

June 4, 2009



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Comments on the Total Maximum Daily Load (TMDL) for Polychlorinated Biphenyls in San Francisco Bay

Dear Ms. Townsend:

Our organizations appreciate the opportunity to provide comments regarding the total maximum daily load (TMDL) for polychlorinated biphenyls (PCBs) in San Francisco Bay currently under review by the State Water Resources Control Board (Board). 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.

As this particular TMDL went through the development process by the San Francisco Regional Water Quality Control Board (Regional Board), our organizations raised concerns that the PCB TMDL and implementation plan are inconsistent with one of our fundamental regulatory rulemaking principles – seeking common-sense and economically reasonable solutions to address water quality problems. We believe there are several remaining economic, technical, and procedural issues regarding flaws in the PCB TMDL that warrant the PCB TMDL to be remanded back to the Regional Board.

The issues of concern our organizations continue to have with the PCB TMDL that were not addressed by the Regional Board are:

Economic Impact to the San Francisco Bay Region and the State

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 San Francisco Bay locations. Additional huge sums of money would be necessary to physically remove PCBs from sediments in the Bay. In fact, the Regional Board identified a cost of \$500 million a year over a twenty-year period to comply with the TMDL – or \$10 billion over the life of the program. According to comments submitted by Dr. David Sunding during the Regional Board public process, he states that the Regional Board failed to adequately characterize or analyze the potential compliance costs and that those costs would result in an unacceptably high level of costs compared to benefits achieved. Our of

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the recent *City of Arcadia v. State Water Resources Control Board* decision mandating that the State and the Los Angeles Regional Water Quality Control Board consider economic factors when adopting or refining water quality standards.

Given the potentially huge costs of the TMDL and the very minimal benefits associated with it, our organizations believe the TMDL does not reflect a reasonable balance between costs and benefits. We believe the TMDL is contrary to 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, methodology, and information

Our organizations believe that TMDL has serious errors in its data, modeling, and analysis that does not provide the Board with an accurate understanding of PCBs in the Bay. We believe 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 storm water loads and then arbitrarily assigns load reductions to counties based on their populations.

Our organizations believe it is critical for regulatory agencies to base their decision on the best possible scientific data and information available. We remain concerned that the Regional Board did not meet this fundamental principle at the time it adopted the PCB TMDL based on comments submitted during the Regional Board process.

Accountability and Transparency

The PCB TMDL states that within 10 years of the effective date of the TMDL, the Regional Board will consider a Basin Plan Amendment that will reflect and incorporate the data and information that is generated in the intervening years. Our organizations are concerned that we have to rely on the Regional Board's discretion as to whether or not to modify the TMDL based on a review of how things have progressed during the first 10 years. We believe that all affected stakeholders would benefit from the inclusion of a clear and stated process within the TMDL as to how the Regional Board will revisit this issue. A transparent and fair process with full opportunity for public comment and debate benefits all involved.

The TMDL is another example of an unsound regulatory regime 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 respectfully request that the Board remand the TMDL back to the Regional Board in order for our organizations and other interested parties to work collaboratively with the Regional Board to find economically-feasible and environmentally-beneficial solutions to address PCB in the San Francisco Bay.

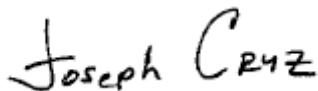
At a time where California is looking for ways to improve the health of the economy and create an environment aimed at enhancing the business climate in the state, our organizations are extremely concerned that the PCB TMDL approved by the Regional Board sends the wrong message. We believe that there are less costly, more environmentally sensitive alternatives to the proposed TMDL such as monitored natural attenuation with an education and outreach program for subsistence fisherman.

Thank you for the opportunity to comment on the PCB TMDL currently under review by the Board.

Sincerely,



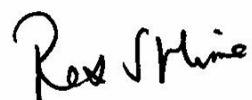
Paul Meyer
American Council of Engineering Companies



Joe Cruz
California Alliance for Jobs



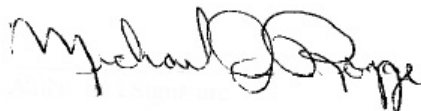
Steve Cruz
California Building Industry Association



Rex S. Hime
California Business Properties Association



Valerie Nera
California Chamber of Commerce



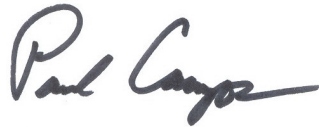
Mike Rogge
California Manufacturers and Technology Association



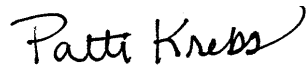
Karen Keene
California State Association of Counties



Mark Grey
Construction Industry Coalition on Water Quality



Paul Campos
Home Builders Association of Northern California



Patti Krebs
Industrial Environmental Association



Staci Heaton
Regional Council of Rural Counties