October 29, 2012

Robert Schlipf
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Via E-mail**:** *rschlipf@waterboards.ca.gov*

SUBJECT: Comments to Tentative Order for Municipal and Industrial Wastewater Discharges of Mercury and PCB in the San Francisco Bay

Dear Mr. Schlipf:

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on the Tentative Order (TO) for Municipal and Industrial Wastewater Discharges of Mercury and PCB in the San Francisco Bay. BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 6.5 million people in the nine county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals charged with protecting the environment and public health. BACWA is pleased to see that the TO identifies that our members' effluent mercury and PCB loads are well below the POTW aggregate waste load allocation identified by the two TMDLs. These low loads are a testament to the excellent pollution prevention efforts by the region's POTWs.

Overall, BACWA would like to commend the Regional Water Quality Control Board (Water Board) for a well written TO. We are pleased to be able to already meet the final aggregate mercury waste load allocation that was not to be enforced until 2017. As is appropriate due to POTWs' low loads, the TO reduces and streamlines requirements associated with mercury source control programs, as well as mercury and PCB risk reduction programs.

BACWA also agrees with the decision to reduce monitoring of PCBs via method 1668C to the 40 congeners observed in fish tissue by the Regional Monitoring Program, down from the full 209 congeners. This reduction in congeners will allow POTWs to refocus their monitoring efforts on constituents that may constitute a health risk.

While BACWA concurs that the TO is a well thought out continuation of the Water Board's mercury and PCB control program in the San Francisco Bay, we have a few concerns and a couple of recommendations to clarify the TO. These comments pertain to PCB monitoring requirements as well as to the risk reduction requirements that were carried over from the current watershed permit.

1. **PCB data gathered via Method 1668C is of poor quality**

   The current watershed permit (Order No. R2-2007-0077, as amended by Order No. R2-2011-0012) requires that data for individual congeners be generated using proposed USEPA Method 1668C. Dischargers have been collecting data using this method since

spring 2011. Method 1668C was considered for promulgation by the EPA in 2012. The EPA received 35 comment letters on the method. Of these comments, five (5) supported the approval of this method, and thirty (30) opposed citing various reasons including the many shortcoming of the inter-laboratory study conducted by EPA, data reproducibility, ubiquitous problem of background contamination, etc. The EPA deferred the promulgation of this method, and EPA staff have stated it will not be promulgated until after an interlaboratory validation study can be conducted.

Additionally, in the packet for the March 9, 2011 Water Board hearing when the PCB requirements were adopted into the Watershed Permit, Water Board staff also expressed that "…we share concerns regarding the limited amount of data available, intra-laboratory variability, and data quality."[1]

Two contract laboratories have analyzed more than 95 percent of the samples gathered since Spring 2011. Agencies that used one of the laboratories obtained results showing consistently higher PCB concentrations, and a higher degree of blank contamination, than agencies that used the other laboratory. This apparent bias may reflect differences in the actual concentrations between the two sets of POTWs, but it is reasonable to question whether it is due to differences in sample handling and reporting. Because it is important there be confidence in the data set generated by the monitoring program, it is necessary to investigate potential reasons for this apparent systematic difference between results from the two laboratories. Preliminary investigations by individual member agencies are ongoing to identify the reasons for these differences, but a regional effort will be required to ensure the consistency of future analytical results.

Until these differences are investigated and the sampling, analytical and reporting protocols for Method 1668C are further refined, the data gathered is of insufficient quality for a reevaluation of wasteload allocations should method 1668C be promulgated. BACWA requests that the permit allow that some of the resources used for routine monitoring be reallocated to fund a special interlaboratory comparison study, and that the permit acknowledge the insufficient quality of the data collected. BACWA is happy to meet with Water Board staff to discuss how the sampling schedule during such a special study might meet the Water Board's needs for data collection.

2. PCB sampling requirements are disproportionate to loads

Under the current watershed permit, and carried forward into this TO, POTWs are required to collect PCB samples between one and four times per year depending on their facility's design flow. This totals 106 samples per year for the POTW community, which will cost approximately $400K per five year permit cycle, assuming an average per-sample analysis cost of $800 for 40 congeners.

[1] http://www.waterboards.ca.gov/rwqcb2/board_info/agendas/2011/March/6/6_RTC.pdf, response to BACWA's comments, pg. 7.

Meanwhile, the stormwater community, which is responsible for 60 percent of PCB loads, compared to less than seven percent from the POTW community[2], is required to collect a minimum of 16 samples per year. The Stormwater community performed a reconnaissance survey and collected 91 samples from 16 candidate watersheds. Based on the results of this survey, six watersheds were ultimately chosen for future monitoring. They were selected based on being representative of other watersheds, containing management opportunities, being named as MRP sites, and the feasibility of collecting samples.

This type of targeted monitoring makes sense to obtain the maximum value from funds spent on monitoring. Monitoring frequency for POTWs should be based on loads rather than flow, which would allow the community to reduce the total number of samples without sacrificing loading data. This would also mean that the highest monitoring costs would be borne by facilities with the highest loads. While the data that has been collected since the adoption of Order R2-2011-0012 needs refinement as described in comment #1 above, it is sufficient to provide the type of order-of-magnitude loading information that would allow a redistribution of monitoring effort to maximize loading information per monitoring dollar.

3. **Risk Reduction efforts should not be the purview of POTWs**

POTWs contribute very little to the mercury and PCBs in the San Francisco Bay, yet are responsible for a large fraction of the funds allocated to public health campaigns, the results of which are unclear. POTWs have expertise such that these funds could be better leveraged towards other facets of the mercury and PCB problem, such as helping to validate method 1668C, as described above.

Mercury and PCB contamination are a major statewide issue, and risk reduction is best dealt with on a statewide level. It cannot continue to be dealt with on a Regional Board-by-Regional Board basis. For example, the Central Valley Water Board's September 2012 Mercury Exposure Reduction Program Strategy states that "[d]uring initial MERP activity period, staff will seek opportunities to integrate future Delta MERP activities with San Francisco Bay efforts to create a more regional program and/or any broader efforts that develop as a result of the Statewide mercury policy currently under development."[3]

NPDES permitting is not the appropriate nexus for these risk reduction efforts. Over the next permit cycle BACWA encourages the Water Board to work with its sister public health agencies at the State level to develop a robust approach and appropriate funding apparatus where responsibility for risk reduction is sensibly allocated. BACWA would be happy to work with the Water Board to facilitate such an effort.

In addition to the general comments above, BACWA has the following specific comments on permit language:

[2] Per the source apportionment in the TMDL R2-2008-0012

[3] http://www.waterboards.ca.gov/rwqcb5/water_issues/tmdl/central_valley_projects/delta_hg/stakeholder_workgroup_mtgs/2012oct2_hg_ex_red_mtgs/2012sep10_merp_strategy_draft.pdf, pg. 4.

1. On the first line of page E-5 of the tentative order, the sentence should be clarified to read:

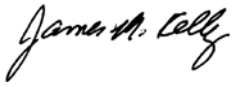
   "If a Discharger monitors effluent mercury or PCBs more frequently than required by this Order, the results of this monitoring shall be included in the calculations and reporting of the data submitted in the SMR."

2. On Table E-2 Monitoring Requirements of page E-3 of the tentative order, the Sample Type for mercury could be inconsistent with the pretreatment monitoring requirements specified in the individual dischargers' NPDES Permits. BACWA recommends modifying footnote 6 of Table E-2 to read:

   (6) Grab Samples: If allowed in the Pretreatment and Biosolids Monitoring Requirements of the dischargers' NPDES Permit, grab samples shall be coincident with the composite samples collected for the analysis of other regulated parameters.

BACWA appreciates the Water Board's close attention to the comments made herein. Representatives of BACWA would be more than happy to discuss our comments and concerns with you in more detail if necessary.

Respectfully Submitted,



James M. Kelly
Executive Director
Bay Area Clean Water Agencies

cc: BACWA Executive Board