

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
June 15, 2005

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Item 1 - Roll Call and Introductions

The meeting was called to order on June 15, 2005 at 9:07 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Mary Warren, Vice-Chair; Kristina Brouhard; Margaret Bruce; Shalom Eliahu; Clifford Waldeck; and Gary Wolff.

Board member absent: Josephine De Luca.

Item 2 - Public Forum

Mark Costanzo, San Francisco International Airport, reported the Airport's new wastewater treatment plant is fully operational and is in compliance with the Board's 2001 Cease and Desist Order. He said the Airport eliminated two stormwater outfalls to the Bay, and instead treats the stormwater in its industrial wastewater treatment plant.

Margaret Gordon, West Oakland Environmental Indicators Project, said she would like to meet with staff to discuss remediation of toxic substances at the Wood Street Train Station site in West Oakland. She said the community would like to be involved in a public participation process to resolve outstanding environmental issues. She expressed concern that staff may have lost documents.

Gary Wolff said Ms. Gordon contacted him last week and he suggested she address the full Board.

Brian Beveridge, West Oakland Environmental Indicators Project, said the community has been told housing will be developed on the site. However, he said the community has not been informed about a program to cleanup toxic substances. He said he and Ms. Gordon would like to meet with staff to discuss remediation.

Bruce Wolfe said the Wood Street Train Station site is a Brownfield site. He said staff intends to keep the public fully engaged in the cleanup program, and would welcome the opportunity to meet with community representatives. He said the City of Oakland recently completed its review of the proposed development under the California Environmental Quality Act.

Dwight Acey, Citizens Against Dump Expansion, questioned whether biosolids used at the Potrero Hills Landfill in Solano County meet certification standards for moisture content and hazardous substances content. He said sludge spread at the landfill creates an unpleasant odor. He asked that proper separation be maintained between the liner and the groundwater table. He referred to an email from June Guidotti to the Water Board and a June 10, 2005 email reply from Curtis Scott.

Yoshiko Acey, Citizens Against Dump Expansion, said residents are concerned the landfill is hazardous to their health and would appreciate help investigating landfill conditions.

George Guynn, Jr., Citizen Against Dump Expansion, expressed concern that use of biosolids at the landfill violates the Porter-Cologne Water Quality Control Act.

June Guidotti, Suisun City, said the landfill surrounds her property. She said the landfill adversely affects the air she breathes and the water she drinks from her well. She requested the Board help protect the health and property of people living near the landfill.

Mrs. Guidotti said one problem she has experienced is that agencies overseeing the landfill often do not have a complete set of regulatory documents. She said she had a meeting scheduled with staff to discuss her concerns.

Mr. Wolfe said the Potrero Hills Landfill is proposing to expand operations beyond its present boundaries. He said a number of public agencies are reviewing the proposed expansion under the California Environmental Quality Act process. He said staff would investigate issues raised by the speakers and prepare a report for the Board. He said the Board would regulate any expansion with Waste Discharge Requirements.

In reply to a question, Mr. Wolfe said the Potrero Hills Landfill began operations in 1986. He said at that time requirements for liners were more lenient than requirements are today. He said different liners were used in 1986 than currently are being used.

Sejal Choksi, San Francisco BayKeeper, said Cargill Salt accidentally spilled toxic brine into Bay waters. She said the frequency of such spills could be reduced if the Water Board assessed a fine against the discharger.

Ms. Choksi said the State Board would consider the San Francisco mercury TMDL tomorrow at its June 16 meeting. She expressed disappointment that BayKeeper was not given an opportunity to review Mr. Wolfe's letter regarding the TMDL before the letter was sent to the State Board.

Ms. Choksi said State Board staff proposed three options for State Board action on the TMDL. She recommended the TMDL include: (1) mass balance of mercury for oil refineries; (2) a monthly monitoring of methylmercury in effluent; (3) an inventory of mercury hot spots; and (4) funding sources to address public health impacts of mercury.

In reply to Ms. Choksi's comments, Mr. Wolfe said Cargill's recent bittern spill does not appear to have left detectable impacts to Newark Slough or nearby marshes. He said staff is investigating the spill, along with an earlier spill, to determine the appropriate enforcement action.

Mr. Wolfe said the State Board adopted a resolution in March 2005 regarding the San Francisco Bay mercury TMDL. He said State Board staff prepared a staff report addressing issues raised in the resolution. He said the State Board would hear testimony on the TMDL at its meeting tomorrow, but would not take action. He said the State Board posted his letter regarding the TMDL on its website.

Dr. Wolff asked if the TMDL would be returned to the Regional Board for consideration if the State Board would like changes made.

Yuri Won said under the Water Code, the State Board could approve the TMDL or return it to the regional board for further consideration and resubmission to the State Board. She said, upon resubmission, the State Board could either approve the TMDL or act directly to revise it.

Item 3 – Minutes of the May 18, 2005 Board Meeting

Motion: It was moved by Mrs. Warren, seconded by Mrs. Brouhard, and it was unanimously voted to adopt the minutes of the May 18, 2005 Board meeting.

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

Mr. Muller said he recently attended a meeting of U.S. EPA's Local Government Advisory Committee held in Washington, D.C.

Mr. Wolfe said Cal/EPA Secretary Lloyd asked the regional boards to review the role of science in their decision-making processes. Mr. Wolfe said staff is preparing a report that would include examples of how science and engineering have been used in this region.

Mr. Wolfe said he recently attended the opening ceremony for the Marin Municipal Water District Desalination Pilot Plant. He said the plant would operate for nine months and would help provide information on operating costs and appropriate technology.

Mrs. Warren asked that the Board receive updates on the operation of the pilot plant.

Dr. Wolff said public acceptance of science and technology is important. He said there is the science and technology to treat seawater and recycled wastewater to make them both suitable for drinking water. However, he said the public does not appear willing to accept recycled wastewater for consumption.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Item 6 – Central Contra Costa Sanitary District, Collection System Overflows, Contra Costa County – Hearing to Consider Administrative Civil Liability for Discharge of Untreated Wastewater to Waters of the State

Mr. Wolfe said a complaint in the amount of \$165,000 was issued against the District as a penalty for sewer spills. He said the District signed a waiver of its right to a hearing and intends to implement supplemental environmental projects in the amount of \$155,000. He said \$10,000 would be paid for staff costs.

Mr. Wolfe said in 2003 the law regarding administrative civil liabilities was changed to allow the Board to hold a hearing on a complaint after a discharger signed a waiver. He said at the time the law was changed, the Board indicated its intent to hold a hearing after a discharger signed a waiver only if public comments indicated there was new and significant information to be considered.

Rosalind Rogoff, San Ramon, discussed two sewage spills that occurred on the street where she lives. She said one spill occurred in 2004 at the District's pump station and the other occurred in 2000. She said both spills created serious health hazards. She said residents in her neighborhood do not believe the fine being assessed against the District is a sufficient penalty.

Christa Freihofner, South San Ramon Neighborhood Association, concurred with Ms. Rogoff. She requested the Board reconsider the amount of the fine.

Herb Moniz, City Manager, City of San Ramon, said the District is working with the City to prepare a supplemental environmental project.

Mr. Wolfe said staff is required under the Water Code to consider a number of factors when calculating the amount of the fine. However, he said the Water Code does not set out a specific formula. He said staff tries to set fines that will have a deterrent effect. He said staff believes the fine assessed against the District is significant.

Charles Batts, General Manager, Central Contra Costa Sanitary District, said the District regrets that the sewer spills occurred. He said the District takes its responsibility seriously.

Mr. Wolfe said he had not heard new and significant testimony that would cause him to reissue the complaint in a different amount. He recommended the Board not hold a hearing regarding the amount of the fine.

Mr. Eliahu asked about actions the District had taken to ensure that spills in its collection system would not reoccur.

Mr. Wolfe said staff is working with wastewater agencies to see that they give a high priority to operation and maintenance of collection systems. He said maintenance is a challenge because in a number of communities piping may be old and may be clogged with roots and grease.

In reply to a question, Ms. Tang said the maximum penalty the Board could assess for a sewer spill is \$10 a gallon. She said the District's complaint alleges 97,175 gallons were spilled and the maximum penalty would be \$971,750.

Ms. Tang said wastewater agencies are required to report sewer spills to staff. She said staff has set up a web-based reporting system. Also, she said wastewater agencies are preparing Sewage Management Plans to set out operational procedures necessary to maintain functioning systems.

Dorothy Dickey recommended the Board proceed with action on this item if it determines that no new and significant information was heard at today's hearing. However, she recommended the item be continued for further action if the Board determines new and significant information was heard.

Motion: It was moved by Mrs. Warren, seconded by Dr. Wolff, and it was voted that the Board would not hold a hearing regarding the complaint against the District because new and significant information was not heard at today's hearing.

Roll Call:

Aye: Mrs. Brouhard; Mrs. Bruce; Mr. Eliahu; Mr. Waldeck; Mrs. Warren; Dr. Wolff; and Mr. Muller

No: None

Motion passed 7 – 0

[The Board took a brief recess.]

Item 7 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Tomales Bay Watershed Pathogens Total Maximum Daily Load and Implementation Plan – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Dyan Whyte gave the staff presentation. She said at the April Board meeting, staff presented an overview of the pathogens TMDL and stakeholders gave testimony. She said today she distributed a Supplemental to this item that contains preliminary revisions to the TMDL.

Ms. Whyte said pathogens are impairing the use of Tomales Bay, Lagunitas Creek, Walker Creek, and Olema Creek. She said the TMDL uses fecal coliform concentrations to indicate presence of pathogens. She said at the April Board meeting, staff presented the following numeric targets:

1. 14 fecal coliform MPN/100mL of Bay water; and
2. 43 fecal coliform MPN/100 mL of tributary water.

Ms. Whyte said the 14 MPN fecal coliform/100 mL target is based on a median value of five samples taken in the Bay over a 30-day period. She said the 43 MPN fecal coliform/100 mL tributary target is based on a single sample maximum value. She said staff believed that when tributary water, not exceeding 43 MPN fecal coliform/100 mL entered the Bay that five samples taken in the Bay within 30 days would comply with the Bay target of 14 MPN fecal coliform/100 mL.

Ms. Whyte said the hydrodynamic model on which the 43 MPN fecal coliform/100 mL was based did not take into account the die-off rate of fecal coliform bacteria. She said staff has asked University of California researchers to re-run the model using a bacteria decay coefficient. She said staff anticipates the tributary target may be raised to 200 MPN fecal coliform/100 mL.

Ms. Whyte said staff does not believe that wildlife makes a significant contribution to pathogen levels in Tomales Bay or its tributaries. She compared the results of water monitoring samples taken from land used as open space with wildlife with land used for livestock grazing. She said fecal coliform concentrations in water samples from land used as open space with wildlife were far below the anticipated target of 200 MPN fecal coliform/100 mL and fecal coliform concentrations in water samples from land used for livestock grazing were above.

Ms. Whyte said actions required in the TMDL implementation plan also are required under other regulatory programs. She said the implementation plan is consistent with the State Board's Nonpoint Source Implementation Policy. She said boaters would have to comply with a boating management plan that is being developed. She said homeowners with septic systems must comply with requirements of the Marin County Environmental Health Services Department. She said horse and cattle ranchers must develop and implement facility plans.

Ms. Whyte said a number of stakeholders requested DNA technology be used to identify the source of fecal coliform contributing to elevated levels in water samples. She said there is sufficient monitoring data to support staff's assessment of sources and does not think extensive DNA analysis is necessary.

In reply to a question, Mr. Wolfe recommended the public hearing for the TMDL be continued until the September Board meeting. He said staff would revise the TMDL further after receiving the hydrodynamic model results. He said the revised TMDL would be distributed to stakeholders. He said staff might make more revisions after receiving public comments.

Dr. Wolff expressed hope that the implementation plan would clearly establish what responsible parties are required to do.

In reply to a question, Ms. Whyte said staff anticipates that local organizations in the Tomales Bay area will help coordinate implementation of the TMDL.

In reply to a question, Ms. Whyte said sampling results could vary depending upon the averaging period used.

Ms. Whyte said parties would not be held responsible for fecal coliform from wildlife on their land.

Gordon Bennett, Sierra Club-Marin Group, said wildlife makes minor contributions to fecal coliform counts. He said it was important that TMDL implementation activities be carried out.

Sally Posey, Marin County Farm Bureau, requested targets in the TMDL be realistically attainable. She said ranchers and farmers have voluntarily worked to reduce pollution by improving management practices. She encouraged the use of DNA testing.

Mr. Wolfe said it is important to use the monitoring data that has been collected, apply science to it, and move forward to implement activities to reduce fecal coliform levels.

Mr. Muller continued the public hearing until September.

Item 8 – ConocoPhillips Company, San Francisco Refinery, Rodeo, Contra Costa County
– Reissuance of NPDES Permit

Robert Schlipf gave the staff presentation. He said the refinery discharges wastewater, once-through cooling water, and stormwater to the Bay.

Lila Tang said some of the effluent limits in the tentative order are more stringent than in the last NPDES permit issued to ConocoPhillips. She said the California Toxics Rule established the more stringent limits.

Yuri Won said the State Implementation Policy allows dischargers to request compliance schedules if they demonstrate it is infeasible to achieve immediate compliance with effluent limits. Mr. Schlipf said the State Implementation Policy requires that dischargers conduct pollution minimization programs as a condition for being granted compliance schedules.

Ms. Tang said ConocoPhillips is not able to immediately comply with limits for eight pollutants and has been granted compliance schedules to reach the limits. Mr. Schlipf said the tentative order requires ConocoPhillips conduct a pollution minimization program and ConocoPhillips objects.

Ms. Won said Water Code section 13263.3 prohibits pollution prevention plans from being included in permits and that the State Board of Water Control Order held that permits could require preparation, but not implementation, of pollution prevention plans prepared pursuant to this Water Code section. She explained that the plan required under the tentative order is not being required under this Water Code provision, that it does not meet the very specific criteria under this provision as to when the Board can require pollution prevention plans, nor does it meet this provision's definition of what a pollution prevention plan must contain. She said the plan is being required in connection with granting a compliance schedule under the State Implementation Policy, under which a discharger must show the pollutant minimization measures it has undertaken and will undertake to get a compliance schedule. She said the tentative order implements this directive and is consistent with other permits adopted by the Board. She concluded that

as a matter of law the requirement for the plan can be included in the tentative order and that also as a practical matter, the Board's staff recommends it stay in the tentative order.

In reply to a question, Ms. Tang said the Board has adopted at least eight permits that have included requirements for a pollution minimization program in connection with granting compliance schedules.

Philip Stern, Environmental Manager, ConocoPhillips, requested Provision D8 in the tentative order be changed: (1) to require preparation, but not implementation, of a pollution minimization program; (2) to limit the scope of the pollution minimization to three pollutants recently detected in effluent; and (3) to delete requirements concerning potential future pollutants.

Kevin Buchan, Western States Petroleum Association, said staff made two changes to the tentative order in response to public comments. He said WSPA would like to submit written comments into the record regarding the changes.

Ms. Won said it has not been the Board's practice to accept written comments after the public comment deadline had closed. She said the Board has allowed parties to read comments into the record. She said while the Board could accept written comments, staff should be given an opportunity to read the comments and to reply to them.

Mr. Muller suggested Mr. Buchan orally summarize his written comments.

Mr. Buchan summarized his written comments. He said Provision D8 of the tentative order is not consistent with SIP Section 2.1, Water Code Section 13263.3, the State Board Tosco Order, and Finding 75 (d) of the tentative order. He objected to the fact that Provision D8 (b)(ii) of the tentative order requires ConocoPhillips to analyze pollutants that have the potential to be future problems.

Mr. Buchan said WSPA is concerned about citizen lawsuits if implementation of pollution minimization programs is required in the NPDES permit. He requested the Board require implementation of pollution minimization programs through a format other than an NPDES permit.

Mr. Buchan said ConocoPhillips has an ongoing pollution prevention program. He said the issue is not about implementing a pollution prevention program. He reiterated the issue is about including the requirement for a pollution minimization program in the NPDES permit because of the potential for citizen lawsuits.

In reply to a question, Ms. Tang said two of the eight pollutants for which there are compliance schedules may not have been detected in ConocoPhillip's effluent.

Ms. Won said the State Implementation Policy does not specify the vehicle under which pollution minimization programs are to be required. However, she reiterated pollution minimization programs go "hand in hand" with granting compliance schedules, and it is reasonable to require them in NPDES permits. In response to the potential for citizen lawsuits, she said the likelihood is slim and that in any case the best defense to one is compliance and ConocoPhillips has indicated it will and can comply with the pollution minimization requirements.

Sejal Choksi, BayKeeper, recommended the tentative order require that ConocoPhillips implement a pollution minimization program.

Peter McGaw, on behalf of Partnership for Sound Science and Environmental Policy, recommended Provision D8 be removed from the tentative order and a statement that ConocoPhillips is required to implement a pollution minimization program be added to the findings section. He further recommended the Executive Officer issue a parallel order requiring the pollution minimization program be implemented.

Mr. Wolfe said he would consider using another process to require a pollution minimization program if all five of the Bay Area refineries agreed to the process. He said parallel orders could be difficult to manage.

Mr. Wolfe reiterated it is reasonable to require implementation of the pollution minimization program in the tentative order because compliance schedules are allowed in the tentative order. He said provisions in the tentative order are enforceable.

Dr. Wolff expressed concern that Provision D8 of the tentative order does not comply with State Implementation Policy Section 2.1. He said the SIP appears to require a pollution minimization schedule be established and Provision D8 does not include a schedule.

Mr. Wolfe said ConocoPhillips would include a schedule when it prepares a pollution minimization program.

Dr. Wolff made a motion to continue this item until such time as staff is able to state the tentative order fully complies with State Implementation Policy Section 2.1.

The motion did not receive a second.

Mr. Wolfe said he felt the requirement for a pollution minimization program should remain in the tentative order. He recommended approval of the tentative order.

Mr. Wolfe said staff could report to the Board on pollution minimization programs in general and how the programs carry out SIP Section 2.1 requirements.

Motion: It was moved by Mr. Waldeck, seconded by Mr. Eliahu, and it was voted to adopt the tentative order as recommended by the Executive Officer.

Roll Call:

Aye: Mrs. Brouhard; Mr. Eliahu; Mr. Waldeck; and Mrs. Warren

No: Mrs. Bruce; Dr. Wolff; and Mr. Muller

Motion passed 4 – 3.

Mr. Muller recommended staff report to the Board regarding SIP Section 2.1 requirements and a requirement in NPDES permits for pollution minimization programs.

Adjournment

The Board meeting was adjourned at approximately 1:00 p.m.