

EXECUTIVE OFFICER'S REPORT: *November 2013*

A Monthly Report to the Board and Public

NEXT MEETING: November 13, 2013 WEBSITE: <http://www.waterboards.ca.gov/sanfranciscobay/>

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Tomales Bay Grazing Waiver Public Workshop (Laurent Meillier & Jim Ponton)

On October 3, Board staff held a public workshop at the Marconi Center in Marshall (Marin County) to inform stakeholders of and answer questions on a draft order that would reissue the Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay watershed (Conditional Waiver). In July 2008, the Board adopted the Conditional Waiver, which had a five-year term and expired in July 2013. We circulated a draft Conditional Waiver for public review in September and the comment period closed on October 16.

Staff's presentation at the workshop described the Conditional Waiver in context of TMDL implementation in the Tomales Bay watershed and covered what was new, or had changed, compared to the 2008 Conditional Waiver. At the workshop, we explained that discharges from grazing lands are just one of several pathogen and sediment source categories that the Board is actively working to regulate. We described what the reissued Conditional Waiver would require of enrollees, what type of operations are eligible for waiver coverage, and which parcels might be exempt from coverage. We also highlighted the significant number of projects in the watershed that have received grants to help implement the grazing program.

In attendance at the workshop were local ranchers, dairymen, scientists, the President of "Save our Seashore", and representatives from the UC Cooperative Extension, the Marin Agricultural Land Trust, and the Marin Resources Conservation District. We concluded the meeting with an active and open discussion between workshop attendees and staff. We are developing written responses to the comment letters received, are revising the draft Conditional Waiver as appropriate, and plan to present the revised Conditional Waiver for Board consideration at the

December Board meeting.

Residential Development on Closed Landfills (Keith Roberson & Terry Seward)

For the first time, and likely indicative of a future trend, the Board has received two proposals for mixed-use development, including residential units, on top of closed municipal landfills. Both proposals are located in urbanized areas of northern Santa Clara County. Although the Board has approved proposals for commercial redevelopment on landfills in the past decade, we had not previously been asked to grant approval of residential development. Interestingly, Title 27, the State's regulations on post-closure uses of landfills does not prohibit or even mention residential redevelopment. We presume this to be because the regulation's authors did not envision residential occupancy as a viable post-closure land use option.

While Title 27 is silent on residential development on landfills, the waste discharge requirements (WDRs) the Board has issued to landfill owners have generally included a provision requiring the landfill owner to obtain Board approval for any changes in post-closure land use. Thus, for landfills regulated under WDRs, the Board has the ability to deny proposed land uses that are inappropriate because of water quality or human health concerns.

Of the two proposals we have received to build residential units over waste, one landfill (the former All-Purpose Landfill in Santa Clara) is regulated under WDRs, while the other (the former Campisi Landfill in Campbell) has never been regulated under WDRs. Thus, the proposed mixed-use development over the Santa Clara Landfill would require Board approval of revised WDRs sanctioning the change in land use and prescribing provisions appropriate to protect water quality and human health. The proposed Campisi Landfill residential development, on the other hand, can proceed without Board concurrence. In fact, in spite of our written concerns over its appropriateness, the Campisi development is moving ahead after receiving approval by the City of Campbell and the Santa Clara Local Enforcement Agency.

In both cases, neither the developers nor the site owners are planning to perform any site cleanup prior to development and propose to manage all risks to future occupants through active engineering controls such as vapor mitigation systems and vapor alarm systems. It is Board staff's view that any proposed residential development over landfilled waste should be approached like a Brownfield redevelopment: the developer (or responsible party) must first attempt to remove the contaminant source (i.e., remove or relocate underlying waste materials away from planned residences) and then must clean up residual site contamination (soil and groundwater) to concentrations low enough to provide long-term protection of future occupants. Both of these steps are possible at the Santa Clara Landfill; however, the City and its development team have yet to submit plans to perform any remedial actions. It is staff's position that engineering controls alone cannot reliably mitigate risks to future residents posed by exposure to chemical and physical hazards associated with landfill wastes, which include methane and volatile organic compounds, seismic risks, and waste settlement. In addition, the reliance on engineering controls alone is inconsistent with the State Department of Toxic Substances Control's vapor intrusion guidance, which differentiates between site remediation and risk management, and recommends that development at contaminated sites include both site remediation as well as vapor/gas mitigation systems.

The City of Santa Clara staff and the prospective developer have included, and continue to include, Board staff in discussions and meetings regarding the proposed project in Santa Clara. We have not been involved in the Campisi development since submitting our written concerns about the project. We will keep the Board informed of key developments in these cases.

Oakland Estuary Cleanup (Habte Kifle)

The California Department of Resources, Recycling, and Recovery (CalRecycle) and U.S. EPA have started a \$4.2 million project to cleanup and remove vessels, marine debris, and piers from the Oakland Estuary. Work, as depicted in photos 1 through 3, started on September 24 and will continue through most of November. On October 17, I participated in a boat tour of the removal sites with other agencies, stakeholders, and the media. The cleanup project will improve water quality by removing objects that otherwise would degrade in place and release pollutants (including heavy metals, asbestos, polychlorinated biphenyls, and petroleum hydrocarbons) into the estuary and its sediments.

The estuary cleanup project developed from discussions at a local task force, the Oakland Estuary Coalition, which formed to resolve issues associated with “anchor outs” and abandoned vessels in the estuary. Board enforcement staff are attending task force meetings and, as noted in previous Executive Officer's reports, have been assisting with vessel removal activities.

Cleanup activities under the current project will be conducted as “time critical removal actions” under the federal Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA. Actions taken under CERCLA are exempt from State and local permitting. CERCLA streamlines the regulatory process for site cleanup by expediting actions that focus on the removal of “gross contamination” within a limited time period. Though permits are not required, actions taken under CERCLA must comply with the regulatory requirements of the State and local oversight agencies. To that end, Board staff has provided comments on workplans, has inspected the onshore debris recycling area, and has been available to assist in any way necessary.

This project has also allowed us to accelerate cleanup at an estuary site in Alameda that is subject to site cleanup requirements adopted by the Board in 2002, due to metals-impacted waste that was dumped on the estuary shoreline. Based on our discussions with U.S. EPA staff, other agencies, and the adjacent parcel owner, this waste material will be removed and temporarily relocated as part of the estuary cleanup project. The parcel's owner will then arrange for permanent offsite disposal.

For more information and project updates, check CalRecycle's website:

<http://www.calrecycle.ca.gov/SWFacilities/Cleanup/Projects/Estuary2013/default.htm>



Photo 1. *Derelict vessel being lifted onto a barge by crane at the "reflecting pier" at Union Point Park in Oakland (Courtesy CalRecycle staff).*



Photo 2 (before) and 3 (after). *Collapsed pier removed from the estuary near the intersection of Clement Avenue and Oak Street in Alameda (Courtesy USEPA staff).*

Board's Moonlite Cleanup Order Petitioned (Nathan King)

On October 11, United Artists Theatre Circuit, Inc. (UATC) petitioned the State Board to review the cleanup order for the Moonlite dry cleaner site. The Board adopted site cleanup requirements for this site at its September meeting and named UATC and Moonlite Associates as dischargers.

UATC raised the following arguments in its petition for review:

- There was no tetrachloroethylene (PCE) discharge from a dry cleaner during UATC's ownership and control;
- UATC did not know and could not have known of the discharge and contamination;
- UATC did not have legal authority to prevent a discharge of PCE at the site;
- UATC's bankruptcy releases it from liability for remediating the site; and
- The cleanup order improperly concluded that the City of Santa Clara should not be named as an additional discharger.

These arguments are similar to the ones UATC raised during the September Board meeting. We will keep you informed of future developments on this petition.

Int'l Conference on Sustainability & Environmental Protection (Shin-Roei Lee)

The Chinese American Environmental Professionals Association was founded in 1988 by the late Board staffer, Dr. Teng-chung Wu. This year, the Association organized a two-day pre-conference workshop, which included three field trips, followed by a 2-day conference from October 10 to 13 in Burlingame. About 140 people attended the conference from China, Taiwan, India, Singapore, and the United States. The conference featured three concurrent tracks on sustainability planning, wastewater infrastructure reinvention, and sustainable cleanup of air, soil, and groundwater. Scholars, researchers, policy and decision makers from federal, State and local agencies, and senior managers of major consulting firms were invited speakers at the conference. Shin-Roei Lee, Randy Lee, and Lila Tang participated as trainers, moderators and/or speakers at the event. The Water Board was featured as one of the conference's co-organizers.

In-house Training

Our October training was on "Maximizing Your Memory." Our November training will be on communicating with a non-technical audience, something we're called on to do on a regular basis. Both trainings rely on outside trainers, provided by the State Board's Training Academy. Brownbag seminars included an October 3 session on Contaminants of Emerging Concern; one in a series of webinars offered by the Groundwater Resources Association and focused on per- and poly-fluorinated compounds (used in manufacturing non-stick products like Teflon).

Staff Presentations

On October 29 and 30, a number of Board staff, Board Members, and State Board Members attended the State of the Estuary Conference. This year's theme, *20/20 Vision: Past Reflections, Future Directions*, was a celebration of both the 20th anniversary of the San Francisco Estuary Partnership's (SFEP) Comprehensive Conservation and Management Plan and the 20th anniversary of the initiation of the Regional Monitoring Program. While celebrating the past 20 years, the conference focused attention on the many challenges ahead. Expert speakers and moderators discussed the Estuary's current and emerging issues, such as climate change and sea level rise, Delta inflows, trash and other contaminants, invasive species, and other threats to our fish and wildlife populations. Both during the conference and during breaks, there was lively debate and discussion about actions needed as we anticipate the major changes coming to our Estuary. Presenters also examined the ways in which government and decision-makers can better engage Bay Area communities in critical decision-making around these challenges. The conference also served as the release event for the Regional Monitoring Program's 2013 "Pulse of the Bay" report, which highlighted what's been learned about contaminants of the emerging concern in the Bay.

Board staff worked closely with SFEP in developing the conference content and agenda and in staffing the conference. Special recognition goes to Board staff who presented at the conference: Tom Mumley (*Managing Contaminants of Emerging Concern in the Bay*), Naomi Feger (*Counting Calories in the Bay: What is the Recommended Daily Allowance?*), and Dale Bowyer (*Getting To Clean: Regulating Trash and Gauging Success*), and Andree Greenberg who helped organize the poster session. I participated in an interesting discussion titled *Future Solutions for the Bay: Key Opportunities and Barriers*. Big thanks to SFEP for pulling together this special biennial event!

Penalty Enforcement Proposed Actions & Final Settlements (Claudia Villacorta)

The following tables show newly issued complaints, recently proposed settlements, and settled actions for assessment of penalties as of the last report. All complaints and proposed settlements are available at:

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

Proposed Settlements			
The following are noticed for a 30-day public comment period. If no significant comments are received by the comment deadline, the Executive Officer will sign an order implementing the settlement.			
Discharger	Violation	Penalty Proposed	Comment Deadline
West County Agency and City of Richmond, Outfall	Discharge limit exceedances	\$3,000	November 1, 2013

Settled Actions			
On behalf of the Board, the Executive Officer approved the following:			
Discharger	Violation	Penalty Imposed	Supplemental Environmental Project
City of Sunnyvale, Water Pollution Control Plant	Discharge limit exceedance	\$3,000	None
Lehigh Hanson West Region, in Oakland	Discharge limit exceedances	\$9,000	None

The State Board's Office of Enforcement includes a statewide summary of penalty enforcement in its Executive Director's Report, which can be found on the State Board website:

http://www.waterboards.ca.gov/board_info/eo_rpts.shtml