



# PORT OF OAKLAND

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Song Her, Clerk to the Board  
Executive Office  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Ms. Song:



## COMMENT LETTER – SEDIMENT QUALITY OBJECTIVES

Thank you for this opportunity to provide comments on behalf of the Port of Oakland on the scope and content of the environmental information that will be included in the draft environmental document prepared to support the proposed sediment quality objectives and implementation policy. Our mission of providing facilities and services for our seaport tenants and customers requires us to review proposed regulatory efforts that affect dredging and similar water-oriented activities.

As requested, we have focused our comments on sediment quality objectives (SQOs), development and mitigation measures, with specific recommendations and suggestions on the range of actions, alternatives, mitigation measures, and potential significant effects to be analyzed in the environmental document. All references are to the "CEQA Scoping Meeting Informational Document: Development of Sediment Quality Objectives for Enclosed Bays and Estuaries" (State Water Resources Control Board, August 17, 2006).

### General

We generally support the use of a multiple-lines-of-evidence (MLOE) approach to assessing sediment conditions, because we agree with State Water Resources Control Board (SWRCB) staff that a single line of evidence is frequently inadequate and scientifically incomplete. We do believe that the environmental document should more extensively address and justify certain of the proposed actions, as explained in the following comments.

### Exemption for Dredging and Dredged Material Disposal Sites

The dredging exemption that seems clearly stated in Section 3 appears ambiguous in Section 2.5. Following a summary of the rationale and testing procedures for dredged material, the document states clearly why such testing, which applies to sub-surface as well as surficial sediments, differs from the testing program for in-place surficial sediments proposed by the State of California. We believe the proper recommendation in Section 2.5 is Alternative 2, which states in part, "SQOs should not be applicable to dredged materials."

SWRCB's recommendation of Alternative 3 in Section 2.5 is problematical for three reasons. First, the dredging reference to Section 13396, Division 7, CWC, appears to imply that an SQO can be exceeded simply on the basis of contaminant concentration data. Under the proposed MLOE approach, this would not be the case. Second, for Section 13396 to be invoked, the dredger, or other entity, must first perform the full suite of determinations for the MLOE approach to the SQO. Therefore, as written, the scoping document does not exempt dredgers from the SQO program, even though the program, as detailed in the document, is inappropriate to dredged sediments. Third, inasmuch as the SQOs are designed to evaluate the condition of a water body, and dredged sediments are generally scheduled to be removed from the water body, SQO testing would be pointless. We believe the language in Alternative 2 is logical and appropriate, and that the existing testing program for dredged sediment, which involves State as well as Federal agency oversight, is fully protective of beneficial uses. We would add the following to the language in Alternative 2:

1. Provisions (a)-(c) of Section 13396, Division 7, CWC shall be deemed to have been met for sediment dredged and discharged under a permit (or other authorization, for a Federal dredging project) issued by the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act (provided that the Water Board has certified or waived certification for the project pursuant to Section 401 of the CWA) or Section 103 of the Marine Protection, Research, and Sanctuaries Act.
2. SWQCB Sediment Quality Objectives shall not apply to management of active, designated or permitted aquatic dredged material disposal or placement sites.

### **Applicability to Dredged Areas**

Even if the SQO MLOE were applied to dredging projects, there would be only two valid LOE (chemistry and toxicity), except in the case of new construction in previously undisturbed areas. This is because the third LOE, which consists of a measure of benthic community disturbance, would be pointless in areas frequently disturbed by ship propellers and maintenance dredging. Such areas (as acknowledged in Sections 3.VII.B and C) are likely to be populated by early-colonizing species rather than a well-developed benthic community, thereby giving a false indication of contaminant-related disturbance. The SQO would thus be redundant, as chemistry and toxicity are already monitored under established dredged material testing programs.

### **Benthos LOE**

While the proposed use of a benthos LOE is appealing in theory, the real-world execution of that technique is problematic in terms of modeling, consistency, available expertise and cost.

- The proposed use of indices (Section 2.17) for quantifying a relationship between faunal composition and chemical contaminants appears to be based in part on a 30-year-old model of benthic response to gradients of organic enrichment, rather than contaminants. The SWQCB thus acquires a burden of proof to show that each proposed index has a functional, stable relationship to chemical contaminants. For many areas, including most of San Francisco Bay, indices have not even been developed, again reducing the SQO to two LOE.

- The difference in sieve sizes between San Francisco Bay and the rest of the state appears arbitrary and unfairly burdens San Francisco Bay permittees with higher sorting costs. Consistent methodologies should be applied to all affected water bodies, unless a detailed justification based on the ecosystem requirements of the specific sites is provided.
- At a time when universities are no longer training their advanced students in taxonomy, this document proposes a taxonomically intensive monitoring program. Most of the work force capable of identifying small benthic organisms is at or rapidly approaching retirement age.
- Finally, benthos sorting and identification are labor-intensive activities with associated costs. Development and maintenance of the required taxonomic expertise, in a shrinking labor market, will likely drive monitoring costs to many times their present levels. For these reasons, the State should be actively researching and developing alternative, cost-effective (preferably, technology-based) methods of evaluating benthic community health.

### **Receiving Water Limits**

We find it difficult to imagine just how SQOs would be used as receiving water limits in National Pollutant Discharge Elimination System (NPDES) permits (Section 2.24), and we hope staff can explain their vision more explicitly. Using SQOs as receiving water limits will make sense only after a toxicity identification-evaluation program (Section 2.25) is proven effective in relating specific chemicals in sediment to observed patterns of biological response (in both toxicity and benthos community measures).

### **Regional Chemistry Effects Values**

For reasons that are not explained in the scoping document, proposed chemical thresholds are higher (in one case, nearly 50 times higher) for southern California than for northern California (Table 3.5. Effect values and weighting factors for the north and south variations of the CCS). The "North CCS", proposed to apply throughout northern California, is apparently based on data for parts of San Francisco Bay, and may reflect finer gradients in chemical exposure than those existing in the southern study areas.

Holding the north to much cleaner standards of chemical exposure than the south could lead to inequities in listings and clean-up actions, and will require much more justification in the environmental document than has been offered.

### **Support of Programs**

Implementation of the proposed SQOs will likely create new and costly monitoring and research programs. Most dischargers in the San Francisco Bay Area are already supporting a similar innovative, but costly, research and monitoring program, the Regional Monitoring Program (RMP). The RMP, as well as the Total Maximum Daily Load (TMDL) Programs under development in the Bay, already have large sediment quality components. We believe it should be stated in SQO policy that implementation of SQOs will not impose additional costs on participants in the RMP and similar programs.

Thank you for providing this opportunity to submit our comments. SQO implementation must be done in coordination with many on-going water and sediment quality regulatory programs, and we encourage great care in articulating how such coordination is to occur.

Please contact me at (510) 627-1268, or Ms. Anne Whittington, Port Environmental Assessment Supervisor, at (510) 627-1559 if you have any questions regarding our comments. We look forward to commenting on the draft environmental document when it is released.

Sincerely,



Gerald M. Serventi  
Director of Engineering

cc: Chris Beegan, SWRCB  
Anne Whittington  
Jon Amdur  
Len Cardoza  
Richard Sinkoff