

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

March 13 - 14, 2007

Note: Copies of orders and resolutions and information on obtaining tapes or transcripts may be obtained from the Executive Assistant, Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, California 94612 or by calling (510) 622-2399. Copies of orders, resolutions, and minutes also are posted on the Board's web site (www.waterboards.ca.gov/sanfranciscobay).

Item 1 - Roll Call

The meeting was called to order on March 13, 2007 at approximately 1:00 p.m. in Room 1505, State Office Building, 15th 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.

Before other items, the Chair recognized Robert Feinbaum, Director, Hydro Nova, who requested the Board amend sections of the Basin Plan that deal with on-site wastewater systems. He suggested making financial assistance available to low-income homeowners who are required to upgrade wastewater systems.

Item 2 – Closed Session – Personnel – postponed until late in the meeting.

Item 3 – Budget, Staffing, Workplans and Board Operations

Bruce Wolfe made a presentation on recent activities and upcoming priorities in the Region, similar to the presentation he made to the State Board on February 20, 2007. Staff described the state budget process, including the Board's approved fiscal year 2006-2007 and proposed fiscal year 2007-2008 budgets. Staff projected the impacts these budgets are having and will have on current and proposed staffing, work plans, and board operations. No action was taken.

[The Board recessed for the evening at approximately 6:05 p.m.]

Item 4 - Roll Call and Introductions

The Board resumed its meeting on March 14, 2007 at 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.

Gina Kathuria introduced Elizabeth Wells, new staff in the Groundwater Protection and Waste Containment Division.

Bill Johnson introduced Heather Ottaway, new staff in the NPDES Permit Division.

Gary Wolff, State Board Member, said Francis Spivy-Weber had been appointed to the State Board and Arthur G. Baggett had been reappointed to the Board. He described steps being taken to update the State and Regional Board's Strategic Plan. He described items the State Board will consider in the next few months.

In reply to a question from Clifford Waldeck, Dr. Wolff described a Statewide Summit on the Strategic Plan that was held in Sacramento on March 12 – 13, 2007. He said participants included the environmental community, permittees, government agencies, and associations.

Item 5 – Public Forum

Robert Feinbaum, Director, Hydro Nova, reiterated his comments he made to the Board on March 13, 2007, noted his conversation with Board staff Blair Allen since he made his comments, and offered to assist staff in developing an amendment to sections of the Basin Plan that deal with on-site wastewater systems.

Item 6 – Minutes of the January 23, 2007 Board Meeting

Mr. Eliahu requested page 8 of the minutes be amended to read that the Motion to Adopt the Tentative Order for Item 12 passed 4 – 1.

Mr. Wolfe said there was a supplemental to the minutes. He recommended the minutes be adopted as amended and supplemented.

Motion: It was moved by Mrs. Warren, seconded by Mr. Peacock, and it was unanimously voted to adopt the minutes as amended, supplemented, and recommended by the Executive Officer.

Item 7 – Chairman's, Board Members', and Executive Officer's Reports

Mr. Muller reported attending a February 20, 2007 State Board meeting during which Bruce Wolfe gave a presentation of recent activities and upcoming priorities in the Region.

Mr. Muller reported attending the Outlook Conference presented by the Bay Area Council on March 8, 2007.

Mr. Muller reported on several legislative bills that were discussed by Board Chairs during a recent teleconference.

Mr. Wolfe said he gave Board members a copy of the transcript of farewell comments made by Josephine De Luca at the October 2006 Board meeting.

Mr. Wolfe reported Teng-Chung Wu was seriously ill. Mr. Wolfe said Dr. Wu served for many years as Chief of the Board's Permit Division. Mr. Wolfe reviewed some of Dr. Wu's significant accomplishments during his tenure at the Board.

Mr. Muller suggested an award be established in the Permits Division in the name of Dr. Wu.

Motion: It was moved by Mrs. Warren, seconded by Mr. Peacock, and it was unanimously voted to establish an award in the Permits Division in the name of Dr. Wu as suggested by Mr. Muller.

Mr. Wolfe elaborated on some items in the Executive Officer's Report. He replied to a question about the study Bay Area refineries are conducting regarding the fate of mercury in the refineries' air emissions.

Margaret Bruce reported attending several conferences dealing with the issue of global warming.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 9 – City of Pinole, Pinole-Hercules Water Pollution Control Plant and Its Collection System, Pinole, Contra Costa County – Reissuance of NPDES Permit

Mr. Schlipf said the City's plant provides secondary treatment for wastewater from Pinole and Hercules. He discussed written comments staff received on the Tentative Order.

Mr. Schlipf said the City and Bay Area Clean Water Agencies Association objected to inclusion of numeric limits for dioxins. He said, in reply, numeric limits are necessary because the pollutants had been detected in the permittee's effluent and the pollutants are impairing the Bay.

Mr. Schlipf said the City and BACWAA requested copper limits be calculated using the water effects ratio. He said, in reply, anti-backsliding provisions of the Clean Water Act require that the Tentative Order include copper limits that are as stringent as limits in the existing permit unless exceptions apply. He said limits calculated with the ratio would be less stringent. He said the City has met copper limits in its existing permit.

Mr. Schlipf said the City objected to being required to monitor receiving water because it participates in the Regional Monitoring Program. He said, in reply, the City may comply with the monitoring requirement by making a calculation using available effluent and RMP data.

Mr. Schlipf said Baykeeper objected to inclusion of compliance schedules for mercury, cyanide, and dioxin. He said, in reply, inclusion of the compliance schedules is consistent with the Basin Plan.

Mr. Schlipf said Baykeeper objected to allowing the City to blend effluent during wet weather. He said, in reply, the City blends effluent about five days a year and the Tentative Order is consistent with federal regulations. He said the City is required to make improvements to its treatment plant to eliminate the need to blend. He said the improvements are estimated to cost \$40 million.

Mr. Schlipf said the Environmental Law Foundation questioned whether anti-degradation issues had been addressed. He said, in reply, provisions in the Tentative Order will not degrade water quality in San Pablo Bay. He said the permitted design capacity will not be increased and treatment levels will not be reduced. He said only cyanide limits will be increased, and the increase was authorized through the Basin Plan Amendment process.

Belinda Espinoza, City Manager, City of Pinole, said effluent from the City's treatment plant is pumped to the Rodeo Sanitary District and combined with Rodeo effluent before being released through a deep water outfall.

Ms. Espinoza spoke against the provision in the Tentative Order requiring the City to monitor receiving water. She said when the Regional Monitoring Program began in the early 1990's permittees agreed to participate in the program instead of conducting monitoring at individual outfalls. She said the City is the only wastewater permittee in the Bay Area that will be required to monitor receiving waters.

Ms. Espinoza spoke against including limits for dioxins in the Tentative Order. She said the primary source of dioxins is air emissions from combustion sources and the City cannot control the sources. She requested the water effects ratio be used to calculate copper limits.

Dan Gildor, Staff Attorney, Environmental Law Foundation, said present water quality in San Pablo should not be used as the baseline for calculating degradation. He suggested staff conduct a cumulative impact analysis of wastewater released to San Pablo Bay. He suggested staff consider the City's past permit compliance to calculate future degradation.

Deb Self, Executive Director, Baykeeper, requested the Tentative Order not be adopted. She said Baykeeper submitted written comments requesting changes. She objected to allowing compliance schedules for toxic pollutants.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, thanked staff for work on the Tentative Order. She objected to the copper limits and spoke against numeric limits for dioxins. She expressed concern that the City must comply with a capital improvement schedule.

In reply to a question, Ms. Tang anticipated future Tentative Orders for wastewater permittees will include receiving water requirements. She said permittees monitored receiving water in the 1980's and early 1990's. She said parties became interested in obtaining monitoring information for the state of the Bay and permittees were allowed to eliminate monitoring outfalls and to participate in the Regional Monitoring Program.

Dr. Young said she served on the Board of the Aquatic Habitat Institute when the Regional Monitoring Program was initiated. She said many parties believed information on the state of the Bay was necessary. She said, however, designing a single program to meet the needs of compliance monitoring and monitoring the state of the Bay is difficult. She commended staff for allowing the City to comply with the monitoring requirement by using available effluent and RMP data.

Yuri Won said current water quality should be used as the baseline for an anti-degradation analysis. She said California's anti-degradation policy was established in 1968.

Dr. Young asked if data from the Regional Monitoring Program has shown that water quality in the Bay has degraded.

Ms. Tang said in the 1960's many facilities released wastewater that was treated to primary standards. She said today facilities release wastewater treated to secondary standards and the water quality of the Bay has improved.

Ms. Tang said the Tentative Order allows pollutant concentrations to be elevated slightly within the zone of initial dilution. She said previous permits also allowed for concentrations to be elevated slightly within the zone of initial dilution.

Dr. Young said understanding the cumulative impact of wastewater permits on the water quality of the Bay would be interesting.

Mr. Wolfe recommended adoption of the Revised Tentative Order.

Motion: It was moved by Mr. Eliahu, seconded by Mr. Peacock, and it was voted to adopt the Revised Tentative Order 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 a recess at 10:57 a.m. and resumed the meeting at 11:05 a.m.]

Item 10 – Alameda Countywide Clean Water Program, Alameda County – Amendment of NPDES Municipal Stormwater Permit to Adopt Hydrograph Modification Management Standard

Item 11 – Fairfield-Suisun Urban Runoff Management Program, Solano County – Amendment of NPDES Municipal Stormwater Permit to Adopt Hydrograph Modification Management Standard

Item 12 – San Mateo Countywide Water Pollution Prevention Program, San Mateo County – Amendment of NPDES Municipal Stormwater Permit to Adopt Hydrograph Modification Management Standard

Jan O’Hara gave one presentation covering Items 10, 11, and 12.

Ms. O’Hara said the rate and duration of stormwater runoff is affected by increased urbanization. She showed slides to illustrate how increased runoff may lead to excessive erosion of stream beds and stream banks. She said eroded sediment deposited in flat reaches of streams may lead to flooding.

Ms. O’Hara said the permittees are regulated by stormwater permits and are required to submit Hydromodification Plans for Board approval. She said a Hydromodification Plan must address the following Standard: stormwater from new development and redevelopment projects shall not cause an increase in the erosion potential of a receiving stream over the existing, pre-project condition.

Ms. O’Hara said the Standard applies to new construction and redevelopment projects that create or replace one acre or more of new impervious surface. She said some types of development, such as transit villages, single-family homes, and Brownfield projects, are exempt. She said the Tentative Order for each permittee includes a map delineating geographically the areas where the Standard applies.

Ms. O’Hara said, to comply with the Standard, developers may use the following: on-site controls; regional controls that receive runoff from several properties; or in-stream measures. She said the Tentative Order for each permittee specifies design criteria for on-site and regional controls that are based on the permittee’s Hydromodification Plan. She said in-stream measures include restoration of eroded streams. She said a developer may contribute up to 2% of project cost to an alternate stormwater project if none of the options can be implemented.

James Scanlin, Program Manager, Alameda Countywide Clean Water Program, thanked Ms. O'Hara for work on the Revised Tentative Order for Item 10. He recommended the Board adopt it.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 10 as supplemented.

Motion: It was moved by Mrs. Warren, seconded by Mrs. Bruce, and it was voted to adopt the Revised Tentative Order for Item 10 as supplemented and 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.

Kevin Cullen, Program Manager, Fairfield-Suisun Urban Runoff Program, thanked Ms. O'Hara for work on the Revised Tentative Order for Item 11. He recommended the Board adopt it.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 11 as supplemented.

It was moved and seconded by Mrs. Bruce, and it was voted to adopt the Revised Tentative Order for Item 11 as supplemented and 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.

Matthew Fabry, Program Coordinator, San Mateo Countywide Water Pollution Prevention Program, thanked Ms. O'Hara for work on the Revised Tentative Order for Item 12. He recommended the Board adopt it.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 12 as supplemented.

Motion: It was moved by Mr. Waldeck, seconded by Mrs. Warren, and it was voted to adopt the Revised Tentative Order as supplemented and 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.

Item 13 – Status Report on Municipal Regional Stormwater Permit – Status Report

Dale Bowyer said Santa Clara County, Alameda County, San Mateo County, Contra Costa County, Vallejo, and Fairfield-Suisun are regulated by separate stormwater permits. He said there are 76 permittees in total because cities and some special districts are regulated through countywide permits. He said permittees would be regulated by one, consistent permit after the Municipal Regional Stormwater Permit is adopted.

Mr. Bowyer said in 2004, staff began discussing development of the MRP with the Bay Area Stormwater Management Agencies Association. He said in 2005, work groups were formed to help draft permit components. He said participants included BASMAA, environmental groups, and interested citizens. He said representatives from the homebuilding industry later participated in the collaborative process.

Mr. Bowyer said in October 2006 staff distributed a working draft of the MRP and held public meetings in November 2006. He said the MRP includes new implementation measures for reducing pollutants that are impairing waters, including mercury, PCBs, and pesticide toxicity. He said trash reduction is a priority for increased management measures.

Mr. Bowyer compared sections of the MRP to sections in current stormwater permits. He said the MRP more clearly defines required actions and reporting requirements. He said the MRP requires comprehensive monitoring. He said stormwater management plans are no longer required and the MRP includes requirements that use to be in the plans.

Mr. Bowyer said in September 2006, BASMAA distributed provisions and performance standards that it recommended the MRP include. He said staff is concerned that BASMAA's recommendations for important program areas include words that encourage rather than require actions.

Mr. Bowyer said, after today's workshop, staff will continue drafting the MRP and future public meetings will be held. He anticipated staff will bring a tentative order for the Board's consideration at the August Board meeting.

In reply to a question, Mr. Bowyer said use of effluent limits for pollutants in stormwater is difficult because runoff enters creeks at many points and the amount of runoff varies over time. He anticipated trash load could be monitored more easily and the MRP might include trigger levels for trash.

Dr. Young said if monitoring can reasonably be done, the results could help permittees develop efficient programs.

Donald Freitas, Chairman, BASMAA, requested the MRP include comprehensive, integrated, prioritized requirements. He said the provisions and performance standards that BASMAA recommended place priority on implementing (1) pollutant reductions identified in TMDLs, (2) controls for new development and redevelopment projects, and (3) programs to monitor pollutants. He said all of the 76 permittees that would be regulated by the MRP concur with BASMAA's recommendations.

Gary Grimm, Attorney, BASMAA, discussed legal requirements applicable to municipal stormwater permits. He discussed the Clean Water Act, court decisions, regulatory precedents, and regulatory guidance.

Mr. Freitas said municipalities face fiscal constraints. He said the constraints underscore the importance of prioritizing MRP requirements. He recommended treatment standards for new development and redevelopment projects remain at 10,000 square feet.

Adam Olivieri, Vice-Chair, BASMAA, said performance standards recommended by BASMAA include enhancements that exceed current stormwater requirements permittees must meet. He showed slides describing enhanced standards (BMPs, implementation level, reporting) for mercury, diazinon and related pesticides, trash and litter, and monitoring programs. He distributed a handout comparing BASMAA's enhanced standards with current requirements.

Mr. Freitas and Dr. Olivieri requested the Board convey what requirements it would like to see prioritized in the MRP. They said BASMAA would like to know whether its priorities are the same as the Board's priorities.

Mr. Freitas requested staff publicly circulate the provisions and performance standards BASMAA prepared. He requested staff schedule more workshops with stakeholders on development of the MRP.

In reply to a question by Clifford Waldeck, Mr. Bowyer said the handout distributed by Dr. Olivieri included (1) photocopies of slides summarizing the presentation BASMAA members gave today, (2) provisions and performance standards BASMAA recommended the MRP include, and (3) a comparison of BASMAA's enhanced standards with requirements permittees currently must meet. He said the provisions and performance standards have been posted on the Board website. He said staff would circulate publicly BASMAA's comparison of performance standards.

Laura Hoffmeister, Assistant City Manager, NPDES Program Manager, City of Clayton, discussed fiscal constraints municipalities face and the cost to implement the MRP. She discussed the cost to operate and to maintain landscape based treatment controls in new development projects. She spoke in favor of prioritizing MRP requirements as BASMAA recommended.

Roger James, speaking on his own behalf, expressed concern about the amount of trash and debris found in creeks, wetlands, and coastal areas. He showed slides that illustrated debris, including pieces of Styrofoam, along stream banks and embedded in wetlands. He said one publication estimated it takes 50 years for a Styrofoam cup in marine waters to degrade.

Larry Kolb, speaking on his own behalf, spoke favorably about a Southern California TMDL that set a target of zero trash in river waters. He said bond funds were used to install mechanical devices in storm drains to keep trash out of the river. He recommended the Board include trash-laden creeks in its 303(d) list of impaired waters in the Bay Area. He recommended the Board act, before preparation of TMDLs, to address excessive trash levels in Bay Area creeks.

[The Board took a lunch break at 12:55 p.m. and resumed the meeting at 1:20 p.m.]

Brian Schmidt, Committee for Green Foothills, recommended the MRP require that permittees monitor the net increases in impervious surfaces from new construction and redevelopment projects that are exempt from MRP. He said the data would help decision makers determine appropriate CEQA mitigation for erosion and water quality problems caused by impervious surfaces of exempt projects. He suggested the financial burden should fall on the developers.

Deb Self, Executive Director, Baykeeper, thanked staff for using a collaborative process to develop the working draft of the MRP. She said the Clean Water Act does not allow for prioritizing cleanup of pollutants. She identified pollutants she hoped the MRP would address. She said trash is a serious issue.

David Lewis, Executive Director, Save the Bay, requested the MRP include enforceable provisions requiring permittees to reduce trash in measurable amounts. He requested permittees be required to make data on trash reduction available to the public.

In reply to a question, Mr. Lewis recommended permittees identify locations where there are large amounts of trash and make focused reduction efforts.

Ron Atkins, Friends of Coyote Creek, said he organizes trash cleanups along a one-mile section of Coyote Creek and volunteer crews pick up several tons of trash every year. He gave the Board photographs of homeless encampments located along the creek. He questioned whether the trash problem can be solved by volunteers and requested the Board's help.

Larry Johmann, President, Guadalupe Coyote Resource Conservation District, spoke in favor of the MRP. He showed slides that illustrated the presence of trash and garbage in streams and along stream banks. He showed slides of homeless encampments. He said areas under bridges are used as garbage dumps and the garbage, including hazardous material, gets washed into streams after storms. He said it is more economical to prevent pollution than to try to clean it up.

Susan Schwartz, Friends of Five Creeks, recommended the MRP require reduction in trash levels. She recommended monitoring data be made available to the public. She said new development and redevelopment requirements should be strengthened.

Andria Ventura, Program Manager, Clean Water Action, expressed concern with the idea of prioritizing pollutant cleanup efforts. She spoke in favor of requiring structure controls that capture trash. She said slides illustrated that trash may include items like light fixtures and batteries that contain toxic material.

Steve Moore, speaking on his own behalf, said trash in creeks is an environmental issue of concern. He recommended the Board use its regulatory authority to require trash reduction. He said there are affordable solutions that will measurably reduce trash levels. He recommended structural devices be placed in areas of high trash accumulation.

Mr. Waldeck reiterated that municipalities face fiscal constraints. He recommended staff give municipalities examples of how to accomplish trash reduction and where reduction programs have successfully occurred.

Mrs. Bruce suggested the Board might join with other organizations to encourage authorities to take corrective action regarding problems with homeless encampments. She said corrective action would promote public safety, human and environmental health, and pollution prevention.

Mr. Muller said development of the MRP involves significant issues and suggested Mr. Wolfe identify a multi-agency team to help staff.

Mrs. Bruce said prioritizing MRP requirements may become necessary and asked staff whether stakeholders had discussed criteria for prioritizing pollutant reduction.

Shin-Roei Lee said a non-profit organization is using grant funds to develop and prioritize best management practices that most effectively deal with pollutants like mercury and PCBs.

In reply to a question from Clifford Waldeck, Mr. Wolfe said reducing pollutants for which the Board has adopted TMDLs are high priority actions. He said the TMDLs were adopted because the pollutants are impairing waters. He said commentators have said that requirements in current stormwater permits have not resulted in reducing trash adequately. He said commentators have requested trash reduction be a priority action too.

2. Closed Session – Personnel

This item was continued to a future Board meeting.

Adjournment

The Board meeting was adjourned at 2:48 p.m.