

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

STATE SUMMARY REPORT (Lila Tang)  
MEETING DATE: November 1, 2007

ITEM: 8

**SUBJECT:** Watershed Permit for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay; Counties of Alameda, Contra Costa, Solano, Napa, Sonoma, Marin, San Francisco, San Mateo, and Santa Clara - Issuance of New NPDES Permit

**CHRONOLOGY:** August 2006 – Board adopted San Francisco Bay Mercury Total Maximum Daily Load (TMDL) Implementation Plan

**DISCUSSION:** The adoption of this Watershed Permit would establish limitations and requirements on the discharge of mercury from more than 60 current NPDES permittees who together discharge over 600 million gallons per day of treated wastewater directly to San Francisco Bay. This Watershed Permit is one of the implementation measures in the Mercury TMDL the Board adopted in August 2006 and State Board approved in July 2007. It will supercede all existing mercury requirements in existing individual wastewater permits to ensure consistent, complete, and coordinated implementation of the TMDL's requirements.

Two drafts of the Watershed Permit were distributed for comment, the first in March prior to State Board's approval, and the second in August after approval. In total, we received 15 letters with over 60 comments (Appendices B and C). We have addressed all the comments in Appendices D and E, and have resolved most of them through revisions where appropriate. This includes all of U.S. EPA's concerns, and U.S. EPA did not comment on the second draft Watershed Permit but has verbally indicated its support.

The Revised Tentative Order (Appendix A) reflects all these revisions. Some issues remain unresolved, and we anticipate testimony on them at the hearing. These issues are:

- The Western States Petroleum Association (WSPA), and to a lesser extent the Bay Area Clean Water Agencies (BACWA), are concerned about the proposed addition of concentration limits that are not required by the TMDL.
- The San Francisco Baykeeper contends that these proposed concentration limits for 19 of the permittees are less stringent than current limits and violate antibacksliding.
- Baykeeper believes the aggregate mass limits and 20-year compliance schedule for final mercury mass limits are illegal.
- Baykeeper requests a number of other changes, including: 1) more frequent monitoring; 2) studies on, and mitigation of, potential local effects prior to allowing recycled wastewater use by industries; and 3) more prescriptive requirements for risk reduction.

The new concentration limits proposed in the Revised Tentative Order, though not directly required by the TMDL, are the appropriate means to implement the TMDL's requirement to hold wastewater treatment facilities to current performance. These limits are calculated from

data from the same timeframe (2000-2003) as that used to derive the wasteload allocations in the TMDL. As such, these limits are consistent with federal regulations. Also, the State Board in its resolution approving the TMDL directed us to include such limits in any permit implementing the TMDL.

On the flip-side of this issue, Baykeeper contends that the concentration limits for 19 permittees violate antibacksliding because the limits are less stringent than these permittees' current individual permit limits. Federal law allows exceptions to antibacksliding, particularly when implementing TMDLs, because TMDLs assure attainment of standards – in this case, through the cumulative reduction of mercury discharges to the Bay. The differences between existing limits and the new limits have no consequential water quality impact. We derived the new limits using a consistent methodology for similar categories of facilities, thus resulting in consistent limits for all permittees in the same category. In doing so, the concentration limits for 37 permittees actually became more stringent, thus leveling the playing field for all permittees. Using these new consistent limits will result in more efficient accounting and tracking for compliance determination.

Concerning Baykeeper's issues on the legality of the aggregate mass limits and the 20-year schedule, both of these requirements derive directly from the TMDL and are based on sound legal principles explored and considered by State Board and U.S. EPA staff and legal counsel. State Board has approved the aggregate mass limits and 20-year schedule in the TMDL, and U.S. EPA has not raised any objections to them though it has had opportunity to do so.

Baykeeper also requested a number of other changes to the draft Permit and was unsatisfied by the further changes made to the risk reduction requirements. We maintain that the monitoring frequencies proposed in the Revised Tentative Order are reasonable considering that wastewater sources are already the best characterized and smallest source of mercury to the Bay relative to other sources. Baykeeper's request to make recycling projects conditional upon studies and mitigation prior to approval of those projects would create an unreasonable disincentive to recycled water use. Such measures are unnecessary given the requirements already proposed in the draft Permit to study and mitigate if adverse local effects are found. Finally, the revised risk reduction provision in the Revised Tentative Order provides a reasonable balance between accountability and flexibility given the current uncertainty in what measures are necessary for what target audience, not to mention the task of coordination with the Department of Public Health, urban stormwater runoff dischargers, and community groups for development of an effective regional risk reduction program.

For more details on each of the above issues, refer to the Response to Comments (Appendix E) for comment numbers 6, 12, 13, 14, 15, 16, and 18.

**RECOMMENDATION:** Adoption of the Revised Tentative Order.

**FILE NO.:** 2101.00 (LWT)

**APPENDICES:**

A – Revised Tentative Order

B – Comments on March 2007 draft permit

C – Comments on August 2007 draft permit

D – Response to Comments on March 2007 draft permit, August 14, 2007

E – Response to Comments on August 2007 draft permit, October 25, 2007