

**California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT**

A Monthly Report to the Board and Public

January 2006

The next regular scheduled Board meeting is January 11, 2006.

See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda

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North Bay New Year's Floods (Wil Bruhns)

Over the New Year's weekend there was significant rainfall and flooding in the North Bay. Based on initial reports the first day back to work after the weekend, there appears not to have been any major unexpected water quality problems in our region due to the floods.

We did receive a report of animal wastes being washed out of a stockyard in Petaluma and are investigating. State and federal requirements for such confined animal facilities require that wastes be managed to contain them in a 24-hour storm that occurs once every 25 years (that would be approximately 5 inches of rain in 24 hours in Petaluma). It appears that the rains were greater than this; so as long as reasonable measures were taken to minimize the release and clean up the facility, we do not expect further enforcement for this discharge.

Floodwaters do carry large amounts of sediment, and in the North Bay we are working on TMDLs for sediment for the Napa River, Petaluma River, and Sonoma Creek. Staff believe that many causes of excess sediment and flooding are related, e.g., urbanization and agricultural land conversion.

Therefore, by addressing the sediment issue, we should be also helping to minimize future flood damage.

In terms of flood protection, over the past ten years, the Board and staff have been heavily involved in the Napa River Flood Protection Project. That Project is currently being built, and the restoration of the floodplain south of Napa to produce both increased flood capacity and restored wetlands has been sufficiently completed such that this storm's damage to downtown Napa was far less than in the historic floods of 1986 and earlier.

The above information is preliminary. As more becomes available we will continue to keep the Board informed.

First Ever Pharmaceutical "Take-Back" Program Planned for Bay Area (Linda Rao)

In March 2006, the Bay Area Pollution Prevention Group (BAPPG) will conduct a region-wide pharmaceutical "take-back" and/or collection program throughout the San Francisco Bay Area. The effort will be the first of its kind to coordinate the collection, transport and disposal of excess medications.

Pharmaceuticals and other residual chemicals from medications and personal care products have been documented as present in surface waters and drinking water supplies since the early 1990's. One of the ways that pharmaceuticals are getting into the aquatic environment is through wastewater discharges from Publicly Owned Treatment Works (POTWs). Most treatment processes at POTWs do little to remove or treat these chemicals. The two largest sources of such chemicals to POTWs are human waste and the public's frequent disposal of unused or unwanted medications down the drain. As a consequence, there are now growing concerns about the impacts of these chemicals on both human health and aquatic life.

In response, member POTW agencies of BAPPG have been investigating the problem, holding workshops, and coordinating with pharmacies and state/federal/local agencies on the best solution and message for the public. The first steps were taken in July 2005 through a workshop for health care facilities and professionals on the proper disposal of excess drug supplies. The second step will be an effort to reduce excess medications in the residential community, with a message to the public that flushing drugs affects fish. NPDES program staff is currently working with BAPPG on a position paper for all Water Boards that will address related issues, including surface water, solid waste, and groundwater issues.

Oakland Uptown Redevelopment Project Groundbreaking (Max Shahbazian)

On December 14, the City of Oakland held a groundbreaking ceremony for its Oakland Uptown Redevelopment Project. Max Shahbazian represented the Water Board at the ceremony. This Brownfield redevelopment site is bounded by Thomas L. Berkeley Way (formerly 20th Street), 18th Street, Telegraph Avenue and San Pablo Avenue, and is located not far from the Board's offices. The redevelopment plans 900 residential units, retail space, and a public park. The first units should be ready for occupancy in September 2007. The Uptown Redevelopment Project is a key element of the City's long-held goals for providing downtown housing for mixed-income levels as well as revitalizing the Fox Theater entertainment district.

We have played an important role in this Brownfield redevelopment project. The Board is the lead agency overseeing the cleanup of soil and groundwater contamination at the site. Petroleum hydrocarbons and chlorinated solvents are present in soil and groundwater due to past commercial activities. We recently approved a cleanup plan for the site that includes soil excavation with off-site disposal, groundwater and soil vapor extraction and treatment, stormwater and dust controls, long-term groundwater monitoring, and a deed restriction on groundwater use. The cleanup will proceed in parallel with the site's redevelopment. In June 2005, the Board authorized me to execute a Prospective Purchaser Agreement (PPA) for this site, and the PPA has since been executed. PPAs encourage Brownfield cleanup and redevelopment by granting future liability relief to site buyers and developers in return for tangible benefits to the state (e.g., site cleanup, access for cleanup or monitoring activities).

Litigation Update (Yuri Won)

Communities for a Better Environment (CBE) and San Francisco Baykeeper (Baykeeper) v. Water Board, et al. (California Supreme Court). On December 21, 2005, the California Supreme Court denied CBE's and Baykeeper's petition for review of a Court of Appeal decision on the Tesoro Golden Eagle Refinery's NPDES permit, thereby ending almost five years of litigation. As was discussed in my September report, we have been litigating Tesoro's 2000 dioxin permit limit in numerous lower and appellate courts, resulting in two published Court of Appeal decisions. The first, issued in 2003, upheld the 2000 permit's final water quality based effluent limitation for dioxins. The second, issued on August 29, 2005, upheld a lower court ruling that (1) the 2000 interim permit limit for dioxins did not violate the anti-backsliding provisions of the federal Clean Water Act and (2) the permit's schedule of compliance for dioxins was valid. CBE and Baykeeper had sought appellate review of this last Court of Appeal decision, and it is this request that the California Supreme Court most recently denied. The significance of the denial is not only that it ends years of litigation, but also it leaves intact and affirms the Board's NPDES permitting approach of imposing, where justified, a schedule of compliance, which includes an interim discharge limit based on performance and a final discharge limit based on a Board-adopted TMDL.

Our Children's Earth Foundation (OCEF) v. Water Board, et al. (San Francisco Superior Court). On December 20, 2005, the San Francisco Superior Court entered a dismissal with prejudice of this lawsuit filed by OCEF against the Board for failure to timely reissue an NPDES permit for the East Bay Municipal Utility District (EBMUD) wet weather facilities that discharge on average 8.6 times per year during severe storm events. The Board reissued the permit in September 2005 after Board staff spent nearly two years negotiating with U.S. EPA, EBMUD, OCEF and the Baykeeper concerning the lack of secondary treatment at EBMUD's wet weather facilities. The negotiations resulted in a last minute private settlement agreement among EBMUD, OCEF and the Baykeeper, where OCEF agreed to dismiss the lawsuit if the Board reissued the permit and companion time schedule order (TSO) without substantial alteration from the final draft versions and no party petitioned or sued on the reissued permit or TSO. The Board adopted the permit and TSO without substantial alteration, and no petitions or lawsuits were filed, requiring OCEF to seek a dismissal of the lawsuit.

EBMUD Petition Declined by State Water Board for Kinder-Morgan Pipeline Discharge
(Chuck Headlee)

On December 20, 2005, the State Board received a petition from the East Bay Municipal Utility District (EBMUD) dated December 16, 2005, that asked for a review of the site cleanup order the

Board adopted in November. The order names EBMUD as a discharger along with Mountain Cascade, Kinder Morgan Energy Partners, and Contra Costa County. It directs them to take various steps to investigate and clean up petroleum contamination from the November 2004 pipeline release in Walnut Creek. EBMUD disputes that it is a responsible party and its petition outlined several reasons for that conclusion. EBMUD asked the State Board to hold its petition in abeyance.

However, on December 29, 2005, the State Board sent a letter to EBMUD declining to accept the petition because it was not filed in a timely manner. The State Water Board's regulations require that any petition for review "must be *received* by the state board no later than 5:00 p.m. 30 days following the date of the action . . ." (*emphasis added*, Cal. Code Regs., tit. 23, § 2050(b).) The EBMUD petition, although apparently mailed on December 16, 2005, was received by the State Board on December 20, 2005, more than 30 days after the action. The State Board noted in its dismissal letter that the deadline for filing petitions is jurisdictional and late filing cannot be waived (Wat. Code, § 13320). Because the petition was not timely filed, the State Board declined it.

Pollution Prevention Reporting for POTWs (Linda Rao)

To assist municipalities in preparing pollution prevention (P2) reports that emphasize the results they achieve, we have produced a document called "Pollution Prevention Reporting for POTWs". It answers questions posed to us by municipalities about permit requirements and describes features of excellent P2 programs. Bay Region municipalities conduct pollution prevention (P2) programs to keep pollutants from entering sewers and reaching POTWs. Presently, about 40 Bay Region municipalities operate P2 programs tailored to the water quality concerns of each service area.

We will group municipalities by size (small, medium, or large design discharge capacity) and will rank programs within each group as "excellent, good, satisfactory, less than satisfactory, or unacceptable." "Excellent" programs demonstrate an extraordinary level of effort beyond minimum permit requirements and include such features as innovation in addressing pollutant reductions, resourceful collaboration, solutions that reduce pollutants to the environment overall (e.g., that benefit wastewater, stormwater, bio-solids), responsiveness to emerging contaminants, and solutions that benefit the region by reducing discharges bay-wide.

The Bay Area Pollution Prevention Group provided important feedback on the document. This document is not regulatory and complements current requirements specified in each municipality's NPDES permit. It is posted on the Board's website under "Available Documents."

Mirant to Provide Earlier Information About Potrero Power Plant Water Quality Effects (Derek Whitworth)

We are preparing documents to reissue the Mirant Potrero Power Plant NPDES permit this spring. The reissuance of the NPDES permit has the attention of a wide range of stakeholders, including organizations concerned with water quality, the local community, and the City of San Francisco.

On December 21, 2005, we sent a Water Code §13267 letter requiring Mirant to begin, without delay, investigative work on the power plant's effects on marine organisms trapped by cooling water intake structures and how best to reduce or compensate for such effects. By requiring this information now in advance of the permit, through the §13267 letter, we are ensuring that data collection and analysis that are required under federal regulations are started as soon as possible. New Clean Water Act regulations adopted in September 2004 require permittees for certain power

plants to gather the data to reduce effects on marine organisms. The §13267 letter requires this information, as well as a polychlorinated biphenyls (PCBs) stormwater discharge study, a mercury discharge study, and a thermal effects study. Many stakeholders following our efforts to reissue the permit support our call for this information.

Mercury in the Guadalupe River Watershed: Technical Documents Available for Review
(Carrie Austin)

After several years of work on one of the most challenging contamination problems in the region, staff has released the first technical report on mercury in the Guadalupe River Watershed. The executive summary was released in mid-December, and the full technical report will be released in January. Both documents will be available at

<http://www.waterboards.ca.gov/sanfranciscobay/guadalupe/rivermercury/tmdl.htm> .

The 170-square mile watershed includes six major reservoirs, over 80 miles of streams including the 19-mile Guadalupe River, and the New Almaden Mining District, located in the hills above San José. From 1845 to 1975, New Almaden was the fifth-largest mercury mine in the world, producing over 84 million pounds of mercury, much of which was used in gold mining in the Sierra Nevada. Typical of waste disposal practices at the time, the roasted ore (calcines) was piled into creeks for the winter rains to wash downstream. Consequently, downstream mercury methylation and bioaccumulation in fish tissue remain significant problems. Almaden Reservoir, Alamitos Creek, Calero Reservoir, Guadalupe Reservoir, Guadalupe Creek, and the Guadalupe River are all listed as impaired by mercury under section 303(d) of the federal Clean Water Act. Other water bodies in and downstream of the historic New Almaden complex, which are considered impaired but not currently listed, will also be addressed by the TMDL.

The Santa Clara Basin Watershed Management Initiative convened the Guadalupe Mercury Work Group, partly to assist with the technical basis of the TMDL. Staff looks forward to working with the Work Group in the coming months as we develop a draft Implementation Plan by June 30, 2006.

Meetings Continue with Ranchers in TMDL Watersheds (Rebecca Tuden/Carmen Fewless)

On December 15, Board staff conducted a meeting in Point Reyes Station to discuss possible TMDL implementation activities that might apply to ranchlands in watersheds in the North Bay identified as impaired due to grazing activities. The meeting was attended by local ranchers and technical staff representing the local Resource Conservation Districts, the Marin Agricultural Land Trust, UC Extension, the National Park Service, and the Natural Resources Conservation Service.

This was the second in a series of meetings with local stakeholders in the Tomales, Napa River, and Sonoma Creek watersheds to discuss possible future regulatory action(s) and pollution/runoff prevention efforts associated with ranching activities.

While these are early dialogues in what may be a lengthy public participation process, all agreed that a multi-stakeholder approach to implementation planning will be beneficial to all parties as staff works to build an implementation framework for addressing sediments and nutrients as well as pathogens. The group will meet again on January 17 in Point Reyes Station.

Public Workshop, CEQA Scoping Meeting Scheduled for Revised Bay Mercury TMDL

(Tom Mumley)

On Tuesday, January 31, 10 am-12 noon in the auditorium at the Oakland State Building, 1515 Clay Street, staff will present a public workshop and hold a CEQA scoping meeting to discuss revisions to the TMDL for mercury in San Francisco Bay. The meeting will address issues identified in the last year's remand by State Water Board.

The CEQA scoping meeting will immediately follow the workshop. Staff will discuss and take comments from the public on proposed new water quality objectives for mercury in Bay fish tissues, as well as changes to the Implementation Plan for mercury adopted by the Board in 2004. Carrie Austin (510 622-1015; caustin@waterboards.ca.gov) is staff contact for the project.

U.S. EPA Contractors Assist Closing Underground Storage Tank (UST) Sites (John Kaiser)

In November, U.S. EPA provided us temporary contractor support to help close UST cases from our Department of Defense program backlog. Currently, we have a significant backlog of low risk UST cases. As part of U.S. EPA's congressional mandate to maintain and increase the pace of UST cleanups and closure throughout the nation, professional staff from Ecology and Environment, Incorporated, have been assigned to assist us in preparing UST closure packages. They will be helping at least through March 2006, when their U.S. EPA contract expires. To date, they have identified at least 12 UST sites eligible for closure.

Hunters Point Shipyard Cleanup –2005 in Review (Jim Ponton)

Significant and aggressive progress continues to be made in cleanup of the Hunters Point Shipyard for redevelopment. In 2005, approximately 95,000 cubic yards of contaminated soil and sediment were excavated along the shipyard's southern shoreline to eliminate potential sources of radionuclides, PCBs, hydrocarbons, metals, pesticides, and solvents to the Bay. Petroleum-impacted soil remedial actions across the shipyard totaled an additional 30,000 cubic yards. The excavated soil volumes would fill over 6,200 standard size dump trucks. Contaminated groundwater was also targeted for remediation through innovative technologies that included subsurface iron and lactate injection to bind and remove contaminants.

All of this work was completed with no reported worker accidents, no community complaints, and increased community participation in the cleanup program. Out of an estimated \$13.5M cleanup budget, approximately \$6M was awarded to local (i.e., Bayview) subcontractors, \$0.5M was spent on local consumables, and the various projects utilized a talent-pool of 62 local employees. We are hopeful that project momentum will continue into 2006 through the continued cooperation of all stakeholders as well as generous project funding.

Deep Groundwater Monitoring Along the Hayward Shoreline (Alec Naugle)

Last month Board staff witnessed the installation of a 700-foot deep well near the Hayward shoreline between West Winton Avenue and Highway 92. This is part of an effort by the Alameda County Water District (District) to monitor deep groundwater aquifers located in a transition zone between the Niles Cone and East Bay Plain groundwater basins. The Niles Cone groundwater basin, which underlies most of Fremont and Union City and portions of Hayward, is actively managed by the District as a major source of their drinking water system. The East Bay Plain groundwater basin, which extends from Hayward to Richmond, is not currently utilized for drinking water, but may be in the future as emergency and drought water supplies are developed.

One goal of the deep groundwater monitoring is to confirm the historic extent of inward (eastward) saltwater intrusion. Defining the extent of inward intrusion is critical so that District knows the best locations to maintain adequate outward hydraulic pressure in the basin to resist further intrusion.

A second goal is to provide key monitoring locations in the transition zone between the groundwater basins in anticipation of future recharge projects. Recharge projects are referred to as “groundwater banking” or “aquifer storage and recovery” for two reasons. First, they allow for recharge (i.e., storage) of surface water in the aquifer during periods when surface water supplies are high and demand for its use is low (such as winter/spring). Second, they allow for water to be pumped from the aquifer (i.e., recovered) when demand is high and other supplies are low (such as during a drought or other emergency). Thus, surface water is temporarily stored in the aquifer for future recovery.

The District's deep groundwater monitoring project is part of a “Local Groundwater Management Assistance” program grant awarded by the Department of Water Resources, and supported by Board staff. This project implements the first of two such grants awarded to the District in 2004 and 2005.



Board staff review geologic samples from 700-foot deep well. Electric borehole log (paper strip chart) shows zones of possible saltwater intrusion



Gravels and sands (i.e., good aquifer materials) were encountered at the 300-foot depth. Samples were collected every 5 feet.

Cal/EPA Customer Service Award for Water Board Staff as Part of the Training Team for In-House Public Participation Workshops

The State and Regional Water Board Public Participation Workshop Training Team included more than 50 staff from the Water Boards and UC Davis. The training program took approximately six months in 2004-2005 to prepare, and incorporated public participation requirements for a variety of regulatory functions, including the Water Board's cleanup, permitting and enforcement, and regulatory programs. Our staff representatives played an important part in this statewide effort, especially for groundwater cleanups, and included Carrie Austin, Christine Boschen, Mark Johnson, George Leyva, Stephen Hill, and Richard Looker.

The training program followed the recommendations embodied in a program survey and assessment, also completed in 2004, and was intended to provide staff with tools that were to be specifically tailored for their use in involving the public in the Board's decision-making process. The training

effort needed to be implemented rapidly in order to meet legislative commitments, and modified within each region to focus on regional projects and priorities. Last-minute changes were also made to retrofit very important cleanup guidance documents, originally prepared by our staff, into the course work. The training was held in early 2005, and was completed by the end of June.

By July 2005, 650 staff and managers were trained through 12 separate trainings held at the State and Regional Water Board offices; an unprecedented effort that involved almost half of all the organization's staffing, and nearly all of its technical program staff. The full-day trainings included not only an overview of common tools, but featured interactive breakout sessions that engaged staff in lively discussions on the subject. A final evaluation report of course participants showed that 85% of attendees rated the quality of instruction at 8 or higher (with 10 being excellent).

Congratulations to our staff and the entire Team for their contribution to this important Board program.

Water Board Engineer Elected President of the Board for Alameda County Water District

In December, Judy Huang of my staff was selected by the District Board as its President. Judy was elected to the District's Board in 2002, receiving the second highest number of popular votes from the communities served by the District. She plans to run for re-election when her term expires next year.

In-house Training

There was no December training due to the holidays. Our January training will be on meeting facilitation. Brownbag seminars included a January 6 session on an innovative subsurface investigation technique (a single probe that combines cone penetrometer (CPT) and membrane interface probe (MIP) tools).