

Adopted as Submitted – 4/12/06

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
March 8, 2006

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Item 1 - Roll Call and Introductions

The meeting was called to order on March 8, 2006 at approximately 9:00 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; and Gary Wolff.

Board members absent: Josephine De Luca and Clifford Waldeck (Note: Mr. Waldeck arrived at 9:07 a.m.).

Item 2 - Public Forum

Trish Mulvey, Chair, Santa Clara Basin Watershed Management Initiative, said the WMI has worked to protect and to enhance the Santa Clara Basin watershed and to facilitate local stewardship. She thanked the Board and Tom Mumley, Wil Bruhns, and Steve Moore for launching the WMI ten years ago. She thanked Shin-Roei Lee and Paul Amato for their current work.

[Mr. Waldeck arrived at 9:07 a.m.]

Phil Bobel, Vice-Chair, Santa Clara Basin Watershed Management Initiative, said the WMI is conducting research on emerging contaminants like pharmaceuticals and anti-bacterial agents. He urged the Board to continue to support the work of the WMI and, in particular, work associated with pollution prevention.

Evan Reeves, Policy & Research Director, Center for Creative Land Recycling, said CCLR promotes recycling environmentally distressed parcels known as brownfields. He said CCLR recently completed a comparative study of cleanups overseen by the Department of Toxic Substances Control and the Regional Water Boards. He said the study found that voluntary, residentially driven brownfield cleanups overseen by either DTSC or the Water Boards are equally protective of human health and the environment.

In reply to a question, Mr. Reeves said there is anecdotal evidence that cleanups overseen by DTSC may take longer to complete than those overseen by the Water Boards. He said this may be due to different legal requirements under which the agencies operate.

Mr. Wolfe said the study helps to confirm that staff's work protects human health and the environment.

Greg Karras, Senior Scientist, Communities for a Better Environment, suggested that new technology should be used in the cooling water processes at the Portero Power Plant. He expressed concern that the tentative NPDES order for the Plant, scheduled to be heard by the Board in May, does not require the use of new technology.

Shana Lazerow, Staff Attorney, Communities for a Better Environment, concurred with Mr. Karras. She spoke in favor of staff's schedule to reissue NPDES permits that will be discussed under Item 13.

Item 3 – Minutes of the February 8, 2006 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mr. Eliahu, and it was unanimously voted to adopt the minutes of the February 8, 2006 Board meeting.

Mr. Waldeck abstained because he did not attend the February 8, 2006 meeting.

Item 11 – Water Quality Excellence Awards – Recognition of Exceptional Achievements in Pollution Prevention in the San Francisco Bay Area

Mr. Wolfe recommended that Item 11 be considered next.

Linda Rao gave the staff presentation. She said staff administers two pollutant control programs: a Pretreatment Program that focuses on controlling pollutants from industrial sources and a Pollution Prevention Program that focuses on controlling pollutants from commercial and residential sources.

Ms. Rao said in 1992 the Bay Area Pollution Prevention Group was formed to encourage municipalities to collaborate on pollutant control measures. She said about 40 municipalities currently implement programs.

Ms. Rao recommended the following agencies/municipalities be given Water Quality Excellence Awards for pollution prevention work:

1. City of San Francisco Public Utilities Commission for developing a full-scale dental mercury reduction program;
2. City of San Leandro for operating as a green business and conducting multi-media activities to reduce pollutants across surface water, land, and air;
3. Mt. View Sanitary District for developing a Pollution Prevention education program for children;
4. Delta Diablo Sanitation District for implementing a system to collect florescent bulbs and for sponsoring a field study program for children; and
5. Palo Alto Regional Water Quality Control Plant for pursuing legislative initiatives related to copper, mercury, and pesticides and for pursuing product bans on zinc floor waxes, copper roofing, and copper root killers.

Mr. Wolfe recommended the Board recognize the Pollution Prevention Programs in the Bay Area and award Water Quality Excellence Awards to the above agencies/municipalities.

Motion: It was moved by Mrs. Bruce, seconded by Mrs. Brouhard, and it was voted to recognize efforts of all municipalities that conduct Pollution Prevention Programs, and to award Water Quality Excellence Awards to the agencies/municipalities recommended by 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. Muller and Mr. Wolfe presented Water Quality Excellence Award Certificates to representatives of the five agencies/municipalities.

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

Gary Wolff said several parties have contacted him about the regional stormwater permit. He said ex-parte rules keep him from replying to the parties. He said because of the constraints of ex-parte rules, parties who would like to discuss an issue should contact Board members at a very early stage before the issue becomes pending.

John Muller thanked Shin-Roei Lee and Brendan Thompson for giving a briefing in Half Moon Bay on the de-watering component of the Devil Slide Tunnel Project.

Mr. Muller said State Board Chair Tam Dudoc held a March telephone conference call with Regional Board Chairs. He said pending legislation was a topic of discussion.

Mr. Wolfe said staff reviews legislative bills and forwards comments to the State Board. He said the State Board and Cal/EPA work to develop the Administration’s position on pending legislation.

Mr. Wolfe said staff submitted a status report to the State Board on proposed revisions to the Mercury TMDL. He reported making a presentation in February to the State Board on current activities in the Region.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 6 – Calera Creek Water Recycling Plant, City of Pacifica, San Mateo County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said the City of Pacifica, Calera Creek Water Recycling Plant signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. He said the permittee agreed to pay a Mandatory Minimum Penalty in the amount of \$396,000 and \$205,000 would be used to fund a supplemental environmental project.

Ms. Tang said the City began using a new wastewater treatment plant, the Calera Creek Water Recycling Plant, in September 2001. She said the plant provides tertiary treatment using state of the art technology. She said violations were caused by a series of startup problems and problems associated with reducing odors. She said the City took prompt action to correct violations.

In reply to a question, Ms. Tang said the plant also includes primary and secondary treatment. She said bacteria are used in secondary treatment and filtration is used in tertiary treatment.

Scott Holmes, Director of Public Works, City of Pacifica, said the City would fund the Esplanade Dune Restoration Project as a supplemental environmental project. He said the four acre ancient dune field would act as a natural filter for storm drainage prior to discharge on the beach.

Mr. Holmes described some of the City's past restoration projects. He said the City used two previous mandatory minimum penalties to fund several projects. He described restoration projects the City would like to accomplish in the future.

Item 7 – Albert Aubry dba Tresser Towing & Auto Salvage, 120 S. Amphlett Blvd., San Mateo, San Mateo County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Failure to Submit the 2004/2005 Annual Report as Required by the Industrial Storm Water General Permit

Item 8 – Vida Lines, Inc., 1999 Stone Ave., San Jose, Santa Clara County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Failure to Submit the 2004/2005 Annual Report as Required by the Industrial Storm Water General Permit

Item 9 – Christopher Rockenbaugh dba Ro-Sal Auto Wreckers and Tow Service, 4030 Folsom Court, Concord, Contra Costa County – Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Failure to Submit the 2004/2005 Annual Report as Required by the Industrial Storm Water Permit

Keith Lichten described the Industrial Storm Water Program. He said facilities apply for coverage under the State Board Industrial Storm Water General Permit. He said permittees are required to prepare: Stormwater Pollution Prevention Plans, Monitoring Plans, and Annual Reports. He said permittees are required to submit Annual Reports to staff by July 1 of each year.

Mr. Lichten said about 1500 facilities in Region 2 must comply with the Industrial Storm Water Permit. He said all permittees, except the three requesting hearings today, submitted in a reasonably timely manner the annual reports due July 1, 2005.

Mr. Lichten discussed Item 7 and the steps staff took to notify the permittee of the obligation to submit an Annual Report. He said the Executive Officer issued a Complaint in January 2006 that proposed a fine of \$13,900. He said the fine included a base delinquency cost of \$50 a day, plus staff costs and adjustments required by law.

Lisa Broochs, Office Manager, Tresser's Auto Dismantler, said she represented the owner. She said she had the Annual Report with her. She said the towing and dismantling portions of the facility separated in 2004, and after the separation, the dismantling part of the business did not operate from July 2004 to June 2005.

She said she understood that an Annual Report did not need to be submitted if a facility was not in operation. In reply to a question, she said vehicles may have been stored in the yard when the dismantling was non operative.

In reply to a question, Mr. Lichten said facilities are classified in the permit as either active or terminated. He said staff considers a facility active if industrial materials like cars are exposed to stormwater and a permittee has not applied for termination of its permit coverage.

Sejal Choksi, San Francisco Baykeeper, said her comments were applicable to Items 7, 8, and 9. She said industrial facilities are required to file annual reports and the facilities should have notified staff earlier if there were reasons not to comply. She recommended the fine amounts be increased.

Mr. Lichten discussed Item 8 and the steps staff took to notify the permittee of the obligation to submit an Annual Report. He said the Executive Officer issued a Complaint in January 2006 that proposed a fine of \$13,900. He said the fine included a base delinquency cost of \$50 a day, plus staff costs and adjustments required by law.

Laurie Mattison, NEST Environmental Service, said he represented Vida Lines, Inc. He said he had the Annual Report and a check to pay permit annual fees with him. He said the Annual Report was not submitted earlier because the general manager of the firm had experienced difficulties.

Mr. Lichten discussed Item 9 and steps staff took to notify the permittee of the obligation to submit an Annual Report. He said the Executive Officer issued a Complaint in January 2006 that proposed a fine of \$13,900. He said the fine included a base delinquency cost of \$50 a day, plus staff costs and adjustments required by law.

Mr. Rockenbaugh, Owner, Ro Sal Auto Wrecking and Tow, said his business responsibilities have been overwhelming and requested the fine be reduced. He said he took responsibility for not submitting the Annual Report on time. He said he brought a check to pay permit annual fees with him.

In reply to a question, Mr. Rockenbaugh said his employees are not authorized to accept a certified letter and he must be present at the facility to do so.

The Board considered Item 7.

Mr. Wolfe recommended adoption of the tentative order for Item 7, including imposition of a \$13,900 fine.

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

Mr. Eliahu suggested reducing the fine to \$12,000. He said the permittee is current on payment of annual fees to the State Board and has submitted timely Annual Reports in the past. There was no second to his suggested amended motion.

Roll Call

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

No: None

Motion passed 7 – 0.

The Board considered Item 8.

Mr. Wolfe recommended adoption of the tentative order for Item 8, including imposition of a \$13,900 fine.

The Board was reminded that certified letters sent to permittees in Items 8 and 9 were returned unopened.

Motion: It was moved by Mr. Eliahu, seconded by Mrs. Bruce, and it was voted to increase the fine imposed under the Complaint for Administrative Civil Liability to \$16,000.

Roll Call

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

No: Mrs. Warren

Motion passed 6 – 1.

The Board considered Item 9.

Mr. Wolfe recommended adoption of the tentative order for Item 9, including imposition of a \$13,900 fine.

Mr. Waldeck said the owner of the business made an appearance and suggested the Board not raise the amount of the fine.

Motion: It was moved by Mrs. Bruce, seconded by Mrs. Warren, and it was voted to adopt the tentative order, as amended: \$6,950 shall be paid by April 7, 2006 and \$6,950 shall be paid by September 8, 2006.

Dr. Wolff said he understood that an owner of a small business can get overwhelmed.

Mr. Eliahu said the owner took responsibility for not submitting the Annual Report on time.

Mr. Muller reminded the Board that in the past it has taken pride in being consistent on issues and items.

Roll Call

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

No: Mr. Eliahu; Mr. Muller

Motion passed 5 – 2.

[The Board took a lunch break at 12:00 p.m. and reconvened at approximately 12:45 p.m.]

Item 10 – ExxonMobil and the Port of San Francisco, Former Mobil Bulk Terminal 04-394, 440 Jefferson Street, City and County of San Francisco – Adoption of Site Cleanup Requirements

Priya Ganguli said ExxonMobil operated a diesel/gasoline storage and dispensing facility on Jefferson Street in the Fisherman’s Wharf area of San Francisco. She said in 1996 ExxonMobil removed an underground storage tank and found soil underneath the tank contaminated with gasoline and diesel fuel. She said in 1990 ExxonMobil’s above ground tank overflowed and resulted in a surface spill of up to 700 gallons of diesel fuel. She said ExxonMobil stopped operation of the facility in 1990.

Ms. Ganguli said hydrocarbon releases by ExxonMobil have impacted soil and groundwater beneath the site and the groundwater plume has migrated beyond the site. She said the tentative order requires the discharger to remediate impacted soil and groundwater and to ensure the protection of human health. She said the Discharger is required to provide a schedule for site investigation and remedial action. She said the Discharger is required to define the extent of vertical and horizontal petroleum hydrocarbon contamination in soil and groundwater.

Ms. Ganguli said data indicate that the groundwater plume has migrated north to the area of Fish Alley and the Wharf J-10 Building. She said the San Francisco Planning Department is evaluating whether the Wharf J-10 Building should be demolished or reconstructed. She said the Discharger will have better access to the subsurface if the building is demolished. She said what happens to the building will influence what remedial action plan can be implemented.

Ms. Ganguli said staff has requested Site History Reports from other petroleum companies that operated in the area. She said the companies would be held responsible if they contributed to contamination.

In reply to a question, Ms. Ganguli said staff believes some hydrocarbons in the groundwater plume have discharged to Bay waters.

Dr. Wolff asked how discharge into the Bay can be prevented.

Ms. Ganguli said ExxonMobil is required to begin immediate remediation at the site and to do site characterization work to understand the lateral extent of the contamination. She said ExxonMobil will be required to implement a remediation plan in the vicinity of the Wharf J-10 Building once the fate of the building is determined.

In reply to a question, Ms. Ganguli said some boundaries of the groundwater plume have been defined.

In reply to a question, Ms. Ganguli said she has worked with stakeholders to keep lines of communication about cleanup at the site open. She said she has met with the public to explain provisions in the tentative order.

Mr. Wolfe recommended adoption of the tentative order.

Motion: It was moved by Mr. Waldeck, seconded by Mrs. Warren, 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.

Item 12 – Tesoro Refining and Marketing Company, Pittsburg Terminal, Pittsburg, Contra Costa County – Status Report on Facility’s Compliance with the Industrial Storm Water General Permit

Keith Lichten said petroleum coke is delivered to the Pittsburg facility on trucks and is stored in open piles before being loaded onto ships. He said coke is a by-product of the petroleum refining process and is composed of carbon. He said coke may contain metals.

Mr. Lichten said in 1999 the Executive Officer issued a Cleanup and Abatement Order to the facility. He said the CAO required that discharge of windblown coke be abated. He said staff accepted an abatement report that was prepared.

Mr. Lichten said an issue has arisen whether fugitive coke dust currently is being windblown from the facility to nearby storm drains and an adjacent slough.

Mr. Lichten said staff has learned that a facility located next door to Tesoro’s facility also stores and transports coke. He said the facility uses enclosed silos and the system seems to effectively eliminate coke dust.

Hilding Spradlin, Environmental Engineer, Tesoro, said the company bought the Pittsburg facility in 2002. He said Tesoro implemented Best Management Practices to significantly reduce dust emissions. He said the company prepared a report that analyzed the effectiveness of the BMPs. He said a conservative model was used to evaluate the impacts of aerial coke deposition on water. He said coke leaching tests were conducted and results were compared to stringent water quality standards. He said test results showed that impact to waters was many times below effluent standards.

Alan Savage, Environmental Manager, Tesoro, assured the Board that the company will cooperate and work fully with staff to address issues.

Brad Nail, Economic Development Director, City of Pittsburg, requested the company be required to enclose its coke operation. He said winds dispersed coke from the facility over the downtown area on a day in 2005.

Sejal Choksi, San Francisco Baykeeper, requested the company be required to cover its coke piles.

Greg Karras, Senior Scientist, Communities for a Better Environment, suggested the company be required to conduct analyses on coke samples to understand chemical content.

Frank Gordon, resident, City of Pittsburg, said he lives near the facility and requested the company be required to cover its coke piles.

Dr. Wolff said it would be helpful to get more information on impact the coke dust has on water quality. He said it would be helpful to understand the process staff uses to reply to citizen complaints.

Mrs. Warren began serving as Chair at approximately 2:00 p.m.

[Mr. Muller left the meeting at approximately 2:00 p.m.]

Mr. Wolfe said he plans to write a letter to Tesoro requiring that the company propose an effective solution to the fugitive coke dust problem and a schedule to address the solution.

Item 13 – NPDES Wastewater Program – Status of Permit Backlog Strategy

Lila Tang said U.S. EPA established a goal that all NPDES wastewater permits be reissued by the end of 2007. She said as a first step in meeting the goal, staff has prepared a permit reissuance schedule that is included as Attachment A to the staff report.

Ms. Tang said resources will be added to the NPDES Division. She said U.S. EPA agreed to provide independent contractor help with reissuances and the State Board agreed to pay cash overtime to staff working on reissuances. She said work on some non-priority tasks, like pollution prevention, will be deferred. She said work products will be clearly defined.

Ms. Tang said permits will be on the agenda for every Board meeting starting in the fall. She said permits may be contested.

Dr. Wolff suggested staff develop performance measures that would allow for comparison of work loads between this region and other regions.

Mr. Eliahu commended staff for preparation of the reissuance schedule.

Nancy Woo, Associate Director, Water Division, U.S. EPA, reiterated that U.S. EPA has a goal of no expired permits by the end of 2007. She stressed the importance of meeting the goal. She said U.S. EPA agreed to provide contractor assistance to help staff with permit reissuances.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, discussed BAWCA's three guiding principles: (1) a permit is a contract with ratepayers, the public at large, and regulators; (2) they are not able to accept permits with requirements they cannot meet; and (3) their permits should be consistent with federal and state requirements. She expressed concern that the rate at which reissuances are to occur under the schedule may make it difficult for permittees to collaborate with staff and resolve issues before Board meetings.

Monica Oakley, Larry Walker & Associates, said she represented the East Bay Dischargers Authority. She said EBDA's three cities and four sewer districts convey wastewater to a common outfall. She said four NPDES wastewater permits regulate the operations of EBDA members and requested the four permits be reissued at the same Board meeting.

Tom Hall, EOA, Inc., said he represented the City of Sunnyvale and the City of Millbrae. He said the City of Millbrae is one of five dischargers that convey wastewater to a common outfall. He recommended NPDES wastewater permits for the five be reissued at the same Board meeting. He recommended NPDES wastewater permits for the City of San Jose, City of Sunnyvale, and City of Palo Alto be reissued at the same meeting. He said coordinated permit reissuances promote economies of scale and collaboration among agencies.

Nathan Whittington, student, Golden Gate Law School Environmental Law and Justice Clinic, said he represented Bay View Hunters Point Advocates. He encouraged staff to work with community groups as a way to augment resources to be used to meet the permit reissuance schedule.

Mr. Wolfe thanked speakers for their suggestions.

Adjournment

The Board meeting was adjourned at 3:02 p.m.

