



# CVCWA

## Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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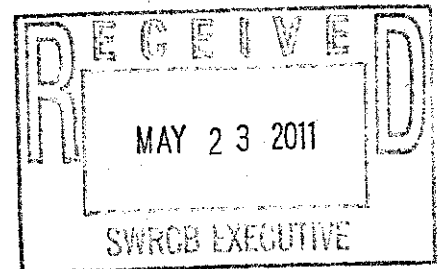
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May 23, 2011

Sent via electronic mail to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Chairman Charles Hoppin & Board Members  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-2000

**Subject: Comment Letter - Delta Methylmercury TMDL**



Dear Chair Hoppin and Board Members:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to provide comments on the Delta Methylmercury TMDL. CVCWA is a consortium of publicly-owned treatment works (POTWs) in the Central Valley. Our primary purpose is to exchange information with our member agencies and provide a unified voice on regulatory issues impacting POTWs throughout the Central Valley. CVCWA members in the Delta will be required via their NPDES permits to comply with relevant requirements in the final Basin Plan Amendment (BPA) in Resolution No. R5-2010-0043 "Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin River Delta Estuary".

CVCWA has been an active participant in the Methylmercury Stakeholder Group and have supported this stakeholder process. CVCWA members want to continue to participate in effective solutions to difficult problems such as mercury. It is our intention that our comments below serve to improve the BPA, particularly in recognition that we already serve the public's interest by removing mercury from municipal wastewater and represent a *de minimis* source of methylmercury to the Delta.

Based on our review of the BPA version publicized on April 18, 2011, we wish to bring to the attention of the State Water Resources Control Board (State Water Board) the following comments to:

- Encourage early actions
- Address scheduling constraints that depend on State Water Board action
- Recognize potential inconsistencies in various concurrent regulatory actions.

## Encourage Early Action

The BPA [page 9] states:

The Regional Water Board shall use any applicable new information and results of the Control Studies to adjust the relevant allocations and implementation requirements as appropriate. *Interim limits established during Phase 1 and allocations will not be reduced as a result of early actions that result in reduced inorganic (total) mercury and/or methylmercury in discharges.* (Emphasis added.)

The purpose of this provision is to encourage early actions and not penalize those who reduce their total and/or methylmercury by setting more stringent interim limits based on these reductions.

Recent experiences with NPDES permits reissued for the Sacramento Regional County Sanitation District and the City of Stockton (among others) have shown that this policy is not yet being followed. In those cases, these POTWs achieved significant mercury load reductions by implementing a comprehensive mercury source reduction program (Sacramento) or upgrading its wastewater treatment facility (Stockton). The reductions these two POTWs achieved were used in the calculation of their interim limits, and have led to lower mercury load caps. This could result in unnecessary NPDES permit violation. Such cases discourage early actions by other POTWs who now fear that any beneficial efforts to reduce total mercury or methylmercury will result in more stringent requirements later. We believe that by repeating this provision in the section applicable to interim limits, it will likely make it more evident to the permit writer that this provision is applicable. Additionally, providing some direction on how to account for these periods when early actions occurred could provide some greater certainty for both the permit writer and NPDES permit holder. One straightforward method to account for these early actions is to exclude monthly load data periods in which these actions have been implemented.

We propose that the State Water Board include the following statement in the paragraph explaining how to calculate interim performance-based limits [page 4] (new text underlined):

During Phase 1, all facilities listed in Table B shall limit their discharges of inorganic (total) mercury to facility performance-based levels. The interim inorganic (total) mercury effluent mass limit is to be derived using current, representative data and shall not exceed the 99.9th percentile of 12-month running effluent inorganic (total) mercury loads (lbs/year). For intermittent dischargers, the interim inorganic (total) mercury effluent mass limit shall consider site-specific discharge conditions. Interim limits established during Phase 1 will not be reduced as a result of early actions that have already reduced inorganic (total) mercury and/or methylmercury in discharges. To implement credits for early reductions, periods in which early actions have been implemented will be excluded from the interim limit calculation. The limit shall be assigned in permits and reported as an annual load based on a calendar year. At the end of Phase 1, the interim inorganic (total) mercury mass limit will be re-evaluated and modified as appropriate.

This comment is new because, based on recent experience with NPDES permits subject to this TMDL, we realized that the Central Valley Regional Water Quality Control Board (Regional Water Board) were not implementing this provision of the TMDL.

### **Exposure Reduction Program**

CVCWA members continue to be concerned that the exposure reduction program will unfairly rely on publicly owned treatment facilities. The Regional Water Board included language [at BPA page 15] that the State Water Board should develop a statewide policy that defines the authority and provides guidance for exposure reduction programs before dischargers are required to submit exposure reduction workplans [two years after Effective Date]. This language was included because neither the Regional Board staff nor the Dischargers understood why they were being tasked with a program they had no expertise in and was under another state agency's responsibility (i.e., California Department of Public Health).

We urge the State Water Board to commit in its resolution to address the issue of responsibility for public health messages and to work with CDPH on this issue.

This comment is new because the State Water Board did not participate in this discussion at the Regional Water Board's workshops or hearings.

### **Scheduling Constraints**

This BPA includes several regulatory compliance schedules to which POTWs will be held accountable, but which depend on action by the Regional Water Board and State Water Board. Delays by the regulatory authorities in completing their prerequisite actions could jeopardize a POTW's and/or other entities' ability to comply with mandated compliance schedules. In particular:

- The Regional Water Board needs to select and contract members to a Technical Advisory Committee and to produce a Control Study Guidance Document [at BPA page 7] before significant progress can be made in developing Control Study Workplans [due nine months from the Effective Date].
- The State Water Board should develop a statewide policy that defines the authority and provides guidance for exposure reduction programs [at BPA page 15] before dischargers are required to submit exposure reduction workplans [two years after Effective Date].

We propose that the State Water Board, in its resolution, (1) provided appropriate mechanisms to adjust schedules when adherence with regulatory compliance schedules imposed on POTWs depends on Regional Water Board or State Water Board actions; and (2) include a commitment to support Regional Water Board activities to ensure timely production of prerequisite guidance documents, policy statements, and workplan reviews.

This comment is new because the scheduled items were part of late revision to the BPA and because they apply to the State Water Board.

### **Urge for Consistency**

There are over 100 waterbodies in the Central Valley on the 303(d) list for mercury impairment. Only a handful of TMDLs have been promulgated to address those impairments, yet recent NPDES permits already include mercury load caps. In this light, we urge the State Water

Board and Regional Water Board to provide consistent approaches in Central Valley mercury TMDLs that will avoid duplicate and/or conflicting regulatory requirements for dischargers.

The State Water Board appears to be working on two other projects to address mercury impairments: (1) developing statewide mercury fish tissue objective(s), and (2) developing a statewide mercury TMDL addressing the many impaired reservoirs. For these projects, we urge the State Water Board to align these efforts to avoid inconsistent or unachievable regulatory requirements. Also, we urge the State Board to initiate a project to develop an offset program policy [at BPA p. 2, 13-14].

Thank you for this opportunity to comment on this BPA. We sincerely request that the State Water Board review our comments and revise the current BPA to address these concerns. Please feel free to contact me at (530) 268-1338 if you wish to discuss our comments.

Sincerely,



Debbie Webster  
Executive Officer – CVCWA

c: Pamela Creedon – Executive Officer, CVRWQCB (electronically)  
Patrick Morris – Central Valley Regional Water Board (electronically)