

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, California 92123

MINUTES OF MEETING
APRIL 13, 2011

At 9:00 a.m. Chairman Destache called to order the meeting of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Item 1 – Roll Call and Introductions

Board Members Present: Grant Destache, Eric Anderson, George Loveland, Gary Strawn, and Marc Luker.

Staff Present: David Gibson, James Smith, Julie Chan, David Barker, Bob Morris, Cynthia Gorham, Brian Kelley, Deborah Jayne, Eric Becker, Craig Carlisle, Jeremy Haas, John Odermatt, Chiara Clemente, Brian McDaniel, Kelly Dorsey, Barry Pulver, Wayne Chiu, Tom Alo, Lisa Honma, Deborah Woodward, Jody Ebsen, Amy Grove, Chris Means, Alan Monji, Mike Porter, Sean McClain, and Fisayo Osibodu.

Others Present on behalf of the San Diego Water Board: State Water Resources Control Board – Catherine Hagan, Jessica Newman, Frances Spivy-Weber and David Boyers. Kennedy Court Reporters – Katrina Dzwonkowski.

Public Attendance:

Michael Welch – self; Matt Wartian – Weston Solutions; Brian Hitchens – Geosyntec Consultants; Debra Biggs – Encina Wastewater Authority; Stephanie Bauer, Karen Holman – Port of San Diego; Edgard Bertant – TDY Industries; Frank Quan – City of Oceanside; Laura Hunter – Environmental Health Coalition; Ruth Kolb, Edith Gutierrez – City of San Diego; Gabriel Solmer – San Diego Coastkeeper; Gary Jacobson, Rondi Prescott – Healthy Times; Jian Peng, Amanda Carr – County of Orange; Beth Breitenbach – Haley & Aldrich; Kristina Schnuci, Jan Shrafe – MACTEC.

Item 2 – Public Forum

There were no requests to speak during the Public Forum.

Item 3 – Minutes of Board Meeting: March 9, 2011

This record of the minutes of the meeting on this date is not intended as the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the San Diego Water Board office for assistance.

Mr. Destache asked for a motion of the March 9, 2011 minutes. Mr. Loveland moved for approval of the minutes. The motion was seconded by Mr. Luker and approved by unanimous vote.

Item 4 – Chairman's, Board Members', State Water Board liaison's and Executive Officer's Reports: These items are for Board discussion only. No public testimony will be allowed, and the Board will take no formal action.

State Board Liason, Ms. Fran Spivy-Weber, spoke about an upcoming Water Quality Coordinating Committee meeting currently scheduled for September 26 and 27, 2011. The meeting will focus on storm water and groundwater issues. Ms. Spivy-Weber reported that State Board is working on the Industrial Stormwater hearing, with a new permit expected this year. Also, a Toxicity Policy Workshop is being planned for the summer. Ms. Spivy-Weber indicated that the Governor's Office reported that the Governor will begin focusing on water related issues within the next month or two. The State Board has adopted sediment quality objectives and is working towards incorporation into the 303d list. She also indicated that she will not be present for the next two meetings.

Chairman Destache made several announcements regarding the Shipyard Notice and the State Board chair meeting.

Executive Officer Gibson reported his attendance at the Western Area Council's Office and the San Diego River Watershed forum. Mr. Gibson requested Jonathon Bishop, the Deputy Director of the State Board, to speak on May 11, 2011 during the Executive Officer's Report on the Toxicity Policy.

Consent Item:

Item 5 – NPDES Permit Reissuance: Encina Wastewater Authority, Discharges to the Pacific Ocean via the Encina Ocean Outfall, San Diego County (Tentative Order No. R9-2011-0019, NPDES No. CA0107395) (*Joann Cofrancesco and Robert Morris*)

Chairman Destache asked for a motion of Order No. R9-2011-0019. Mr. Luker moved for approval of the Order. The motion was seconded by Mr. Loveland and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 6 – Information Item: Briefing on the Regional Harbor Monitoring Program
(*Cynthia Gorham*)

Ms. Cynthia Gorham – San Diego Water Board senior staff, Ms. Karen Holman - Port of San Diego, and Mr. Matt Wartian -Western Solutions provided an informational briefing on the Regional Harbor Monitoring Program and Copper Special Focus Study. Mr. Gibson and Board Members asked questions and made comments.

Item 7 – Adoption of Negative Declaration: Former Teledyne Ryan Facility, Tentative Addendum No. 4 to Cleanup and Abatement Order No. R9-2004-0258 (Tentative Resolution No. R9-2011-0018) (*Fisayo Osibodu*)

Executive Officer Gibson informed the Board that he was on the Advisory Team along with Board Counsel, Ms. Jessica Newman with Ms. Kelly Dorsey, Regional Board technical staff. Mr. Gibson indicated that Item 7, A Negative Declaration is related to Item 8 and indicated that both Items will be heard together. Ms. Newman also indicated that she has had several general discussions with the Cleanup Team but had not specifically advised them on the Teledyne Ryan Facility and the Cleanup and Abatement Order.

Mr. Tom Alo, San Diego Water Board staff, provided an Introduction to Item 7 and Item 8, gave a presentation on the Addendum, and provided a summary of the site background.

Mr. Strawn asked questions on the 54 inch line. Chairman Destache asked questions on the status of the concrete foundations and related demolition. Mr. Hays of the Port of San Diego provided the background on the foundations.

Chairman Destache asked questions on the status of other TDY Clean Up and Abatement Orders and the requirements. Mr. Alo provided details on the status and requirements of the addendum.

Chairman Destache asked questions regarding the status of investigations on the General Dynamics site. Mr. Alo addressed the status of the investigations. Staff member Barry Pulver provided an update on the redevelopment status regarding the north side of the airport.

Mr. Fisayo Osibodu provided a brief presentation of Item 7, the CEQA compliance document. He indicated that the San Diego Water Board is the lead agency. Mr. Osibodu stated that the Draft Negative Declaration concludes that the adoption of Addendum No. 4 will not have a significant effect on the environment. Mr. Osibodu recommended adoption of Item 7 and read a change into the record indicating that Item D, page 10 should read "No Impact."

Item 8 – Adoption of Cleanup and Abatement Order Addendum: Former Teledyne Ryan Facility (Tentative Addendum No. 4 to Cleanup and Abatement Order No. R9-2004-0258) (*Tom Alo*)

Mr. Alo presented specific information on Item 8. Mr. Alo indicated that the scope of Addendum 4 only addresses the Cleanup and Abatement of waste to land. The Addendum does not address contamination on the cap, a separate enforcement order will be issued to address the cap in the future. Ms. Julie Chan covered key issue items covered in the Executive Officer Report and related revisions to the December Public Review version of the addendum.

Ms. Laura Hunter, Environment Health Coalition made comments on Teledyne Ryan and the cleanup of PCBs at the site. Gabriel Solmer, Interim Director - San Diego Coast Keeper also spoke regarding adequate characterization of the site.

Ms. Ruth Kolb, Program Manager, City of San Diego, also spoke regarding the changes to the Cleanup and Abatement Order and Errata sheet related to the City's MS4 permit. Ms. Kolb indicated that the City, as an interested party, has not had an adequate opportunity to review the changes and its related impacts to the City.

Chairman Destache asked questions of staff on the review of additional investigations to be performed at a later date and the RAP schedule. Mr. Alo indicated the schedule is identified in the Addendum. Chairman Destache asked questions on additional testing. Mr. Alo indicated that the draft interim response provided guidance on newly discovered areas and sampling. Mr. Anderson asked questions regarding TDY as being the responsible party. Mr. Alo indicated TDY as the responsible party. Chairman Destache asked questions regarding amount of soil at the site. Mr. Alo indicated a completion report will document the volume. Mr. Strawn had questions regarding storm surges as related to Ms. Hunter's concerns. Mr. Alo indicated this was addressed in the evaluation. Mr. Strawn also asked questions of Ms. Kolb with regards to her comments to the errata. Ms. Chan indicated the concerns were addressed in the response to comments.

Executive Officer Gibson asked questions of staff.

Ms. Chan and Mr. Alo provided additional details from the responses to comments.

Executive Officer Gibson recommended approval of Item 7 with errata, and Item 8 .

Chairman Destache asked for a motion of Order No. R9-2011-0018. Mr. Luker moved for adoption of the Order. The motion was seconded by Mr. Strawn and approved by unanimous vote.

Chairman Destache asked for a motion of tentative Addendum No. 4 to Cleanup and Abatement Order No. R9-2004-0258 and Errata. Mr. Loveland moved for adoption. The motion was seconded by Mr. Anderson and approved by unanimous vote.

At 11:45 the meeting recessed for lunch and to discuss Closed Session items.

Item 10 - *Closed Session* - Discussion of Ongoing Litigation [Authorized under Government Code Section 11126, subd. (e)]

Civil Actions

- a. *People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Edward Drusina, an individual in his capacity as Commissioner of the International Boundary and Water Commission, United States Section, et al., Complaint for Violations of the Clean Water Act and Related State Law Claims. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS) (filed February 2001). (David Gibson)*
- b. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region, Petition for Writ of Mandate [re: San Diego Water Board's adoption of Order No. R9-2009-0038 amending Order No. R9-2006-0065 for Poseidon Resources (Channelside), LLC, NPDES Permit No. CA0109223, approval of a Flow, Entrainment and Impingement Minimization Plan under the California Water Code]. San Diego County Superior Court, Case No. 37-2010-0009-436-CU-WM-CTL (filed April 2010). (Brian Kelley)*
- c. *South Orange County Wastewater Authority and South Coast Water District, Petition for Writ of Mandate. Orange County Superior Court, Case No. 30-2010-00364016-CU-WM-CXC (filed April 2010) (Joann Cofrancesco)*
- d. *California Regional Water Quality Control Board, San Diego Region v. Bill and Heidi Dickerson, Larry and Penelope Gunning and Perry & Papenhausen, Inc. Complaint for Damages for Breach of Contract and for Specific Performance. San Diego County Superior Court, Case No. 37-2010-00096011-CU-CO-CTL (filed July 2010) (Jeremy Haas)*
- e. *State of California Department of Finance, State Water Resources Control Board, And California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates. Petition for Writ of Administrative Mandamus. Sacramento County Superior Court, Case No. 34-2010-80000604 (filed July 2010) (Catherine George Hagan).*

Petitions for Review Pending Before State Water Resources Control Board

- i. Petition of South Coast Water District and South Orange County Wastewater Authority (Failure to Act to Modify NPDES Permit for Brine Discharge and Groundwater Recovery Facility, San Diego County), SWRCB/OCC File A-2072, filed January 2010. (*Brian Kelley*)

The meeting reconvened.

Item 9 – Administrative Assessment of Civil Liability, Healthy Times, Inc., Administrative Civil Liability, for violations of Order No. 97-03-DWQ. The San Diego Water Board will consider adoption of a tentative Order that would impose a \$9,492 penalty recommended in Complaint R9-2010-0126 for failing to submit the Fiscal Year 2007-08 and 2008-09 Annual Reports and failing to pay the Fiscal Year 2007-08, 2008-09, and 2009-10 annual fees required by State Water Resources Control Board Order No. 97-03, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. Water Code section 13399.33 requires the San Diego Water Board impose a mandatory penalty of no less than \$1,000 plus staff costs for each annual report violation. The San Diego Water Board may approve, modify, or reject assessment of the recommended penalty. (Tentative Order No. R9-2011-0031) (*Fisayo Osibodu*)

Mr. Osibodu introduced Item 9. Mr. Frank Melbourn, Compliance and Assurance Unit and member of the Prosecution Team introduced Mr. David Boyers, Supervising Attorney, State Board Office of Enforcement, and Jeremy Hass, Senior Environmental Scientist. Mr. Melbourn gave an introduction and brief presentation. Mr. Melbourn entered the files into the record.

Mr. Gary Jacobson and Mr. and Ms. Richard & Rondi Prescott of Healthy Times provided testimony for Healthy Times.

Board Members asked questions of staff and made comments on the certification forms, failure to submit annual reports and failure to pay annual fees.

Mr. Jacobson provided closing remarks.

Mr. Melbourn provided closing statements.

Mr. Anderson asked questions of staff.

Executive Officer Gibson provided closing remarks.

Chairman Destache closed the public hearing.

Board Members provided comments. Ms. Jessica Newman addressed Board Member comments on the liability.

Executive Officer Gibson recommended adoption. Mr. Strawn provided additional comments.

Mr. Loveland asked for a motion of Order No. R9-2011-0031. The motion was seconded by Mr. Anderson. Chairman Destache moved for adoption and approval. Mr. Luker and Mr. Strawn did not support the motion. The motion was approved.

Item 11 – *Closed Session* - Consideration of Initiation of Litigation or Discussion of Significant Exposure to Litigation

The San Diego Water Board may meet in closed session to initiate or consider initiating litigation against persons who are alleged to have violated the Porter-Cologne Water Quality Control Act or the federal Clean Water Act or to discuss significant exposure to litigation [Authorized under Government Code Section 11126(e)]

The Closed Session was not held.

Item 12 – *Closed Session* - Deliberation on a Decision to be Reached Based on Evidence Introduced in a Hearing

The San Diego Water Board may meet in closed session to consider evidence received in an adjudicatory hearing and to deliberate on a decision to be reached based upon that evidence [Authorized under Government Code Section 11126(c)(3)]

The Closed Session was not held.

Item 13 – *Closed Session* - Personnel

The San Diego Water Board may meet in closed session to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing [Authorized under Government Code Section 11126(a)]

The Closed Session was not held.

Item 14 – Arrangements for Next Meeting and Adjournment

Wednesday, May 11, 2011 - 9:00 a.m.

Water Quality Control Board

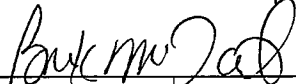
Regional Board Meeting Room

9174 Sky Park Court

San Diego, California


With there being no further business, the meeting was adjourned at 2:15 p.m.

These minutes were prepared by:



Brian McDaniel
Engineering Geologist

Signed by:



David Gibson
Executive Officer