

February 26, 2007

Ms Joanne Cox
State Water Resources Control Board
Water Quality Division
1001 I Street
Sacramento, CA 95814



Dear Ms Cox:

SUBJECT: Proposed State Policy for Water Quality Control, SF Bay, Delta, and Tributaries Mercury Discharge Offset Policy

In late 2005, the State of California's Delta Protection Commission (DPC) convened a collaborative of Delta stakeholders to provide input to the Central Valley Regional Water Quality Control Board (Regional Board) for consideration in the development of a TMDL for Methylmercury in the Delta. It was, and continues to be, the desire of the Delta Methylmercury TMDL Collaborative (Collaborative) to contribute to the Regional and/or State Boards' efforts to satisfy mandates imposed by the U. S. Environmental Protection Agency, while at the same time developing meaningful and realistically feasible programs to do so.

The Collaborative has spent the last year and a half working with Regional Board staff on the development of the proposed Delta Methylmercury TMDL program, and is encouraged by some of the changes that have been made to the proposed Basin Plan Amendment (BPA) as part of that process. One of the main interests for some Collaborative members was the inclusion of a Mercury Offset Program; the BPA language as currently proposed contains language relating to the development of a pilot Mercury Offset Program as part of the Delta TMDL process.

Comment 1: The Regional Board's draft language related to the pilot Mercury Offset Program states that the Board would consider offsets for the following sources: "mercury and gold mine sites; Cache Creek Settling Basin; in-stream contaminated sediments; NPDES MS4 discharges; NPDES facilities; wetlands; irrigated agriculture; flood conveyance and water management activities ..." Ideally, the State Board's proposed offset program should contain similar language specific to Delta interests and their ability to utilize offsets in the future (the State Board language as laid out in the informational scoping document [top of page 4] is much more general with respect to the types of projects that could qualify as offset projects).

Comment 2: At the February 20 scoping meeting, a few interested parties reported that Sacramento Regional County Sanitation District (SRCSD) has been implementing a pilot program which will be yielding some good information, and suggested that a work group be formed to help advise on development of an effective Mercury (and possibly Methylmercury) Offset program.

Comment 3: There were some specific comments on some of the "Principles" that should be addressed, particularly:

- General Principle #4: POTWs' ability to serve new growth (i.e., those existing facilities that are not physically "expanding"), if additional mercury discharges are only to be granted to new or expanding facilities.
- Principles Affect Implementation of Offsets #5: The reference to an exception "for offset project on public land where the public agency did not cause the mercury pollution" seems to imply that all private (non-public agency) landowners are responsible for the mercury pollution on their lands. As mercury is a legacy pollutant, there are many agricultural and wetland landowners/managers that are also not responsible for mercury present on Delta lands. It seems arbitrary to call out public agencies as the only exception to this policy.

Thank you for the opportunity to comment on this scoping document. The Collaborative will continue to participate in this process as it progresses, and looks forward to working with you to develop a viable Offset Program that can maximize benefits to those who live, work, and play in the Delta.

Sincerely,

Lori Clamurro
Dept. of Fish and Game, Water Branch
On Behalf of the Delta Protection Commission's Delta MeHg TMDL Collaborative