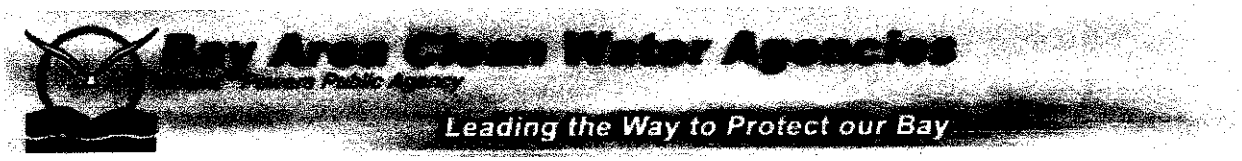
Hg OBJECTIVES
Deadline: 2/28/07 5pm



February 28, 2007

Tam Doduc, Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attention: Song Her, Clerk to the Board

Dear Chairwoman Doduc & Members:

Subject: Comments on CEQA Scoping for Proposed Methylmercury Objectives For Inland Surface Waters, Enclosed Bays, and Estuaries in California

On behalf of the Bay Area Clean Water Agencies (BACWA), I thank you for the opportunity to provide comments regarding CEQA scoping for proposed methylmercury objectives for inland surface waters, enclosed bays, and estuaries in California. 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 6 million people in the nine-county Bay Area, treating most domestic, commercial and a significant amount of industrial wastewater. BACWA was formed to develop a region-wide understanding of the watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and to ensure that 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 environment and public health.

In order to avoid repetition BACWA supports and incorporates by reference the comments made by CASA/ Tri-Tac in its comment letter.

Proposed Region 2 Site Specific Mercury Objectives Should Take Precedence Over Statewide Objectives.

BACWA recognizes the environmental significance of mercury, and the daunting problem that mercury contamination poses in California. The San Francisco Bay was listed under section 303(d) as impaired for mercury due to fish tissue contamination. As a result of this listing, the Region 2 Water Board has worked cooperatively with the Clean Estuary Partnership of which BACWA is an active participant, to develop a TMDL and new Water Quality Objectives (WQOs) for mercury. The new proposed objectives were adopted by the Water Board in August 2006. These objectives are based on San Francisco Bay site-specific data, including fish consumption information for Bay Area residents. There are two proposed objectives, one for large fish to address human health concerns, and one for prey fish which is intended to protect wildlife. The implementation vehicle for these site-specific WQOs is the proposed San Francisco Bay Mercury TMDL which was also adopted by the Water Board in August 2006. In testimony before the Water Board and in written comments, U.S. EPA Region 9 agreed with the proposed site specific WQOs and with the implementation of these objectives through the proposed WLAs of the TMDL. EPA's comments are a part of the Administrative Record on the San Francisco Bay Mercury TMDL as adopted in August 2006.

The San Francisco Bay Mercury objectives and TMDL are based on the best available scientific, technical and water quality data specific to the San Francisco Bay and are grounded in current global knowledge about mercury. We are concerned that the proposal for statewide WQOs could inadvertently compromise the approach embodied in the San Francisco Bay Mercury TMDL by the State Water Board and strongly urge the State Water Board recognize the unique position the San Francisco Bay Region is in with adopted mercury objectives and a TMDL implementation plan. As the CEQA and other analyses proceed on the proposal for the statewide WQOs, BACWA requests that the San Francisco Bay, as defined by the proposed WQOs for mercury that were approved by the Region 2 Water Board in August 2006, be geographically excluded. We also request that when the State Water Board considers the adoption of the San Francisco Bay site-specific mercury WQOs and the San Francisco Bay Mercury TMDL that it be made clear that the San Francisco Bay site specific WQOs will not be replaced by any statewide standards if and when they may be adopted. If the State Water Board does not choose to recognize the existing objectives and TMDL for San Francisco Bay, it will be necessary for the CEQA process for the statewide objectives to undertake a full analysis of the how the statewide proposed standards would be implemented in the San Francisco Bay and how this implementation would be consistent with or change the San Francisco Bay Mercury TMDL. This would not be a desirable prospect.

BACWA Urges a Statewide Mercury Reduction Strategy

BACWA believes that the scope of the WQOs is too narrow if our goal is to restore fish for human health and wildlife consumption. The problems with mercury in our water environment are not the result of current or future point source discharges. By establishing WQOs for mercury there appears to be an expectation that this will result in the restoration of aquatic and other beneficial uses. BACWA does not believe that this is a valid expectation, given the magnitude of ongoing sources to legacy mercury sources. It is BACWA's belief that these WQOs cannot be achieved solely through the State Implementation Plan, which is to say by further effluent restrictions on industrial and municipal wastewater agencies. For this reason, BACWA strongly urges the State Water Board to lead the development of a multi-media approach to reducing mercury risk in our environment and to understanding the attainability of mercury target levels in fish. BACWA pledges to work with the State Water Board on such a strategy.

A California Mercury Reduction Strategy should include but not be limited to:

- Statewide strategies for controlling the impact of the reservoirs of mercury that are already resident in the sediments of our inland surface waters and enclosed bays and estuaries as a result of legacy activities,
- Development of new and innovative pollution prevention approaches, including statewide product bans or product substitution requirements aimed at significant sources,
- A meaningful investment in risk reduction strategies for communities that subsist on fish caught in local waters, and
- Studies to establish attainable levels of mercury in wildlife in California, as required in the Water Code.

CEQA Analysis Should Include a Regional Approach to WQOs Based on Site-Specific Conditions

As part of a California Mercury Reduction Strategy, regional fish tissue based standards for methylmercury (MeHg) should focus on the protection of local fish and wildlife. The environmental conditions, the type of fish (many of the States waters do not support trophic 4 species), the food web structures, and the presence of threatened or endangered species vary from region to region in California. Fish consumption practices also vary from region to region. The CEQA document needs to ensure that the alternative that looks at a regional site-specific approach is included and receives the equivalent level of analysis as the other alternatives.

CEQA Analysis Should Include an Alternative Which Mimics the San Francisco Bay Experience

In the San Francisco Bay, fish tissue was found to contain undesirable levels of mercury and fish consumption advisories were issued. As a result the San Francisco Bay waters were listed as impaired. This impairment has lead to WQOs for fish tissue that protects human health consumption and wildlife as requested by the U.S. EPA and the Fish and Wildlife Services. As a variation of the regional approach alternatives, the CEQA document should also analyze the alternative of not adopting a statewide fish tissue standard, but rather only requiring a standard be developed if there are impairments and then the standard be adopted as part of a TMDL.

CEQA Analysis Should Explain the Benefits and Detail the Reasonable and Foreseeable Means of Compliance with Water Column Based Objectives

Most of the alternatives under consideration are water column-based objectives (Alternatives 2-5). At a minimum, the following questions should be addressed regarding the benefits and detriments of water column-based objectives:

(a) What mercury load management benefit will water column-based objectives provide that would not already be achieved through fish tissue objectives?
(b) Are water column objectives more or less certain indicators of mercury risk than fish tissue objectives?
(c) What uncertainties exist in the linkage between desired fish tissue levels and water column objectives?
(d) Will water column objectives lead to concentration-based effluent limits that will hinder the feasibility of offset projects by point sources?
(e) What would be the long range costs and benefits of a mercury variance program?

In the CEQA scoping document, it is acknowledged that water column objectives will pose severe compliance problems for point sources throughout the State. It is therefore incumbent on the State Water Board to demonstrate that water column-based objectives would provide a better means of beneficial use protection than the fish tissue objective alternative (Alternative 6 or a regional fish tissue objective alternative) and would counterbalance the environmental impacts of the additional treatment needed to attain compliance with NPDES permit requirements. The CEQA analysis for the water column objective alternatives should evaluate:

1) Energy requirements and impacts of additional treatment facilities needed to attain compliance, including greenhouse gas impacts.
2) Brine disposal impacts.
3) Impacts of disposal of additional residuals generated by advanced treatment facilities.
4) Social and economic impacts on communities, including citizens least able to afford rate increases.

Setting new mercury water quality objectives will not by itself solve the existing mercury problems, since an objective merely provides a mechanism for conveniently determining whether beneficial uses are being attained, not a strategy for attaining those uses.

In conclusion, BACWA recommends that the State Water Board **rescope** this effort and include the development of a California Mercury Reduction Strategy to comprehensively address all sources of mercury in the environment. BACWA further recommends that any revisions to California's mercury water quality objectives include provisions that would recognize site-specific WQOs and/or TMDLs already adopted or pending adoption at the State Board.

Thank you for allowing BACWA to comment on these critical issues. BACWA stands ready to work with the State Water Resources Control Board on the development of the California Mercury Reduction Strategy.

Sincerely,

Michele M.Pla
Executive Director

cc: Tom Howard, Acting Executive Officer, SWRCB
Rik Rasmussen, Water Quality Division, SWRCB
Tom Kimball, Water Quality Division, SWRCB
Dyane Whyte, Region 2 Water Board
Tom Mumley, Region 2 Water Board