



Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay

A Joint Powers Public Agency

P.O. Box 24055, MS 702

Oakland, California 94623

April 4, 2007

Tam M. Doduc, Chair
State Water Resources Control Board
1001 "I" Street, 25th Floor
P.O. Box 100
Sacramento, CA 95812-0100
Attention: Song Her, Clerk to the Board
commentletters@waterboards.ca.gov

SF Bay Mercury
Deadline: 4/4/07 Noon



RE: Amendment to the Water Quality Control Plan for the San Francisco Bay Basin Related to Mercury Fish Tissue Objectives, Vacation of the Mercury Water Quality Objective and Establish Mercury TMDL for the San Francisco Bay

Chair Doduc and Distinguished Members of the Board:

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on the revised portions of the Mercury TMDL/Basin Plan Amendment (BPA).¹ BACWA members own and operate publicly owned treatment works (POTWs) that discharge to San Francisco Bay and its tributaries. Collectively, BACWA's members serve over 5 million people in the nine-county Bay Area, treating domestic, commercial and a significant amount of industrial wastewater. BACWA was formed to develop a region-wide understanding of watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and to ensure this understanding leads to long-term stewardship of the San Francisco Bay Estuary. BACWA member agencies are public agencies, governed by elected officials and managed by professionals who are dedicated to protecting our water environment and the public health.

BACWA believes that the revised TMDL responds to the State Board Resolution No. 2005-0060. BACWA urges the SWRCB to adopt these Basin Plan amendments and allow the Water Board to continue to proceed with the implementation phase. Before providing our specific comments regarding the Basin Plan amendments, we believe it is important to recognize that this TMDL has been developed to address mercury present in the sediments of San Francisco Bay sourced from historical mining practices and other

¹ BACWA submitted comments on the prior submittal of the Mercury TMDL, dated August 13, 2005. These comments are incorporated by reference. BACWA also submitted comments to the Region 2 Water Board on the proposed revisions to the TMDL, that letter dated June 5, 2006 is incorporated by reference as should be part of the administrative record.

legacy industrial activities. The publicly owned clean water agencies contribute less than approximately 1.4% of the current mercury mass loading to San Francisco Bay, yet tremendous effort and focus has been placed on this minor source of mercury, and many of the regulatory issues and directives in the remand order are aimed at public clean water agencies. We are disheartened that responding to this remand has taken the time of our members, the Regional Water Board and your staff to focus exclusively on 6 kg/year out of a total allocation of 698 kg/yr. The 2 year delay in TMDL implementation cannot be recaptured.

BACWA members are a highly regulated community. We are governed by detailed NPDES permits and have sustained an impressive record of compliance and adherence to those permits. BACWA member agencies are nationally recognized as leaders in pollution prevention, industrial pretreatment, wastewater operations and maintenance, and wastewater engineering practices. BACWA takes seriously its role as protector of the public's health and steward of San Francisco Bay's ecology; this role is the purpose of our member agencies and the life's work of their dedicated professional staff. BACWA members' dedication to water quality protection goes beyond the day-to-day operations of treatment plants. We support and fund research to advance water quality science, recycle water, reuse other residual products, including fats, oil and grease and biosolids, support and conduct ambient monitoring, and participate in regional partnerships to address the long term water quality issues of the Bay. BACWA will also continue to work with the State Water Resources Control Board, the Environmental Protection Agency and the Region 2 Water Board to ensure that future TMDLs will be focused on providing effective and efficient solutions for our San Francisco Bay.

The Proposed Water Quality Objectives for the San Francisco Bay are Extremely Conservative

We believe the Regional Water Board has employed an unnecessary level of conservatism in developing and adopting the fish tissue-based water quality objectives.² The result is a much greater burden for the San Francisco Bay discharger community than for any other water body in California and, likely, in the United States. The San Francisco Bay and the uses it supports are undisputed treasures; nonetheless, the evaluation of economic and environmental impacts falls short of the rigor required by CEQA and the Water Code to support this level of protection and the burden it presents. BACWA's comment letter to the Region 2 Water Board dated June 5, 2006 provided more detail on this issue.

² For example, the assumption used to support the linkage between mercury in sediment and methylmercury in fish is a scientifically unsupportable.

The Group Wasteload Allocation Depends on a Future Offset Program

The revised WLA for municipal wastewater require dramatic reductions that will, in some cases, be difficult to meet. BACWA continues to strongly advocate the municipal group wasteload allocation (as all other sources also have group allocations) which is sum of the individual allocations. We believe this is consistent with the remand Resolution, meets the requirements of the Clean Water Act and will provide a difficult requirement for the clean water agencies in the years to come.

The TMDL assumes our members will be able to meet the interim wasteload allocations (20% reduction) through aggressive pollution prevention practices. With adoption of the TMDL, clean water agencies across the Bay Area will develop and implement dental amalgam programs, which along with the expected phasing out of products that include mercury, are expected by the TMDL to enable the clean water agencies to achieve the 20% reduction without additional capital expenditure and energy intensive advanced treatment.

It is acknowledged in the TMDL that achieving a 40% reduction, at secondary treatment facilities, however, will require the implementation of a voluntary, fair and equitable pollution offset and credits program, consistent with the Resolution No. 2005-0060. The remand Resolution adopted by the SWRCB specifically states that any offset policy developed for the purposes of reducing the impacts of mercury on the environment will not result in an undue burden on municipal wastewater. SWRCB resolution No. 2005-0060 stipulates that:

- The policy *shall not* include requirements that would *leverage* existing point source discharges as a means of *forcing* dischargers to bear more than their fair share of responsibility for causing or contributing to any violation of water quality standards, and
- That the fair share is *proportional* to their contribution to the impairment.

. For BACWA member agencies, this language means that:

- We will not be forced, through regulations, wasteload allocations or NPDES permit requirements, to be the deep pockets for clean up of an inordinate share of mercury, and
- The responsibility for cleanup of pollutants will remain proportional to the mass contribution of a given source in comparison to the total system loadings.

It is our strong position that an offset program has to be fair, as described in the SWRCB Resolution, and voluntary. Consistent with the Resolution, we do not believe it is the burden of the municipal clean water agencies to clean up a disproportionate share of legacy mercury in the Sacramento and San Joaquin Rivers Delta and the San Francisco Bay. Rather, this is a burden that belongs to all of the State of California.

If a fair and equitable offset program cannot be developed, BACWA cannot be expected to meet the 40% reduction in the wasteload allocation that is required by this TMDL. Compliance through treatment would require a public investment of approximately \$300 million every year over 20 years (in 2004 dollars) to develop advanced treatment at each existing secondary facility. This would then allow these facilities to reduce from 14 kg/yr to 11/kg year. If no viable offset program is in place, rather than proceed with such an investment, BACWA will ask that the TMDL be reopened so that the 40% reduction of the WLA can be reviewed and revised.

It is also our understanding based on Region 2 Water Board staff reports that the 17kg/yr WLA is sufficient to meet the water quality objective (WQO). The 40% reduction in the WLA, from 17 to 11 kg/yr for municipal clean water agencies, is not necessary to meet the WQO. Considering both of these facts, we would not anticipate any backsliding issues should the TMDL be revised at mid point. We urge the SWRCB to include in the resolution to adopt this TMDL, a statement that this may be reopened if a fair, equitable and voluntary offset program is not available within nine years of the date of adoption.

We appreciate the opportunity to comment on these Basin Plan amendments and we look forward to working with this Board and staff on future issues that will have a meaningful result for San Francisco Bay.

Sincerely,



Michele M Pla
Executive Director

cc: William Keane, SFPUC
Dave Williams, EBMUD
Chuck Weir, EBDA
Doug Craig, CCCSD
Dave Tucker, City of San Jose
Benita Best Wong, EPA HQ
Alexis Strauss, EPA Region 9