

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**SUPPLEMENTAL SHEET FOR REGULAR MEETING ON MAY 16, 2003
Prepared on May 7, 2003**

ITEM NUMBER: 36

SUBJECT: Las Tablas Creek and Lake Nacimiento Total Maximum Daily Load (TMDL) for Mercury

KEY INFORMATION: Staff recommends that the Board delay action on adoption of Las Tablas Creek and Lake Nacimiento TMDL for Mercury as a Basin Plan Amendment.

DISCUSSION

Staff recommends that the Regional Board delay adoption of the TMDL and implementation plan as a Basin Plan Amendment on two premises. BVMI, as the responsible party for the load reduction, has refused to accept responsibility and staff's historic attempts have not been successful to compel the responsible party to implement the load reduction necessary to achieve water quality standards. Past enforcement efforts have included both state and federal civil and criminal enforcement actions. USEPA has undertaken a removal action under CERCLA and settled their CERCLA claims for payment of \$500,000. The owner of the mines has not been absolved of responsibility for NPDES discharges from the mines. Staff is pursuing development and concurrence with USEPA on alternative options for implementation of the load reduction necessary to achieve water quality standards. Staff plans to meet with USEPA to identify a range of alternatives and to determine which alternatives can be implemented. These meetings could eventually form the basis for a subsequent recommendation or indicate that there are no options that can be implemented in the near future. Staff will provide an update to the Board with a recommendation regarding timing for TMDL adoption.

The Board has already endorsed the TMDL analysis and results, including identification of sources and assignment of responsibility to the

responsible parties for these sources (the load allocations) by approving the TMDL and implementation plan as a Basin Plan Amendment at the November 1, 2002 Board meeting. Staff is not retracting or proposing to revise that analysis or conclusions. Therefore, staff will continue to pursue reduction of loads from other identified controllable sources (e.g., segment of Cypress Mountain Road).

COMMENTS

Three letters were submitted regarding this item.

Ms. Shaunna Sullivan, on behalf of her client, BVMI, submitted a six-page letter with a number of attachments. Ms. Sullivan's letter raises several technical and legal issues and concludes with a suggestion that the Regional Board disapprove the TMDL and implementation plan as a Basin Plan Amendment.

Mr. Marvin Niccum submitted a second letter, dated April 25, 2003. Mr. Niccum subsequently submitted a revised version of his comment letter dated April 30, 2003, indicating this was replacing and expanding the earlier comments. Mr. Niccum's April 30 letter concludes with a statement that the TMDL is not an equitable TMDL that would benefit all stakeholders in the watershed.

On May 5, Board staff received a letter from San Luis Obispo County dated April 6, 2003. The County acknowledges their estimated contribution to the load and expresses concern that their implementation cost and a zero load allocation is an inequitable burden relative to their share of the source. They propose additional investigation of roadway runoff and a "Maximum Extent Practicable" approach to implementation.

Response: Staff is not responding to the specific comments in these letters because the staff recommendation to delay action on this item is consistent with Ms. Sullivan's suggestion. Delaying adoption of the implementation plan until USEPA plans (and alternatives) are better defined also appears consistent with the letters sent by Mr. Niccum and San Luis Obispo County. Staff will consider all of the comments in these letters in preparation of a future recommendation and these parties will have the opportunity to submit additional comments on future draft recommendations.

RECOMMENDATION

Staff recommends that the Regional Board delay adoption of the TMDL and implementation plan as a Basin Plan Amendment.

ATTACHMENTS

- 1) Letter to California Regional Water Quality Control Board, Central Coast Region from Shaunna Sullivan, dated April 22, 2003.
- 2) Letter to Douglas Gouzie, Central Coast Regional Water Board from Marvin R. Niccum, RG, dated April 30, 2003 (with attachment dated April 30, 2003).
- 3) Letter to Doug Gouzie, Regional Water Quality Control Board from Noel King, Director of Public Works, San Luis Obispo County, dated April 6, 2003.