Hg OBJECTIVES
Deadline: 2/28/07 5pm

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

February 28, 2007

Song Her, Clerk to the Board
Executive Office, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Electronic Mail: commentletters@waterboards.ca.gov

Subject: Comment Letter – Methylmercury Objectives.

The Central Valley Clean Water Association (CVCWA) is a consortium of 47 publicly-owned treatment works (POTWs) in the Central Valley. CVCWA's primary purpose is to exchange information and provide a unified voice on regulatory issues impacting POTWs throughout the Central Valley. CVCWA members appreciate the environmental significance of mercury and its widespread contamination in northern and central California. We are pleased to provide comments regarding CEQA scoping for proposed mercury offsets policy for San Francisco Bay and the Sacramento-San Joaquin River Delta and tributaries as the State Board attempts to address this problem.

The main reason for initiating the development of this policy is the interest in reducing mercury in fish tissue, as the goal is to protect human and wildlife consumers of fish. Fish tissue objectives are a better surrogate for beneficial use protection because they better reflect the risk to human and wildlife consumers of fish. Further, fish tissue objectives focus on broad-based watershed solutions, which would more likely result in significant reductions of mercury in fish and in the environment. Alternative 6 of the proposed policy attempts to take us down this path, yet could be improved to account for more site-specific information.

CVCWA has already made efforts to coordinate comments and reviews with other wastewater stakeholder groups, including CASA, Tri-TAC, and BACWA. In general, we support their comments and provide these additional comments separately to emphasize certain issues and concerns.

General Comments

The timing for developing the methylmercury objectives should take into consideration the availability of ongoing mercury research in the Bay-Delta watershed. In particular, the results of over $30 million in CALFED-funded research should be considered in the state policy discussions to assure that the objectives are based on the best science possible.

Specific Comments

- Pages 3 and 8, BAFs and Translators: The state should consider that the conversion of a fish tissue objective to a total mercury ambient water quality objective using linear BAFs and 'translators' is not appropriate for the following reasons:
  - Current science is not sufficiently precise to support the application of national or statewide Bioaccumulation Factors (BAFs) necessary to translate from a fish tissue concentration to a water column concentration. EPA's draft *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion* (draft Guidance) states that a fish tissue-based criterion is preferred.
  - The term 'translator' is typically used to represent the ratio of total to dissolved concentrations when dissolution-adsorption processes are chemical in nature. In this policy a translator is used to represent the ratio of total mercury to dissolved methylmercury concentrations, which is chemical and biological in nature. The increased complexity of these reactions does not correlate with traditional translator application and thus does not warrant representation by a linear ratio.
  - Methylmercury and total mercury concentrations in water are highly variable in space and time. Testing for a consistent local relationship would require specialized sampling training, and require long-term monitoring and dedicated funding. A site-specific dataset would, in the end, result in relationships based on two pairs of mean concentrations (fish-methyl and methyl-total) that may not predict how changes in water column concentrations would change fish tissue concentrations.
- Page 5, Alternatives 1-5: Most of the alternatives under consideration are water column-based objectives, which can be translated easily by permit writers into numeric permit limits for point sources such as POTWs. Such limits will be unattainable for most POTWs and will not provide a better means of beneficial use protection than the fish tissue objective alternative (Alternative 6). This focus on total or methylmercury concentrations in water unnecessarily complicates the issue and does not offer any gains in mercury management. The state should consider the disadvantages of employing mercury water column concentration objectives in addition to fish tissue objectives.
  - Any focus on methylmercury concentration objectives would be an obstacle to offsets. The likely parties to perform offsets will be dischargers operating under NPDES permits. If such dischargers are required to install additional treatment to meet methylmercury AWQOs, (a) the financial resources for offsets will be diminished or eliminated and (b) the need for offsets will be similarly reduced.
  - The fact that a variance procedure [see comment below] would be required as part of the implementation strategy for a methylmercury water column objective provides a strong reason not to go in this direction. The focus of mercury regulation statewide should remain on the outcome – specifically, reductions in fish tissue levels.

- TMDLs for mercury-impaired water bodies would have more flexibility to derive appropriate site-specific water column concentration goals and any associated load reduction requirements without the burden of additional regulatory constraints. The San Francisco Bay and Delta mercury TMDLs have not been impeded by the current lack of a state methylmercury objective.

- Page 5, Alternative 6 and new Alternative 7: We support Alternative 6, but recommend that the state evaluate an additional alternative that is fish-tissue based and considers more region-specific fish consumption rates and trophic levels in establishing mercury fish tissue objectives for the following reasons:
  - Fish tissue objectives are the best surrogate for beneficial use protection because they better reflect the risk to human and wildlife consumers of fish.
  - Fish tissue objectives keep the management focus on broad-based watershed solutions.
  - This approach is acceptable under EPA's draft Methylmercury Guidance.
  - The California Toxics Rule provides the example of copper where site-specific objectives have been developed for different parts of the San Francisco Bay.
  - This approach is consistent with establishing site specific objectives as per the EPA Water Quality Standards Handbook.
  - California has significant regional variations of fish populations throughout the state, with varying types of fish and fish consumption rates, making a "one-size fit all" approach not workable.
- Page 6, General: The scoping document needs to address how pre-TMDL permits will be handled, when a discharge is to a 303(d)-listed water body for mercury. For example, a permittee would not be able to comply with a prescribed limit yet not be able to participate in an offset program before a TMDL is done. In addition, the scoping document needs to consider how this new policy would apply to the TMDLs for the two water bodies of greatest concern for mercury – the San Francisco Bay and Delta.
- Page 6, Exhibit 2: The use of a margin of safety in the determination of reasonable potential is not required and is not consistent with ongoing NPDES permitting practices. Moreover, a reasonable potential analysis is not required since the process of listing mercury impairment and pursuing mercury TMDLs already fulfills the purpose of establishing NPDES permits, as well as non-point source, discharge requirements. This alternative procedure is unnecessary and the scoping process should consider eliminating this use from any proposed objective.
- Page 6, Variance procedure: Municipal wastewater facilities are operated to control basic operational parameters such as pH, TSS, BOD, and coliform. Each wastewater treatment facility is limited in its ability to control effluent concentrations beyond attention in its pollution minimization program. A variance procedure would certainly be needed if water column methylmercury objectives are promulgated and used to set NPDES effluent limits. The state should consider how a variance procedure would impose a new regulatory burden with no environmental benefit and would delay implementation of offsets.
- Page 7, possible implementation requirements: The term 'requirements' should be replaced with 'options'. Also, offset projects that provide for both total and methylmercury discharge compliance should be added to the list as a possible implementation option.

Thank you for requesting our input and we look forward to working with you and other State Board staff as this policy is developed.

If you have any questions feel free to contact me at 530-886-4911.

Sincerely,

Warren Tellefson

Executive Officer

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