

March 13, 2018

Habte Kifle  
California Regional Water Quality Control Board, San Francisco Bay Region  
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Oakland, California 94612  
Email: [habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)

*Transmitted Via Electronic Mail*

**RE: Equilon Enterprises LLC, dba Shell Oil Products US Settlement Agreement and Stipulated Order**

Dear Mr. Kifle,

On behalf of San Francisco Baykeeper (“Baykeeper”) and our more than five thousand members and supporters who use and enjoy the environmental, recreational, and aesthetic qualities of San Francisco Bay and its surrounding tributaries and ecosystems, I respectfully submit these comments for consideration by the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) regarding the proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Settlement Agreement”) with Equilon Enterprises LLC, dba Shell Oil Products US, Shell Martinez Refinery Wastewater Treatment Plant, Contra Costa County (“Shell”). While Baykeeper appreciates the Regional Board’s efforts to enforce Shell’s wastewater permit, we disagree with the Regional Board’s choice of supplemental environmental project (“SEP”).

**I. Background: Selenium TMDL**

In fall of 2015, the Regional Board adopted Resolution No. R2-2015-0048, amending the Water Quality Control Plan for the San Francisco Bay Basin to Establish a Total Maximum Daily Load and Implementation Plan for Selenium in North San Francisco Bay” (“Selenium TMDL”). The Selenium TMDL capped existing wasteloads for petroleum refineries in the North Bay, with Shell having the highest individual wasteload allocation. The Selenium TMDL includes fish tissue targets and a water column target. Instead of requiring individual dischargers to monitor for compliance with the Selenium TMDL, the Selenium TMDL allows for all monitoring to demonstrate attainment of the TMDL targets be conducted by the Regional Monitoring Program (“RMP”).

Baykeeper submitted comments to the Regional Board in September 2015 regarding the Selenium TMDL, urging the Regional Board to adopt more protective criteria requiring reductions for Selenium. It is Baykeeper’s understanding that the Regional Board declined to revise the Selenium criteria in the proposed Selenium TMDL in part because the historical data for Selenium was too inconsistent to show a trend in Selenium conditions in the North Bay, and thus did not justify reductions. However, Regional Board members stated they would consider re-opening the Selenium TMDL once additional data was collected in the future. Now, that data collection is at risk of not occurring due to funding limitations.

## II. Shell's SEP

The Regional Board has proposed Shell direct half of the administrative liability amount (\$43,000) to the RMP for implementation of the Polychlorinated Biphenyl ("PCB") Synthesis Study of Measurements in Dredged Sediments Compiled in the Dredged Material Management Office ("DMMO") Database ("PCB Synthesis Study"). While Baykeeper supports the implementation of the PCB Synthesis Study in theory, we strongly believe that the Regional Board should have directed the SEP toward the RMP's Selenium Workgroup.

First, Shell's violations include an exceedance for selenium. Attachment B to the Settlement Agreement, listing alleged violations, states that in January and February 2017, Shell exceeded its daily maximum effluent limits for total suspended solids, selenium, and mercury. Reviewing DMMO data on PCBs will not remedy the adverse impacts from Shell's excessive Selenium pollution to the North Bay.

Second, Baykeeper's Staff Scientist, Ian Wren, is a member of the Technical Review Committee for the RMP, and has witnessed firsthand that financial constraints have resulted in the RMP's Selenium Workgroup proposing fewer projects than necessary to fully monitor Selenium in the North Bay. In the meantime, millions of dollars have been directed toward studying PCBs in San Francisco Bay. The more funding available for the Selenium Workgroup, the more data the RMP will be able to collect. Moreover, historically, the U.S. Geological Survey has contributed significant staff resources to support the Selenium monitoring efforts, but the continuation of this collaborative effort has become uncertain due to the current political climate at the federal level, so even more of the Selenium monitoring will likely fall on the RMP's Selenium Workgroup (or the monitoring will not happen at all). Comprehensive data collection is required if we are to understand the current Selenium condition in the North Bay. Only with this data will the Regional Board re-open the Selenium TMDL to adopt more protective Selenium criteria.

## III. Conclusion

Baykeeper understands that implementation of the PCB Synthesis Study has already begun. At this time, we are not suggesting the Regional Board redirect Shell's \$43,000 SEP away from the PCB Synthesis Study. However, Baykeeper encourages the Regional Board to direct any future SEP monies from Shell, and the other four petroleum refineries in the North Bay, to fund projects under the RMP's Selenium Workgroup.

Very truly yours,



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Nicole C. Sasaki  
Associate Attorney  
San Francisco Baykeeper