SACRAMENTO

STORMWATER QUALITY PARTNERSHIP

April 9, 2008

Members of the Central Valley
Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

Re: February 2008 draft "Amendments to The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary"

Dear Members of the Board:

Thank you for providing this opportunity to review the subject documents (hereafter "TMDL"). The full report includes proposed amendments to Basin Plan language, followed by several attachments explaining the amendments. Comments provided in this letter focus on the Basin Plan Amendment. These comments are submitted to you on behalf of the Sacramento Stormwater Quality Partnership.

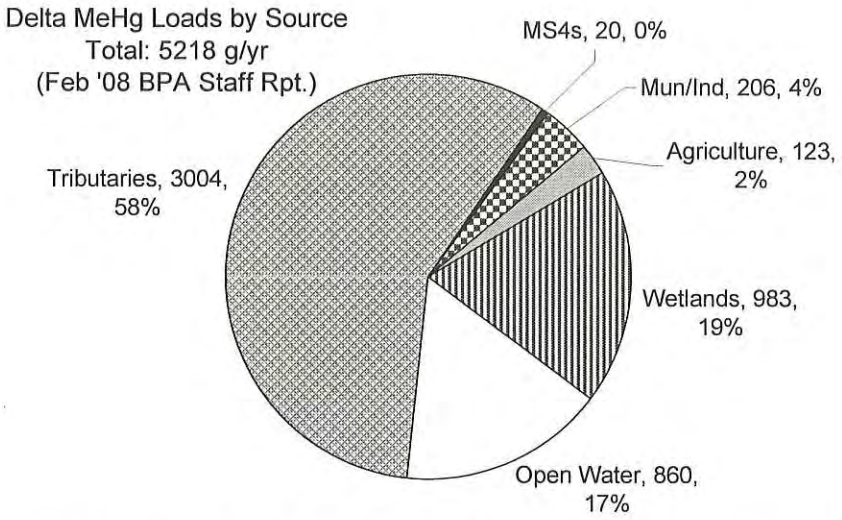
We would like to preface our comments by saying that we, as environmental stewards in the Sacramento metropolitan area, have done much to understand and improve the quality of our stormwater discharges. Regardless of the fact that our urban stormwater contributes less than half of 1% of the mercury load to the Delta, we are committed to doing our part in reducing mercury impairment in the Delta. In the interest of prudent use of public funds as well as achieving real environmental benefits, it is our hope that we would not be required to spend our limited resources on activities that will have no measurable effect on those impairments.

As described below, there are three important issues that we still wish to bring to the attention of the Regional Board:

1) The existing mercury load to the Delta must be addressed prior to implementing Phase 2 of this TMDL
2) The proposed controls for methylmercury will not reduce mercury concentrations in fish tissue; consider Minnesota approach
3) MS4 mercury control efforts must focus on total mercury; existing MS4 control efforts are MEP

1. The existing mercury load to the Delta must be addressed prior to implementing Phase 2 of this TMDL

Regulated sources of mercury such as municipal stormwater represent a small fraction of the overall mercury budget. The following pie chart from the TMDL demonstrates the relative magnitudes of methylmercury (MeHg) sources, where "MS4s" stands for municipal separate storm sewer systems and the percentages are rounded to the nearest whole number:



The TMDL leaves the impression that the studies and potentially resulting controls implemented by NPDES dischargers will result in achieving the TMDL fish tissue targets; yet there is no plan or strategy to deal with the bulk of the mercury load. Focusing attention on minor sources, while 75% of the methylmercury sources (tributaries and open water) are not even addressed, is misleading to decision makers and ultimately will be ineffective in achieving reductions in fish tissue mercury concentrations. The Regional Board should have a plan for addressing the entire load of mercury to the Delta beyond simply allocating reductions to tributary watersheds.

The mercury problem in our waterways stems from the gold rush in the late 1800s that contaminated streambeds and streambanks throughout the Sierra Nevada and Coastal Range, and thus generally has no identified responsible party. Consequently, the State, as the waterway caretaker, needs to address this share of the mercury impairment. The TMDL needs to allocate load reduction requirements to the State rather than passing it on to minor sources.

Recommendations:

- Revise Phase 1 of the TMDL to include an overall strategy for the Regional Board completing over 45 mercury TMDLs for the multiple water bodies tributary to the Delta (based on the 2006 303(d) list for Region 5) and make significant progress in completing them before initiating Phase 2.
- Recognize the State's responsibility in the TMDL for the greatest proportion of the methylmercury load to the Delta (open water and tributaries). Allocate load reductions to the State and require characterization and control studies by the State if those are pursued.

2. The proposed controls for methylmercury will not reduce mercury concentrations in fish tissue; consider Minnesota approach

Methylmercury is different than other impairments addressed by the Regional Board. The concentrations and effects of mercury in our water bodies today are not caused by current land uses. Scientists widely recognize that mercury is a naturally-occurring element and a legacy pollutant, present in Central Valley water bodies predominately as a result of historic mining and natural erosion.

The current draft follows a rote TMDL model of blanketing load reductions to every permitted discharger throughout the Delta region without addressing this existing impairment or evaluating the impacts of this approach on discharger operations. This rote approach is followed even while no total mercury or methylmercury control program has documented reductions of mercury in fish to the levels proposed in this TMDL. This TMDL, if adopted in its current form, would have profound impacts on a variety of state and federal mandates and objectives aimed at improving environmental and public health associated with wetland management and restoration within the Delta and its watersheds.

Recent mercury TMDLs in Minnesota[1] (covering two-thirds of the state's listed water) and in seven Northeast states[2] (covering over 10,000 water bodies and 46,000 river miles) have taken a alternative more prudent approach that would be appropriate for the Delta as well. Those TMDLs recognize that the major (>97%) source of total mercury in the environment is atmospheric deposition. Given the magnitude of the reductions required to implement the TMDLs, the regulators in Minnesota and the Northeast states recognized that they could reduce in-region sources further to compensate for insufficient reductions from out-of-region or otherwise uncontrollable sources. Instead of allocating WLA among and setting concentration limits for individual sources within the state or region, mercury reduction will be accomplished through mercury minimization plans and the continuation of region-wide mercury reduction efforts. Stormwater managers in the Central Valley should not have to do any more than that. The methylmercury characterization and control studies proposed in this TMDL would expend limited public funds with no environmental benefit.

We generally support the concept of offset programs as an alternative compliance tool. However, these programs should be pursued as part of the State's effort to address the existing mercury impairment and funded accordingly.

Recommendations:

- Revise the TMDL to follow the example of prudence set by other states in seeking mercury reductions through mercury minimization plans and the continuation of region-wide mercury reduction efforts.

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[1] Minnesota Statewide Mercury Total Maximum Daily Load (2007). By Minnesota Pollution Control Agency. Submitted March 27.

[2] Northeast Regional Mercury Total Maximum Daily Load (2007). By Connecticut Department of Environmental Protection (DEP), Maine DEP, Massachusetts DEP, New Hampshire Department of Environmental Services, New York State Department of Environmental Conservation, Rhode Island Department of Environmental Management, Vermont Department of Environmental Conservation, New England Interstate Water Pollution Control Commission. Submitted October 24.

- The Regional Board should use an approach that emphasizes holistic, Delta ecosystem-wide benefits when considering elements of the TMDL. The test of feasibility for any methylmercury control measure should consider the potential negative environmental consequences of any proposed changes to our stormwater management program such as the potential of prohibiting wetland construction. This potential negative environmental consequence should be balanced with the negligible measurable benefit of reducing mercury concentrations in discharges to the Delta that represent less than half of 1% of the load.
- Revise the TMDL to include a Use Attainability Analysis, completed by the Regional Board in Phase 1, to determine if the fish tissue goals are reasonable and achievable. Adjust the fish tissue objective accordingly.
- Support rather than discourage and delay State implementation and funding of mercury offsets.

3. MS4 mercury control efforts must focus on total mercury; existing MS4 control efforts are MEP

Although stormwater is a minor contributor of mercury, we recognize the benefit of doing whatever is feasible to reduce our mercury discharges. In that regard, we support requirements to continue our existing programs intended to reduce total mercury discharges to the maximum extent practicable. However, we are unable to directly control methylmercury production and should not be required to focus control efforts on methylmercury. This point is particularly important in that the effects of methylmercury in our water bodies today are not caused by today's urban areas or other land and water managers, but the result of historic discharges.

The SSQP's comprehensive draft Mercury Plan, submitted to the Regional Board on May 1, 2004, already guides the Permittees' mercury reduction activities. Although comments on the draft plan have not been received to date, the Permittees have already implemented key provisions to ensure continued progress in reducing total mercury. The Mercury Plan incorporates the SSQP's existing BMPs that reduce mercury through sediment control/removal and adds new pollution prevention BMPs to satisfy permit specified concepts. New BMPs promote the proper handling and disposal of mercury-containing products by Permittee employees, the commercial/industrial sector and the general public. The TMDL should recognize this plan as an adequate level of effort by the SSQP in controlling discharges calculated as being less than half of 1% of the load to the Delta.

In addition, by focusing TMDL control efforts unnecessarily on insignificant MS4 methylmercury discharges, important MS4 BMPs would be negatively impacted. This TMDL would significantly affect the MS4s ability to utilize wet detention basins and wetlands as BMPs for the reduction of other pollutant discharges. There are few other BMPs available to MS4s that provide the same high level of pollutant removal efficiency as wet basins and as such the MS4s ability to reduce pollutant discharges would be negatively affected by the limits placed on the use of wet basins.

Recommendation:

- The TMDL should recognize existing MS4 total mercury control efforts as MEP. The TMDL should support the continuation of these efforts in lieu of the ability to control methylmercury production.

- The TMDL should not require further characterization and control studies for MS4s nor should it require changes in wet detention basin or wetlands operations until after the existing mercury impairment has been evaluated in Phase 1 of the TMDL and then only if MS4 discharges have been determined to be of greater significance.

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,

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