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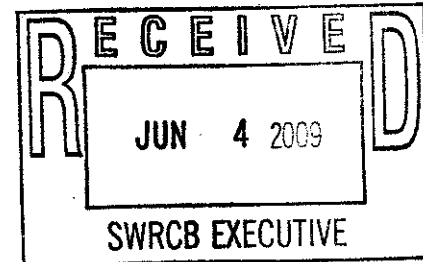
Public Comment
SF Bay PCB TMDL's
Deadline: 6/4/09 by 12 noon



*Flex your power!
Be energy efficient!*

June 2, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
By e-mail: commentletters@waterboards.ca.gov



ATTN: Ms. Jeanine Townsend

Re: Comment Letter – San Francisco Bay PCBs TMDL

Dear Ms Townsend:

The California Department of Transportation (Caltrans) appreciates the opportunity to provide comments on the proposed approval of the San Francisco Bay Basin Plan Amendment (BPA) that would establish a Total Maximum Daily Load (TMDL) for polychlorinated biphenyls (PCBs). The TMDL requires major reductions in PCB loading to the Bay over a 20-year period. While we support the goals of the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) to reduce PCB pollution, this TMDL has the potential to significantly affect Caltrans operations and management. Our major concern is as follows:

Remediation under Federal or State Laws: PCBs were manufactured in the United States and widely used from the late 1920s through the 1970s in the electricity utility. A number of parties used oils containing PCBs and the associated dioxins. The biggest impact to the aquatic environment in the San Francisco Bay (Bay) is not current discharges of these persistent, bioaccumulative and toxic substances, but the legacy left behind by their use. Rather than subject local and state publicly-funded entities with the burden of cleaning up the Bay sediments and /or using Publicly-Owned Treatment Works to treat urban stormwater, (the latter likely to present its own fiscal and environmental challenges), the State Water Resources Control Board (SWRCB) and SFBRWQCB should pursue remediation of the Bay under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the state corollary rather than through the TMDL process. Since the primary concern comes from the human consumption of fish from the Bay, there is also a case for the pursuit of natural resources damages under either CERCLA or the state corollary. Caltrans suggests that the SFBRWQCB consult with the Environmental Protection Agency

(EPA) Region IX, and with the federal trustee agencies such as the National Oceanic and Atmospheric Administration-Fisheries (NMFS), the U.S. Fish and Wildlife Service (FWS) and with the state trustee agency the California Department of Fish and Game (DFG) to begin the process of real long-term remediation of the PCB contaminated Bay sediments. Caltrans strongly suggests that the legacy contamination be addressed under CERCLA or other applicable state statutes first.

Caltrans therefore requests that the SWRCB remand back to SFBRWQCB the proposed BPA for consideration of these alternative approaches. Only after exploring the various cleanup actions described above, should the SFBRWQCB and SWRCB consider a TMDL.

Should the SWRCB and SFBRWQCB however decide to use the TMDL to remedy the legacy contamination, Caltrans comments are as follows:

- 1). **Caltrans as stakeholder:** The decision to implement this TMDL should be based upon reliable data and scientific conclusions. The TMDL lists Caltrans as one of the stakeholders. Caltrans is not aware of any monitoring studies attributing higher than background levels of PCB present in highway runoff. If the TMDL is adopted as written, Caltrans will be one of the implementing parties and will be required to undertake onerous and unnecessary monitoring of highway runoff to determine the presence of PCBs in highway runoff to even know where to begin to implement the proposed TMDL. Instead, the absence of any evidence that Caltrans stormwater discharges have PCB loads should be used to exempt Caltrans from this BPA.
- 2). **Caltrans Allocation :** The intent of this BPA is to reduce stormwater runoff waste load allocations (WLA) over 20 years and to implement this TMDL through the NPDES stormwater permits issued to the Bay area stormwater runoff management agencies and the Caltrans. The urban stormwater runoff waste load allocations implicitly include all current and future permitted discharges, not otherwise addressed by another allocation, and unpermitted discharges within the geographic boundaries of stormwater runoff management agencies including, but not limited to, Caltrans roadway and other facilities and rights-of-way, atmospheric deposition, public facilities, properties proximate to stream banks, industrial facilities, and construction sites.

As such, the proposed TMDL places Caltrans in a subordinate position within the geographic boundaries of each municipal stormwater program. As part of the TMDL, these municipal programs are directed to begin implementation of a pilot program to address PCB hot spots. This hot spot effort and the other specified activities may not be appropriate for Caltrans' transportation system in the Bay Area.

We specifically request that the SFBRWQCB modify the BPA to provide the same flexibility incorporated in the adopted San Francisco Bay Area Mercury TMDL. The Mercury TMDL includes a provision allowing Caltrans to implement a regional program focused directly on Caltrans roadways and facilities. Alternatively, Caltrans could choose to implement load reduction actions on a watershed or region wide basis in lieu of sharing a portion of an urban runoff management agency's allocation. In such a case, the SFBRWQCB would impose a separate WLA for Caltrans and permit Caltrans to demonstrate progress toward attaining an allocation or load reduction in the same manner mentioned previously for municipal programs.

This change would allow Caltrans to implement a consistent region wide PCB control program. In addition, it may enable Caltrans to better coordinate its activities to address the PCB TMDL, as well as the Mercury TMDL and other related TMDLs that may be adopted for the Bay in the future.

Caltrans submitted a similar request to the SFBRWQCB during development of this TMDL. In response, the SFBRWQCB pointed out that the phased adaptive implementation plan allows for the requested flexibility and that it "may consider a separate allocation for Caltrans in the future based on a demonstration by Caltrans that it is needed for implementation" In light of this response, Caltrans requests that the SFBRWQCB clearly incorporate the option of a separate Caltrans compliance effort in this BPA as was incorporated into the San Francisco Bay Mercury TMDL.

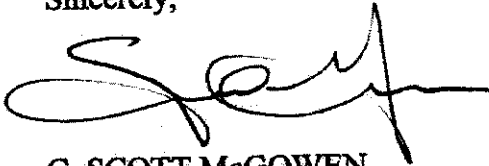
- 3). **Goals:** In addition, Caltrans is concerned that the PCB TMDL does not provide clear goals for determining compliance compared with the Mercury TMDL. For example, it would help structure control activities if the TMDL prescribed a target for suspended sediment in storm drains. According to the draft Board agenda item (page 3), the sediment concentration goal is 1 µg/kg, "which will result in attainment of the fish tissue target of 10 µg/kg." This same goal would be appropriate for storm drain discharges. In addition, the inclusion of a specific target would facilitate compliance.

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- 4.) **Possible Diversion to Wastewater Treatment Plant:** One of the provisions of the TMDL lists possible diversion of the urban stormwater run off to POTW. Caltrans strongly believes that sending the entire highway run off to POTW s is not feasible nor is it desirable. The POTWs would likely be overwhelmed by such flows and this would increase the probability of a sewage overflow during the storms.
- 5.) **Funding:** It is certain that significant additional resources will be needed to implement the provisions of this TMDL. In the absence of an increase in state gas tax, subject to legislative and voter approval, Caltrans cannot unilaterally impose user or utility "fees" upon ourselves to pay for the TMDL implementation.

Again, thank you for the opportunity to comment. If you have any questions, please contact Joyce Brenner of my staff at (916) 653-2512.

Sincerely,



G. SCOTT MCGOWEN
Chief Environmental Engineer

c: Joyce Brenner, Office Chief, Program Implementation
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