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August 11, 2005

Arthur G. Baggett, Jr., Chair
California Water Resources Control Board (SWRCB)
1001 I Street
Sacramento, CA 95814

Also via electronic mail to dirvin@waterboards.ca.gov

**Re: Comments on Proposed Amendment to the California Water
Quality Control Plan for the San Francisco Bay Region**

Dear Chairman Baggett and Members of the Board:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to submit these comments, for consideration at the September 7, 2005 SWRCB meeting, regarding the proposed amendment to the Water Quality Control Plan for the San Francisco Bay Region (Bay Region) to incorporate a mercury total maximum daily load (TMDL) developed by the San Francisco Bay Regional Water Quality Control Board. Founded in 1970, NACWA represents the interests of nearly 300 of the nation's publicly owned treatment works (POTWs). NACWA member agencies provide wastewater treatment to the majority of the sewered population in our country, collectively treating and reclaiming over 18 billion gallons of water every day.

For decades, NACWA has been actively engaged in the national dialogue on mercury pollution control, treatment, and prevention. NACWA's **Mercury Workgroup** is comprised of national experts who together explore effective and reasonable approaches to controlling mercury discharges to the nation's waters. The California Water Quality Control Plan (**Plan**) for the Bay Region has the potential to set important precedent for the nation when it comes to how **de minimis** point source mercury loads are addressed via TMDLs and via subsequent implementation of TMDLs by states. Our review reveals that this TMDL takes a sound technical and legally-supported approach to **de minimis** point sources. We hope that our comments assist the SWRCB in reaching this same conclusion.

The research and technical studies underlying this TMDL show that cumulative point source (municipal and industrial) mercury contributions in the Bay Region comprise two percent of total loadings. Given that the point sources are **de minimis** sources of mercury, achievement of the TMDL

contemplates that point sources will develop and implement programs to control mercury sources and loading. The TMDL does not require that they achieve reduced numeric National Pollutant Discharge Elimination System (NPDES) limits for mercury.

This approach is consistent with EPA and state guidance documents and TMDLs developed to address mercury and other legacy pollutants, as well as with past handling of *de minimis* sources. In support of this statement, NACWA incorporates by reference the detailed legal and regulatory policy analysis contained in the comments provided by the Bay Area Clean Water Agencies (BACWA).

Rather than approving this solid TMDL as presented by the San Francisco Bay Regional Water Quality Control Board, the SWRCB is considering changing it to require municipal clean water agencies to reduce their mercury loadings below the cumulative two percent point source level through more restrictive NPDES limits. NACWA believes that modifying the TMDL to include such requirements would be extremely problematic and could set adverse national precedent on mercury because:

- greater mercury reductions by municipal clean water agencies will not meaningfully reduce mercury levels in San Francisco Bay fish or in the water column;
- the Regional Board found that reductions from nonpoint sources would bring the San Francisco Bay into mercury attainment without numeric reductions from *de minimis* point sources;
- imposing additional requirements on municipal clean water agencies, excluding other point sources, is arbitrary;
- such action would trade a watershed-based TMDL approach for a time consuming NPDES permitting exercise;
- such action would be inconsistent with federal and California TMDL policy; and
- it fails to recognize that the TMDL contemplates an appropriate level of additional, enhanced pollution prevention efforts by the *de minimis* point sources.

Once again, these points are supported by the detailed information in the BACWA comments.

NACWA notes that some stakeholders involved in this TMDL recently have called attention to lower effluent mercury levels reportedly achieved at POTWs elsewhere in the country. The implication that such effluent mercury levels have been achieved solely through source control efforts and that therefore, such levels also are achievable in the Bay, is generally not supported by data available to NACWA. In particular, several Great Lakes region POTWs with among the country's lowest effluent mercury levels have shown no significant decline in effluent mercury levels over five years using clean sampling and low-level analysis, despite the initiation of meaningful mercury source control efforts during that period. Accordingly, the data indicate that the low effluent mercury levels achieved at these facilities are attributable to factors other than source control efforts. One hypothesis forwarded is that in these cases, higher industrial contributions dilute mercury from other mercury sources – such as domestic wastewater. While further study is needed to test such hypotheses, it is certainly premature to conclude that the lowest observed municipal effluent mercury levels are achievable by all municipalities.

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For these reasons, NACWA urges the SWRCB to support this TMDL as presented by the San Francisco Bay Regional Water Quality Control Board, and to acknowledge that it has the potential to dramatically, and equitably, reduce mercury loadings in the San Francisco Bay.

We are more than willing to provide the Board additional information on national mercury or TMDL trends should you find them helpful. If you have any additional questions regarding this matter, please contact NACWA's Director of Regulatory Affairs, Chris Hornback, at 202/833-9106. Thank you for your consideration of our perspective.

Sincerely,

A handwritten signature in black ink that reads "K Kirk". The "K" is a simple, bold letter, and "Kirk" is written in a cursive style.

**Ken Kirk
Executive Director**