



SF Bay Mercury  
Deadline: 4/4/07 Noon

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



Re : Comment Letter—Mercury TMDL in San Francisco Bay.

Dear Chair Doduc and Members of the Board :

The City of Sunnyvale appreciates the opportunity to comment on the proposed amendment to the Basin Plan for San Francisco Bay and the proposed water quality objective for mercury in San Francisco Bay. Sunnyvale has participated actively throughout the course of the multi-year process involved in developing these two proposals. Our numerous previous comment letters, including letters from our outside counsel, our technical consultants and City officials are in the administrative record of this rulemaking and are incorporated herein by reference.

Among the reasons for our decision to submit this letter that incorporates our prior comments by reference is our belief that few, if any, of our prior comments have been adequately addressed during the course of this rulemaking. Thus, we wish to remind the State Board of our past documented concerns, which Sunnyvale continues to have. Among these concerns are the following:

1. The Regional Board expansion of the express language of State Board Resolution 2005-0060, which remanded a previous version of the TMDL with the mandate that any revision not impose further requirements on the highly-performing POTWs. The revised wasteload allocation for municipal treatment plants contained in the proposed TMDL now before you, imposes a further 20% reduction on Sunnyvale and the other AWT plants with clearly documented outstanding mercury removal performance. The consequences of these further required reductions have exacerbated the concerns expressed below.

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707  
TDD (408) 730-7501

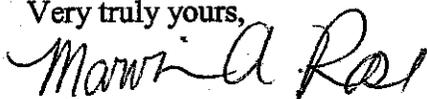
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2. Fundamental questions as to the soundness of the scientific and technical bases advanced by the Regional Board for the proposals. We believe that all requirements imposed upon the regulated community should be backed by scientifically defensible and persuasive analysis. We remain disappointed on this score.
3. Continuing concerns as to the impact of the wasteload allocation to Sunnyvale's POTW that could remove a large portion of Sunnyvale's unused treatment capacity from future use, to the detriment of the future wastewater treatment needs of the South Bay area and potentially serious economic losses to Sunnyvale.
4. The Regional Board has not assessed the potential legal and regulatory risks that could arise under federal anti-backsliding law should growth in future wastewater treatment needs require increases in the mercury allocation under the TMDL. A future increase in the allocation for any source covered by the proposed wasteload allocation could founder on the federal requirement that the Regional Board must prove scientifically that the amended TMDL assures that the applicable water quality objective will be met. Given the high level of uncertainty surrounding the present attainment demonstration and the uniformly low level of scientific and technical analysis that accompanies it, the Regional Board could be denied any future increases, to the detriment of the wastewater treatment needs of the region.
5. A concern that suggestions and proposals for future offset and trading programs aimed at allowing individual POTWs to expand their treatment flows, when necessary, are undeveloped and uncertain, with questions of feasibility, cost, and political acceptability remaining totally unaddressed. This gap in the proposed implementation plan leaves the wastewater treatment community at risk of having to expend hundreds of millions of dollars for additional treatment capacity, a risk that the Regional Board staff have consistently dismissed as unworthy of its concern. We join with BACWA in urging that the needed programs be set up with all deliberate speed and in a manner consistent with the mandates contained in State Board Resolution 2005-0060.
6. A concern that further reductions from the installation of additional advanced wastewater treatment on the part of Bay Area POTWs, while laudible, may prove to be an unwise public policy decision and expenditure of public resources given other more pressing environmental priorities (e.g., roughly an expenditure of \$300 million dollars per year for 20 years to reduce 3 kg/year of mercury. Over that first 20 year period this corresponds to approximately \$100,000,000 per kilogram of mercury removed).

7. Legal concerns as to whether the Regional Board (and the State Board, if the proposals are adopted) will have complied with the California Environmental Quality Act, the Porter Cologne Water Quality Control Act (especially sections 13241 and 13242) and other California and federal legal requirements—all concerns that have been more fully identified in our past comments.

Thank you again for the opportunity to participate once more in this rulemaking process.

Very truly yours,



Marvin A. Rose  
Public Works Director  
City of Sunnyvale

Cc: David Kahn, City Attorney, City of Sunnyvale  
Lorrie Gervin, City of Sunnyvale  
Robert C. Thompson, LeBoeuf, Lamb, Greene & MacRae, LLP  
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Adam W. Olivieri, EOA, Inc.