

REGIONAL WATER QUALITY CONTROL BOARD - SAN FRANCISCO BAY
BOARD MEETING MINUTES
October 19, 2005

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Item 1 - Roll Call and Introductions

The meeting was called to order on October 19, 2005 at approximately 9:10 a.m. in the State Office Building Auditorium, First Floor, 1515 Clay Street, Oakland.

Board members present: Mary Warren, Acting Chair; Margaret Bruce; Shalom Eliahu; Clifford Waldeck; and Gary Wolff.

Board members absent: Kristina Brouhard; Josephine De Luca; and John Muller.

Gina Kathuria and Dyan Whyte introduced new staff: Devender Narala and Janet Cox.

Item 2 - Public Forum

There were no public comments.

Item 3 – Minutes of the September 21, 2005 Board Meeting

Gary Wolff requested the last paragraph on page 5 of the minutes, regarding his abstention from voting on the Tesoro Refining & Marketing Company item, be amended. He requested the phrase “felt their comments were based on science” be stricken from the second sentence of the paragraph and replaced with the phrase “who usually also understand the science.” He requested a sentence be added at the end of the paragraph to read: “He criticized the environmental groups for not submitting comments in writing.”

Motion: It was moved by Mrs. Bruce, seconded by Dr. Wolff, and it was voted to adopt the minutes of the September 21, 2005 Board meeting as amended by Dr. Wolff.

Roll Call

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

No: None

Motion passed 5 – 0.

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

Clifford Waldeck reported having lunch with Sejal Choksi of BayKeeper. He said Ms. Choksi sent him material regarding diazinon and pesticide related toxicity that he forwarded to staff.

Mr. Wolfe said the Board might not hold a December 2005 meeting. He also said the State Board in 2006 might hold its meetings on third Wednesdays and suggested the Regional Board meet on second or fourth Wednesdays in order to avoid scheduling conflicts.

Mr. Wolfe said the American Society of Civil Engineers issued a report card that graded various categories of Bay Area infrastructure. He said wastewater treatment facilities received an A-. He said the overall grade for Bay Area infrastructure was C-.

Mr. Wolfe said the Water Board was named to U.S. EPA’s 2005 list of best work places for commuters.

Dr. Wolff asked a question about the San Mateo Creek watershed item in the written Executive Officer’s Report. Mr. Wolfe said staff would discuss specifics with him at a future time.

Item 5 – Consideration of Uncontested Items Calendar

Mr. Wolfe recommended adoption of the uncontested calendar.

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

Roll Call:

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

No: None

Motion passed 5 – 0.

Item 6 – Contra Costa County Sanitation District No. 5, Sewage Treatment Plant, Port Costa, Contra Costa County – Hearing to Consider Mandatory Minimum Penalty for Discharge of Partially Treated Wastewater to Waters of the State

Mr. Wolfe said Contra Costa Sanitation District No. 5 signed a waiver of the right to a hearing on the proposed MMP. He said no Board action was necessary. Mr. Wolfe said the District agreed to pay a Mandatory Minimum Penalty in the amount of \$57,000. He said \$57,000 would be used for a Compliance Project.

Item 7 – Contra Costa County Sanitation District No. 5, Sewage Treatment Plant, Port Costa, Contra Costa County – Hearing to Consider Adoption of Time Schedule Order

Greg Walker gave the staff report. He said Sanitation District No. 5 operates a sewage treatment plant in Port Costa that serves 350 residents. He said the District needs to repair the plant in order to comply with regulatory requirements in its NPDES permit. He said the Tentative Time Schedule Order would insure repairs are made.

Mr. Walker said the District estimates repairs would cost \$500,00. He said the District would like to use the \$57,000 Mandatory Minimum Penalty towards completing a compliance project.

Mr. Walker requested references in the Tentative Time Schedule Order to the Water Code be changed from WC 13303 to WC 13300 in Finding 11, Finding 14, and in the paragraph stating IT IS HEREBY ORDERED.

In reply to a question, Mr. Walker said the District is geographically remote from other sanitary districts and piping sewage from Port Costa to other plants would be expensive. He said the Port Costa sewage plant operates cost effectively. He said the District plans to issue a bond to pay for repairs, and revenue from an increased parcel tax would help pay off the bond.

In reply to questions, Mr. Wolfe said the District would continue to have mandatory minimum penalties unless repairs were made. He said the District, in order to complete repairs, must negotiate access for construction equipment to cross railroad tracks. He said tasks in the Tentative Time Schedule Order must be completed by November 30, 2007.

Mr. Wolfe recommended adoption to the Tentative Time Schedule Order as amended by Mr. Walker.

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

Roll Call:

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

No: None

Motion passed 5 – 0.

Item 8 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region for the 2005 General Update with Non-Regulatory Revisions – Hearing to Consider Adoption of Proposed Basin Plan Amendment

Sarah Raker gave the staff presentation. She said, as a regulatory document, the Basin Plan provides a legal basis for many of the Board's permitting decisions. She said, as an informational document, the Basin Plan serves as a water quality atlas and gives the public information about waters. She said, as a planning document, the Basin Plan helps clarify Board priorities.

Ms. Raker said the proposed Basin Plan Amendment includes updates (1) to organizational documents, (2) beneficial use maps/tables, and (3) program descriptions.

She said the Amendment includes our updated names, Water Board and State Water Board.

Ms. Raker said the Amendment would make non-regulatory changes to the Basin Plan. She said the Amendment would not include regulatory changes.

Ms. Raker said the Water Board, State Water Board, Office of Administrative Law, and U.S. EPA must approve the Amendment.

In reply to a question, Mr. Wolfe said the Amendment updates items that currently are in the Basin Plan. He said the Basin Plan, as updated, would be enforceable.

Mr. Wolfe said staff is working with State Board legal counsel to make sure the Amendment does not include regulatory changes.

In reply to a question, Yuri Won said staff is scrutinizing all changes proposed in the Amendment, including deletions.

Leah Orloff, Senior Water Resources Specialist, Contra Costa Water District, said the Basin Plan incorrectly identifies the beneficial use of Mallard Reservoir as limited water contact recreation use. She said Mallard Reservoir is used for drinking water and is located next to the District's drinking water treatment plant. She said the Reservoir is not used for recreational purposes and requested correction of the beneficial use designation.

Mr. Wolfe said the requested correction is regulatory in nature and could not be included in the Amendment. He said staff would consider the correction when Basin Plan regulatory changes are made.

Mr. Waldeck commended staff for making the Basin Plan available to the public on the Internet. He stressed the importance of having public documents be truly public.

Mr. Wolfe recommended the item be continued for consideration at the November Board meeting.

Motion: It was moved by Mrs. Bruce, seconded by Mr. Waldeck, and it was voted to continue the item as recommended by the Executive Officer.

Roll Call:

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

No: None

Motion passed 5 – 0.

Item 9 – Proposed Amendment to the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Region to Establish a Water Quality Attainment Strategy, Total Maximum Daily Load, and Implementation Plan for Diazinon and Pesticide-Related Toxicity in Urban Creeks – Hearing to Receive Testimony on Proposed Amendment

Bill Johnson gave the staff report. He said in the 1990's a pesticide called diazinon caused toxicity in many creeks in the Region. He said U.S. EPA phased out most urban uses of diazinon in 2004.

Mr. Johnson said people started using other pesticides, including a new pesticide category called pyrethroids. He said pyrethroids tend to stick to particles and organic matter, and they have caused sediment toxicity in creeks.

Mr. Johnson said urban creeks that contain pesticide-related toxicity do not meet the Basin Plan narrative water quality objectives. He said the narrative objectives require that waters be free of toxic substances in toxic amounts.

Mr. Johnson said the proposed Basin Plan Amendment establishes a Water Quality Attainment Strategy for diazinon and pesticide-related toxicity in the Region's urban creeks. He said pesticide toxicity is a dynamic problem that needs to be addressed through a region-wide approach. He said the Strategy incorporates a TMDL to address creeks on the 303(d) list due to diazinon toxicity.

Mr. Johnson reiterated that the Water Quality Attainment Strategy applies to all urban creeks in the Region and is directed at all pesticide-related toxicity. He said the Strategy requires actions in order to prevent future pesticide toxicity in the creeks.

Mr. Johnson said the Water Quality Attainment Strategy includes numeric targets for diazinon and acute and chronic pesticide-related toxicity. He said the three targets are concentration-based. He said the TMDL and allocations also are concentration based and are the same as the targets.

Mr. Johnson said Argentine ants are the primary pest problem in the Region. He said rain and irrigation water capture pesticides that are applied to landscaped areas and impervious surfaces around buildings. He said pesticides enter urban creeks mainly through runoff.

Mr. Johnson said implementation of the Water Quality Attainment Strategy focuses on: (1) proactive regulation; (2) education and outreach; and (3) research and monitoring. He said the Strategy requests U.S. EPA and the California Department of Pesticide Regulation (DPR) to implement actions to reduce pesticide use that adversely affects water quality. He said the Strategy promotes "integrated pest management" and the use of less toxic pest control methods. He said the Strategy calls for monitoring benchmarks and adaptive implementation.

Mr. Johnson said the Board regulates urban runoff management agencies through NPDES permits. He said recently issued permits have included the three-pronged implementation strategy stated above.

Mr. Johnson said since 1995 staff has participated in a stakeholder group called the Urban Pesticide Committee.

Mr. Johnson described stakeholder comments to the Water Quality Attainment Strategy. He said U.S. EPA and the DPR generally have commented favorably. He said DPR expressed some concern about how the Water Board calls for actions to be implemented.

Mr. Johnson said comments from Baykeeper, Pesticide Action Network, and Clean Water Action indicated they would like the Board to regulate the sale and use of pesticides and to delegate regulatory authority to local agencies. He said the stakeholders commented that compliance with NPDES permits “shields” agencies from using an iterative approach to implement new control measures to improve water quality.

Mr. Johnson, in reply to comments by Baykeeper, Pesticide Action Network, and Clean Water Action, said staff does not believe runoff agencies have been given a shield. He also said staff would like to collaborate with DPR rather than develop a new regulatory structure.

Mr. Johnson said urban runoff management agencies are concerned they may be required to meet numeric effluent limits. He said, however, the Strategy does not impose numeric effluent limits.

In reply to a question, Mr. Johnson said the California Environmental Protection Agency could mediate if conflicts develop between the Water Board and DPR. He said staff would like to advise DPR on water quality issues and have DPR use the information to regulate pesticide use.

Dr. Wolff asked if there was a legal opinion to resolve potential conflicts that could occur if the Board required local agencies to take actions and DPR claimed the agencies were prohibited from taking the actions.

Yuri Won said there was not a legal opinion. Dorothy Dickey said the answer to the question would depend upon the authority the Legislature has granted to the Water Board and DPR, and what the Board might require the agencies to do.

In reply to a question, Mr. Johnson said the Strategy applies only to pesticide-related toxicity, not toxicity in general.

Mrs. Bruce asked if the Strategy might lead to the inclusion of numeric effluent limits in stormwater permits.

Mr. Johnson reiterated the Strategy does not include numeric effluent limits. He said the Strategy includes numeric targets for toxicity and diazinon in urban creeks.

Mr. Eliahu asked how the Board would enforce the Strategy if it does not include numeric effluent limits.

Mr. Johnson said agencies are required NPDES stormwater permits to implement Best Management Practices.

Tom Mumley said the Basin Plan narrative objectives for toxicity are enforceable through Best Management Practices. He said measuring pesticides in the right place at the right time and applying a numeric standard could be difficult.

In reply to a question, Yuri Won said the Water Quality Attainment Strategy focuses on preventing urban creek toxicity and requirements in the Strategy are allowed under

California law. She said TMDLs are prepared to correct current pollutant problems and are required under federal law.

Dr. Wolff asked if the toxicity language on page A-1 of the Basin Plan Amendment applies generally to the entire Bay.

Mr. Johnson replied affirmatively, and said the toxicity language applies to all waters in the Region.

Geoff Brosseau, Executive Director, Bay Area Stormwater Management Agencies Association, said he appreciated staff's recognition that municipalities generally are not the original source of pesticides that are discharged from municipal storm drains. He said he appreciated staff's recognition that pesticides can be used according to label directions approved by U.S. EPA and DPR and still cause toxicity in creeks. He said local governments are prohibited by state law from regulating pesticide registration, sale, and use.

Mr. Brosseau recommended the diazinon target in the Water Quality Attainment Strategy be consistent with the State's 303(d) listing policy. He expressed concern that monitoring benchmarks might be used as a basis for determining permit compliance. He suggested the Strategy include a sentence that prohibits using benchmarks to determine compliance.

Mr. Brosseau said it is possible that federal and state agencies might not implement actions that the Strategy sets out. He said BASMAA is concerned that, as a result, municipalities might be required to spend money to mitigate impacts over which they have little control. He suggested a paragraph be added to the Strategy that would explain steps to be taken if at some time the future allocations are not met.

Robert Sorenson, Maintenance Stormwater Coordinator, Caltrans, said diazinon is not used within Caltrans' right of way. He asked that Caltrans not be assigned a diazinon wasteload allocation.

Gary Grimm, legal counsel for Alameda Countywide Clean Water Program, endorsed statements in the Strategy: (1) that municipalities generally are not a direct source of pesticide-related activity and (2) that municipalities' responsibility for addressing allocations and targets would be met through compliance with stormwater NPDES permits.

Andria Ventura, Clean Water Action and Environmental Justice Coalition for Water, spoke in favor of the premise that the Strategy should focus on the broad issue of pesticide toxicity. She recommended the Strategy require concrete actions to improve water quality.

Ellen Johnck, Executive Director, Bay Planning Coalition, concurred with comments made by Geoff Brosseau. She asked if targets applied to the construction industry.

Sejal Choksi, Baykeeper, thanked Tom Mumley and Bill Johnson for their work on the Strategy. She recommended staff modify the implementation section: (1) to specify a deadline for action by DPR; (2) to establish language in stormwater permits that allows

agencies to continuously adapt to new toxicity information; (3) to set minimum standards for all stormwater agencies based on the most active agencies' practices; and (4) to remove the "shield" language that allows agencies to meet responsibilities to address targets and allocations by complying with NPDES stormwater permits.

Dr. Wolff said the diazinon TMDL and the pesticide-related toxicity Water Quality Attainment Strategy are based on separate legal authorities. He recommended staff clarify the legal authorities. He recommended the Strategy address all toxicity in urban creeks and not just pesticide-related toxicity.

Dr. Wolff said under the Strategy, agencies that comply with stormwater permits will be deemed to meet their responsibilities to address targets and allocations. He recommended the Strategy be modified to provide that stormwater agencies will not be required to solve problems they do not have the power to solve.

Dr. Wolff recommended implementation actions in the Strategy be set out with specificity that details "who, what and when." He gave examples of implementation actions.

Dr. Wolff recommended staff prepared a template that could be used in future TMDLs to set out implementation activities. He recommended changes to the Water Quality Attainment Strategy be made in the context of the template.

Dr. Wolff reported having a conversation last week with staff from Baykeeper about Baykeeper's comment letter on the Strategy.

Mr. Waldeck and Mrs. Bruce encouraged staff to consider Dr. Wolff's comments.

In reply to a question, Mr. Wolfe said agencies are required to implement Best Management Practices in order to meet the Basin Plan's narrative toxicity objectives. He said waters would be monitored to ensure BMPs are effective.

Mr. Wolfe said staff would review and reply to all comments received. He said the Strategy might be brought back next month for the Board's consideration.

Mr. Waldeck asked whether pest control businesses that have been certified as green businesses could advertise that fact.

Dr. Wolff said the Structural Pest Control Board adopted a rule that businesses that sell pesticide services are not allowed to advertise that they have been certified as green businesses.

Dr. Wolff recommended that a general toxicity standard for urban creeks be placed in Chapter 3 of the Basin Plan and the standard replace the pesticide-related toxicity targets in Chapter 4.

Mr. Wolfe said many helpful comments and suggestions have been made. He said staff would reply to the comments.

Item 10 – City of Petaluma, Water Pollution Control Plant, Sonoma County – Reissuance of NPDES Permit

Tong Yin gave the staff presentation. She said the City currently operates a secondary level wastewater treatment plant. She said the City recently began construction on a new plant that will be operational in three years.

Ms. Yin said staff received comments on the tentative order from the City of Petaluma, Baykeeper, and U.S. EPA. She said U.S. EPA and Baykeeper commented that the total coliform bacteria limit in the tentative order is not consistent with the more stringent limit in the Basin Plan. She said, however, the City provided evidence to meet the exception also allowed in the Basin Plan.

Ms. Yin said Baykeeper and U.S. EPA commented upon the fact the tentative order allows compliance schedules for copper and cyanide. She said the State Implementation Policy became effective in 2000 and provides procedures for granting the schedules. She said compliance schedules are allowed under the SIP because the City has demonstrated that it cannot comply with final limits.

Ms. Yin said U.S. EPA is concerned the tentative order allows the City to conduct a study to establish the use of alternate water quality based bacterial limits. She said staff revised the tentative order to address U.S. EPA's concerns.

Ms. Yin said Baykeeper objects to the fact that the tentative order allows the City to develop a pollutant mass offset program. She pointed out that the Board must approve any mass offset program proposed by the City.

In reply to questions, Mr. Wolfe said the City would be able to comply with proposed limits using its current wastewater treatment plant. He said staff is continuing to work on developing site-specific objectives for copper and cyanide in waters north of Dumbarton Bridge.

Mike Ban, Director, Water Resources and Conservation Department, City of Petaluma, thanked Lila Tang and Tong Yin for their work on the tentative order. He said the City's new wastewater treatment facility would meet the community's needs for the next 50 – 100 years. He said the facility would produce tertiary treated recycled water that would augment the City's water recycling program. He said the facility, which will cost \$110 million, has the full support of the community.

Mr. Wolfe recommended adoption of the tentative order as supplemented.

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

Roll Call:

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

No: None

Motion passed 5 – 0.

Item 11 – Resolution in Support of Programs for Inspection and Rehabilitation of Private Sewer Laterals – Adoption of Resolution

Michael Chee gave the staff report. He said homes and businesses are connected to main sewer lines by sewer laterals. He said private property owners are responsible for maintaining sewer laterals that run on their property. He said the Tentative Resolution provides Board support for local agencies to conduct programs to inspect and rehabilitate private sewer laterals.

Mr. Chee said poorly maintained laterals allow stormwater and groundwater into the sewer system. He said the additional water overloads sewer lines and causes sewer overflows.

Mr. Chee said the Tentative Resolution represents a step in the Board's effort to reduce the number of sanitary sewer overflows. He said the Board already has worked with the Bay Area Clean Water Agencies to establish an electronic reporting system for sewer overflows and a guidance manual on the development of sewer system management plans.

In reply to a question, Mr. Chee said public agencies would develop, on an individual basis to meet needs locally, private sewer lateral programs. He said, for example, some agencies might inspect private laterals at the time properties are sold.

Mr. Waldeck said it might be helpful to require public agencies to conduct private lateral inspection programs on a regular basis.

Dr. Wolff concurred with the spirit of Mr. Waldeck's suggestion. Dr. Wolff recommended the following language be added on page 2 of the Tentative Resolution, "Further, be it resolved, this Water Board will consider the existence of such programs, especially in jurisdictions experiencing significant infiltration or inflow from private sewer laterals, as an important factor when considering enforcement actions for sewer system overflows."

Dr. Wolff said he serves as Chair of the Community Advisory Committee of the Castro Valley Sanitary District. He said the Advisory Committee recently recommended the Castro Valley Sanitary District initiate a pilot sewer lateral inspection program.

Sejal Choksi, BayKeeper, said sewer spills are a big problem in the Bay Area and current regulatory programs are not reducing the number of spills. She asked the Board not to adopt the Tentative Resolution until the Resolution provides that municipalities take actions such as: (1) developing low interest loan programs to help with the cost of sewer lateral repair; (2) prohibiting lateral spills that lead to storm drains; (3) inspecting and repairing laterals when properties are sold or remodeled; and (4) penalizing failure to inspect and repair laterals when spills occur.

Michele Plá, Executive Director, Bay Area Clean Water Agencies, encouraged the Board to adopt the Tentative Resolution as amended by Dr. Wolff. She said the Tentative Resolution takes into account that private sewer laterals are not in the public domain.

She said Clean Water Agencies are working hard to reduce sewer overflows. She said the agencies do not believe overflows will be completely eliminated.

Mr. Wolfe said staff considers a number of factors when calculating penalties for administrative civil liabilities. He said staff could consider, as suggested by Dr. Wolff, whether an agency has taken action to reduce inflow and infiltration in private laterals.

Mrs. Warren, Mr. Eliahu, and Mr. Waldeck spoke in favor of amending the Tentative Resolution as suggested by Dr. Wolff.

Mr. Wolfe recommended adoption of the Tentative Resolution as amended by Dr. Wolff.

Motion: It was moved by Mr. Waldeck, seconded by Mrs. Bruce, and it was voted to adopt the tentative resolution as amended by Dr. Wolff and recommended by the Executive Officer.

Roll Call:

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

No: None

Motion passed 5 – 0.

In reply to questions, Mr. Wolfe said sewer system management plans prepared by individual agencies would not be subject to Board approval. He said Mr. Chee would make periodic reports to the Board on progress being made to reduce sewer overflows.

Adjournment

The Board meeting was adjourned at approximately 12:35 p.m.