



Bay Area Clean Water Agencies

A Joint Powers Public Agency

P.O. Box 24055, MS 702

Oakland, California 94623

September 12, 2007

VIA EMAIL

Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Comments on the Tentative Order Issuing San Francisco Bay Mercury Watershed Permit (CA0038849)

Dear Mr. Wolfe:

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to comment on the Tentative Order for the San Francisco Bay Mercury Watershed Permit, as well as make comments on policy issues related to the NPDES permit. 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 6.5 million people in the nine-county Bay Area, treating all 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 water environment and the public health.

BACWA hopes that the following comments will result in changes being made to the tentative order prior to issuance of the final mercury watershed permit. Further, in order to avoid repetition, but to preserve these arguments, BACWA supports and incorporates by reference comments made by BACWA members in their respective comment letters.

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CITY AND COUNTY OF SAN FRANCISCO

CITY OF SAN JOSE

EAST BAY DISCHARGERS AUTHORITY

EAST BAY MUNICIPAL UTILITY DISTRICT

1. BACWA understands the reasons for lowering the mercury concentration limits applicable to each POTW, and believes they are consistent with the State Water Resources Control Board resolution.

BACWA members are disappointed that the individually enforceable concentration limits for mercury are lower than the first tentative order. However, on July 17, 2007 the State Water Resources Control Board (State Water Board) passed a resolution giving specific direction to the Regional Water Quality Control Board (Regional Water Board) which required a revision to the individually enforceable limits to make them consistent with the mercury TMDL wasteload allocations (WLAs). BACWA believes that the Regional Water Board, in recalculating the concentration limits using the same dataset used for the WLAs, made the limits consistent with the WLAs, and that this is a fair outcome and is also entirely consistent with the State Water Board resolution.

2. The Permit Must Recognize that POTWs Must Have 20 Years to Achieve the 40% Reduction in Mass Loading, Including a Realistic Mass Offset Program.

BACWA recognizes that the Regional Water Board placed the reductions in mercury mass loads (20% in 10 years and 40% in 20 years) in the main body of the permit to ensure that there is no question about the direction of this permit or program. However, BACWA wants to reiterate how important it is for its members to be allowed the full 20 years to implement the final 40% reductions, because it will take time to develop pollution prevention programs, to conduct the various studies that are planned to advance the knowledge of mercury fate and transport (and thereby be able to control mercury more effectively), and to develop a regional offset program, a critical aspect of the compliance attainability of the 40% reductions for POTWs.

Achieving a 40% reduction of effluent loading at secondary treatment facilities will require the implementation of a voluntary, fair and equitable pollution offset and credits program. If a fair and equitable offset program cannot be developed, BACWA cannot be expected to meet the 40% reduction in the WLA that is required by the mercury TMDL and as described in the permit Fact Sheet. Compliance through treatment would require a public investment of approximately \$300 million per year every year over 20 years (in 2004 dollars) to develop advanced treatment at each existing secondary facility. This would then allow these facilities to make reductions by about 3 kg/yr.

During both the Regional Water Board hearing in August 2006, and the State Water Board hearing in July 2007, BACWA clearly heard the staff inform the Boards that the 40% reduction is not required in order to meet the TMDL target, now the fish tissue

objective. Based on this understanding, BACWA strongly requests that the permit language, in both the Fact Sheet and in the body of the permit, state that the 40% reduction is conditioned on the existence of a State-approved, viable offset program. In particular, we request the following specific revisions to footnote 5 of Table 6 titled, "Municipal – Individual Mercury Effluent Limitations" (on page 17 of the second tentative order issued for public comment):

- (5) The first Annual Average Effluent Limits represent the San Francisco Bay Mercury TMDL's initial mass limits for Municipal Dischargers. In accordance with the TMDL and the compliance schedule provision that the Regional Water Board will submit to USEPA for approval, the Municipal Dischargers listed in this table have up to 10 years from the effective date of this Order to achieve the "Effective in 10 Years Annual Average Effluent Limits" and its respective Aggregate Annual Mass Emission Limit and up to 20 years to achieve the "Effective in 20 Years Annual Average Effluent Limits" and its respective Aggregate Annual Mass Emission Limit listed in Table 6. Consistent with deliberations which occurred during adoption of the TMDL by the Regional and State Water Boards, the effluent limits scheduled to become effective in 20 years will not be applicable unless or until the State Water Board adopts a mercury offset program applicable to Municipal Dischargers.

In addition, BACWA requests that revisions be made on page F-16 the Fact Sheet as follows:

4. WQBEL Calculations

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The Order implements the 10 and 20 year timeframe for compliance with the interim and final aggregate load limits of the TMDL's wasteload allocations. These timeframes are appropriate to allow Municipal Dischargers time to implement additional measures to reduce their contribution of mercury discharge to San Francisco Bay. The timeframes are as soon as possible because of the high level of uncertainty in pollution prevention methods and other measures envisioned in the TMDL for reducing mercury discharge concentrations from municipalities. As indicated in the TMDL, the other measures that would be necessary include wastewater re-use, pollutant trading, offsets and/or system improvements. The uncertainties inherent in developing

a pollutant trading and offset program warrant this long timeframe as state policies for these programs are still in the initial stages. The development and design of plans for the infrastructure and funding required for significantly increasing wastewater re-use, and system improvements by public agencies also warrant a longer timeframe. As a result of these considerations, and consistent with deliberations which occurred during adoption of the TMDL by the Regional and State Water Boards, the effluent limits scheduled to become effective in 20 years will not be applicable unless or until the State Water Board adopts a mercury offset program applicable to Municipal Dischargers.

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3. BACWA appreciates the consideration and flexibility to support water recycling.

BACWA recognizes that the Regional Water Board made revisions to Provision V.C.5.d. regarding discharge adjustments for recycled wastewater use by industrial facilities. BACWA supports this revised language since it facilitates the use of recycled water.

4. BACWA urges the Regional Water Board to make a commitment to combine future pollutant-specific permit requirements into the mercury watershed permit.

BACWA believes that this permit conveys the correct message, that we work within a watershed approach in the protection of San Francisco Bay. We also believe that in this one permit we see a consistent approach from one clean water agency to another, consistent again with our desire to focus on the real issues associated with protection of the waters and compliance with the Basin Plan. The likelihood that conflicts arise across permits can also be avoided with the watershed permits. Therefore, BACWA strongly requests that the Regional Water Board make a commitment to combine any future pollutant-specific permits with this one.

5. BACWA believes that Appendix F-1, the "Example of When Required Actions Are Triggered" shows that the trigger language must be revised.

The trigger example in Appendix F-1 shows that in almost every case where one sample is above a trigger value, an action plan will be required. This is because sample results are often received at the end of the month when no time is left for additional sampling during that month.

It is BACWA's understanding that if accelerated monitoring shows no exceedances, this information is sufficient to indicate no ongoing issues and the Discharger could return to routine sampling. For these reasons, BACWA requests revisions to the trigger language. Certainly, the purpose of accelerated monitoring is to show that no **subsequent** samples to the original exceedance are exceeding any one of the three possible triggers. In addition, 3 weekly samples should be sufficient for this purpose. Therefore, the language in the permit should be revised as follows (a couple of typos are also corrected):

Table 12. Action Plan for Trigger Exceedance

Task	Deadline
<p>i. Accelerated Sampling. As soon as the Discharger becomes aware of the exceedance, resample within 48 hours and commence weekly sampling (or more frequent than weekly) for a total of <u>3 new</u> samples. If all <u>3 of the new</u> samples show mercury levels below the triggers, return to routine sampling. If during the accelerated sampling, <u>either (1) any of the samples are above the maximum daily trigger, or (2) the average of the samples is above the average monthly trigger, or (3) the respective annualized mass is above the mass</u> trigger, proceed with action plan for mercury reduction and continue sampling monthly until the observed mercury discharge is below the trigger levels for 3 consecutive months, at which point the Discharger shall complete the reporting of this exceedance as required by Tasks ii. <u>and ix.</u> <u>and</u> return to routine monitoring and discontinue efforts under Task iii, below.</p>	<p>See deadlines in task description.</p>

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The example will also need to be changed to reflect this change to Task i. The remainder of the example appears to reflect an appropriate level of action by POTWs in the event of continued exceedances.

BACWA appreciates the Regional Water Board's close attention to the comments made herein. I would be more than happy to meet with you to discuss our comments and concerns in more detail as you wish.

Respectfully submitted,



Michele Pla
Executive Director
BACWA

cc: BACWA Executive Board