

San Francisco Bay Regional Water Quality Control Board Meeting  
October 12 and 13, 2021  
Notes by Gayle Tupper for the League of Women Voters

**1. Roll Call and Introductions.** All Board members present (Battey, Gunther, Hacker, Kissinger, McGrath, and Young). Also Executive Officer (EO) Montgomery and other RWQCB staff.

**2. Public Forum.** A speaker from SF Baykeeper and one from Clean Water Action both spoke about tribal beneficial uses and environmental justice.

**3. Minutes of September meeting.**  
Unanimous approval

**4. Chair's, Board Members', and Executive Officer's Reports.**

Director Gunther had an Op-Ed in the SF Chronicle about putting a surge barrier at Golden Gate Bridge. Director Battey, at the American Leadership Forum, noted that people are paying more attention to climate change. Chair McGrath at State of Estuary Conference noted that mayors coming to this conference are preparing so projects will be ready when state and federal money arrives.

State Water Resources Control Board representative Sean Maguire noted that the drought is severe. The state is prepared for a range of scenarios, and is developing conservation requirements. They are working on the sanitary sewer management plan (SSMP), and how to put climate change in the SSMP. Fee increases that were deferred last year, are now in the range of 15-20% for this largely fee-supported organization.

EO Montgomery. This Regional Board (RB2) is working to bring partners together to better support each other, and to understand the scientific and leadership work RB2 is doing to address changes such as sea level rise.

**5. Uncontested Items.**

**5A. Amendment of Waste Discharge Requirements for Municipal Wastewater Dischargers** – Amendment of chlorine and oil and grease provisions of NPDES Permits. This action amends NPDES permits to eliminate residual chlorine requirements and change the oil and grease provision. This is a win for the environment, and is cost-saving for the dischargers. Comment from Jackie Zipkin, representing the dischargers. The dischargers support this action, which will take effect as soon as they get EPA approval, commend RB2 staff for making this overall change rather than with individual permits over time, and note it is a great example of collaborating to protect the Bay and best use of public funds.  
Unanimous approval.

Item 6 was moved to the uncontested calendar.

**6. Resolution to Support a Water Quality Improvement Plan to Address the San Gregorio Creek Sediment Impairment** – hearing to consider adoption of a tentative resolution.

This action protects endangered coho salmon and steelheads in this watershed, especially in the Mid-Peninsula Regional Open Space District. No board or public comments. Unanimous approval, Battey recused (due to working with a stakeholder in the region).

*[Observer's Note: the Municipal Regional Stormwater Permit (MRP), below, was the major item of this 2-day board meeting. This hearing was to receive input from all stakeholders on the tentative permit, which has been under development for about two years.]*

## **Other Business**

**7. Municipal Regional Stormwater NPDES Permit** – Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County – workshop hearing to receive testimony on Tentative Order.

Staff presented information about this tentative order. It is a Clean Water Act stormwater (SW) permit, and covers discharges to municipal stormwater systems. It is for most of the urbanized bay area, including 79 total permittees (cities and other co-permittees). It does not include San Francisco (because SF has a combined wastewater and SW system) or north bay cities with individual permits. This is a permit re-issuance – the prior MRP was issued in 2015. The goal was to have a collaborative process, via meetings with permittees and EPA, and separate meetings with NGOs and others. The tentative order was issued in September 2021 for a 2-month comment period, with final permit issuance during or after February 2022. The approach is evolutionary, not revolutionary. The permit responds to regulatory drivers to ensure dischargers comply with provisions.

Staff presentation information included

- The proposed permit effective date is July 1, 2022.
- Consistent standards, newly adopted TMDLs (limits), and recognition of challenges of limited resources. A repeated theme was to work within existing resources.
- New development and redevelopment requirements, including Low Impact Development (LID).
- Trash controls, including “urban slobber” – the gunk that flows from streets, dumpsters, and such to storm drains and the bay.
- Trash requirements have 3-year delays due to the amount of work needed
- Homelessness issues related to trash were a repeated discussion. This goes beyond a clean water issue. Strategies and actions are needed about human waste and trash that can degrade water quality and threaten public health. The intent is to gather info, ID effective practices, and foster collaboration among agencies.
- Federal regulations require adequate maps – some agencies don’t have that, so there may be significant costs.
- For legacy discharges of mercury and PCBs, current actions don’t fully control the discharges. The changes are incremental.
- For green infrastructure (GI) retrofit requirements, the permit implements the dischargers’ proposal that each do something

- Green Infrastructure: Some municipalities (noted El Cerrito and Fremont) are already implementing GI. The permit has more specific requirements, based on population of each city, and increases the pace of improvements.
- The City of San Jose is retrofitting at a higher rate based on a settlement with BayKeeper. This approach takes resources, makes them re-prioritize, decreases flexibility. Current pace would be fairly slow, new permit would increase the pace.
- The permit has countywide sampling and reporting to allow cost sharing, enough sampling locations and events for useful data.

Discharger representatives said:

- Many issues have been resolved, but some remain, and they want to work for a better permit than the current draft.
- The pandemic continues to interrupt progress.
- The primary themes from permittees are how to increase effectiveness and quality of outcomes. They want reasonable requirements, specific direction, and more time for some requirements.
- Concerned about time frames, the increased scope of projects, increased tracking and inspections, and significant administrative burdens.
- Development fees do not cover costs. Some cities do not have SW fees, and are hindered in establishing fees by Proposition 218.
- Their efforts for trash control are the most significant seen to date. The US sees SF Bay as a leader due to CalTrans/ RB2 and permittees.
- Source control is the ultimate solution.

Environmental group representatives said:

- The iterative process has failed, the draft permit goes backwards via safe harbor provisions that protect cities without protecting water quality. They said the draft order does not include safe harbor requirements.
- There has been a full permit term with little compliance, and now RB2 is behind the curve.
- They want a holistic view with monitoring at least as robust as other areas of state.

RB2 staff disagreed about safe harbor discussions with the SWRCB, and staff referred to the section of packet where safe harbor is addressed.

The US EPA representative said

- RB2 has stayed on course, hosted robust workshops with permittees and EPA, and improved transparency.
- EPA supports most of the permit, is reviewing the entire packet.
- EPA recognizes that increased requirements also increases costs, and there is extensive work for municipalities' staff.
- EPA supports the intentions and goals of new provisions, and hears municipalities' comments about what is feasible.
- EPA wants to be a funding partner for green infrastructure. EPA will submit substantive written comments about trash and receiving water monitoring.

A public commenter said that dischargers want to loosen requirements, and that some agencies are doing unpermitted construction without inspections or permits. The draft permit is a good starting point.

Board comments:

- Accomplishments to date are very significant and appreciated, showing tremendous work and commitment to resources.
- The board asks for specific input, not generalities.
- Foremost is interest in forwarding water quality protection through tools we have while being aware of consequences.
- Clarify ambiguous language.
- Ask RB2 attorneys if permit requirements are in conflict with other laws for the City of Oakland (e.g., affordable housing).
- Climate crisis—do all we can as soon as we can about climate and water quality.
- Listening to affordability issues, unfunded issues. Raising fees is a big issue.
- Looking at benchmarking, innovation, and what other areas are doing, e.g., LA.
- Credit what cities have already done.
- Heard that targets are unreasonable. What do dischargers think is reasonable?
- Commend constructive attitude of virtually everybody. Good faith discussions
- Want clarification about the safe harbor issue (alternative compliance)
- More collaborative approach than previous iterations of the MRP, need even more. Urban slobber is more of a collaborative than regulatory question.
- Not prepared to back off road requirements. Roads are dirty, there is a nexus between road maintenance and the Bay – this runoff kills fish, dirtier than any other element. It is not unreasonable to achieve water quality standards. Public works directors need to acknowledge the problem, and there is federal funding.
- Be less prescriptive in some areas, eg, bicycle developments.
- Look for ways to prioritize, to eliminate objectives from previous permits, report consolidation
- What are the requirements and costs are from permittee's perspective? Be aware of unintended consequences.
- Concern about mercury and PCBs for subsistence fishers. Concentrations of these pollutants is not going down. PCBs remain a high priority.
- Low impact development (LID) is more important than trash.

Chair McGrath and other board members noted repeatedly that they recall when these meeting were vitriolic, and appreciate all commenters were speaking positively at this two-day meeting.

Adjourn.