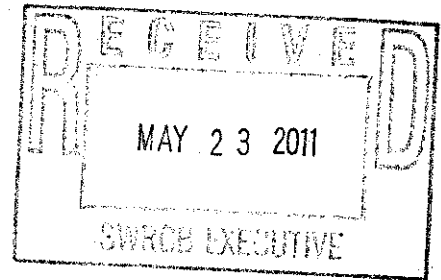


Submitted by email to: commentletters@waterboards.ca.gov
Subject: Comment Letter - Delta Methylmercury TMDL

May 23, 2011



Dear Chair Hoppin and Board Members:

The Sacramento Municipal Separate Storm Sewer System (MS4) (CAS082597), East Contra Costa County MS4 (CAS083313), and Stockton MS4 (CAS083470) will be required via their Phase I NPDES permits to comply with relevant requirements in the final Basin Plan Amendment (BPA). Based on our review of the BPA version publicized on April 18, 2011, we provide to the State Water Board the following comments:

- Address policy issues with the Exposure Reduction Program and scheduling constraints that depend on State Water Board action
- Account for the fact that our MS4 service areas overlap areas covered in other TMDLs
- Recognize potential inconsistencies in various concurrent regulatory actions

Each comment is explained below along with proposed edits to the BPA.

Exposure Reduction Program

We agree with the following language in the BPA: "The State Water Board should develop a statewide policy that defines the authority and provides guidance for exposure reduction programs, including guidance on addressing public health impacts of mercury, activities that

reduce actual and potential exposure of, and mitigating health impacts to those people and communities most likely to be affected by mercury.” The Regional Water Board drafted this text in response to State Water Board Resolution 2005-0060 and subsequent comments from dischargers. However, without the clarity to be provided by such policy, the Exposure Reduction Strategy will be an uncertain process.

We propose that the BPA be revised so that the Exposure Reduction Strategy and Workplans follow the State Water Board’s statewide policy as follows [suggested deletions are struck through; additions are underlined]:

- BPA page 14: “By [six months after development of statewide policy that defines the authority and provides guidance for exposure reduction programs], Regional Water Board staff shall work with dischargers...to complete an Exposure Reduction Strategy.”
- BPA page 15: “The dischargers...shall submit an exposure reduction workplan for Executive Officer approval by [~~two years after Effective Date~~ one year after completion of the Exposure Reduction Strategy].”

We raised this specific comment in our April 2010 comment letter to the Central Valley Water Board [see below Attachment 1, at page 3 of 5] but the response was inadequate in that the schedule does not recognize the need to have the statewide policy in place and the language in these bullet points was part of a late change to the BPA made subsequent to our 4/1/2010 comment letter.

Regulated Service Areas

This TMDL applies to dischargers in the legal Delta boundary. **We propose** that the BPA be modified to state that Control Studies are required for [BPA page 6] as follows “d. Sacramento Area MS4, Stockton MS4, and East Contra Costa County MS4 service areas within and/or upstream of the legal Delta boundary.”

We raised this issue before in discussions the Central Valley Water Board. The language was changed in one section, but missed in the referenced text. Adding “/or” allows us to account for studies conducted within our service area but not necessarily in the subwatershed draining directly to the Delta.

Control Study Scheduling Constraints

This BPA includes several regulatory compliance schedules to which MS4s will be held accountable, but that require action by Regional Board to complete. Delay by the Regional Board in completing its necessary actions could jeopardize the ability of MS4s to comply with compliance schedules. In particular:

- The Regional Board needs to select and contract members for the Technical Advisory Committee and to produce a Control Study Guidance Document [BPA page 7] before significant progress can be made in developing Control Study Workplans [due nine months from the Effective Date].

- Board staff shall work with the TAC and Stakeholder Group(s) to review the Control Study Workplan(s) and results [BPA page 7] Within four months of submittal, the Executive Officer must determine if the Workplans are acceptable [BPA page 8].

We propose that the State Board, in its resolution, recognize that where adherence with regulatory compliance schedules imposed on MS4s depends on Regional Board actions, that mechanisms should be provided to adjust schedules appropriately. In addition, the State Board should include a commitment to support Regional Water Board activities to ensure timely production of the prerequisite guidance document and review of workplans.

This comment is new because the scheduled items were part of late revision to the BPA.

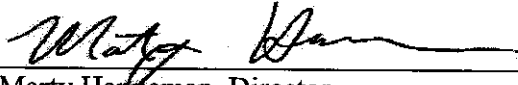
Urge for Consistency

Each of the Phase I Stormwater programs already are (or eventually will be) impacted by other mercury TMDLs (e.g., Morrison Creek and American River for Sacramento Area; San Joaquin and Mokelumne Rivers for City of Stockton/ County of San Joaquin; San Francisco Bay for Contra Costa County, its 19 incorporated cities and towns, and the Contra Costa Flood Control and Water Conservation District). In this light, **we urge** the State Water Board and Regional Water Boards provide consistent approaches and avoid duplicate regulatory requirements for dischargers.

The State Water Board appears to be working on two projects to address mercury impairments: (1) developing a statewide mercury fish tissue objective(s) and (2) developing a statewide mercury TMDL addressing the many impaired reservoirs. **We urge** the State Water Board to align these efforts to avoid duplicative effort and conflicting regulatory requirements.

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.

Sincerely,



Marty Handeman, Director
Department of Utilities
City of Sacramento



Jeff Willett, P.E., Interim Director
Department of Municipal Utilities
City of Stockton



Michael Peterson, P.E., Director
Department of Water Resources
County of Sacramento



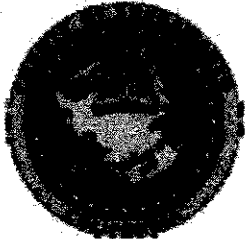
R. Mitch Avalon, Deputy Director
Contra Costa County Public Works Dept.



Thomas Dalziel, Program Manager
Contra Costa Clean Water Program

Attachment 1: April 1, 2010 Comment letter Re: Phase I Stormwater Program comments on "Basin Plan Amendment for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary" to Central Valley Regional Board

ATTACHMENT 1: April 1, 2010 Comment letter Re: Phase I Stormwater Program comments on "Basin Plan Amendment for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary" to Central Valley Regional Board



**Ms. Katherine Hart, Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670**

April 1, 2010

Re: Phase I Stormwater Program comments on "Basin Plan Amendment for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary"

Dear Chair Hart and Board Members:

The Sacramento Municipal Separate Storm Sewer System (MS4) (CAS002597), Contra Costa County MS4 (CAS003313), and Stockton MS4 (CAS003470) will be required via their Phase I NPDES permits to comply with relevant requirements in the February 2010 draft Basin Plan Amendments for the control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary (HPA). In reviewing the draft HPA, we have strong concerns that the proposed "Exposure Reduction Program" language does not utilize the best and most effective approach and, as written, would impose a grossly disproportionate obligation on MS4s relative to their discharges of methylmercury. We are providing this letter to document our concerns and ask that the language be revised as we have proposed.

Our fundamental concern arises from the draft HPA language that assigns responsibility for implementing an Exposure Reduction Program to dischargers. While we agree with the need to reduce the potential for mercury exposure for people that eat fish caught in the Delta, it is erroneous to assert that MS4 dischargers are creating this risk. The risk is created by legacy pollution in the State waterways. The State is responsible through the Clean Water Act for reporting the condition of the State waterways and as such is responsible for delivering this information to users of those waterways. This role is accomplished by preparing the Impaired Water Body lists or the 305(b) reports. It is incumbent upon the State to make this information more accessible to the public, rather than deferring this responsibility to dischargers.

Page 1 of 5

We urge the revision of this language to clearly provide the option for MS4s to implement their existing programs or participate in a state-led program, and delete any language assigning responsibility to the MS4s for reduction of risk. Our more specific comments follow.

Objectives and Scope of the Exposure Reduction Program

The draft BPA mandates that MS4s participate in an Exposure Reduction Program that has no clearly defined leadership, scope, or budget. The listed objectives in the draft BPA language are an inconsistent combination of goals and strategies that exemplify the lack of clarity and direction. We agree that "The State Water Board should develop a statewide policy that defines the authority and provides guidance for exposure reduction programs" because the Regional Water Board has developed this draft text in response to State Water Resources Control Board Resolution 2005-0060.

To be effective, an Exposure Reduction Program (ERP) should be a regional effort, ideally coordinated or integrated with the ERP required by the San Francisco Bay Mercury TMDL. The State's Department of Public Health (DPH) should implement it, because this agency has the most relevant mission and expertise to lead a public health program for the communities affected by mercury in fish. The BPA language should indicate that development and implementation of an ERP is the responsibility of the State.

If a comprehensive regional ERP is established by the State, MS4s could participate appropriately as part of their public outreach programs required under their NPDES permits. Ideally, such participation would utilize messages and materials developed by the State. A State-led ERP could also be an appropriate recipient for funding from dischargers, which should be proportional to their mercury and methylmercury discharges. If an effective regional program is not established by DPH or another State agency such as the Office of Environmental Health Hazard Assessment or Department of Toxic Substances Control, we believe that it is inappropriate, and most likely counter-productive, for the BPA to create requirements for individual dischargers to be responsible for developing their own ERPs. MS4s and other dischargers do not have the expertise to develop public health programs, and an uncoordinated approach to such a program could lead to inefficient use of resources, and a confusing and conflicting patchwork of messages.

We do not contest the concept of "integration of community-based organizations and consumers of Delta fish into planning, decision-making, and implementation of exposure reduction activities". However, this implementation strategy should be included in an ERP led by DPH or another State agency, as it is outside the expertise and scope of responsibility of MS4s and other dischargers.

Proposed Solution #1: Revise the bullet point list of objectives as follows:

- The goal is to "Reduce actual and potential mercury exposure of Delta fish consumers most likely affected by mercury".
- The Strategy may include efforts to: (1) "Raise awareness of fish consumption issues among people and communities most likely affected by mercury in Delta-

caught fish such as subsistence fishers and their families"; (2) Develop and implement community-driven activities to reduce mercury exposure"; and (3) "Integrate community-based organizations that serve Delta fish consumers, Delta fish consumers, and public health agencies in the design and implementation of an Exposure Reduction Program".

Proposed Solution #2: Delete the requirement for a workplan that states, "Dischargers shall integrate or, at a minimum, provide good-faith opportunities for integration of community-based organizations..." This requirement is redundant or could preclude any recommendations from the required Exposure Reduction Strategy, which does require including community-based organizations and Delta fish consumers.

Proposed Solution #3: Schedule the Exposure Reduction Strategy and Workplan to allow the State Water Board's development of a statewide policy that defines the authority and provides guidance for exposure reduction programs. "By [six months after Effective Date and development of statewide policy that defines the authority and provides guidance for exposure reduction programs, whichever comes later], Regional Water Board staff shall work with dischargers, State and local public health agencies, and other stakeholders, including community-based organizations and Delta fish consumers, to complete an Exposure Reduction Strategy." And "The dischargers, either individually or collectively, shall submit an exposure reduction workplan for Executive Officer approval by [two-years-after-Effective Date/one year after completion of the Exposure Reduction Strategy]."

Proportional Responsibility

The current BPA language states that "At a minimum, point source dischargers and the state and federal agency dischargers shall be responsible for conducting the Exposure Reduction Program." This qualification indicates disproportionate responsibility for the point-source dischargers including MS4s. We strongly oppose such language in the BPA.

The combined methylmercury load from all MS4s in the Delta is less than 1% of the total load. Because the TMDL load and wasteload allocations are proportional to current loadings, any responsibility for developing and implementing an ERP should be similarly proportional. The benefits of providing stormwater drainage in our urban areas are no less important than the benefits provided by activities of other source types. Non-participation by some dischargers should not require the remaining dischargers to compensate for that shortage. Moreover, as noted previously, because the risk arises primarily from the legacy pollution to State waterways, the State should remain primarily responsible for reporting on the health of the waterways and the risks associated with their use.

Proposed Solution: For any source type that cannot be required to participate in an ERP, provide separate funds in proportion to that load allocation. USEPA's funding to Bay Area Stormwater Management Agencies Association in a grant entitled "Clean Watersheds for a Clean Bay" supports regional efforts to remove Mercury from watershed in part by developing a risk reduction program to be implemented throughout the San Francisco Bay region.

Inter-regional Consistency

The Exposure Reduction Program language originated from State Water Resources Control Board Resolution 2005-0060, which applied to both the San Francisco Bay and Central Valley Regional Water Boards. The two Regional Water Boards implementing the resolution have each drafted different language in their Basin Plans in response to the resolution.

Notwithstanding the good reasons for the language changes, this BPA should aim for consistency to the extent practicable for two reasons: (1) the County of Contra Costa MS4 manages one stormwater program but must comply with two regional permits, and (2) whatever risk reduction program is developed for San Francisco Bay could be expanded or replicated in the Delta if the requirements were similar.

Proposed Solution: Review the final draft language for the ERP for consistency with requirements in the San Francisco Bay Mercury TMDL BPA and Provision C.11 Mercury Controls of the Municipal Regional Stormwater NPDES Permit No. CAS612008.

Comment on Other BPA Language

In addition to the ERP, we share concerns with the following items.

BPA Page #1 "Water Quality Objectives"

"The long-term goal of the mercury program is to enable people to safely eat four to five meals per week (128-160 g/day) of Delta fish."

This long-term goal is not associated with the TMDL allocations and exceeds consumption levels previously applied by USEPA and the Regional Boards. Further, the goal is not appropriately part of the BPA, which is to establish water quality objectives and implementation measures for the water quality objectives. Long-term goals unassociated with the water quality objectives proposed for adoption should not be included in the BPA.

Proposed Solution: Delete the statement "The long-term goal of the mercury program is to enable people to safely eat four to five meals per week (128-160 g/day) of Delta fish" from the BPA.

BPA Page #4 "Requirements for NPDES Permitted Urban Runoff Discharges"

"The Sacramento MS4 (CAS082597), Contra Costa County MS4 (CAS083313), and Stockton MS4 (CAS083470) shall continue to conduct mercury control studies to monitor and evaluate the effectiveness of existing BMPs per existing requirements in permits and orders, and to develop and evaluate additional BMPs as needed to reduce their mercury and methylmercury discharges within and upstream of the legal Delta boundary."

While we will continue to improve our stormwater management programs and participate in the TMDL's Phase 1 implementation, there is no basis in this TMDL for determining "as needed" reductions upstream of the legal Delta boundary.

Agencies with jurisdictional area located in the upstream of the legal Delta boundary will benefit from developing programs to control mercury. In developing future TMDLs, agencies that have conducted studies should not be required to conduct additional studies for any future mercury TMDLs.

Proposed Solution: Delete "and upstream of" from the text. Existing NPDES permit requirements already address the interest in reducing mercury loadings from the MS4s into upstream waters.

BPA Page #13 "Mercury Control Program for Morrison Creek"

The text states that a mercury control program will be developed for Morrison Creek, in the Sacramento Area, by 2017. Morrison Creek is not listed as impaired for mercury. We are concerned if the Basin Plan Amendment is used to designate urban tributaries as impaired separate from the 305(b) reporting process.

Proposed Solution: Delete reference to Morrison Creek on BPA page #13.

Thank you for this opportunity to comment on the public review draft BPA. We sincerely request that the Regional Board review our comments and revise the current BPA to address these concerns.


Sincerely,



Marty Henderson, Director
Department of Utilities
City of Sacramento



Jeff Willett, P.E., Eng. Man./Asst. Dir.
Department of Municipal Utilities
City of Stockton



Michael L. Peterson, P.E., Principal Civil Engr.
Sac. Co. Dept. Wtr. Res.
County of Sacramento



R. Mitch Avalon, Deputy Director
Contra Costa County Public Works Dept.