

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION R2-2006-0052

AMENDING THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY
REGION TO ESTABLISH NEW MERCURY WATER QUALITY OBJECTIVES AND TO
AMEND THE TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN FOR
MERCURY IN SAN FRANCISCO BAY

WHEREAS an updated Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) was adopted by the San Francisco Bay Regional Water Quality Control Board (Water Board) on June 21, 1995, approved by the State Water Resources Control Board on July 20, 1995, and approved by the Office of Administrative Law (OAL) on November 13, 1995, and has since been revised; and

WHEREAS the Basin Plan may be amended in accordance with California Water Code § 13240, et seq.; and

WHEREAS San Francisco Bay has been identified under federal Clean Water Act § 303(d) as an impaired waterbody due to elevated concentrations of mercury; and

WHEREAS under Clean Water Act § 303(d) the Water Board is required and authorized to establish the total maximum daily load (TMDL) for impairing pollutants.

WHEREAS on September 15, 2004, the Water Board adopted a mercury TMDL for San Francisco Bay and an implementation plan into the Basin Plan (Mercury TMDL) by Resolution No. R2-2004-0082; and

WHEREAS the State Water Resources Control Board (State Board), by Resolution 2005-0060 (Remand Resolution), remanded the Mercury TMDL to the Water Board for further consideration consistent with the Remand Resolution and directed that the Mercury TMDL be revised to:

- Incorporate requirements for appropriate pollution prevention programs and practices
- Establish individual wasteload allocations
- Include methylmercury monitoring in the next round of NPDES permits
- Include a reopener to modify NPDES permits to implement a forthcoming State pollutant offsets policy
- Revise the wildlife numeric target
- Address the marine waters mercury four-day average water quality objective; and

WHEREAS an amendment to the Basin Plan to amend the Mercury TMDL and adopt new mercury water quality objectives for San Francisco Bay (collectively, the Basin Plan Amendment) are proposed to comply with the Remand Resolution; and

WHEREAS the Basin Plan Amendment would adopt new mercury water quality objectives of 0.2 and 0.03 milligrams mercury per kilogram of fish tissue to protect human health and aquatic organisms/wildlife, respectively, both of which will be implemented through the Mercury TMDL, as revised; vacate the existing 4-day average water quality objective for mercury in the Basin Plan as it applies to San Francisco Bay; and amend the Mercury TMDL to, among other things, adopt a wildlife target, reduce the TMDL from 706 kilograms per year to 700 kilograms, primarily by lowering individual wasteload allocations for municipal wastewater sources by up to 40% on a 20-year implementation schedule, impose additional implementation plan actions such as methylmercury monitoring and corrective actions upon exceedances of mercury triggers for municipal and industrial wastewater sources; and

WHEREAS Water Code § 13241 authorizes the Water Board to adopt new water quality objectives such as the new mercury objectives proposed in the Basin Plan Amendment upon consideration of the following factors: past, present, and probable future beneficial uses of water; environmental characteristics of the hydrograph unit under consideration, including the quality of water available thereto; water quality conditions that could be reasonably be achieved through the coordinated control of all factors that affect water quality; economics; the need for developing housing; and the need to develop and use recycled water; and

WHEREAS the Water Board has duly considered the Water Code § 13241 factors; and

WHEREAS the Water Board finds that the Basin Plan Amendment includes the required Water Code § 13242 program of implementation for achieving the proposed new mercury water quality objectives through the Mercury TMDL, as revised; and

WHEREAS the Water Board finds the proposed mercury water quality objectives to be based on sound scientific rationale and protect beneficial uses; and

WHEREAS the Basin Plan Amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto; and

WHEREAS the scientific basis of regulatory elements of the Basin Plan Amendment were reviewed by external peer reviewers Dr. James Kirchner, University of California, Berkeley; Dr. David L. Sedlak, University of California, Berkeley; and Dr. Rhea Williamson, San Jose State University; and

WHEREAS a draft Basin Plan Amendment, Staff Report, and Environmental Checklist were prepared and distributed for public review and comment on April 21, 2006, in accordance with applicable state and federal laws and regulations; and

WHEREAS the Water Board held public hearings on June 14, 2006, and on August 9, 2006, to consider the Basin Plan Amendment and supporting documents, and the changes made

thereto in response to public comments. A Notice of Public Hearing and Notice of Filing of a Draft Environmental Document was given to interested persons and was published in accordance with applicable state and federal laws and regulations; and

WHEREAS the process of basin planning has been certified by the Secretary for Resources as exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code § 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration; and

WHEREAS the Water Board has duly considered the Environmental Checklist, Staff Report, and supporting documentation with respect to environmental impacts and finds that the Basin Plan Amendment will not have a significant impact on the environment. The Basin Plan Amendment will result in no potential for adverse effect on wildlife. The Water Board has also considered the environmental analysis contained in the Staff Report and the Environmental Checklist of the reasonably foreseeable methods of compliance with the Basin Plan Amendment, including economics; and

WHEREAS the Water Board has carefully considered all comments and testimony received, including responses thereto, on the Basin Plan Amendment, as well as all of the evidence in the administrative record; and

WHEREAS the Basin Plan Amendment must be submitted to the State Board so that it may act on both the Mercury TMDL, as revised, and the Basin Plan Amendment. Upon State Board's approval, OAL and the United States Environmental Protection Agency (USEPA) must approve the Mercury TMDL, as revised, and the new water quality objectives;

NOW, THEREFORE BE IT RESOLVED that the Water Board adopts the Basin Plan Amendment, as set forth in Exhibit A hereto, that amends the Mercury TMDL, adopts two new mercury water quality objectives for San Francisco Bay and vacates the existing 4-day mercury water quality objective as it applies to San Francisco Bay to comply with the Remand Resolution; and

BE IT FURTHER RESOLVED that the Water Board does not intend for the Basin Plan to preclude the Water Board from incorporating performance-based effluent limitations in NPDES permits where warranted; and

BE IT FURTHER RESOLVED that the Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Board in accordance with the requirement of California Water Code § 13245; and

BE IT FURTHER RESOLVED that the Water Board requests that the State Board approve the Mercury TMDL and the Basin Plan Amendment, in accordance with the requirements of California Water Code § 13245 and § 13246 and forward it to the OAL and USEPA for approval; and

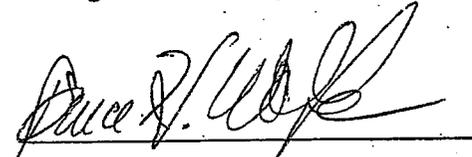
BE IT FURTHER RESOLVED that the Water Board requests that if the State Board finds further revisions to the Mercury TMDL and the Basin Plan Amendment may be necessary, it hold a hearing in the San Francisco Bay region to make the revisions; and

BE IT FURTHER RESOLVED that if, during the approval process, Water Board staff, the State Board, or OAL determines that minor, non-substantive corrections to the language of the amendment and supporting documentation are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes; and

BE IT FURTHER RESOLVED that in conjunction with USEPA approval of the Mercury TMDL, as revised, and the new mercury water quality objectives, the Executive Officer also seek USEPA approval of the 20-year final wastewater allocation implementation schedule under 40 Code of Federal Regulations § 131.13, which allows USEPA to approve water quality standard implementation policies; and

BE IT FURTHER RESOLVED that since the Basin Plan Amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife, the Executive Officer is directed to sign a Certificate of Fee Exemption for a "De Minimis" Impact Finding and to submit the exemption in lieu of payment of the Department of Fish and Game CEQA filing fee.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on August 9, 2006.



BRUCE H. WOLFE
Executive Officer

Attachment

Exhibit A - Basin Plan Amendment to establish new Mercury Water Quality Objectives and to amend the Total Maximum Daily Load and Implementation Plan for Mercury in San Francisco Bay