

WATER COMMITTEE ISSUE SUMMARIES
303(d) LIST/TOTAL DAILY MAXIMUM LOAD (TMDL) ISSUES

Background: Under Section 303(d) of the Clean Water Act and associated USEPA regulations, States are required to prepare a list every 2 years of water bodies for which water quality standards will not be met after application of technology-based controls, and establish priorities for action among the listed water bodies. The States must then establish total maximum daily loads (TMDLs) for each listed water body, which are the sum of wasteload allocations for point sources, load allocations for nonpoint sources, natural background contributions, and a margin of safety.

303(d) List Update: The State Water Resources Control Board (SWRCB) adopted the 2002 303(d) list for California on February 4, 2003, EPA Region 9 approved it in June 2003, and finalized the addition of about 15 additional waterbody-pollutant combinations to the list in July 2003. California's 2002 303(d) list includes more than 1,850 waterbody segment-pollutant combinations on 684 waterbodies.

SWRCB Development of Listing & TMDL Development Guidance: SWRCB staff has released for public comment a draft Policy regarding listing and de-listing pursuant to section 303(d). Written comments are due on August 26, 2004, and a workshop will be held in Sacramento on September 8, 2004. Final adoption of the Listing Policy is expected in Fall 2004.

SWRCB staff are also in the process of preparing a TMDL Development Policy and related guidance document. As with the Listing Policy, the SWRCB released preliminary drafts of these documents in July 2003. Final adoption of the Policy and guidance are expected in 2004.

The Regulated Caucus of the AB 982 Public Advisory Group provided comments on preliminary drafts of both policies to SWRCB staff on September 12, 2003. Tri-TAC submitted written comments and testimony on the previous draft of the listing policy, and the Water Committee is developing comments on the revised draft for submittal by the August 26, 2004 deadline.

EPA's TMDL Regulations: In March 2003, U.S. EPA withdrew the controversial 2000 TMDL regulation, which had been promulgated but never implemented, due to a combination of congressional action and litigation. U.S. EPA is now working on a new proposed "Watershed Rule." The draft rule is still under internal review, but in its current form includes many positive changes from the POTW perspective. There is no firm date for release of the rule for public comment. In the meantime, U.S. EPA had told the states that they must submit the lists due in April 2004. The SWRCB has indicated that it will begin to develop the 2004 list following adoption of the Listing Policy, with the goal of submitting it to U.S. EPA in early 2005.

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Current as of: August 2004

WATER COMMITTEE ISSUE SUMMARIES
CALIFORNIA TOXICS RULE (CTR) / PROPOSED STATE IMPLEMENTATION POLICY (SIP)

The SWRCB was required to adopt water quality objectives for priority pollutants under the Clean Water Act, Section 303(c)(2)(B). SWRCB originally adopted the Inland Surface Water Plan/Enclosed Bays and Estuary Plan (ISWP/EBEP) in 1991, but both plans were rescinded in 1994 in response to a court order. As a result, USEPA began efforts to promulgate the California Toxics Rule (CTR), which was finalized on May 18, 2000.

In conjunction with the CTR, the SWRCB developed the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bay, and Estuaries of California (State Implementation Policy, or SIP) and functional equivalent document (FED), which contains provisions for determining reasonable potential, calculating effluent limits, compliance determination, compliance schedules, and other related topics. The SIP became effective upon USEPA promulgation of the CTR in May 2000. NPDES permits now must be written to incorporate the provisions of the SIP and CTR.

In 2001, EPA issued a letter conditionally approving the SIP. EPA approved most provisions of the SIP, subject to various conditions on the proper interpretation, but withheld action on the compliance schedules provision which allows up to 15 years for a TMDL to be developed and 5 years for compliance with the wasteload allocations derived from the TMDL (for a total of up to 20 years). In light of EPA's action, the status of these TMDL-based compliance schedule provisions is unclear, although the SWRCB recently indicated that this provision is not in effect due to EPA's failure to approve it.

In July 2002, the SWRCB developed a document that contains procedures for applying for case-by-case exceptions to the SIP, and recently staff have indicated that they may develop further guidance on the development of case-by-case exceptions. In September 2003, the SWRCB posted guidance on its website related to the development of site specific objectives.

SIP Phase II: On October 15, 2003, the SWRCB adopted a workplan for amendments to the SIP and for work on related issues to be pursued outside of the SIP, including issues related to effluent dependent waters and mixing zones. A Response to Comments document was also released, responding to comments submitted to the SWRCB in December 2002 recommending changes to the SIP. The work plan includes clarifying SIP provisions for implementing Basin Plan narrative toxicity objectives, allowing Water Effects Ratios to be established as part of the permit process, and eliminating the reasonable potential trigger based solely on ambient background conditions.

As of August, 2004, it was reported that State Water Board staff intend to release a draft Functional Equivalent Document (FED) for the changes to the SIP described above in the next few weeks.

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Current as of: August 2004

**WATER COMMITTEE ISSUE SUMMARIES
PROPOSED OCEAN PLAN AMENDMENTS
AUGUST 2004**

In July 1999, the State Water Resources Control Board (SWRCB) adopted Resolution 99-073 directing staff to review a series of high priority issues identified in the 1999-2002 Ocean Plan Triennial Review Workplan (SWRCB 1999). Staff was further directed to make recommendations to the SWRCB for any necessary changes to the California Ocean Plan. In January 2004, the SWRCB held a workshop to receive comments on four draft proposed amendments. After receiving comments, the SWRCB directed staff to revisit the original list. On August 6, 2004, the SWRCB noticed a hearing for October 6, 2004 to consider two of the original four amendments to the Ocean Plan.

The two proposed amendments are:

1. Choice of Indicator Organisms for Water-Contact Bacterial Standards
2. "Reasonable Potential:" Determining the likelihood that the concentration of a pollutant would cause or contribute to an exceedance of water quality standards.

Regulatory Background: The California Ocean Plan establishes water quality objectives for California's ocean waters and provides the basis for regulation of wastes discharged into the State's coastal waters. It applies to point and nonpoint source discharges. The SWRCB adopts the California Ocean Plan, and both the SWRCB and the six coastal Regional Water Quality Control Boards (RWQCBs) implement the California Ocean Plan. Currently, the 2001 California Ocean Plan contains three chapters that describe beneficial uses to be protected, water quality objectives, and a program of implementation needed for achieving water quality objectives.

Project Description: The CWC (§13170.2) requires that the California Ocean Plan be reviewed at least every three years to guarantee that the current standards are adequate and are not allowing degradation to indigenous marine species or posing a threat to human health. This project, if approved by the SWRCB, will amend the 2001 California Ocean Plan.

Issues:

Issue 1: Choice of Indicator Organisms for Water-Contact Bacterial Standards.

Summary of Proposed Amendment: *Add an enterococcus water-contact standard, delete the single sample standard currently in the California Ocean Plan and change it to a trigger for additional monitoring. Require monitoring for only total coliform at offshore stations. Present California Ocean Plan: Chapter II of the 2001 California Ocean Plan contains a total coliform water-contact standard, and a bacterial assessment and remedial action requirement that requires the measurement of enterococcus at all stations where total are sampled.*

Issue 2: Reasonable Potential: Determining when California Ocean Plan Water Quality-based Effluent Limitations are Needed.

Summary of Proposed Amendment: *Remove existing language that allows dischargers to certify that Table B pollutants are not present in their effluent in lieu of monitoring, and add new "reasonable potential" language to Chapter III (Program of Implementation) of the California Ocean Plan. Present California Ocean Plan: Dischargers are currently allowed to certify that Table B pollutants are not present in their effluent in lieu of monitoring.*

Update: On August 6, 2004 the SWRCB released the Draft Functional Equivalent Document and notice of hearing for October 6, 2004 to hear comments on the two proposed amendments. Documents are available at <http://www.swrcb.ca.gov/plnspols/oplans/index.html#2004opa>.

Schedule:

On October 6, 2004 at 10:00am the SWRCB will conduct a hearing on the two proposed amendments at the Cal/EPA Headquarters Building. Written comments are due by September 17, 2004 to Debbie Irvin, Clerk to the Board, Executive Office, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100, dirvin@swrcb.ca.gov.

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Current as of: August 11, 2004*

WATER COMMITTEE ISSUE SUMMARIES PERMIT APPEALS

Since the late 1990s, many POTW permits throughout the State have been appealed. The SWRCB reports nearly 300 appeals pending before them currently. Below are some of the main administrative and judicial appeal updates.

LA/Burbank (3 permits): The City of Los Angeles/Burbank appeals yielded a favorable initial ruling in 2001 from a Los Angeles Superior Court judge, who determined that the regional board failed to consider economics, potential environmental impacts and other public interest factors when adopting the cities' 1998 permits, as required by the Porter-Cologne Water Quality Control Act and Clean Water Act.

The Attorney General (AG), representing the SWRCB and LARWQCB, appealed of the LA/Burbank decisions. On December 24, 2002, the Court of Appeals issued an unpublished opinion reversing the trial court on all appealed issues. After the Cities filed a Petition for Rehearing, the Court took the decision back up on its own motion and a new decision was issued on August 14, 2003. After another rehearing request, the Cities appealed to the California Supreme Court. Review was granted in November of 2003 after the Supreme Court received letters from 43 cities, the League of California Cities, and from 15 other special districts and trade organizations requesting review of the case. All briefing is now complete in this case and the only remaining hurdle is oral argument, which will likely be scheduled in late 2004 or early 2005.

Napa Sanitation District: After receiving a dismissal of its stay request by the SWRCB, the Napa Sanitation District filed a petition for writ of mandate along with a Motion for Stay of portions of the permit. The Bay Area Clean Water Agencies was later added as a Petitioner. In October of 2002, the Regional Board adopted permit amendments removing many of the challenged effluent limits and making more reasonable several of the other interim limits, so the issues in the judicial appeal narrowed slightly. The hearing on the writ was held on January 7, 2003. The main issues are the propriety of mass limits based on a narrative objective that may act as growth control in the absence of a TMDL, the propriety of 85% removal requirements where cost effective I/I repairs have been made, the requirement to implement a pollution prevention plan, and the failure to include a compliance schedule for the start up of the new plant. A decision was issued denying relief to Napa and BACWA. The decision has been appealed to the Court of Appeals, but the parties are currently in settlement negotiations.

City of Vacaville: The SWRCB heard the City of Vacaville's Permit appeal on September 11-13th, 2001. CASA/SCAP/Tri-TAC were consolidated as one party in this evidentiary hearing. Other parties included the City of Turlock, LACSD, DeltaKeeper, and Heal the Bay/Southern California Keepers. On October 3, 2002, the SWRCB adopted its final order addressing many, but not all of the issues, and mostly in a manner unfavorable to Vacaville (e.g., improper beneficial uses, blending prohibitions, etc.). Both the City of Vacaville and CASA have recently appealed the SWRCB's decision to Solano County Superior Court. Venue was changed to Contra Costa County and there has been one hearing on a request for intervention by environmental groups, where the judge denied intervention because the groups were expanding the issues. The groups have filed a new motion to intervene that will be heard in late August.

City of Woodland: The City of Woodland received a permit requiring tertiary treatment (coagulation, filtration) even though its plant meets the numeric tertiary requirements with its secondary treatment plant. This issue raises the question as to whether the Regional Board can require a specific manner of compliance. The permit also requires the plant to meet an electrical conductivity (EC) limit of 700 umhos that cannot be met without Reverse Osmosis. This limit was imposed based on an agricultural goal through a narrative objective to protect non-existent crops (strawberries) that someone might want to grow in the Yolo Bypass someday. The State Board issued an Order on its own motion in June of 2004 to amend the City's permit and remove the EC, boron and fluoride limits that were all based on agricultural goals. The City has recently appealed the tertiary treatment by 2006 mandate and the finding of reasonable potential for several other constituents in Yolo County Superior Court.

Storm Water Permits: Numerous storm water permits are in various levels of appeal throughout the State. The San Diego permit, decided adversely in SWRCB Water Quality Order No. 2001-15 was upheld in San Diego Superior Court and appealed to the Court of Appeal. The Los Angeles permit was denied review by the State Board in December 2002, and five petitions for writ of mandate were filed on that permit in Los Angeles County Superior Court, although the one filed by the City of Los Angeles was dismissed without prejudice. The remaining cases have been through one phase of hearings.

The court bifurcated trial on this matter, dividing the issues into those that were largely legal--such as whether the Receiving Waters Limitations language in the LA County NPDES permit violates the Clean Water Act--in contrast to those that were more fact-driven--such as whether the record supports the findings made in the Permit. The court held trial on the first phase in May 2004 and trial on the second phase is set for August 10 and 11, 2004.

The court's oral ruling after phase 1 of trial was quite interesting, particularly with respect to the interpretation of Part 2 of the Permit, the Receiving Waters Limitations. Part 2 has four subdivisions: Part 2.1 states that discharges from the MS4 that cause or contribute to the violation of Water Quality standards or water quality objectives are prohibited; Part 2.2 states that discharges from the MS4 shall not cause or contribute to a condition of nuisance; Part 2.3 states that the Permittees shall comply with Parts 2.1 and 2.2 through the iterative process of timely implementation of control measures; and Part 2.4 states that so long as the Permittee has complied with the iterative process described in Part 2.3 and is implementing the revised SQMP, the Permittee does not have to repeat the same procedure to remedy continuing or recurring exceedances of the same receiving water limitations unless otherwise directed. Parts 2.1 and 2.2 are enforceable through fines of up to \$27,500 per day. **Significantly, the court in its oral statement of decision found that Part 2 must be read in light of the Clean Water Act's MEP standard and the Porter-Cologne's reasonableness standard, as well as the TMDL procedures, case law and prior Regional Board orders.**

The appeal of the Stockton/San Joaquin County permit was accepted by the State Board, but the Sacramento County and local cities permit was denied review and an appeal was filed in Sacramento Superior Court. The primary issue in these cases was the lack of an explicit "safe harbor" for permit compliance, including following the "iterative process" whenever water quality standards are exceeded, and the limitation of Maximum Extent

Practicable (MEP) on all municipal storm water requirements. The Sacramento case was settled when the co-permittees agreed to dismiss the lawsuit upon receipt of a letter from the Regional Board Chair clarifying the intent of the permit, which was sent out in late June.

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Current as of: July 29, 2004*

WATER COMMITTEE ISSUE SUMMARIES

SEDIMENT QUALITY OBJECTIVES

The SWRCB has set aside \$2.5 million dollars and four years to develop Sediment Quality Objectives (SQO) for Enclosed Bays and Estuaries. To develop the SQOs, the SWRCB is utilizing three forums including a Sediment Quality Advisory Committee, a Scientific Steering Committee and an Agency Coordination Committee.

Regulatory Background: In 1989, the California Water Code (CWC) was amended to require the SWRCB to develop SQOs as part of a comprehensive program to protect existing and future beneficial water uses within California's enclosed bays and estuaries. In 1991, SWRCB prepared a conceptual approach to develop SQOs in a Work plan for the Development of Sediment Quality Objectives for Enclosed Bays and Estuaries of California (91-14 WQ) (1991 Work plan). Insufficient funding resulted in significant delay of the program. SWRCB staff anticipated that the program described in the 1991 Work plan would require seven years to complete. In 2001, a lawsuit was filed against SWRCB for failing, among other things, to adopt SQOs in accordance with the CWC. The Court agreed with the petitioners, and SWRCB was mandated to develop SQOs.

Project Goals: Develop scientifically defensible SQOs that are protective of beneficial uses. Develop policy that's fair and provides for consistent application throughout the state. Describe methods and tools for assessing sediment quality as part of an implementation policy.

Key Project Objectives: Utilize a combination of numeric and narrative SQOs to address the broad range of beneficial uses. Develop numeric objectives using regional information. Provide an implementation policy for different applications. Focus on protecting benthic communities/aquatic life using a weight of evidence approach.

Project Roles: SWRCB staff and contractors are managing the project. Scientific activities: SCCWRP, SFEI Moss Landing Marine Labs and UC Davis-MPSL Granite Canyon with input from Scientific, Advisory, and Regulatory Groups. Enforcement/Application policy development: SWRCB staff with input from Scientific, Advisory, and Regulatory Groups. SWRCB Board members will ultimately decide what the policy or plan will contain.

Sediment Quality Advisory Committee:

Regulated Community:

- Ports: Paul Johansen, Port of Los Angeles. Alt: Andy Jahn, Port of Oakland
- POTWs: Tom Grovhoug, Larry Walker Associates. Alt: Lisa Haney, LACSD
- Municipal Stormwater: Desi Alvarez, City of Downey. Alt: Sandy Mathews, California Stormwater Quality Association
- Industrial Stormwater: Tim Piasky, BIASC. Alt: Steve Arita, Western States Petroleum Association
- Industrial Direct: Susan Paulsen, Flowscience. Alt: Craig Johns, California Resource Strategies
- Federal Facilities: Teresa Marley, USN. Alt: Sandy Halvax, Southwest Marine Inc
- Legacy Pollutants: Paul Singarella, Latham & Watkins.

Environmental Community

- Elaine Carlin and Laura Hunter, Environmental Health Coalition; Mitzi Taggart, Heal the Bay; Sarah Newkirk and Linda Sheehan Alt. Representing The Ocean Conservancy; Bruce Reznik, San Diego Bay Keeper; Leo P. O'Brien, San Francisco BayKeeper; Robin Rierdan, San Diego River Park- Lakeside Santee Conservancy; Bill Jennings, DeltaKeeper; Ed Kimura, Sierra Club, San Diego Chapter; Marco Gonzalez Surfrider Foundation, San Diego Chapter; Dave Paradies, Bay Foundation of Morro Bay.

Scientific Advisory Committee: Dr. Todd Bridges, U.S. Army Corps of Engineers; ERDC, Dr. Dan Dauer, Old Dominion University; Tom Gries, Washington Dept. of Ecology; Chris Ingersoll, U.S. Geological Survey; Dr. Scott Ireland, U.S. EPA, Office of Water; Dr. Peter Landrum, NOAA, Great Lakes Environmental Research Lab; Edward Long, ERL Environmental; Donald D. MacDonald, MacDonald Environmental Services; Gail Sloane, Florida Department of Environmental Protection.

Agency Coordination Committee: SWRCB, RWQCB, DFG, DPR, DTSC, SLC, BCDC, CCC and OEHHA.

Issues: The SWRCB has agreed to focus on the policy and regulatory aspects of this effort in addition to conducting good science to formulate numeric and narrative objectives. SWRCB has stated that it will follow the requirements of the California Water Code in setting enforceable objectives. SWRCB staff will capture important policy issues in a Policy Support Document (PSD). The effort is limited to the development of SQOs in marine and estuarine areas. SQOs will not be developed for freshwater areas. Numeric SQOs will only be established where adequate data exists. The primary focus for SQOs will be the protection of benthic communities. Tools for assessment of human health and wildlife protection will be examined but these end points are not expected to be the subject of SQOs. Advisory group members have recommended that implementation of SQOs must provide enough flexibility so as to not cause further harm by disturbing sediments and to provide for natural attenuation of the constituents of concern.

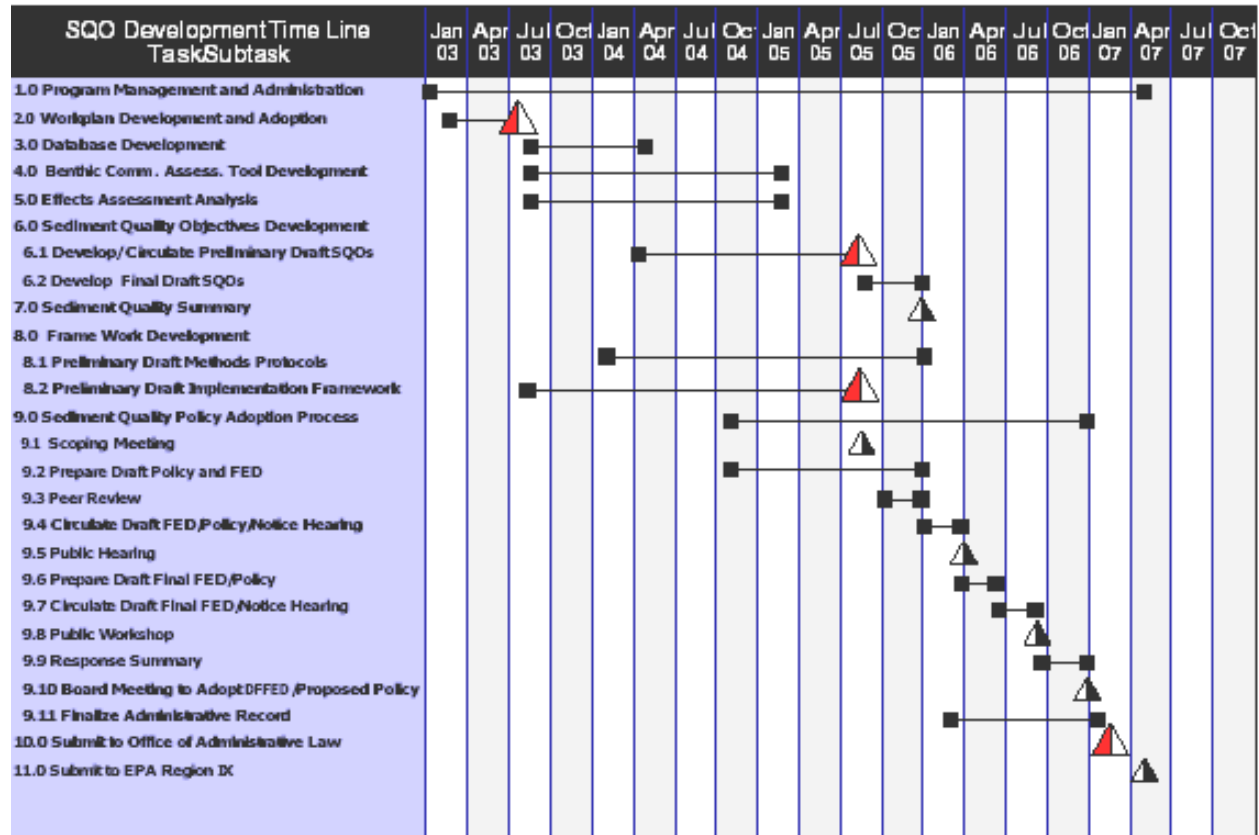
Update: The most recent meeting of the Sediment Quality Advisory Committee (SQAC) was held on June 15 in Los Angeles. The June 15 meeting provided a review of key terms and conditions of the effort, an update on technical progress (database development and benthic community assessment tool), and presentations and discussions on the State of Washington Sediment Quality Management Policy (the only active sediment quality management program in operation in the US). The next meeting of the SQAC will be held on August 12, 2004 in Sacramento.

Schedule:

- January 2003: Project start, Work plan development, Database creation
- June 2003: Adopt work plan, begin Benthic assessment tool development, Data base development, Limited field sampling
- October 6, 2003; January 30, February 12, April, June 15 and August 12, 2004: Meetings of SQAC
- August 3-4, 2004: First meeting of Scientific Advisory Committee

- August 2005: Draft SQOs for review, Guidance development, data analyses, Summary of sediment quality project
- February 2007: Adopt SQOs

A program schedule preliminary time line includes extensive detail on Task 9 which is outlines the SWRCBs Planning Process.



 Date mandated by Court Order

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Current as of: August 10, 2004

WATER COMMITTEE ISSUE SUMMARIES
MERCURY REGULATORY DEVELOPMENTS

Update on San Francisco Bay TMDL.

On April 30, 2004, the San Francisco Regional Board issued a notice regarding the adoption of an amendment to the Water Quality Control Plan for the San Francisco Bay (Basin Plan) to incorporate a TMDL for mercury in San Francisco Bay and an implementation plan to achieve the TMDL targets and allocation. The Regional Board held one hearing on June 16, 2004 and will hold a second hearing on September 15, 2004. No action on the Basin Plan amendment will be taken until the September 15th hearing and testimony will be limited to any changes made as an outgrowth of the original proposal. Written comments were due June 14, 2004. Thirty comment letters were submitted to Regional Board and are available on the Regional Board's website at: <http://www.swrcb.ca.gov/rwqcb2/sfbaymercurytmdl.htm>. The Bay Area Clean Water Agencies submitted comments on behalf of area POTWs expressing concern over: 1) the reduction in the pooled allocation for POTWs by 18% (from 17 to 4 kg/yr), which eliminates any allowance for POTW growth in flow or loads over the next 20 years; 2) the reduction in the averaging period for compliance with the pooled allocation from 5 years to 1 year; and 3) modifications in the individual facility allocations that penalize communities with top performing treatment plants. EPA also submitted supporting comments on the TMDL, including the inclusion of limitations on waste load allocations for municipal and industrial wastewater dischargers to current performance levels. EPA's comments also expressed concerns that the TMDL document did not demonstrate how the numeric Basin Plan objective of 0.025 ug/L as a 4-day average would be attained throughout the affected Bay segments; asked for clarification in the Basin Plan amendment that individual waste load allocations would be adopted since this is a necessary component of a TMDL; and expressed concerns over elements of the implementation measures in the proposed Basin Plan amendment that impacted NPDES permitting and may lead to EPA objections of permits.

Update on Technical Review of U.S Fish and Wildlife Service Mercury Report.

When EPA proposed the California Toxics Rule (CTR), the rule contained a human health criterion for total mercury of 50 ng/L. As part of its consultation under the federal Endangered Species Act (ESA), the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) issued a draft Biological Opinion, which concluded that the certain components of the CTR (including the mercury criterion) proposed by EPA would likely jeopardize endangered species. After further consultations, EPA and the Services came to an agreement in 1999 on modifications to the CTR to remove the jeopardy opinion. The CTR was promulgated in May 2000. As part of the agreement, EPA promised the Services that the agency would revise its recommended 304(a) human health criterion for mercury and that a soon to be proposed new human health criterion for mercury should be sufficient to protect federally listed aquatic and aquatic dependent wildlife species in California. EPA also agreed to propose revised human health criteria for mercury in California by January 2003 and to work with the Services to evaluate the degree of protection afforded to federally listed species by the revised criteria. To facilitate this biological evaluation, EPA entered into an Intergovernmental Agreement with the U.S. Fish and Wildlife Service's Sacramento Office and in October 2003, released a report on EPA's January 2001 methyl mercury (Me Hg) fish tissue criterion (*Evaluation of the Clean Water Act Section 304(a) Human Health Criterion for Methylmercury: Protectiveness for Threatened and Endangered Wildlife in California*). The conclusion of the report was that the 0.3 mg/kg Me Hg fish tissue criterion was not protective of certain endangered species. However the report carefully says that these conclusions do not represent the results of consultation under

Section 7 of the ESA, rather they were based solely on the agencies current understanding of Me Hg behavior in aquatic ecosystems and the toxicological foundation from which the risk assessment methodology was developed. One of the primary concerns with the report is that since EPA helped develop it, the likely outcome of a revision to the CTR would be a mercury criterion significantly lower than the 0.3 mg/kg Me Hg fish tissue criterion. AMSA, CASA, FWQC, WSPA and UWAG are jointly funding a scientific review of the report, which is being conducted by Tetra Tech, to provide comments to EPA. The review will be completed by November 2004, and will incorporate a peer review of the work conducted by Tetra Tech.

EPA Guidance for Conversion of Methyl Mercury (Me Hg) Fish Tissue Criteria to Ambient Water Criteria.

EPA has been in the process of developing guidance for the states to use to implement the January 2001 fish tissue-based Me Hg criterion (0.3 mg/kg) for their water quality standards programs. The schedule for releasing the draft document has been delayed, and it is not expected to be released until after the November 2004 election. Based on previous drafts and input from EPA staff, it appears that the document will positively address such issues as using the fish tissue approach rather than using bioaccumulation factors (BAFs) for TMDL targets and permit limits, as well as the use of pollutant minimization plans (PMPs) for deminimis point sources.

Update on Idaho Mercury Water Quality Standards Regulatory Negotiation Process.

The Idaho Mining Association (IMA) petitioned the Idaho Board of Health and Welfare for a mercury standards change in June 2003. The IMA proposed that EPA's 0.3 mg/kg Me Hg fish tissue criterion be used along with chronic (1.4 ug/L) and acute (0.77 ug/L) aquatic life criteria for mercury. In October, the Idaho Department of Environmental Quality (IDEQ) entered into a negotiated rulemaking with IMA, the City of Boise and other stakeholders. IDEQ published the proposed rule and implementation guidance in the August 4, 2004 State Bulletin (the link to the rule is at <http://www2.state.id.us/adm/adminrules/bulletin/04aug.pdf> on pages 189-200; the link to the Mercury Implementation Guidance and supporting documents is at http://www.deq.state.id.us/rules/58_0102_0302_proposed.htm). The package includes a discussion of variances, UAAs, monitoring and assessment programs, endangered species, fish advisories, and a statewide fish-monitoring program. As part of the proposal, municipalities will have options to defer permit requirements by participating in the statewide monitoring program. For determining reasonable potential in permits, if fish tissue Me Hg values are > 0.24 mg/kg, the discharger must undertake mandatory BMPs; < 0.24 mg/kg, the discharger can undertake voluntary BMPs. For listing and TMDL decisions, the 0.3 mg/kg Me Hg fish tissue criterion is used as the trigger. If fish tissue levels are > 0.3 mg/kg, the water body is listed and a TMDL must be conducted. If the discharger is a deminimis source, then the only regulatory requirement is to participate in the statewide monitoring program and voluntary BMPs. If fish tissue values are < 0.3 mg/kg, the water body is not listed. If the fish tissue levels are significantly below the criterion, it may be possible to relax monitoring requirements. Endangered and threatened species were also considered in developing the proposal, and IDEQ has determined that the 0.3 mg/kg Me Hg fish tissue criterion is protective. The primary species of concern was the bald eagle. Reasonable potential analyses for permits will also evaluate the aquatic life criteria. If there is reasonable potential, there will be permit conditions and mandatory BMPs.

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Current as of: August 11, 2004*

