



August 20, 2007

Mr. Fred Hetzel
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Establishing a Total Maximum Daily Load (TMDL) for Polychlorinated Biphenyls in San Francisco Bay and an Implementation Plan to Achieve the TMDL

Dear Mr. Hetzel:

Our organizations appreciate the opportunity to provide comments regarding the proposed amendment to the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) to establish a total maximum daily load (TMDL) for polychlorinated biphenyls (PCBs) in San Francisco Bay, and an implementation plan to achieve the TMDL. (Please see the attached Statement of Interests document briefly describing the signatory organizations)

Our organizations believe we need to work constructively with regulatory agencies in order to develop policies and permits – including the development of TMDLs – that protect the quality of our waters and at the same time enable the State to prosper economically. We support efforts to protect and improve water quality in a meaningful way through attainable implementation measures. We are concerned that the proposed PCBs TMDL and implementation plan is inconsistent with one of our fundamental regulatory rulemaking principals – seeking common-sense and economically reasonable solutions to address water quality problems.

Issues of concern our organizations have with the San Francisco Bay Regional Water Quality Control Board (Board) proposed action include:

- *Stringency* -- We understand that the Board staff previously calculated a fish target of 111 parts per billion (“ppb”), 11 times greater than the current proposal, and, as recently as January 2004, proposed a target that was more than twice as high as the current proposal. The TMDL is 3.4 to 8.9 times as stringent as the California Toxics Rule water-quality criteria set by the U.S. EPA to protect human health. The Board bears a heavy burden to demonstrate why it needs to subject the regulated community to such an extraordinarily stringent target.
- *Benefits to Human Health* -- The ostensible benefits of the TMDL are minimal and speculative, as the TMDL is addressing theoretical risks, and is intended to protect a segment of the sport fishing population that probably does not even exist (hypothetical extreme anglers who eat large quantities of bottom fish loaded with PCBs every week for 70 years).



California Business Properties Association



HOME BUILDERS ASSOCIATION



OF NORTHERN CALIFORNIA



Industrial Environmental Association



National Association of Industrial and Office Properties

The Forum for Commercial Real Estate



Even if the TMDL would result in attainment of the 10 ppb fish-tissue target and even if such hypothetical anglers existed, such anglers would be able to legally buy and consume fish from markets and at restaurants that meet the federal Food and Drug Administration's national tolerance level of 2000 ppb PCBs.

- *Benefits to the Ecosystem* -- The TMDL would result in no material benefits to the ecosystem as current levels of PCBs are not hurting fish or wildlife. Bay waters are in compliance with the California Toxics Rule for the protection of aquatic life. Likewise the vast majority of PCB concentrations in Bay sediment are well below screening levels set by the U.S. EPA for the protection of wildlife.
- *Costs* -- The TMDL calls for a 95 percent reduction of PCBs in stormwater to help meet the TMDL's proposed water column concentration of 19 to 49 parts per quadrillion. BMPs could not be expected to achieve these extremely low concentrations--in fact, there is no technology demonstrated to achieve these levels in stormwater on a wide-scale basis. Nevertheless, the TMDL calls for hundreds of millions of dollars to be spent annually on removal of PCBs from stormwater, without analysis to demonstrate that such removal is necessary or feasible at any particular Bay locations. Additional huge sums would be necessary to physically remove PCBs from sediments in the Bay margin, where the Board calls for mass removal of PCBs through dredging and capping, without regard to any risk reduction benefits that might accrue. Also, the TMDL will place a cloud over port and waterfront businesses and activities, as the TMDL classifies bottom sediments in these areas as contaminated, adding complexity and cost to economic activity along the entire perimeter of the Bay.
- *Balance* -- Given the potentially huge costs of the TMDL, and the very minimal benefits associated with it, the TMDL does not reflect a reasonable balance between costs and benefits. Adoption of the TMDL would violate the economic and business priorities of the Administration, and the reasonable balance called for by the Board's governing statute, the Porter-Cologne Act.
- *Proper Technical Conditions* -- The TMDL has serious errors in its data, modeling, and analysis that leaves the Board without an accurate understanding of PCBs in the Bay. By applying a model that violates basic principles of physics (*i.e.*, conservation of mass, the TMDL significantly understates the ability of the Bay to assimilate PCBs. The TMDL also ignores extensive, reliable data showing that the Bay is recovering from PCBs with half the PCBs dissipating every six to twelve years. External loads from the Central Valley, non-urban runoff, the atmosphere and rainfall are indefinite, and based on inappropriate, incomplete, or the faulty interpretation of data. The TMDL uses an

uncalibrated model to calculate stormwater loads and then arbitrarily assigns load reductions to counties based on their populations.

- *Impacts Review* -- Our organizations believe that an analysis of economic and environmental impacts of the Board's proposal must be conducted and that the Board has not yet developed that information. The information that is available shows that implementing the TMDL will have a potentially huge price tag, however, and will cause significant environmental impacts—including destroying healthy benthic communities, emissions of criteria pollutants, consumption of landfill capacity, and emissions of greenhouse gases.

The TMDL is another example of an unsound regulatory proposal that is not supported by science and that likely will impose very significant costs on California in general, and the San Francisco Bay Area regional economy specifically, without commensurate environmental benefit.

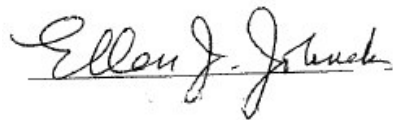
Our organizations are interested in working with the Board to find economically-feasible and environmentally-beneficial solutions to address PCBs in the San Francisco Bay. To that end, our organizations request the Board to pursue less costly, more environmentally sensitive alternatives to the proposed TMDL such as monitored natural attenuation with an education and outreach program for subsistence fisherman. In the alternative, if the Board moves forward with the current proposal, we ask the Board to grant us an additional forty-five days to consider and comment on the proposal. The current public comment period, initiated just prior to the Fourth of July holiday, and ending on August 20, does not provide a meaningful opportunity to review the proposed TMDL. In the meantime, we incorporate by reference as if fully set forth herein, comments submitted under separate cover by the California Chamber of Commerce.

Thank you once again for the opportunity to comment on the proposed PCBs TMDL and implementation plan.

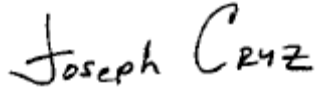
Sincerely,



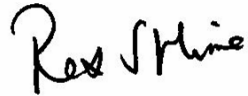
Thomas T. Holsman
Associated General Contractors of California



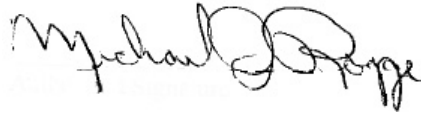
Ellen Johnck
Bay Planning Coalition



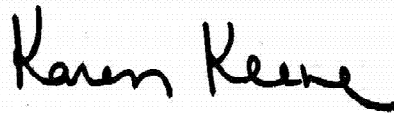
Joseph Cruz
California Alliance for Jobs



Rex S. Hime
California Business Properties Association



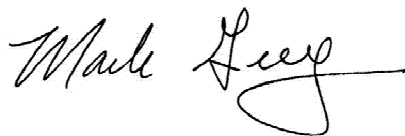
Mike Rogge
California Manufacturers and Technology Association



Karen Keene
California State Association of Counties



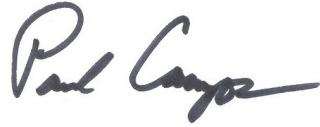
John Ulrich
Chemical Industry Council of California



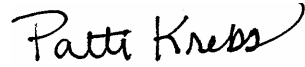
Mark Grey
Construction Industry Coalition on Water Quality



Paul Meyer
Consulting Engineers and Land Surveyors of California



Paul Campos
Home Builders Association of Northern California



Patti Krebs
Industrial Environmental Association



James Camp
National Association of Industrial and Office Properties – California Chapters



Kathy Mannion
Regional Council of Rural Counties



Richard Markuson
Western Electrical Contractors Association