

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

October 8, 2008

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Item 1 – Roll Call and Introductions

The meeting was called to order on October 8, 2008 at 9:04 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; William Peacock; Rameshwar Singh.

Board members absent: Steven Moore [Note: Mr. Moore arrived at 9:16 a.m.]

Item 2 – Public Forum

Mike Ban, Director, Water Resources & Conservation, City of Petaluma, discussed the City's wastewater treatment operations.

[Mr. Moore arrived at 9:16 a.m.]

Phil Tucker, Project Director, California Healthy Communities Network; Anthony Moscarelli, Save Our Suisun; George Guynn, Jr., Suisun Citizens League; Wayne Monger, Suisun City resident; and Beth Garber, Suisun Citizens League, expressed concern about a large commercial project proposed to be built in Suisun City. Mr. Tucker gave staff a package of information including a letter addressed to Mr. Muller that further specified their concerns.

Bruce Wolfe said next month he would give the Board an update on the project status.

Item 3 – Minutes of the May 14, 2008 Board Meeting

Motion: It was moved by Mr. Peacock, seconded by Dr. Singh, and it was unanimously voted to adopt the minutes of the May 14, 2008 Board Meeting.

Item 4 - Chairman's, Board Members', and Executive Officer's Reports

Steve Moore reported he was a speaker at a recent association meeting. He said he discussed Board programs.

Rameshwar Singh said he attended the Regional Monitoring Program 2008 Annual Meeting. He said a number of speakers gave presentations on topics related to mercury.

James McGrath asked staff to provide information to the Board on monitoring expenses of several types of NPDES permittees. He said he attended a meeting where the subject of permittees' monitoring expenses was discussed.

Terry Young said she met recently with Michele Plá, Executive Director, Bay Area Clean Water Agencies. She said they had a general discussion about water quality issues.

Bruce Wolfe said a report entitled "The Pulse of the Estuary 2008" was distributed at the Regional Monitoring Program 2008 Annual Meeting. He said he would obtain copies of the report for Board members.

Mr. Wolfe said a drug collection program was being conducted today in the State Building as part of the No Drugs Down the Drain campaign.

[The Board took a break at 9:55 a.m. and resumed the meeting at approximately 10:00 a.m.]

Item 5 – Storybook Mountain, Calistoga, Napa County – Hearing to Consider Administrative Civil Liability for Late Submittal of Annual Monitoring Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity (Continued from the September Board Meeting)

Tom Mumley, Yuri Won, Shin-Roei Lee, Keith Lichten, Michelle Rembaum-Fox served as prosecutorial staff. Bruce Wolfe and Dorothy Dickey served as Board advisors.

Colleen Williams, Vice President Operations, Storybook Mountain Winery, testified. She replied to questions asked by Board advisory staff.

Ms. Williams and prosecutorial staff replied to questions asked by Board members.

Ms. Williams made a statement. She replied to questions asked by Board members.

Prosecutorial staff made a statement.

Board members made statements. Ms. Williams and Board advisory staff replied to a Board member's statement.

Mr. Peacock made a motion to adopt an Administrative Civil Liability.

Mr. McGrath seconded the motion.

Board advisory staff replied to a recommendation made by prosecutorial staff.

Board members participated in discussion. Board advisory staff replied to Board members questions.

Mr. Eliahu made a motion to amend the motion made by Mr. Peacock.

Dr. Singh seconded Mr. Eliahu's motion.

Board members participated in discussion.

A vote was taken on the motion by Mr. Eliahu to amend the original motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;  
Mr. Muller

No: None

Motion passed 7 – 0

Board advisory staff recommended changes to the Tentative Order.

Mr. Peacock amended his motion to include the recommended changes.

The Board considered Mr. Peacock's original motion that he amended and the Board amended by motion. Mr. Muller asked Board members if they would like to substitute the vote taken on the motion just adopted for a vote on the motion under consideration.

After conferring with Board members, Mr. Muller said the vote just taken would be substituted for a vote on the motion under consideration. Based on the substituted vote, Mr. Peacock's original motion that he amended and the Board amended passed unanimously.

Item 7 – Eagle Marine, Martinez, Contra Costa County – Hearing to Consider Administrative Civil Liability for Late Submittal of Annual Monitoring Report Required Under the Statewide NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity (Continued from the September Board Meeting)

Mr. Wolfe said no Board action was necessary on this item.

Item 8a – Sonoma Valley County Sanitation District, Sonoma, Sonoma County – Reissuance of NPDES Permit

Item 8b – Sonoma Valley County Sanitation District, Sonoma, Sonoma County – Issuance of Cease and Desist Order

Tong Yin gave one presentation that covered both items. She described the Tentative Order and the Tentative Cease and Desist Order and addressed concerns stated in comment letters that staff received.

In reply to a question from Mr. McGrath, Lila Tang described improvements the permittee made to its wastewater collection system.

In reply to a question from Mr. Eliahu, Ms. Tang said staff is reviewing information related to bioaccumulation factors to better understand regulatory consequences of including the factors in NPDES permits.

In reply to a question from Mr. Eliahu, Ms. Tang said the Tentative Order allows the permittee to conduct a study to justify the use of an ammonia dilution factor. She said such a dilution factor could be incorporated into the Permit through a permit amendment or in the future when the Permit is reissued.

Mr. Wolfe said staff is working with Bay Area Clean Water Agencies to evaluate the use of bioaccumulation factors in NPDES permits.

Mr. Moore discussed diurnal variability in pH in high marsh areas.

Ms. Yin discussed available pH data used to calculate total ammonia objectives.

Kevin Booker, Water Agency Engineer, Sonoma Valley County Sanitation District, thanked Ms. Yin for her work on the Tentative Order and the Tentative Cease and Desist Order. He said the District continues to have concerns about limits for ammonia, dioxin TEQ, and heptachlor.

In reply to a question from Mr. Moore, Mr. Booker said the permittee's current permit does not include ammonia limits.

Mr. Wolfe said there was a supplemental for Item 8a that amends: (1) paragraph 5 on page F-19 of Attachment F to the Revised Tentative Order; (2) Response to BACWA Comment 6 on page 12 of Appendix D to the Staff Summary Report; and (3) Table 8 on page 15 of the Revised Tentative Order.

Ms. Tang recommended addition of the following before the last sentence in paragraph iii on Page F-46 of Attachment F to the Revised Tentative Order: The study should include receiving water data that fully characterizes diurnal variabilities in pH.

Bill Johnson recommended a correction to the third sentence in the last paragraph on page F-45 of Attachment F to the Revised Tentative Order. He recommended the sentence read: These receiving water data show a strong increasing trend to pH downstream of the discharge.

Mr. Wolfe recommended adoption of the Revised Tentative Order for Item 8a as supplemented and with the amendments recommended by staff.

Dr. Singh made a motion to adopt the Revised Tentative Order with the supplemental and the amendments recommended by staff and as recommended by the Executive Officer.

Mr. Peacock seconded the motion.

Mr. Moore discussed the importance of understanding ammonia dynamics in order to properly account for ammonia attenuation.

Dr. Young recommended staff include all stakeholders in conversations regarding regulation of dioxins.

A vote was taken on the motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;  
Mr. Muller

No: None

Motion passed 7 – 0

Mr. Wolfe recommended adoption of the Revised Tentative Cease and Desist Order for Item 8b.

Mr. McGrath made a motion to adopt the Revised Tentative Cease and Desist Order as recommended by the Executive Officer.

Dr. Young seconded the motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;  
Mr. Muller

No: None

Motion passed 7 – 0

Item 7 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish New Water Quality Objectives and a Total Maximum Daily Load and Implementation Plan for Mercury in Waters of the Guadalupe River Watershed – Hearing to Consider Adoption of the Proposed Basin Plan Amendment

Dr. Singh disclosed that he attended a meeting in Almaden Valley where the proposed Basin Plan amendment was discussed.

Carrie Austin said the first hearing on the amendment was held in May 2008. She said at the conclusion of today's hearing, the Board will consider adoption of the amendment.

Ms. Austin said former mercury mines are located in the upper portion of the Guadalupe River watershed in an area known as the New Almaden Mining District. She said the Basin Plan amendment addresses the problem of elevated mercury levels in fish in waters downstream from the Mining District. She said a fish consumption advisory was issued warning the public not to consume any fish in the middle and lower portions of the watershed.

Ms. Austin said the Basin Plan amendment establishes two new methylmercury fish tissue objectives: 0.05 milligrams methylmercury per kilogram for small preyfish and 0.1 milligrams methylmercury per kilogram for larger preyfish.

Ms. Austin said the amendment establishes concentration based allocations: (1) 0.2 milligrams mercury per erodible mercury mining waste in the area of former mercury mines; (2) 1.5 nanograms total methylmercury per liter of water in Guadalupe Reservoir, Almaden Reservoir, Calero Reservoir, and Lake Almaden; and (3) 0.2 milligrams mercury per kilogram of sediment in downstream creeks and in the Guadalupe River.

Ms. Austin said the amendment establishes total maximum daily loads: (1) 0.2 milligrams mercury per kilogram of sediment in Guadalupe Creek, Los Alamitos Creek, and Guadalupe River and (2) 1.5 nanograms of methylmercury per liter of water in Guadalupe Reservoir, Almaden Reservoir, Calero Reservoir, and Lake Almaden.

Ms. Austin said the implementation plan in the amendment includes two phases, each spanning ten years. She said in the first phase, actions are required to control mining waste at the former mercury mines and to develop methylmercury controls in Lake Almaden and in reservoirs. She said the goal of the second phase of implementation is to cleanup mining waste accumulated in creek beds and banks located downstream from the former mercury mines. She said cleanup in the creeks generally will commence after mining waste in the upper watershed has been controlled.

Ms. Austin discussed the importance of remediating mining waste in Los Alamitos Creek. She said remediation will require cooperative efforts of public and private parties.

Ms. Austin described revisions staff made to the Basin Plan amendment following previous public comment and testimony.

[The Board recessed for lunch at 12:03 p.m. and resumed the meeting at 12:39 p.m.]

Diane Fleck, U.S. EPA Region IX, TMDL and Water Quality Standards Liaison to the Regional Water Board, recommended the Board adopt the Basin Plan amendment, including new water quality objectives and total maximum daily loads. She spoke in favor of using both total mercury and methylmercury TMDL allocations to achieve lower levels of mercury in fish tissue.

Michael Boulland, New Almaden resident, thanked staff for clarifying the role of Los Alamitos Creek property owners in proposed Creek bank stability and habitat restoration projects. He said staff clarified that property owners are responsible for providing reasonable access to the Creek and are not responsible for conducting projects. He recommended the load allocation for mercury mining waste found near former mines be based on bioavailable mercury rather than total mercury.

Roberta Lamons, Ph.D., New Almaden resident, questioned the assumption of the authors of the Basin Plan amendment that all forms of mercury are equally bioavailable. She requested the public be given more time to review the revised amendment before it is considered for adoption.

Andria Ventura, Program Manager, Clean Water Action, also representing Environmental Justice Coalition for Water, requested the Board modify the amendment to require an investigation of public health impacts of mercury in fish in the watershed on subsistence fishers and their families. She requested the amendment require development of exposure reduction programs if public health impacts are shown.

Steve Ritchie, Executive Project Manager, South Bay Salt Pond Restoration Project, said controlling sources of mercury in the watershed will help facilitate restoration of South Bay salt ponds. He spoke in favor of developing mercury programs that are collaborative in nature.

Katherine Harasz, Deputy County Counsel, County of Santa Clara, said the amendment includes requirements that are not consistent with a phased approach based on adaptive implementation. She recommended the amendment required parties adaptively implement mercury management programs according to schedules that are reasonable.

Julie Mark, Deputy Director, Parks and Recreation Department, County of Santa Clara, requested the amendment include a phased implementation approach and reasonable timelines for implementation actions.

Beau Goldie, Deputy Operating Officer, Santa Clara Valley Water District, thanked Tom Mumley, Jim Ponton, and Carrie Austin for meeting with District staff and for modifying the Basin Plan amendment presented in May 2008. He said implementation of the amendment would significantly improve water quality in the watershed. He said the District is willing to take the technical lead in creek bank stability projects in the New Almaden area of Los Alamitos Creek.

In reply to questions from Dr. Singh, Mr. Goldie said the District has undertaken a project to reduce methylmercury in lake and reservoir waters as well as a number of mercury remediation projects. He requested implementation schedules provide parties sufficient flexibility to complete programs successfully.

Yadira Taylor, Allen Matkins Leck Gamble Mallory & Natsis LLP, on behalf of Myers Industries, Inc. and Buckhorn, Inc., questioned the accuracy of the list of previous owners and operators of mercury mines that was included in the Staff Report. She questioned the remediation and restoration responsibility of listed parties.

Mr. McGrath asked staff to confirm that stakeholders will be allowed to develop innovative methods to reduce mercury in waters.

Dr. Singh asked staff to discuss implementation schedules and funding, mercury bioavailability, and stabilization of slopes.

Dr. Young said the numbers in the watershed mercury mass balance that was included in the Staff Report contained uncertainty. She asked if staff anticipated numbers used to calculate a mass balance five years from now would include greater certainty.

Board members and Mr. Wolfe participated in discussion while staff caucused to prepare summary replies to comments made at today's hearing.

Tom Mumley said Ms. Austin and he would reply to the comments. Dr. Mumley said staff recognizes there is emerging science on the concepts of reactive mercury and bioavailable mercury. He said staff believes, however, basing the TMDL and allocations on total mercury as a surrogate for reactive mercury and bioavailable mercury is reasonable at this time.

Dr. Mumley reiterated that revisions staff made to the amendment were based on comments previously received. He recommended the adaptive implementation process begin rather than giving the public more time to review the amendment. He reiterated that a fish consumption advisory was issued warning the public not to consume any fish in the middle and lower portions of the Guadalupe River watershed.

Dr. Mumley said staff believes implementation schedules in the amendment are reasonable. He said he understands the importance of flexibility in scheduling. He said staff will give annual progress reports to the Board on reducing watershed mercury levels and the public would have an opportunity to express specific scheduling concerns when reports are made.

Dr. Mumley said the previous owners and operators of mercury mines listed in the Staff Report were not listed as parties responsible for cleanup actions. He said responsible parties will be named in future Board actions. He said the Staff Report identifies current mercury cleanup sites and previously completed sites that will be excluded from further Board regulatory action.

Ms. Austin discussed the water quality impacts of several forms of mercury, including reactive mercury and methylmercury.

Dyan Whyte said the purpose of slope stabilization projects is to control transport of mercury mining waste in sediments to surface waters.

Mr. Muller expressed concern about funding for mercury remediation and cleanup projects.

Mr. Wolfe said mercury cleanup projects will receive priority in Water Board funding programs.

Dr. Mumley said the amendment was written to encourage stakeholders to use innovative implementation methods. Ms. Austin and he said monitoring information will provide more accurate data to use in future mercury mass balance analyses.

Mr. Wolfe said there was a Supplemental to the proposed Basin Plan amendment and Tentative Resolution. He recommended adoption of the Tentative Resolution Amending the Water Quality Control Plan for the San Francisco Bay Region to Establish New Water Quality Objectives, Total Maximum Daily Loads, and an Implementation Plan for Mercury in the Guadalupe River Watershed, as supplemented.

Mr. McGrath made a motion to adopt the Tentative Resolution as supplemented and as recommended by the Executive Officer.

Mr. Peacock seconded the motion.

Dr. Singh spoke in favor of several revisions staff made to the amendment.

Mr. McGrath spoke about the importance of cleaning up mercury contamination.

A vote was taken on the motion.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Dr. Singh; Dr. Young;  
Mr. Muller

No: None

Motion passed 7 – 0.

Item 9 – Sanitary Sewer Overflow Reduction Program – Status Report

Mr. Wolfe recommended this item be continued to the November Board meeting.

Item 14 – Adjournment

The Board meeting was adjourned at approximately 1:56 p.m.