MEMORANDUM

Dan Cloak Environmental Consulting

To: Andria Ventura, Clean Water Action

From: Dan Cloak
Environmental Technical Representative to the Clean Estuary Program

Subject: **Update on Environmental Technical Representative Activities**

Date: 6 May 2004

Background

As previously reported, on 2 April 2004 the CEP TC met to review Conceptual Model/Impairment Assessment (CMIA) draft reports for Diazinon, Legacy Pesticides, Dioxin, and Selenium in San Francisco Bay.

At this meeting, I noted that the "next steps" listed at the end of each draft report focused on further research and studies, but did not identify potential actions aimed at mitigating the effects of these pollutants.

After some discussion, it was agreed that:

- The sections would stand as is but would be framed with paragraphs explaining that the currently recommended "next steps" were limited to considering data gaps encountered during development of the impairment assessment.
- The CEP TC would pursue a process for identifying and evaluating proposed actions. It was agreed that a process for identifying and evaluating proposed actions should begin with the next TC meeting, scheduled for 7 April.

Regulatory Actions and Mitigation Measures

At the 7 April TC meeting, I proposed holding a series of 2-hour meetings to discuss actions for each of the four pollutants. The TC agreed, and a combined meeting to discuss Diazinon and Legacy Pesticides was scheduled for 28 April. In preparation for this meeting, CEP staff and Water Board staff developed a template for proposed projects that focused on regulatory projects—i.e. projects that would provide the technical basis for the Water Board to adopt, for each pollutant, one of the following:

- A TMDL, including waste load allocations, load allocations, and an implementation plan.
- A Water Quality Attainment Strategy (essentially a list of actions that are designed to achieve water quality objectives without load allocations and waste load allocations).

- Removal of the pollutant from the 303(d) list of pollutants impairing beneficial uses of San Francisco Bay.
- Postponement of regulatory action pending further study or confirmation of trends (applicable to impairments that are expected to abate by themselves).

In response to this focus on regulatory projects, rather than mitigation actions, I suggested—first by email and then at the 28 April meeting—that the group should set aside, temporarily, decisions on a regulatory action for each of these pollutants. Instead, I suggested, the group should focus on developing a set of reasonable mitigation actions that represent consensus on what can and should be done to protect the environment and human health from the potential effects of these pollutants.

My reasoning is as follows: The same set of sensible mitigation actions for these pollutants could, in reality, be structured as a TMDL implementation plan, a Water Quality Attainment Strategy, or a list of preventative actions in the Basin Plan implementation plan. (The latter could be associated with either a delisting action or "no regulatory action" alternative.)

The TC did have a fruitful discussion along these lines on 28 April. The discussion ended with agreement that CEP staff would draft a "package" of mitigation actions to be associated with contemplated regulatory actions for Diazinon and Legacy Pesticides. However, it is uncertain if "packages" of actions will also be prepared for Selenium and Dioxins. I will continue to pursue this point.

Mitigation Projects of Interest

BACWA—the POTWs—proposed a substantial list of (mostly existing) pollution-prevention actions to address Diazinon and Legacy Pesticides.

I proposed two projects.

The first project would address the potential of future water toxicity problems resulting from the substitution of new pesticides for Diazinon. CEP partners would fund elements of a process to:

- Track agriculture and urban pesticide use to identify new pesticides on the market and those where use is changing or increasing.
- Analyze the potential effects on water quality and the threat to water quality posed by these changes.
- Assist with regulatory and legislative strategies to control use of these pesticides.

The rationale for this project is, in part, that the effectiveness of voluntary pollution-prevention and integrated pest management is unproven. In contrast, pesticide bans and strict regulation are obviously very effective in reducing and preventing water-quality effects.

The second project would assess the potential human health effects of legacy pesticides in the context of overall environmental factors affecting the health of the most exposed or vulnerable communities. This could

and should be combined with consideration of the potential health effects of other listed pollutants, including PCBs and mercury.

Although there are no truly effective ways to control the sources, fate, or transport of legacy pesticides, PCBs, or mercury, there may be ways to mitigate their effects on human health. A first step in identifying potential mitigations would be to improve our understanding of how these pollutants are affecting human health—and to do so in a public health context, not just in the context of toxicology and risk analysis applied to individual pollutants and single pathways.

Budget

At a the 5 May 2004 TC meeting, CEP staff distributed a first "placeholder" budget for the fiscal year beginning 1 July 2004. This is of interest because there is $175,000-$225,000 pegged for "unallocated technical studies." At the meeting I advocated that the process for allocating these funds be tied into consideration of the implementation projects coming out of CM/IA process described above.

Modeling

I also prepared a memorandum reviewing and critiquing a CEP project technical report on "Use of Conceptual and Numerical Models to Guide TMDL Development and Implementation in San Francisco Bay." The purpose of this review was to emphasize the need to implement management actions and pursue adaptive implementation as an alternative to expensive and protracted development of numerical models.

Communications

Problems with communications have made it difficult for me, as Environmental Technical Representative, to become fully engaged in the activities of the CEP TC. The main problem seems to be that activities are largely taking place in self-directed work groups. Communications are mainly by email. I have repeatedly requested to receive these email communications (so I can at least monitor the decision-making process, even if time and resources are insufficient for me to participate).

In addition, CEP staff (Applied Marine Sciences) have had some difficulty with their software for distributing meeting announcements, etc.

Neither of these problems appears to be intentional at all. I will continue to work with CEP staff to insure that I get the timely information that I need to monitor and participate in the CEP—and to keep you informed.

Summary and Evaluation

As I've become involved in the CEP, the general perspectives and issues identified in our 23 March 2004 meeting—and reiterated at the larger 8 April 2004 meeting—have served as a useful guide.

There are some opportunities to possibly win commitments from CEP partners to pursue projects and actions that are of interest to the coalition. These projects and actions could be developed and scoped using funds from the CEP's FY 2004-2005 budget, and then incorporated into future regulatory actions by the Water Board.

As we discussed on 8 April, a "good TMDL" (I would now add "or any 'good' regulatory decision") is a decision that includes measurable and verifiable actions that can reduce the environmental and human health Although success is still uncertain, there appear to be some opportunities, through the CEP, to get such actions implemented.

Sometime soon, we should discuss how we can coordinate my advocacy on the TC with the coalition members' advocacy in other venues.