

# Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay

A Joint Powers Public Agency

Public Comment  
City of Tracy / A-1846(a) & (b)  
Deadline: 3/4/09 by 12 noon

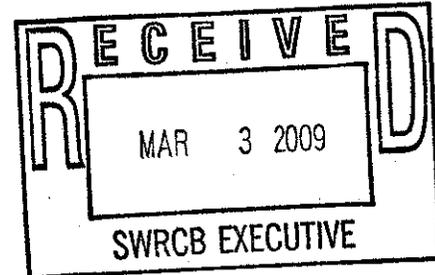
P.O. Box 24055, MS 702

Oakland, California 94623

March 4, 2009

VIA EMAIL

Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
commentletters@waterboards.ca.gov



Re: Bay Area Clean Water Agencies' Comments on Draft Order for  
**A-1846(a) and A-1846(b) - March 17, 2009 Board Meeting**

Dear Ms. Townsend and Members of the State Water Board:

Bay Area Clean Water Agencies ("BACWA") submits the following comments on the proposed Draft Order issued for public comment on February 2, 2009. BACWA is a joint powers authority ("JPA") whose members own and operate publicly-owned treatment works ("POTWs") that discharge treated effluent to San Francisco Bay and its tributaries. Collectively, BACWA's members serve nearly 7 million people in the nine-county Bay Area, treating all domestic, commercial and a significant amount of industrial wastewater. BACWA was formed to develop a region-wide understanding of the watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and to ensure that this understanding leads to long-term stewardship of the San Francisco Bay Estuary. BACWA member agencies are public agencies, governed by elected officials and managed by professionals, who are dedicated to protecting our water environment and the public health.

BACWA is concerned with the precedent being potentially set by portions of the Draft Order in the Petition filed by the California Sportsfishing Protection Alliance on the City of Tracy's NPDES permit, in particular the provisions related to the use of estimated data in the determination of whether a discharge has a reasonable potential to cause or contribute to an exceedance of applicable water quality standards.

The Draft Order at page 17 contends that the State Implementation Policy for Toxics Standards ("SIP") requires a finding of reasonable potential for bis(2-ethylhexyl)phthalate ("bis-2"). However, the Regional Water Boards possesses ample discretion to find that data are inappropriate or insufficient for use under the plain language of SIP section 1.2 ("When implementing the provisions of this Policy, the RWQCB shall use all available, valid, relevant, representative data and information, as determined by the RWQCB. The RWQCB shall have

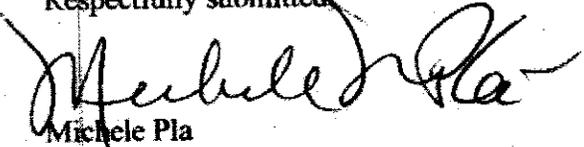
discretion to consider if any data are inappropriate or insufficient for use in implementing this Policy." (emphasis added))

The State Board should not be encouraging the use of estimated ("j-flagged") data in calculations of reasonable potential, or in determinations of impaired waters or in assessing violations of NPDES permits. Detected Not Quantified (DNQ) data merely indicate the *potential* presence of a pollutant, but do not rise to a level of certainty that should be required for any data utilized for regulatory purposes. In fact, these exact issues have been the subject of national debate, resulting in the creation of a federal advisory committee to discuss the legal and scientific implications of relying upon such questionable data values.

BACWA is particularly concerned about this precedent particularly with bis-2, because the State Board has recognized in previous precedential orders to which BACWA was a party that there is a high likelihood of interference and contamination that may cause false positive readings. *In the Matter of the Petitions of East Bay MUD and BACWA*, Order No. WQO 2002-0012 at pg. 28. Given this added level of uncertainty, the Regional Water Board was justified in its judgment to require additional confirmatory monitoring for a year using improved sampling methods instead of jumping to the conclusion that an effluent limitation for bis-2 was required. This was consistent with the SIP's section 1.3 admonition in Step 8 to require "additional monitoring for the pollutant in the place of a water quality-based effluent limitation."

BACWA believes that the State Board should not be overturning reasonable approaches to water quality regulation and should instead be confirming the Regional Water Board's compliance with the intent and procedures of the SIP.

Respectfully submitted



Michele Pla

Executive Director