California Regional Water Quality Control Board
San Francisco Bay Region

EXECUTIVE OFFICER'S REPORT

A Monthly Report to the Board and Public

March 2006

The next regular scheduled Board meeting is March 8, 2006.
*See **http://www.waterboards.ca.gov/sanfranciscobay/** for latest details and agenda*

Items in this Report (Author[s])

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Mercury TMDL and CEQA Scoping Meeting (Dyan Whyte and Carrie Austin)

Staff held a public workshop and CEQA scoping meeting on revisions to the Bay Mercury TMDL and Implementation Plan on January 31. Thirty-one stakeholders attended, representing U.S. EPA, U.S. Fish and Wildlife Service, the Corps of Engineers, National Oceanic and Atmospheric Administration fisheries division, municipal agencies including stormwater agencies and publicly owned wastewater treatment plants, and environmental advocacy groups.

Dyan Whyte and Carrie Austin presented an overview of staff's plans to revise the TMDL in accordance with last September's State Board Order No. 2005-0060. In summary, planned revisions include:

- Vacating the outdated water column water quality objective for mercury in the Bay and replacing it with fish tissue water quality objectives protective of wildlife and humans who consume Bay fish;
- More stringent wasteload allocations and increased specificity about pollution prevention measures to be undertaken by wastewater dischargers;
- Sharper focus on dredging activities that may disturb mercury-laden sediments; legacy sources of mercury such as upstream mines; and mercury hotspots at the Bay margin; and
- New requirements that dischargers monitor for methylmercury and report their findings to the Water Board.

Participants expressed general support for the planned Basin Plan amendment revisions presented by staff. In particular, representatives of environmental groups, U.S. EPA, and U.S. Fish and Wildlife Service expressed support for new fish tissue water quality objectives. Not surprisingly, there were both support for and concerns about more stringent wasteload allocations and wastewater discharge permit requirements. There was also interest, and concern, regarding whether

the State Board would be able to produce a workable pollutant trading program that adequately accounts for localized effects.

Staff is proceeding with preparing proposed Basin Plan amendments and a supporting staff report for release later in March for public review and comment. A Board hearing is expected in June. Staff is also preparing a status report to the State Board on our plans to revise the TMDL in accordance with State Board Order No. 2005-0060, to be presented at that Board's March 22 meeting.

Napa River and Sonoma Creek Pathogen TMDL Documents Released for Public Comment (Peter Krottje and Tina Low)
On February 10 staff issued a public notice releasing for public review and comment proposed Basin Plan amendments and supporting staff reports for these two TMDLs, setting the stage for forthcoming Board action as reported at the Board's February meeting.

The Napa River and Sonoma Creek watersheds are impaired by pathogens, sediment, and nutrients. Because these semi-rural North Bay watersheds have much in common both geologically and in terms of the types of dischargers and potential sources of pathogens to creeks and streams, the TMDLs for pathogens have been "twinned" by staff and are moving along parallel tracks toward Basin Plan amendment adoption.

The public notice announced the beginning of a 45-day comment period (through March 27, 2006), and the dates of the Board's upcoming hearing on these TMDLs on April 12 and an expected adoption hearing June 14, 2006. The documents are available for downloading from our website, at http://www.waterboards.ca.gov/sanfranciscobay/tmdlprojects.htm.

Comparison of Site Cleanup Decisions by State Agencies (Stephen Hill)
In January, the Center for Creative Land Recycling (CCLR) published a report, *"California Brownfield Regulatory Agencies: Are All Cleanups Created Equal? – A Comparative Study"*. CCLR compared cleanups overseen by the two state agencies responsible for overseeing Brownfield remediation in California: the Department of Toxic Substances Control (DTSC) and the Water Boards. The study included eight cases from this region and a total of 21 cases from the two agencies. The study concluded that voluntary, residentially-driven Brownfield cleanups overseen by either DTSC or by a Water Board are equally protective of human health and the environment. Both agencies derive their cleanup goals either from conservative standards or through Cal/EPA-accepted risk assessment processes, and each agency's cleanups achieved those goals with similarly high frequency. The report's foreword goes on to note the significance of this finding: DTSC's more process-oriented approach does not lead to safer or more protective Brownfield cleanups. However, it does increase the cost and duration of cleanup for Brownfield restoration projects that are often already operating at the margins of economic feasibility.

CCLR is a non-profit organization focused on creating sustainable communities. Its mission is to encourage and facilitate land recycling in ways that revitalize urban areas, discourage urban sprawl, and conserve greenspace. CCLR was founded in 1996 as a project of The Trust for Public Land. The above study can be downloaded at www.cclr.org/cclr_publications.htm. Several staff from this office helped with file review during the study including Michelle Rembaum-Fox, David Barr, and Melinda Wong.

Lead Agency Change at Sherwin-Williams, Emeryville (Mark Johnson)
On February 22, Cal/EPA's Site Designation Committee, acting on my request, agreed to shift lead agency responsibility from the Water Board to DTSC for this site. Sherwin-Williams operates a paint manufacturing plant at 1450 Sherwin Avenue in Emeryville. Past plant operations resulted in significant soil and groundwater contamination by metals, particularly arsenic. The Water Board has been overseeing site cleanup here since 1997, when it was designated as the lead agency by the Cal/EPA Site Designation Committee. The Water Board adopted site cleanup requirements (SCR) in 1998, and most SCR tasks have been completed. Water Board staff have worked closely with DTSC staff and other interested stake holders during this period. At this point, the key remaining tasks include: preparing a draft cleanup and risk management plan and implementing the plan. However, during the course of our oversight, there have been several significant changes that caused us to recommend a shift in lead agency:

- Land use in the immediate site vicinity has shifted from primarily industrial to mixed use (including several residential developments). This could increase the potential threat to human health associated with metals cleanup.
- Anticipated future land use of the site has shifted from industrial to mixed use (including residential).
- We have seen increased community concern regarding the potential for human health impacts during cleanup activities. The potential threat to water quality has turned out to be much less than previously estimated.
- Migration of mobilized metals in groundwater is still a concern, but interim measures (including a slurry wall around the most-contaminated area) and available in-situ treatment options suggest that migration can be effectively controlled.

We formally requested the lead agency change in January. City and community representatives supported the request, and DTSC and Sherwin-Williams representatives did not object. The Site Designation Committee approved the change February 23 after hearing no opposition. We will work with our DTSC counterparts to assure a smooth lead-agency transition. I will bring an SCR rescission item to the Board this spring, after DTSC issues its own enforcement order. We will remain involved in water quality aspects of the case but in a supporting role.

The Cal/EPA Site Designation process was created by state law in the mid 1990s to improve coordination among agencies involved with site cleanup. Someone seeking oversight through this process asks the Committee to designate a lead agency. The Committee designates the lead agency, and that agency is obliged to coordinate with other agencies and follow certain procedural steps. In return, the lead agency's cleanup decision is binding on the other agencies (a "super certification"). This process is of value to applicants who want the certainty of a "super certification" and are willing to accept the additional procedural steps. Only a very small portion of the sites we oversee came to us through the Site Designation process.

DTSC Enforcement Action for West County Landfill (Terry Seward)
In early February, DTSC issued an Enforcement Order to the West Contra Costa County Sanitary Landfill's operators, citing them for failure to comply with DTSC's permit for their Class I hazardous waste portion of the facility. This Class I facility is contiguous to the domestic waste landfill the Water Board regulates and for which the Board approved an eight-month time extension for its closure at the January Board meeting. While DTSC's Enforcement Order is significant, we believe it will have only moderate to no long-term impact on the landfill the Board regulates and that the operators will be able to come back into compliance. However, there are possible short-term impacts of concern.

DTSC's Enforcement Order requires the landfill operators to perform various corrective actions, alleging that the landfill operators did not properly control and extract hazardous waste leachate from the Class I facility. As a result of failing to control the Class I leachate, the leachate has:

- Mounded within the Class I facility, creating an outward hydraulic gradient
- Over topped the Class I facility's slurry walls
- Migrated beyond the boundaries of the Class I facility into groundwater, which recharges an adjacent slough and San Pablo Creek, which then flows into San Francisco Bay.

In addition DTSC's indicates the Leachate Treatment System, which is designed to treat the Class I leachate, is frequently non-operational and was inoperable during January 2006.

The landfill the Board regulates is not part of DTSC's Enforcement Order. However, Class I leachate potentially entering this landfill or impacting surface water (e.g., San Pablo Creek) is of great concern to us. As required by the January Board Order, we have recently reviewed and approved the domestic waste landfill's Leachate Management Plan. My conditional approval letter requires the landfill operators to conduct additional investigations of leachate conditions at the landfill to assure compliance with all conditions of the Board Order. We will continue to coordinate with DTSC on its enforcement and work with the landfill operators to resolve our concerns.

Stanford Linear Accelerator Center Update (George Leyva)
In January 2006, Cal/EPA's Site Designation Committee named this Board as the Lead Agency overseeing the cleanup at the Stanford Linear Accelerator Center (SLAC) site.

In May 2005, the Board issued Site Cleanup Requirements (Order) requiring cleanup of soil and groundwater at the SLAC site. The dischargers named on the Order are Stanford, the landowner; and the U.S. Department of Energy (DOE), the tenant. Stanford petitioned the Order to the State Board citing concerns that site cleanup standards were not identified in the Order.

Stanford placed the petition in abeyance pending my approval, as granted by the Order, of appropriate cleanup standards (residential vs. industrial). Pursuant to the Order, Stanford submitted its site reuse plan proposing residential uses at the SLAC site after DOE vacates the property. Staff determined that Stanford's reuse plan supports cleanup standards protective of residential uses. In November 2005, I issued a letter establishing site cleanup standards protective of residential uses. Subsequent to the letter, Stanford expressed support to the Committee in designating this Board as the Lead Agency. DOE also supports the Committee's decision.

Hamilton Army Airfield Wetland Restoration Project Progress (Naomi Feger)
The U.S. Army Base Realignment and Closure program team and the Army Corps of Engineers (Corps) continue to make progress towards completion of site preparation operations for the Hamilton Wetland Restoration Project (Project).

Currently, the Army is on track to complete by this summer the remaining cleanup and removal actions at the Project site. These berms and levees must be in place to hold the dredged material to be used to raise the site's elevation, that will allow re-establishment of wetlands, before dredged material can be accepted at the site. Concurrent with those activities, the Corps continues to have its contractors build containment berms and levees at the site. Of some interest, when the storms on New Year's Day damaged levees on adjacent properties, the resulting flooding of those areas

provided a view of what the future 2500-acre wetland restoration project will look like when reconnected tidally to San Pablo Bay.

Of particular importance, the Corps is finalizing its contract bidding package for the Phase 3E Port of Oakland 50-Foot Dredging project. This contract includes requirements for bringing two million cubic yards of dredged material to the Project site. The dredging contractor will be responsible for providing an off-loader, five miles of pipeline, and the capability to transport, pump and place dredged material onto the site. The dredging contractor will also be responsible for managing the decant water that is pumped back into San Pablo Bay and meeting the requirements of the Board's Waste Discharge Requirements issued last year.

We anticipate that the earliest that dredged material would be delivered to Hamilton is this fall. My staff continues to work closely on this project with the Corps and our dredging and wetland restoration partners.

Oakland Litter Tax and Green Roof Symposium (Jan O'Hara)
Recently the Oakland City Council passed an ordinance that seeks to reduce and eliminate litter in residential areas near Oakland in middle and high Schools. Oakland will take three steps to address this litter problem:

1. Outreach and education initiatives in Oakland schools;
2. Stepped-up enforcement through "litter stings;" and
3. The institution of a fee on fast food businesses, liquor stores, convenience markets and gas stations.

The fee, or "Litter Tax," will cover businesses that earn money substantially or exclusively from the sale of goods in disposable packaging for immediate consumption off-site. Proceeds will cover the cost of one two-person cleanup crew per Council District and the purchase of trucks and equipment.

Oakland staff studied the City's litter patterns and affected businesses before proposing the Ordinance. The proposed fee structure is $230/year for small businesses (< $500,000 annual business); $910/year for medium businesses ($500,000-1,000,000); and $2439/year for large businesses ($1,000,000+). The fee will likely amount to no more than 0.1% of each business' annual gross receipts.

Board staff applauds this action, and points out that it will also help reduce the amount of trash reaching storm drains and help the City towards implementation of the upcoming TMDL for trash in Lake Merritt.

On February 9, the City of Oakland and Laney College sponsored a Green Roof Symposium as the first step in encouraging builders to make Oakland a leader in green roofs, on par with Chicago and Boston. Mr. Randy Hayes, the City's Director of Sustainability, reminded the participants that Oakland has a successful Green Building Ordinance and the oldest green roof in the Bay Area, atop the Kaiser building, now over 30 years old. Engineers and landscape architects clarified design considerations, giving examples that included at least a dozen green roofs in the Bay Area. A representative of the trade group, Green Roofs for Healthy Cities (www.greenroofs.org), explained the cost-effectiveness of green roofs as well as their many benefits, including:

- Cost savings on roof replacement and on reduced energy use for heating and cooling;
- Sound insulation;
- Amenity / aesthetic value;
- Outdoor space with limited access, e.g., for hospitals, senior housing, day care, etc.;
- Moderation of the urban heat island effect;
- Improve air quality by filtration of particulates and carbon dioxide/oxygen exchange; and
- Most importantly to water quality, filtration and detention of stormwater runoff.

Cleanup Status at Ashland, Newark (Cherie McCaulou)
Between September and December 2005, Ashland excavated over 16,000 cubic yards of solvent-impacted soil at its Newark site. This soil removal is part of the Board-approved final site cleanup plan. The soil was excavated from the former tank farm area down to a depth of 12 feet and then either treated onsite and reused or hauled offsite. In addition, Ashland recently proposed further soil investigation and excavation beneath a warehouse at the site that will be demolished later this year. Also as part of the cleanup plan, Ashland ceased operation of its groundwater extraction and treatment system that had operated since 1982. The system had reached the practical extent of its effectiveness. Groundwater monitoring will continue at the site to document natural attenuation of the remaining groundwater pollution.

In-house Training
Our February training was on computer skills (MS Word and MS PowerPoint), using an outside trainer, as part of staff's conversion to MS Office 2003. Our March training will be on electronic document management.

Staff Presentations and Outreach
February 22 – Groundwater Resources Association Annual Update
Stephen Hill and Alec Naugle presented a regulatory update to the Bay Area branch of the Groundwater Resources Association (GRA) at Spenger's Restaurant in Berkeley. They focused on eight topics: the Brownfield memorandum of agreement (MOA) between the Water Boards and DTSC, efforts to reform California's site cleanup program, new Water Board public participation tools, environmental screening levels, vapor intrusion to indoor air, Basin Plan updates with respect to groundwater, the state's groundwater ambient monitoring and assessment (GAMA) program, and regulating aquifer storage/recovery projects. For each topic, they described past activities and results, current issues and challenges, and next steps.