

Construction Industry Coalition on Water Quality



February 17, 2017

The Honorable Felicia Marcus, Chair and
Members of the State Water Resources Control Board
c/o: Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Public Comment
Beneficial Uses and Mercury Objectives
Deadline: 2/17/17 12 noon



Via Email: Commentletters@waterboards.ca.gov

RE: Comments on Beneficial Uses and Mercury Objectives

Dear Chair Marcus and Members of the Board:

On behalf of the Construction Industry Coalition on Water Quality (CICWQ), Building Industry Defense Foundation (BILD), and California Building Industry Association (CBIA), thank you for the opportunity to provide comments on the proposed Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Provisions) which was distributed for public review on January 4, 2017 (also here referred to as the “Draft Staff Report”).

We are providing summary comments in this letter specific to our memberships, and want to recognize and support the comments submitted to you on this matter by the Association of California Water Agencies and the California Stormwater Quality Association, of which CICWQ is a current member.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

BILD is the premier legal advocate for the building and construction industry in California. BILD is a non-profit mutual benefit corporation and a wholly-controlled affiliate of the Building Industry Association of Southern California, Inc. (“BIASC”). BIASC represents approximately 1,200 member companies across Southern California that are active in all aspects of the building industry, including land development; builders of housing, commercial, and infrastructure; and related entities including architects, engineers, planners, contractors, suppliers, and property owners. The purposes of BILD are, in part, to initiate or support litigation or agency action designed to improve the business climate for the building industry and to monitor and involve itself in government regulation critical to the industry.

CBIA is a non-profit trade association comprised of approximately 6,500 member companies that are engaged in all aspects of planning, designing, financing, constructing and selling approximately 80% of all new homes built in California each year.

As an overarching comment and as a representative of the construction sector, we continue to be dismayed by the State’s effort to enact regulation, that upon adoption, would place hundreds, if not thousands, of stormwater discharge permit holders out of compliance, with no clear ability to comply in the future. Our specific comments are as follows:

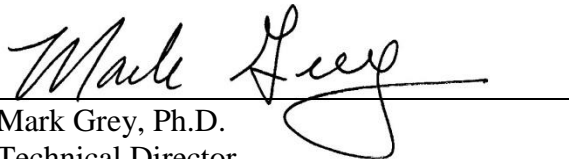
- I. The Construction General Permit (CGP): The Draft Staff Report finds that the CGP requires sufficient sediment controls such that the implementation program does not include additional requirements for mercury in construction stormwater discharges. We ask that provisions should confirm in Section 3 related to stormwater discharges that CGP Discharge Prohibition C.1, which prohibits non-stormwater discharges that would cause or contribute to a violation of any water quality standard should be exempt from the new mercury water quality objectives (WQO), since such discharges of potable water and groundwater dewatering may contain mercury higher than the stringent new WQO, and there is no technology which construction sites could use to achieve the WQO.

- II. Municipal Separate Storm Sewer System (MS4) permits regulating urban stormwater: Urban stormwater is not a source of mercury according to water quality experts, particularly in Bay Area TMDLs. Further, Bay Area TMDL data indicates that the typical new development and redevelopment mandates, including LID BMP mandates do not control for mercury. Nevertheless, the new, stringent, unattainable WQOs upon adoption will become MS4 permit receiving water limitations. MS4 permittees will be required to expand the reasonable assurance analysis requirements for MS4 permits mandated by 2015-0049, and costs of watershed management plans or other alternative compliance mechanisms will increase to take mercury into account due to the addition of mercury objectives to receiving water limitations. As watershed management plans are modified, new control measures for mercury in urban stormwater will

- need to be addressed, but there are no effective technologies, and imposing costs for invention, development and implementation of new mercury control technologies supplementary to current LID BMP technologies is not warranted given that urban runoff is an exceedingly minor source of mercury. The Provisions should be modified to clarify that mercury WQOs should be excluded from receiving water limitations.
- III. Wetlands Regulation. Builders engaging in urban development and discharging fill have an obligation to create new wetlands for water quality treatment purposes, particularly to deal with stormwater, and to compensate for discharges of fill under the Federal and SWRCB No Net Loss Policies, Clean Water Act, and Cal. Fish and Game Code Section 1600 et. seq. The Provisions require new regulation and new requirements in 401 certifications, WDRs, and waivers of WDRs for all projects creating wetlands (as required by law to do) particularly in defined “areas with elevated mercury concentrations.” The regulations and measures to be imposed are not specified, which is a substantive due process problem and precludes any assessment by the regulated community of the potential impact of such regulations on its duty to create wetlands and the costs of doing so. Time should be taken to work with building industry on exactly what the regulations would require for mercury controls.
- IV. Tribal Beneficial Use Definitions: Tribal beneficial uses definitions need to be refined to preclude interpretation that they require minimum flow objectives or reintroduction of flows to urban streams. Guidance needs to be given to RWQCBs regarding how, where, and when waterbodies should be designated.

We appreciate your consideration of our comments. Should you or your staff have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or mgrey@biasc.org.

Respectfully submitted,



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Construction Industry Coalition on Water Quality