

Necessary format and other typographical changes may be made to the proposed Revised Draft Final Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (generally referred to as “the Provisions”), noticed and made available to the public on April 21, 2017. The Revised Draft Final Provisions contains text in red single underline and single strikethrough to reflect initial revisions to the Draft Provisions noticed and circulated on January 3, 2017. Necessary format and other typographical changes may be made to the proposed Draft Resolution (made available to the public on April 21, 2017) for Item 6. The revisions shown in black bold single underline and single strikeout reflect subsequent changes to the Provisions and the Draft Resolution made with Change Sheet #1:

## **PROVISIONS**

1. Modify Chapter IV.D.1 (p. A-8) to state:

### **1. General Applicability of the Mercury Implementation Provisions**

The implementation provisions of Chapter IV.D, **which apply only to discharges identified in Chapters IV.D.2 through IV.D.7 below**, shall be implemented through NPDES permits issued pursuant to section 402 of the Clean Water Act, water quality certifications issued pursuant to section 401 of the Clean Water Act, waste discharge requirements (WDRs), and waivers of WDRs where any of the MERCURY WATER QUALITY OBJECTIVES apply.

2. Modify the last paragraph in Chapter IV.D.1 (p. A-9) to state:

A Regional Water Board may adopt a new mercury TMDL associated with the ~~for~~CUL, T-SUB, or SUB beneficial uses that substantially relies on the assumptions, technical and scientific basis, and requirements of an EXISTING MERCURY TMDL, if the analyses and assumptions underlying the EXISTING MERCURY TMDL remain valid. In such circumstances, the new mercury TMDL may effectively include the same actions **and waste load allocations** of the EXISTING MERCURY TMDL with the exception of including a longer period of time to ensure the water quality objective associated with the CUL, T-SUB, or SUB beneficial use is attained. **Such EXISTING MERCURY TMDL and new mercury TMDL may be utilized to establish interim and final effluent limitations in permits in accordance with Chapter IV.D.2.c.2.ii, as applicable.**

3. Modify Chapter IV.D.2.a (p. A-9) to state:

### **2. Municipal Wastewater and Industrial Discharges** **a. Applicability**

Chapter IV.D.2 applies to dischargers issued individual non-STORM WATER National Pollutant Discharge Elimination System (NPDES) permits **for municipal wastewater or industrial discharges**. The PERMITTING AUTHORITY shall incorporate the following requirements, as applicable, into NPDES permits during every permit issuance or renewal.

4. Modify Chapter IV.D.2.c.1 (p. A-12) to state:

*Step 5:* Apply as set forth in the SIP, but replace the determination of the “maximum” ambient background concentration for mercury (denoted as B in the SIP), with the highest observed annual average ambient background concentration. The annual average shall be calculated as an arithmetic mean, as described in Section 1.4.3.2 of the SIP, except if the arithmetic mean sample is below the reported detection limit, then one half of the detection limit shall be used, using all ambient background total mercury samples collected during a CALENDAR YEAR.

5. Modify Chapter IV.D.2.c.2 (p. A-12) to state:

2) Calculation of the Effluent Limitations

If, upon the completion of applying the REASONABLE POTENTIAL analysis set forth in Chapter IV.D.2.c.1, a water quality based effluent limitation is required, **and the Permitting Authority does not establish effluent limitations for mercury in accordance with section 1.4.4 of the SIP (Intake Water Credits)**, then the PERMITTING AUTHORITY shall calculate the effluent limitation by applying section 1.4 of the SIP. as follows:

The If part B of section 1.4 of the SIP applies, the PERMITTING AUTHORITY shall apply Steps 1-7 contained in part B of section 1.4 of the SIP as modified by the following Chapter IV.D.2.c.2.i, below. If, however, an EXISTING MERCURY TMDL is in effect for the applicable water body that implements a water quality objective other than one of the MERCURY WATER QUALITY OBJECTIVES, as applicable, for CUL, T-SUB, or SUB, the PERMITTING AUTHORITY may apply Chapter IV.D.2.c.2.ii, below. In applying Chapter IV.D.2.c.2.ii, the Permitting Authority may utilize an EXISTING MERCURY TMDL and a new mercury TMDL as described in the last paragraph in Chapter IV.D.1.

6. Modify Chapter IV.D.2.d.4 (p. A-14) to state:

4) Compliance Schedule. The PERMITTING AUTHORITY may include a compliance schedule in NPDES permits to achieve the mercury effluent limitation in accordance with the Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (State Water Board Resolution No. 2008-0025) **(Compliance Schedule Policy).** **The duration of the compliance schedule in a permit may not exceed ten years from the date of the adoption, revision, or new interpretation of the applicable water quality objective, except where a compliance schedule in a permit is established in a “single permitting action” or implements or is consistent with the waste load allocations specified in a TMDL, as provided by the Compliance Schedule Policy. If a compliance schedule is authorized in a permit, interim requirements and final effluent limitation shall be included, as provided by the Compliance Schedule Policy. The compliance schedule may also include requirements be consistent with Chapter IV.D.2.c.2.ii, if applicable.**

**RESOLUTION**

1. Modify recital 10 (p. 2) to state:
  10. The Provisions (Chpt. II) provides that the Regional Water Boards shall use the beneficial use definitions contained in the Provisions for CUL, T-SUB, and SUB, to the extent the Regional Water Boards describe such uses in a water quality control plan **after the effective date of the Provisions**. The Provisions does not require the Regional Water Boards to designate specific waters within their regions with the CUL, T-SUB, or SUB beneficial uses nor does it set forth a prioritization schedule for such designations to occur. The Water Boards generally consider prioritizing the designation of ~~waters~~ **beneficial uses** during their triennial review process.
  
2. Insert a new recital after recital 17 (p. 3):
  18. **The Provisions (Chpt. III.D.3) expressly provides that, except for the two mercury water quality objectives identified therein, the Mercury Water Quality Objectives do not supersede any site-specific mercury water quality objectives established in a water quality control plan. Such site-specific mercury water quality objectives include those established on, before, or after the effective date of the Provisions in accordance with Water Code section 13241. The State Water Board acknowledges that the development of site-specific mercury water quality objectives may be appropriate to account for potential variations in the fish consumption rate, the form of consumption (e.g. whole, fillet with skin, skinless fillet), and the fish species consumed.**
  
3. Modify existing recital 18 (p. 3) to state:
  18. The Provisions (Chpts. IV.D.5-IV.D.7) provide that the State Water Board and Regional Water Boards (collectively referred to as Water Boards) have authority under existing law to include permit requirements for nonpoint source discharges and applicants for wetlands projects or dredging activities to control mercury. The Provisions provide that in areas with elevated levels of mercury, the Water Boards should consider requiring wetland design features or management practices to minimize methylation or control sediment from transporting out of the wetland. However, the Staff Report (Section 6.10) recognizes that wetlands and wetland restoration projects provide valuable **water quality**, wildlife habitat, and flood control functions and should not be dis-incentivized due to mercury concerns.
  
4. Modify subpart (c) of existing recital 21 (p. 4) to state:
  - c. With respect to the development of the beneficial uses, eleven focus group meetings with relevant and interested stakeholders and representatives of California Native American tribes **were held between May 2016 and July 2016**.

5. Insert the following new recital after the existing recital 20 (p. 3):
  21. **The State Water Board further acknowledges that it may be appropriate for Regional Water Boards to adopt new mercury TMDLs associated with the CUL, T-SUB, or SUB beneficial use that substantially relies on the assumptions, technical and scientific basis, and requirements of a mercury TMDL approved by U.S. EPA for a COMM, WILD, or RARE beneficial use, if the analyses and assumptions underlying the existing mercury TMDL remains valid. In such circumstances, the new mercury TMDL may effectively include the same actions and waste load allocations of the existing mercury TMDL with the exception of including a longer period of time to ensure the water quality objective associated with the CUL, T-SUB, or SUB beneficial use is attained.**
6. Modify the existing recital 27 (p. 5) to state:
  27. The State Water Board complied with the tribal consultation requirements established by **Governor's Executive Order No. B-10-11 (Sept. 19, 2011) and** Assembly Bill 52 (Gatto) (Stats. 2014, ch. 532) **which ensure tribal governments have the opportunity to provide meaningful input in the development of regulations, rules, policies, or projects that may affect tribes.**
7. Modify the existing recital 30 (p. 5) to state:
  30. The Provisions do not become effective until approved by the Office of Administrative Law and the Provisions' beneficial uses, **and** Mercury Water Quality Objectives, **and the requirements for a compliance schedule (Chpt. IV.D.2.c.2.ii)** are effective for Clean Water Act purposes upon approval by the United States Environmental Protection Agency (U.S. EPA).