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SF Bay Mercury
Deadline: 4/4/07 Noon

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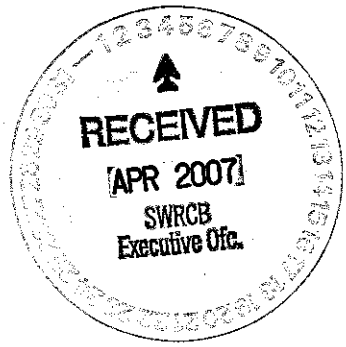
April 4, 2007



Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comments Letter – Mercury TMDL in San Francisco Bay

Dear Ms. Her:

We appreciate the opportunity to comment on the amendment to the Water Quality Control Plan for the San Francisco Bay Region to establish a Total Maximum Daily Load (TMDLs) for Mercury in the San Francisco Bay. The California Department of Transportation (Department) strongly supports the State Board's efforts to protect human health and achieve the best water quality possible.

The Department continues to be concerned that there is no identified technology for achieving the storm water allocations specified in the TMDL. As currently drafted, municipal storm water sources are expected to reduce their mercury loadings by approximately 50%. We presume that the Board intends for storm water dischargers to participate in an offset program and to buy equivalent mercury reductions elsewhere. Unfortunately, this program has not been developed, and thus storm water dischargers currently have no viable options for complying with the TMDL.

We have four specific concerns with the revised TMDL:

1. Establishment of two numeric mercury water quality objectives for San Francisco Bay:
The TMDL Amendment includes establishment of numeric objectives applicable to fish tissue or whole fish. Our concern is that the TMDL does not identify how the fish objectives translate into water quality criteria applicable to the water column and how these water column numbers will, in turn, be applied to dischargers. Presumably, a storm water discharger in compliance with a mass load allocation would be in at least partial compliance with TMDL requirements. Our question is whether and how the fish tissue objectives will yield point-of-discharge standards applicable to storm water dischargers. In other words, we request a discussion in the TMDL report on whether the fish tissue objectives will be translated into objectives applicable to discharges and, if so, the regulatory justification.

2. Requirement for urban storm water dischargers to conduct methyl mercury monitoring:
We question the need for methyl mercury monitoring for storm water in the absence of information that storm water is a significant source of methyl mercury. This monitoring is expensive and will divert available funds from other monitoring activities. It should be clarified that this is a temporary research effort and that extended monitoring will not be required unless storm water is identified as a significant contributor.

3. Lack of an offset program:
The Remand Order directed the Water Board staff to develop a State policy that establishes alternative methods to meet mercury allocations and criteria that would allow dischargers to perform other activities aside from eliminating more mercury from their discharges. As far as we know, no such policy has been drafted. Consequently, storm water dischargers are faced with a major reduction requirement (approximately 50%), but have no viable means of achieving them.

The Remand directed the Regional Board to provide that any new or modified National Pollutant Discharge Elimination System (NPDES) permit would contain a reopener to implement the offset policy. This action, however, does not resolve the basic problem of there being no viable compliance option for storm water.

4. Costs:
TMDL allocations require storm water dischargers to reduce their individual mercury contributions by about 50%. The only certain method of doing this is to collect and treat storm water, which is inordinately expensive and has never been accomplished on a large scale. We believe that the costs would be substantial. It is the responsibility of the Board to identify reasonable pathways toward compliance and to make an effort to estimate the costs.

5. Reasonably foreseeable methods of compliance:
As noted in the document,[1] "CEQA additionally requires that whenever a Water Board adopts a rule that requires the installation of pollution control equipment or establishes a performance standard or treatment requirement, it must conduct an environmental analysis of reasonably foreseeable methods of compliance." This has not been done for storm water, but should be done prior to proceeding with the amendment.

We hope these comments are helpful. We look forward to working with the Regional Board to develop a Mercury TMDL that has realistic and economically achievable goals. If you have any questions, please contact Keith Jones at (916) 653-4947.

Sincerely,

for

G. SCOTT MCGOWEN, P.E.
Chief Environmental Engineer

c: Ivan Karnezis, Department of Transportation Headquarters,
Division of Environmental Analysis;
David Yam, Department of Transportation, District 4
Tom Fung, Department of Transportation Headquarters,
Division of Environmental Analysis

[1] See page IV-17 of the staff report.