" parties would have to: show that they did not contribute to site contamination, provide access for cleanup activities by dischargers, and conduct basic cleanup (if there are no viable dischargers). Liability relief is expected to encourage buyers and lenders to invest in Brownfield properties. The bill is similar to the liability-relief features in 2002 federal Brownfield legislation, but goes further in some respects. Environmental groups are concerned that the bill sets a looser standard for cleanup and shifts the burden from the "innocent" party to the oversight agency to determine "innocent" status. We like the idea of liability relief but have some concerns about the details. For example, we could be inundated with requests for "innocent" status, because the bill does not require any fees or cost recovery to accompany the requests. We understand that Cal/EPA is discussing various changes with the bill's author.
- SB 559 (Ortiz/Machado) – This bill would establish a streamlined oversight process for investigation and cleanup of contamination at Brownfield sites, with the Department of Toxic Substances Control

(DTSC) as the primary oversight agency. It would require DTSC and the State Board to enter into an agreement to minimize duplication of effort. We support the idea of streamlining the oversight process. We are concerned, however, about this Water Board being shut out of the Brownfield oversight program, given our past record of promptly and effectively overseeing Brownfield projects.

**BayKeeper Challenges Approval of Napa Stormwater Program** (Selina Louie)

The Board has been regulating municipal stormwater for over 10 years through permits for the major urban portions of the Region. Item 10 on this meeting's agenda is a status report on the Region's four major countywide programs. Pursuant to federal regulations, the municipal stormwater program is in the process of expanding to smaller urban areas, commonly referred to as Phase II. Last year, the State Board issued a general permit for Phase II communities throughout the State. In our Region, that permit covers all North Bay counties from Marin to Solano and also those portions of San Francisco not served by the combined (i.e., storm and sanitary) sewer system.

The procedures established in the State Board's general permit call for staff of each respective region to review and comment on stormwater management plans from each Phase II community. When those plans are acceptable to staff, they are posted on the State Board web page for 60 days. If no member of the public requests a hearing on the adequacy of the management plan during those 60 days, the plan goes into effect. If there is a public request for a hearing, it is to be held before the respective water board to determine if the management plan is acceptable.

In our Region, the first management plan found acceptable by staff was for Napa County and its cities. The 60-day comment period began on January 1, 2004. Staff has also posted management plans for Marin County, Petaluma, and San Francisco, which are currently still in their comment period.

On February 27, BayKeeper formally requested a hearing on the Napa County management plan. Its letter states that the plan, "... may not comply with the Phase II permit or the Clean Water Act". No other details were included. Board staff has scheduled a meeting with BayKeeper to determine what its concerns are. Once we have defined the issues, we will schedule a hearing as appropriate. If BayKeeper, or others, challenge the other Phase II management plans currently under public review, we will attempt to consolidate issues and hearings in order to expedite Board consideration of the plans.

### **Release of Diazinon and Pesticide-Related Toxicity TMDL Report** (Bill Johnson)

We recently completed a TMDL project report on diazinon and pesticide-related toxicity in Bay Area urban creeks. It presents staff recommendations on establishing a strategy to eliminate pesticide-related toxicity from urban creeks. The strategy includes a TMDL that addresses water quality impairment attributed to the insecticide diazinon. Diazinon has been widely used throughout the Bay Area to manage numerous pest problems, including ants. A small fraction of the diazinon used by the public outdoors reaches surface water, often resulting in diazinon concentrations that are toxic to test organisms. Diazinon is now being phased out of urban use, but replacement pesticides pose new water quality concerns. Consequently, we have also considered replacement pesticides in the strategy.

This project report is an important milestone; it provides an opportunity for stakeholders to provide feedback on technical issues and our proposed implementation plan. We will consider their feedback and draft a Basin Plan amendment to incorporate the proposed strategy and TMDL into the Basin Plan. We anticipate a Board hearing this fall. On March 16, we will host a workshop to update stakeholders regarding this project. The workshop will also serve as a public scoping meeting to discuss the proper scope and content of the environmental review of the Basin Plan Amendment pursuant to the California Environmental Quality Act (CEQA). The workshop will be coordinated with the regular meeting of the Urban Pesticide Committee, which meets bimonthly and serves as a forum for coordinating early implementation efforts related to the water quality attainment strategy and TMDL.

### **Change in Local Oversight of Tank Site Cleanups In Santa Clara County** (Chuck Headlee)

On March 17, Board staff will attend a meeting to discuss the transfer of the leaking underground fuel tank

program from Santa Clara Valley Water District to Santa Clara County's Environmental Health Department. The transfer will take effect on July 1.

The transfer is occurring due to legal uncertainty over the District's eligibility to receive funds from the State Board to oversee leaking fuel tank cleanups under the State Board-contracted local oversight program (LOP). Specifically, the State Board can only enter into a LOP contract with a "local agency" as that term is defined in the State Health and Safety Code, and there are ambiguities regarding the District's legal status as a "local agency". The District has received LOP contracts continuously since 1988 and has been one of the State's most effective LOP agencies. Last year, we worked with the State Board, the District, the County, other local agencies, and Senator Byron Sher's office to support legislation that would allow the District to retain its LOP status through the current fiscal year. Consequently, the District has continued to oversee leaking fuel tank cases. However, this is only a short-term solution, and the County has indicated its interest in assuming LOP status as of July 1.

We are working to assure that the transition goes smoothly. The groundwater basin beneath Santa Clara Valley helps provide drinking water to 1.7 million residents. The District oversees about 430 open leaking fuel tank cases, including a significant number of high-threat MTBE cases. We will be working closely with the District and the County during the transition. Afterwards, we will provide the necessary technical and program support to the County to ensure its success as an LOP agency.

### **Concurrence Letter for Tidal Area Landfill, Concord Naval Weapons Station**

(Laurent Meillier)

I do not intend to sign the Navy's Tidal Area Landfill Containment Record of Decision (ROD) for Concord Naval Weapons Station. The Concord Naval Weapons Station Site 1 Tidal Area Landfill is located in tidal wetlands adjacent to Suisun Bay, covering 13 acres, and containing an estimated 33,000 tons of wastes disposed between 1944 and 1979. I will issue, instead, a concurrence letter to be included in the administrative record stating that while we agree with the construction remedy of containing the wastes at the landfill via an engineered cap, we do not agree with the omission of certain regulatory citations in the ROD.

The omitted citations include the San Francisco Bay Basin Plan as an ARAR (Applicable or Relevant and

Appropriate Requirement) and the Navy's written acknowledgment that the contaminants present in leachates leaving the Site 1 footprint must meet Federal and State criteria for the protection of human and ecological health.

Issuance of a concurrence letter will assure that cleanup of the facility will proceed while noting our objections and not setting a precedent for other federal sites.

### **Streamlining Permit Rescissions** (Lila Tang)

For legal and administrative reasons, NPDES discharge permits that are no longer necessary, or even expired, must be officially rescinded. Historically, we rescinded permits with a separate Board order for each permit. In an effort towards greater efficiency, we will start to process all rescissions in one Board order roughly once a year. In some special cases, we will forego Board action altogether by simply rescinding with an Executive Officer letter. These special cases involve facilities that have not applied for reissuance because they are no longer operating and whose permits are expired.

The first streamlined rescission Order will be in May. It will cover five facilities that recently received coverage under our new general permit for potable water treatment plants, and so their individual permits are no longer necessary.

### **Staff Participate in Hamilton MtBE Public Information Forum, Novato** (James Ponton)

Controversy and parental concern resulted from an article published January 4 by the Marin Independent-Journal that described the plume of MtBE-contaminated groundwater near a charter school at the former Hamilton Airfield. The article reported the perspective of a City of Novato official who alleged that the plume is uncontrolled and is migrating towards the school, thus threatening the health of students, staff, and neighboring residents of the Hamilton community.

The MtBE plume originates from a former Navy-owned and operated gasoline station. The Novato charter school is located across the street from the site of the former gasoline station.

The MtBE plume is actually under active remediation and is being closely monitored in compliance with a Board order. That fact was not fully communicated in the newspaper article.

Responding to both parent and community concerns on this issue, the Novato Unified School District sponsored a public forum on January 20. The forum was intended

to educate the community on the risks posed by the MtBE plume. Board staff, represented by James Ponton, along with representatives of DTSC, the U.S. Navy, and a City of Novato environmental consultant were panelists for the forum. Novato School Superintendent Jan L. Torre-Derby moderated the forum.

The forum was attended by approximately 100 parents and residents and was televised via a local television station. After a brief introduction of the panelists, a question and answer period followed. Responding to numerous questions, the panelists assured both parents and the community that human health and environmental concerns are being addressed. The panelists summarized the efforts and progress made to date to remediate the plume (via underground tank removal, soil removal, soil vapor extraction, and bio-sparging) and described the extensive well network (soil gas and groundwater) that is used in tracking the remedial progress and the migratory behavior of the plume. The tracking data clearly show that the levels of MtBE impacting groundwater have been greatly reduced and there is no current threat to human health and the environment.

DTSC toxicologists present at the forum further indicated that the past and current risk to staff and students is negligible given the location of the school atop bedrock, (i.e., not in soils which are transmissive of groundwater), the plume's current pathway outside of the school grounds, and by the remediation progress accomplished to date.

Overall, the forum has been deemed a success, responding in a timely fashion to both parent and community concerns.

### **Staff Facilitate Meetings to Address Concerns Over Mountain Lake Restoration Effort, Presidio of San Francisco** (James Ponton)

Mountain Lake is a 2.4-acre, approximately 15-foot deep, spring-fed, natural lake near the southern boundary of the Presidio. The Mountain Lake watershed includes a large portion of the Presidio, neighboring San Francisco residential areas to the south of the lake, and runoff from Highway 1 (Park Presidio Blvd.). Mountain Lake suffers from eutrophication (i.e., shallow, rich in dissolved nutrients, and seasonally deficient in dissolved oxygen).

In an effort to restore Mountain Lake, the Presidio Trust, the Golden Gate National Recreation Area, and the National Park Service are in the planning stages of implementing a Mountain Lake enhancement project (i.e., dredging approximately 5 to 6 feet of sediment

from the center portion of the Lake and removing invasive plant species). Funding for planning and implementing the first phase of enhancement is provided from \$500,000 in mitigation funds secured from the San Francisco Airport as part of a 1997 Board order.

Sediments in the center of the Lake and adjacent to CalTrans storm drains draining Highway 1 show impacts from pesticides and metals (i.e., lead, antimony, copper, and mercury). These detections, in part, appear to be related to stormwater discharge into Mountain Lake from Highway 1.

Community members that serve on the Presidio Restoration Advisory Board (RAB) consider CalTrans responsible for the metals pollution detected in Lake sediments. Although several technical meetings have been held over the past two years between the state regulatory agencies (Board and DTSC) and CalTrans regarding the pollution, the RAB remains concerned about the apparent slow pace of the meetings and CalTrans' lack of financial assistance towards the restoration effort. The RAB formally expressed their concerns by collectively drafting and sending a letter in February to Senator Joseph Dunn (State Chairman, Budget Subcommittee on Legislative, Executive, Public Safety and General Government). The RAB's letter requests a budget subcommittee hearing on this issue (i.e., CalTrans financial responsibility towards cleanup of Mountain Lake sediments).

In an attempt to facilitate communication between the parties, Jim Ponton of my staff arranged two meetings between CalTrans, the Presidio Trust, and the National Park Service to establish a technical dialogue and facilitate discussions related to the Highway 1 storm drains and metals distributions discovered in sediments. The most recent meeting held on February 17 was quite positive with CalTrans management considering the use of "T-Dollars/Grants" for contributing to the Mountain

Lake restoration and stormwater management effort. Board staff was assisted by Mary Frederick of Caltrans (on loan to the Board as a CalTrans Training and Development assignment) for helping to link Board staff with appropriate managers at CalTrans.

### **In-house Training**

Our February training was on conducting site inspections and was a scaled-down version of the State Board training academy course on this topic. Our March training will be on watershed topics, including stream protection, habitat restoration, and Bay sediment dynamics. Recent brown-bag topics have included a February 25 session on sediment screening and benthic toxicity testing, a March 3 session on ex-situ treatment of contaminated soil, and a March 10 session on well drilling methods.

### **Presentations and Outreach**

On February 9, Andree Breaux gave a presentation entitled, "California Wetland Laws and Regulations," at the Continuing Legal Education Conference on Wetlands in San Francisco.

On February 26, Richard Looker gave a presentation on the Lower San Francisco Bay site-specific objectives project to State and Regional Water Board staff attending a site-specific objectives training course. The course was held at the California Environmental Protection Agency building in Sacramento.

On March 16, Stephen Hill will speak at the Association for Environmental Health and Sciences (AEHS) West Coast Conference. He will discuss how the Board uses institutional controls at sites where residual contamination needs to be managed following active cleanup. He will be on a panel that includes representatives from industry, government, citizen groups, and non-profits that promote Brownfields redevelopment.

**Attachment 1**  
**Key Proposed Legislation as of March 10, 2004**

<b>Bill Number (Sponsor)</b>	<b>Subject</b>	<b>Expanded Description</b>
AB 204 (Nation)	Motor vehicles – environmental impacts / mitigation	Would authorize DMV to collect a fee of up to \$6 for motor vehicle registration in Bay Area counties that would fund projects and grants to prevent, reduce, remediate, or mitigate the adverse environmental impacts of motor vehicles and motor vehicle facilities, once counties agreed to the fee collection.
AB 389 (Montanez)	Brownfields – purchaser protection	This bill would require, among other things, CalEPA to adopt regulations to establish the conditions under which the agency or agency entity (e.g., water boards) may enter into a prospective purchaser agreement (PPA) with a bona fide prospective purchaser of a Brownfield site.
AB 1699 (Laird)	Mercury – fluorescent lamps	This bill proposes to establish a fluorescent lamp recycling program to encourage proper handling and recycling and thus reduce the amount of mercury potentially released into the environment. In response to concerns regarding high levels of mercury in San Francisco Bay fish, the Water Board is proposing TMDLs that will require urban runoff management agencies to significantly reduce the level of mercury in their stormwater discharges. The proposed point-of-purchase fee appears to be a fair and effective method of raising the funds necessary to implement a fluorescent lamp recycling program.
AB 2529 (Kehoe)	CA Ocean Plan	This bill would require the State Board to revise the California Ocean Plan on or before January 1, 2007, to require all regional water board plans that include watersheds draining to coastal waters to provide for the protection, maintenance, and restoration of marine ecosystems, prohibit certain additional point source discharges, and require waste discharge reports and waste discharge requirements for certain nonpoint source discharges. This bill could help provide additional environmental protections to coastal resources. The bill as proposed could also require significant staff resources to implement.
AB 2814 (Simitian)	CEQA – coastal/marine resources	This bill would exempt from CEQA actions taken by state or local government if the objective of the action is to "improve" or conserve coastal or marine resources in a marine life preserve, marine protected area, or marine managed area. We do not how the project proponent would know if the potential effects would be adverse or not, without going through the process of either a Negative Declaration or EIR.

Bill Number (Sponsor)	Subject	Expanded Description
AB 3004 (Pavley)	Perchlorate	This bill would require DTSC to adopt regulations specifying best management practices for managing perchlorate materials. This a step in the right direction, but other sources of perchlorate should also be addressed, such as federal defense facilities and fireworks manufacturers among others.
SB 493 (Cedillo)	Brownfields – immunity from cleanup liability	This bill would relieve “innocent” landowners and prospective purchasers of cleanup liability if they meet certain tests. For example, these “innocent” parties would have to: show that they did not contribute to site contamination, provide access for cleanup activities by dischargers, and conduct basic cleanup (if there are no viable dischargers). We like the idea but still have some concerns about the details.
SB 559 (Ortiz and Machado)	Brownfields – streamline agency oversight	This bill would establish a streamlined oversight process for investigation and cleanup of contamination at Brownfield sites, with DTSC as the primary oversight agency. It would require DTSC and the State Board to enter into an agreement to minimize duplication of effort. We favor the streamlined approach for lower-risk sites (including most Brownfield sites). We are concerned, however, about this Water Board being shut out of Brownfield oversight efforts, given our past record of promptly and effectively overseeing Brownfield projects.
SB 1486 (Hollingsworth)	CEQA – overpass exemption	This bill would exempt from CEQA an overpass built within an easement or right-of-way controlled by a state or local transportation agency or a city, county or city and county. Our experience is that such transportation projects frequently have direct impacts on adjacent wetlands, creeks or other State waters, and those impacts should be identified and mitigated in advance of construction. Likewise, such projects have both construction/temporary impacts and permanent impacts (both due to increases/changes in impervious surfaces and to the pollutants that run off from the new surfaces) to stormwater quality that should be mitigated. Further, such projects run a high risk of involving nearby properties that could have hazardous waste, and these properties need to be identified early on to facilitate planning for proper waste management.
SB 1552 (Machado)	Water Quality - TMDLs	This bill would allow water boards to establish minimum stream flow requirements in connection with establishing TMDLs. However, the bill speaks only to authority to establish flow requirements, and without authority to implement and enforce the flow requirements it fails to change the status quo.

<b>Bill Number (Sponsor)</b>	<b>Subject</b>	<b>Expanded Description</b>
SB 1728 (Aanestad)	Private Property – State Agency Access	This bill would prohibit state agencies from entering private property except with the owner's consent and pursuant to specified requirements, including at least 72 hours telephone notification. The bill includes several requirements such as providing reports to the owner of activities during the visit and confining observations, investigations, or other activity to the original purpose for which entry is sought. This bill would create a significant burden to Board staff, and make it virtually impossible to implement effective enforcement of State and federal water quality laws.
SB 1732 (Hollingsworth)	Dairy	This bill would authorize the Secretary of Food and Agriculture to develop a voluntary program to promote the environmental quality of dairy lands, facilities, and operations. Such a program would work well in concert with our recent effort to bring our Region's dairies into compliance.