



CVCWA Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

STAN DEAN – CHAIR, SRCSD HUMBERTO MOLINA – VICE CHAIR, MERCED
MICHAEL RIDDELL – SECRETARY, CERES FRED BURNETT – TREASURER, CALAVERAS COUNTY WD

October 13, 2006

Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Re: Early review of June 2006 Delta Mercury Total Maximum Daily Load Peer Review,
Draft Staff Report, and Basin Plan Amendment

Dear Ms. Creedon

Thank you for providing this opportunity for an early review of the June 2006 Delta Mercury Total Maximum Daily Load (TMDL) Peer Review, Draft Staff Report, and Basin Plan Amendment (BPA) language. Members of the Central Valley Clean Water Association have met with CVRWQCB (Regional Board) staff and listened to a presentation on the actions and goals of the recommended option and offer the following comments.

As described below, there are four concerns, or important issues we wish to bring to the attention of the Regional Board. The first issue is the report needs to prioritize and emphasize the development of a mercury offset program that will expedite the reduction of mercury loads in the watershed and provide regulatory compliance credit for making those improvements. Second, the report should eliminate the 2014 prohibition of discharge of methylmercury. This provision, which is overly stringent, unnecessarily focuses significant funding and resources on the smallest sources in the watershed and has no clear purpose. Third, we formally request that key information and study results Regional Board staff used in the development of this TMDL be made available to ensure that it is subjected to public and peer review and included in the staff report. Finally, there is a need for this TMDL to recognize State and federal responsibility for responding to this legacy pollutant and to provide public funding to address mercury monitoring and remediation.

1. Mercury Offset Program

We strongly recommend the Regional Board commit to the development and implementation of an effective mercury offset program to ensure stakeholders of the certainty that this compliance option is in place well in advance of regulatory deadlines. To encourage offsets as an effective regulatory tool, the Regional Board should include language in the TMDL that:

1. Commits to the development of an effective offset program or framework in coordination with SWRCB within the next 2 years;
2. Acknowledges relationships between Total and Methylmercury forms and allows total mercury mass load reductions to be used as the basis for offset credits; and
3. Makes candidate projects immediately available for offsets and avoids legal obstacles by working closely with USEPA.

Further, the TMDL implementation plan should specifically describe and authorize the Sacramento Regional County Sanitation District's pilot offset project. This would create momentum and demonstrate that offsets can be implemented to obtain compliance credit for total and methyl mercury.

2. Eliminate the 2014 Methylmercury Prohibition and Other Unnecessary Provisions

The proposed TMDL compels very minor sources of methylmercury to implement very expensive control measures, with little evidence of the potential for measurable reduction and benefit to the environment. The proposed TMDL load allocations, load reductions and implementation plan, including onerous elements such as the 2014 methylmercury discharge prohibition, load caps, and no net increase policies, are built on a number of unsupported assumptions and unproven hypotheses. A verifiable linkage between proposed control measures and actual reductions in fish should be established to justify requiring so many onerous elements.

Our primary concern with this TMDL centers on the significant scientific uncertainties surrounding the ability of the proposed implementation plan to achieve mercury objectives in fish tissue. These uncertainties should be clearly expressed in the Staff Report, as should the uncertainty of most of the source characterizations and the unknowns in understanding control mechanisms. All these uncertainties should be weighed in light of proposed stringent regulatory requirements and prohibitions. When setting new objectives and goals, sections 13241 and 13242 of the California Water Code requires implementation plans to include a complete analysis of the cost-effectiveness of the proposed implementation measures in relation to the attainment of target mercury levels in water and fish. This is not provided in the current version of the TMDL.

The Regional Board staff has not reported any other mercury or methylmercury control programs to document reductions of mercury in fish to the levels proposed in this TMDL. Given this uncertainty, an excessively onerous TMDL implementation plan is not warranted. We are committed to working with the Regional Board staff to identify reasonable initial steps and workable provisions to clarify and provide specific adaptive management practices and flexibility to adjust the TMDL implementation plan.

3. Release Key Information and Analysis for Public and Peer Review

As stated above, some key information and study results that Regional Board staff has used in development of this TMDL have not been made available or necessarily subjected to peer review. Given the complexity of the mercury problem and the need to reach agreement on the best course of action to address the problem, it is essential that all of the information that is to be relied upon in setting policies and actions under this TMDL be fully considered and evaluated. We request that the information identified below be released for public and sent to peer review at the earliest possible time. This requested information includes:

1. Data and study results used to calculate the methylmercury mass balances presented in the TMDL;
2. Data and data quality assurance reports associated with the Twitchell Island Study; and
3. Studies and rationale for asserting that methylmercury concentrations remain constant in rivers (flowing water) over a 24 hour timeframe.

4. State and Federal Responsibility for Funding Legacy Problem

In the Delta, mercury is a legacy pollutant largely resulting from historic mining and erosion. It comes from abandoned mercury mines and cinnabar deposits in the Coast Range and from Sierra streams and rivers where it was used to process gold in the 1800s. Total mercury then methylates in wetlands and in the sediments of open water. A small percentage of total and methylmercury is also put into the system from wastewater treatment plants, storm water discharges, and other minor sources. The attached pie chart, created from data in the draft report, shows the relative magnitude of methylmercury sources. The TMDL must recognize that the mercury issue is a State and federal responsibility and public funding is appropriate to address mercury monitoring and remediation.

We appreciate this opportunity to provide early input into the Basin Planning process and look forward to working with you and your staff to resolve our concerns.

Sincerely yours,

Warren Tellefson
Executive Officer

Cc:
Tom Kimball, SWRCB
Joanne Cox, SWRCB
Alexis Strauss, US EPA Region IX
David Smith, US EPA Region IX
Robert Schneider, Chair, CVRWQCB
Karl Longley, Vice Chair, CVRWQCB
Christopher Cabaldon, Board Member, CVRWQCB
Kate Hart, Board Member, CVRWQCB
Sopac Mulholland, Board Member, CVRWQCB
Dan Odenweller, Board Member, CVRWQCB
Paul Betancourt, Board Member, CVRWQCB
Alson Brizard, Board Member, CVRWQCB
Patrick Morris, CVRWQCB
Jacqueline McCall, CVCWA

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