

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

February 10, 2010

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Item 1 - Roll Call and Introductions

The meeting was called to order on February 10, 2010 at 9:17 a.m. in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland.

Board members present: John Muller, Chair; Terry Young, Vice-Chair; Shalom Eliahu; James McGrath; Steven Moore; William Peacock; Robert Schroder.

Board members absent: Rameshwar Singh.

Tam M. Doduc, Member, State Water Resources Control Board, and liaison to Region 2, addressed the Board.

Item 2 – Public Forum

David Lewis, Executive Director, Save The Bay, spoke. He distributed handouts to the Board.

Jason Flanders, Staff Attorney, San Francisco Baykeeper, spoke.

Item 3 – Minutes of the August 12, 2009 Board Meeting

Motion: It was moved by Mr. Peacock, simultaneously seconded by Mr. Moore and Mr. McGrath, and it was voted unanimously to adopt the Minutes of the August 12, 2009 Board meeting.

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

Mr. Peacock said he discussed with staff whether he had a conflict of interest regarding Item 9 (Closed Session – Litigation) and understood he did not have a conflict.

Dr. Young said during the past month, she met with a representative of the Bay Area Stormwater Management Agencies Association and separately, with staff. She said the purpose of the meetings was to exchange ideas about a methodology that could be used to calculate trash baselines as part of implementation of the Municipal Regional Stormwater Permit. She said the meetings also included discussion about implementation of other areas of the Municipal Regional Stormwater Permit.

Mr. Muller asked for comment regarding the status of Item 6.

Bruce H. Wolfe said he served on the Board advisory team for Item 6.

The advisory team recommended postponement of the scheduled hearing.

Mr. Muller concurred that the hearing would be postponed.

Item 5 – Updated Regional Standard Provision, and Monitoring and Reporting Requirements – Amendment of NPDES Permits

Mr. Wolfe said Bill Johnson would give the staff presentation.

Mr. Johnson said about 70 NPDES wastewater permits would be amended through adoption of the Revised Tentative Order. He said requirements in the Revised Tentative Order would replace existing standard provisions and provide an up-to-date Attachment G.

Mr. Johnson described three changes that would be made to existing dioxin and furan reporting provisions. He said first, permittees would be required to incorporate bioaccumulation equivalency factors into dioxin-TEQ calculations. He said second, permittees would be required to use dioxin and furan minimum levels that match default values specified in United States Environmental Protection Agency Method 1613. He said third, in calculating dioxin-TEQ, permittees would be required to exclude estimated values below minimum levels.

Mr. Johnson said the Revised Tentative Order would continue to require permittees to report all known and estimated values of dioxin and furans even if the values were less than minimum levels. He said dioxin-TEQ effluent limits would not be changed. He said staff does not believe there will be an increase of dioxins and furans in the Bay if the Revised Tentative Order is adopted.

Mr. Johnson said permittees currently are required to conduct extensive monitoring, with some exceptions, during treatment system bypasses. He said the Revised Tentative Order would allow permittees to reduce monitoring during approved bypasses and to revert to extensive monitoring when total suspended solids concentrations are exceptionally high. He said the Revised Tentative Order replaces permit-by-permit monitoring exceptions during approved bypasses with a consistent provision applicable to all permittees.

Mr. Johnson said staff received six comment letters on the Tentative Order and resolved concerns addressed by five of the commenters. He discussed concerns of the remaining commenter and presented staff's replies to the concerns.

Mr. Wolfe said the Board was given a Supplemental that revises a Response to Comment in Appendix C (Response to Comments) of the Staff Summary Report.

Mr. McGrath requested discussion on whether a surrogate constituent could be used to estimate dioxin and furan concentrations below minimum levels.

Dr. Young asked staff to discuss dioxin and furan pollution minimization activities that permittees currently are required to conduct.

In reply to Dr. Young, Mr. Johnson said some permittees are required to comply with compliance schedules because they cannot meet final limits. He said the compliance schedules include pollutant minimization requirements.

Dr. Young asked staff to comment on pollutant minimization actions permittees would take if the proposed reporting scheme is adopted and dioxin and furan concentration levels in effluent change.

Lila Tang said she thought permittees with higher concentration levels would implement pollution minimization measures as a means to have as low a level as possible.

Dr. Young asked if the Board would be limiting its regulatory options if it adopted the proposed reporting scheme.

Ms. Tang said the Board would not be limiting regulatory options. She said permittees would still be required to report monitoring results, including estimated values of dioxins and furans.

Ian Wren, Staff Scientist, San Francisco Baykeeper, expressed concern that dioxins and furans could be released to the Bay in undocumented amounts under proposed reporting criteria. He objected to the fact that the Revised Tentative Order allows permittees to conduct reduced monitoring during approved bypass events. He requested consideration of the proposed permit be continued to allow for further discussion of revisions made to the Tentative Order.

In reply to Mr. McGrath's request, Mr. Wren said he would be willing to provide information after the Board meeting regarding the utility of using alternative methods to estimate dioxin and furan concentrations below minimum levels.

Mr. Moore asked Mr. Wren if he would be in favor of monitoring a surrogate constituent like total suspended solids during an approved bypass if there was justification for using the constituent.

Mr. Wren said he might be in favor if data justified the reliance.

Kevin Buchan, Senior Coordinator, Bay Area and State Water Issues, Western States Petroleum Association, requested the Board adopt the Revised Tentative Order. He spoke in favor of incorporating bioaccumulation equivalency factors into dioxin-TEQ calculations and requiring consistent dioxin and furan minimum levels among permittees. He said the Revised Tentative Order does not contradict the anti-backsliding provision of the Clean Water Act because dioxin-TEQ effluent limits remain the same.

Amy Chastain, Executive Director, Bay Area Clean Water Agencies, spoke in favor of adoption of the Revised Tentative Order and thanked staff for its work. She briefly discussed pollution minimization efforts.

Craig S.J. Johns, Program Manager, Partnership for Sound Science in Environmental Policy, spoke in favor of adoption of the Revised Tentative Order. He congratulated Mr. Johnson and Ms. Tang and staff for its work on the Revised Tentative Order and on Appendix C (Response to Comments) of the Staff Summary Report. He said proposed revisions regarding dioxin-TEQ calculations and the methodology of reporting dioxin and furan concentrations are based on sound science. He briefly discussed dioxin sources.

Mr. Moore thanked staff for its work on the Revised Tentative Order and on Appendix C of the Staff Summary Report. He said the Revised Tentative Order would provide a consistent reporting and monitoring program for NPDES wastewater permittees.

Mr. McGrath concurred with Mr. Moore and spoke in favor of adoption of the Revised Tentative Order.

Dr. Young also concurred with Mr. Moore. She said she appreciated the discussion regarding pollution minimization activities and she appreciated staff's discussion that the Board would not limit its regulatory options by adopting the proposed reporting scheme. She requested staff place an existing report regarding dioxins and furans on the Board's web page.

Mr. Muller thanked stakeholders for their comments and he thanked staff for its dedication in its work.

Mr. Wolfe recommended adoption of the Revised Tentative Order as supplemented.

Mr. Moore recommended staff discuss with representatives of San Francisco Baykeeper the data that justifies monitoring of a surrogate constituent during approved bypass events.

Motion: It was moved by Mr. McGrath, seconded by Mr. Eliahu, and it was voted to adopt the Revised Tentative Order as supplemented and as recommended by the Executive Officer.

Roll Call:

Aye: Mr. Eliahu; Mr. McGrath; Mr. Moore; Mr. Peacock; Mr. Schroder;

Dr. Young; Mr. Muller

No: None

Absent: Dr. Singh

Motion passed 7 – 0.

Item 6 – Uni Tile & Marble, Inc., Hayward, Alameda County – Hearing to Consider Adoption of Order Imposing Administrative Civil Liability for Failure to Obtain NPDES Industrial Stormwater General Permit Coverage as Required by California Water Code Section 13376

This Item was discussed under Item 4.

Item 7 – Correspondence

Mr. Muller briefly discussed correspondence items.

At 10:27 a.m., the Board took a break and concluded the break at 10:42 a.m.

Item 9 – Closed Session – Litigation

At 10:42 a.m., the Board retired to closed session as authorized under Government Code section 11126(e)(2)(A) to discuss pending litigation, *Arc Ecology, et al. v. United States Maritime Administration, et al.* (United States District Court for the Eastern District of California, Sacramento Division, Case No. 2:07-cv-2320-GEB-GGH).

At 11:25 a.m., the Board concluded the closed session.

Item 12 – Adjournment

The meeting was adjourned at 11:25 a.m.