

**California Regional Water Quality Control Board
San Francisco Bay Region
EXECUTIVE OFFICER'S REPORT
A Monthly Report to the Board and Public**

September 2009

*The next regular scheduled Board meeting is September 9, 2009.
See <http://www.waterboards.ca.gov/sanfranciscobay/> for latest details and agenda*

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Update on Fraud Case (Yuri Won and Stephen Hill)

Gary Dawson recently completed a six-month term in County Jail as a result of his conviction on felony forgery charges. He was convicted of forging a “no further action” letter for a contaminated site in San Jose and forging the signature of former Board staff member Roger Brewer on that letter.

Trend Plastics owned the San Jose site and hired Mr. Dawson and his company (Environex) to clean up hydraulic oils at the site. Board staff became aware of the forged letter when the San Jose Fire Department, which was overseeing site cleanup, forwarded a case-closure package containing a copy of the letter to the Board’s office. Board staff promptly referred the matter to the Santa Clara County District Attorney for prosecution. In October 2008, Mr. Dawson pled guilty to two felonies – forgery and recording a false instrument – pursuant to the California Penal Code. In early 2009, he was sentenced to six months in County Jail, placed on three years probation, and ordered to pay standard fines and fees.

Board staff once again thanks Roger Brewer for traveling from his current residence in Hawaii to provide crucial testimony at the preliminary hearing. We also appreciate the District Attorney’s efforts in prosecuting this criminal violation.

Enforcement – Complaints and Settlements (Brian Thompson)

I have publicly noticed a tentative order setting Administrative Civil Liabilities for a case in which the Board's Prosecution Team reached a settlement with the Mt. View Sanitary District in Martinez (Contra Costa County). The Mt. View Sanitary District has agreed to pay \$145,000 to the State's Cleanup and Abatement Account and, in lieu of a further fine of \$125,000, complete a Supplemental Environmental Project for levee improvements and restoration of Peyton Slough and McNabney Marsh. I intend to sign the agreement and issue the ACL order if no significant comments are received within the 30-day comment period. A copy of the tentative order can be found on our web site:

http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml

I also issued one ACL order during August which directs C&H Sugar Company, Inc. in Crockett (Contra Costa County) to pay a fine of \$258,500 to the State's Cleanup and Abatement Account and, in lieu of a further fine of \$231,500, complete a Supplemental Environmental Project to preserve open space for habitat and watershed environmental quality protection in the Franklin Canyon area. I issued this order after the Board's Prosecution Team reached a settlement with C&H Sugar and after circulation of a draft ACL order did not generate opposition to this action.

Agreement to Shutdown Potrero Power Plant (Derek Whitworth)

On August 13, Mirant Potrero and the City of San Francisco reached a settlement agreement providing for the shutdown of the Potrero Unit 3 Power Plant once it is no longer needed for electric reliability by the California Independent System Operator. The settlement agreement will become effective upon approval by the San Francisco Board of Supervisors.

The Unit 3 power plant operates under a NPDES permit that was reissued in May 2006. The plant draws over 200 million gallons per day of water from the Bay for cooling purposes. This water is then returned to the Bay. This use of water for condensing waste steam in power plants is known as "once through cooling" and is a practice that is recognized as adversely impacting aquatic life in the source water. The permit was issued in May 2006 for two and a half years, compared to the normal five years. It was anticipated that subsequent permits would incorporate requirements to reduce or eliminate the use of once through cooling.

The State Board has been developing a statewide policy on the use of coastal and estuarine waters for power plant cooling that would encompass operations at the Potrero Plant. Pending the finalization of this policy, now expected in early 2010, the Potrero NPDES permit was administratively extended beyond its expiration date of December 2008.

The settlement agreement would resolve various disputes between Mirant Potrero and the City for this plant. Mirant Potrero and the City anticipate that the plant will no longer be needed for electric reliability once the Trans Bay Cable becomes operational. This cable is

expected to be brought on line in the second quarter of 2010. The plant is anticipated to be shut down by the end of 2010, at which time the existing NPDES permit would be rescinded.

The settlement agreement provides that Mirant Potrero will support the City's efforts with the California Independent System Operator and Federal Energy Regulatory Commission to achieve the permanent shutdown of the plant, and that the City will support any and all regulatory approvals required to operate the plant through 2010.

Ammonia Summit (Karen Taberski)

The State Board has identified discharges of ammonia/ammonium from wastewater treatment plants in the Delta watershed as a potential concern related to the pelagic organism decline (POD) and has called for further study. Potential impacts were thought to be either through direct toxicity or through inhibition of primary production that limits the amount of food available to POD organisms. In March, CALFED held a workshop to identify data and science gaps and develop a scientific research framework to determine the role of ammonia/ammonium within the Sacramento-San Joaquin Delta and Suisun Bay ecosystem. On August 18 and 19, the Interagency Ecological Program (IEP) held an ammonia summit to provide a forum to present findings of current research and gather information relevant to the role of ammonia in the Bay-Delta ecosystem. As a member of the IEP ammonia workgroup, Board staff member Karen Taberski attended this summit. Results from the summit indicated that: 1) there is evidence that ammonium may be inhibiting the growth of diatoms in spring in Suisun Bay, and 2) concentrations of ammonia and ammonium in the estuary are below US EPA acute and chronic criteria, as well as below thresholds developed for larval delta smelt and estuarine zooplankton. We are continuing to be engaged in this process and work in coordination with other researchers and agencies to answer two questions: 1) what level of confidence do we have that ammonium is inhibiting spring phytoplankton blooms in Suisun Bay? and 2) are there controllable sources contributing to ammonium concentrations in Suisun Bay? I will keep you informed on our progress.

Richardson Bay Pathogens TMDL (Farhad Ghodrati)

On August 4, the State Board unanimously approved the Richardson Bay Pathogens TMDL Basin Plan amendment. This Basin Plan amendment was adopted by the Water Board in July 2008. The State Board will subsequently send the Basin Plan amendment to the Office of Administrative Law and U.S. EPA for their approvals.

The Richardson Bay TMDL is intended to address the ongoing impairment of Richardson Bay by pathogens. The TMDL is designed to protect shellfish harvesting and recreational uses in Richardson Bay, and calls for actions to manage potential pathogen discharges from sanitary sewer systems, stormwater runoff, houseboats, and vessels. We will adaptively manage the TMDL by evaluating the effectiveness of implementation actions, monitoring progress towards the targets, and reviewing the scientific understanding pertaining to pathogens. This may result in modifying the TMDL in the future.

Update on Tomales Bay Grazing Waiver (Carmen Fewless)

One of the first steps staff took toward implementing the Waiver of Waste Discharge Requirements for Grazing Lands in the Tomales Bay Watershed (adopted in July 2008) was to notify agricultural landowners of the requirement to submit a Notice of Intent to Comply with the Waiver (NOI) or a Notice of Non-Applicability (NNA). By the end of July, staff had completed two rounds of mailing with significant response from landowners. Of the initial 425 parcels in the watershed listed by the County as agricultural, and with help from the Marin Resources Conservation District (RCD), staff determined that approximately 255 individual or parcel combinations potentially fall under the waiver. To date, staff have received 192 NOIs and 23 NNAs. We are anticipating submittal of an additional five to ten NOIs, based upon phone and mail correspondence. The result is that about 80% of these grazing lands will be participating in the waiver program and subsequent requirements. Staff plan to follow up for those parcels that have not responded to date, including working with stakeholder groups, doing inspections, and pursuing enforcement where appropriate.

A second important step in implementing the Waiver is a template for the Ranch Water Quality Plan (Ranch Plan) being developed by the University of California Cooperative Extension (UCCE), with input from Board staff. Funded in part by a TMDL contract with the Board, UCCE and a number of agricultural technical partners, are preparing the template and will be providing workshops to ranchers to assist in fulfilling the requirements of the Waiver. Each landowner or lessee will be required to complete a Ranch Plan to inventory and assess the condition of the lands as it relates to or intersects with their grazing operations and pollutant loading to the water courses on their lands. The Waiver requires ranchers to address pollutant discharges related to grazing, including pathogens, sediments, nutrients, and, in the Walker Creek watershed, mercury. The Ranch Plan will also identify problem sites ("controllable and non-controllable discharges points") and potential management practices with a timeline to address the problems. Two evening workshops on the Ranch Plans and a day-long field tour for ranchers are scheduled for September.

New Enforcement Approach for Industrial Stormwater (Christine Boschen)

Previous years' three-step enforcement process replaced with one-step process

The annual reports for our Region's approximately 1,400 Industrial Stormwater General Permit dischargers are due each July. The associated tracking, data entry, and subsequent enforcement are a major staff effort. In the past, this process has taken us the better part of a year, beginning with the mail out of two consecutive "warning" Notice of Noncompliance letters (spaced at least 30 days apart) to late reporters. For late reporters still delinquent after the second Notice of Noncompliance letter, we have pursued administrative civil liability complaints.

This year, we are trying a radically new approach: on August 4, we issued roughly 280 Notice of Noncompliance letters to late reporters, accompanied by an offer to participate in

an expedited payment program. The options under the expedited payment program are as follows:

- The late reporter may opt to settle for \$1,000 as long as it submits the annual report and settlement offer acceptance form by September 4;
- The late reporter may contest the violation, explaining in writing why it believes it is not in violation, by September 4; or,
- The late reporter may do nothing/refuse the settlement offer.

If the late reporter opts to settle, we are required to public notice the settlement for 30 days, after which (if we receive no substantive comments), the Executive Officer signs off on the settlement, and the late reporter submits the \$1,000 within 10 days. If the late reporter contests, staff will review the merits of its argument and determine whether to dismiss the violation or to pursue an individual administrative civil liability. If the late reporter does not respond, staff will verify that the late reporter is still in business and proceed with an administrative civil liability complaint, or other enforcement as appropriate.

New approach designed to benefit both staff and dischargers

We believe the expedited payment program will quickly, effectively get late reporters' attention. Thus, the program will streamline the annual report collection and enforcement process for us and benefit dischargers both by reducing liability amounts per facility and allowing us more time to focus on the content of the annual reports. By the nature of the previous two noncompliance notices being spread at least 60 days past the due date, late reports straggled over many months. The subsequent administrative civil liability amount was calculated by days the reports were late, which resulted in a range of \$8,900 to \$24,200 per facility.

Future steps

We will keep you informed on the progress of this program in future EO Reports. Specifically, we will report back to you when we have public noticed the settlement acceptances.

The settlement offer letter was prepared on our behalf by the State Board's Office of Enforcement, and it is likely that the program will be adopted by other regions around the State following this first year "test drive" in our region. The program is modeled after the NPDES Mandatory Minimum Penalty expedited payment program, which is already successfully in use by Water Boards statewide.

Implementation of State Water Board's UST Resolution (Chuck Headlee)

This Board is ahead of schedule to complete tasks set out in the State Board's recent underground storage tank (UST) resolution. The resolution was adopted in May 2009, in response to a serious shortfall in the UST Cleanup Fund and associated cutbacks in Cleanup Fund reimbursement of UST cleanup costs (see my November 2008 EO Report). The resolution is titled "Actions to Improve Administration of the UST Cleanup Fund and UST Cleanup Program." It contains several elements:

- By August 1, 2009, Water Boards and local oversight agencies must reduce groundwater monitoring frequencies for all UST sites from quarterly to semi-annually. This will immediately save the Cleanup Fund about \$40 million per year.
- By June 30, 2010, Water Boards and local oversight agencies must review all UST sites to determine whether or not they are ready for closure.
 - If the site is not ready for closure, the agency is required to determine the impediments to closure, the environmental benefits of additional work, the sensitive receptors that are likely to be impacted, and the timeframe for those impacts to occur.
 - If the site is ready for closure, the agency is required to close it by June 30, 2010.
- Water Boards and local oversight agencies are supposed to refrain from issuing new cleanup directives to UST sites until all site-closure reviews are completed and the results are posted on the GeoTracker website.

The resolution also creates a task force to make recommendations for improvements to the UST Cleanup Fund's response to its current cash shortage and make recommendations to improve the UST cleanup regulatory program, including additional approaches to risk-based cleanup. The task force's recommendations to the State Board are due by the end of this year.

We have pro-actively addressed many of the resolution's elements even prior to its adoption, and we expect to complete the necessary tasks on or ahead of schedule:

- **Monitoring frequency:** over the last couple of years, we have reduced the monitoring frequency at a number of our UST sites. We were, therefore, able to change the monitoring frequency at all our UST sites by the August 1, 2009, deadline.
- **Site-closure reviews:** our staff routinely considers impediments to site closure. We took the lead in developing a new GeoTracker web page to track UST site-closure reviews. We have made the site-closure reviews a high priority task and intend to complete them this fall, many months ahead of schedule.
- **Task Force:** we were one of the first regions to implement low-risk closures at UST sites, based on our 1996 supplemental instructions to State Board staff's 1995 letter on this subject. We have participated in three task force meetings to date and will continue to be engaged in the task force's activities. To avoid the appearance of conflict, we will participate as an observer and not as a member of the task force.

Assessment Tool for Low-Threat Site Closure (Alec Naugle)

The Board's staff Groundwater Committee has recently developed an assessment tool for low-threat closure of chlorinated solvent sites. The low-threat closure approach has been used at leaking underground fuel tank sites in this region since the mid-1990s. More recently, we have used this approach at solvent-impacted sites on a case-by-case basis to identify sites that present little risk to human health and the environment and little threat to water quality and beneficial uses. We feel we have enough experience now with solvent-impacted sites to warrant a more uniform approach.

It's difficult to attain typical groundwater cleanup standards at most solvent-impacted sites for a variety of reasons. Under appropriate conditions, low-threat closure offers a regulatory solution by helping to identify impediments to site closure, appropriate alternatives, and a path forward.

The assessment tool was developed by the Committee over the last three years in consultation with selected local groundwater management agencies. The draft was reviewed internally (including a "road test" on several Board sites) and was shared with staff at other Water Board offices and at the Department of Toxic Substances Control. The current draft reflects modifications made in response to comments received during that process.

The assessment tool is 39 pages long, including attachments. It includes four main sections: introduction, recommended closure criteria, application of selected criteria, and policy discussion. It also includes a "quick reference" checklist of the closure criteria and some Frequently Asked Questions (FAQs).

The assessment tool is available on the Water Board's website at: <http://www.waterboards.ca.gov/sanfranciscobay/sitecleanupprogram.shtml#SCPElements>, under "Cleanup Complete Determinations".

It is considered an "evergreen" document that will be periodically revised as necessary. We welcome public comments, but there is no comment deadline and the assessment tool is available for use immediately.

In-house Training

We had no training in August and have none planned for September. Our in-house training will resume in October.

Staff Presentations

On August 11, the Board's water recycling expert Blair Allen presented information to the Los Carneros Water District of Napa County about using recycled water for agriculture and landscape irrigation.