

1 CITY OF EMERYVILLE  
MICHAEL G. BIDDLE (139223)  
2 City Attorney  
1333 Park Avenue  
3 Emeryville, CA 94608  
Telephone: (510) 596-4381  
4 [mbiddle@emeryville.org](mailto:mbiddle@emeryville.org)

5  
6 Attorney for Petitioner  
CITY OF EMERYVILLE

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

IN THE MATTER OF CITY OF  
EMERYVILLE FOR REVIEW OF ORDER  
NO. R2-2009-0083 (NPDES NO.  
CA0038792) OF THE REGIONAL WATER  
QUALITY CONTROL BOARD, SAN  
FRANCISCO BAY REGION.

**CITY OF EMERYVILLE'S PETITION  
FOR REVIEW; PRELIMINARY POINTS  
AND AUTHORITIES IN SUPPORT OF  
PETITION (Wat. Code § 13320)**

1 Pursuant to Section 13220(a) of the California Water Code and Section 2050 of Title 23 of  
2 the California Code of Regulations, City of Emeryville ("Petitioner") hereby petitions the  
3 California State Water Resources Control Board ("State Board") for review of Order No. R2-  
4 2009-0083 adopted by the California Regional Water Quality Control Board, San Francisco Bay  
5 Region ("Regional Board") on November 18, 2009. The Order is also National Pollutant  
6 Discharge Elimination System ("NPDES") Permit No. CA0038792 for the Petitioner's Sanitary  
7 Sewer Collection System ("Permit"). A copy of the Permit is attached to this Petition as Exhibit  
8 A. A copy of this Petition has been sent to the Regional Board. A copy of the Request to Prepare  
9 Record of Proceeding is attached as Exhibit B. The issues and a summary of the bases for the  
10 Petition follow. Petitioner reserves the right to file a more detailed memorandum in support of its  
11 Petition when the full administrative record is available and any other material has been  
12 submitted.<sup>1</sup> Petitioner requests a hearing in this matter.

13 The Petitioner has worked and will continue to work cooperatively with the Regional  
14 Board to achieve the common goal of protecting water quality in San Francisco Bay. The  
15 Regional Board in revising this Permit and the NPDES permits of other satellites has grappled  
16 with numerous complex technical and legal issues. On several issues, however, the Regional  
17 Board's legal analysis is incorrect and the Regional Board did not fully consider the facts  
18 surrounding both Petitioner and the other Satellites and the treatment entity. With great respect for  
19 the Regional Board and its staff, Petitioner must seek review of these issues from the State Board  
20 in order to preserve Petitioner's rights.

21 This Petition is a protective filing, and Petitioner requests that the State Board hold this  
22 petition in abeyance pursuant to Title 23, California Code of Regulations, Section 2050.5,  
23 subdivision (d) until further notice. If this Petition is not held in abeyance for any reason,  
24

25 <sup>1</sup> The State Water Resources Control Board's regulations require submission of a statement of points and authorities  
26 in support of a petition (23 C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary  
27 memorandum. However, it is impossible to prepare a complete statement and memorandum in the absence of the  
28 complete administrative record, which is not yet available. In addition, the Petitioner will introduce further evidence  
before the State Board as permitted by 23 C.C.R. § 2050.6 and Water Code § 13320(b) regarding economics and  
further impacts that was not available at the time of the Regional Board hearing.

1 Petitioner will file an amended petition and supporting declaration seeking a stay under Water  
2 Code § 13321(a) and Title 23, California Code of Regulations, Section 2053.

3 **1. NAME AND ADDRESS OF PETITIONER**

4 City of Emeryville

5 1333 Park Avenue

6 Emeryville, CA 94608

7 Attn: Michael G. Biddle, City Attorney

8 **2. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

9 The Petitioner seeks review of the Regional Board's Order No. R2-2009-0083, which was  
10 the issuance of the Permit (NPDES Permit No. CA0038792).

11 **3. DATE OF THE REGIONAL BOARD ACTION**

12 The Regional Board issued its Order and adopted the Permit on November 18, 2009.

13 **4. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION**  
14 **WAS INAPPROPRIATE OR IMPROPER**

15 As set forth below, the action of the Regional Board with respect to Petitioner was not  
16 supported by the record, and was arbitrary, vague and in violation of law and policy.

17 **A. 40 C.F.R. § 122.41(e) does not Provide Authority for the Imposition of**  
18 **Discharge Prohibition III.D**

19 The Regional Board improperly relied on Section 122.41, subdivision (e), of Title 40 of the  
20 Code of Federal Regulations for the imposition of Discharge Prohibition III.D. Section IV of the  
21 Permit Fact Sheet states that Discharge Prohibition III.D is based on the operations and  
22 maintenance requirements in Section 122.41, subdivision (e), of Title 40 of the Code of Federal  
23 Regulations and "is necessary to ensure that the Discharger properly operates and maintains its  
24 facilities to reduce I&I." Section 122.41, subdivision (e), provides in relevant part, "[t]he permittee  
25 shall at all times properly operate and maintain all facilities and systems of treatment and control  
26 (and related appurtenances) which are installed or used by the permittee to achieve compliance  
27 with the conditions of the permit."

28 ///

1 Section 122.41, subdivision (e), does not authorize the Regional Board to impose  
2 Discharge Prohibition III.D because Discharge Prohibition III.D is not an operation and  
3 maintenance requirement. Instead, Discharge Prohibition III.D is a narrative wet weather flow  
4 limit. The broad “cause or contribute” language in the discharge prohibition potentially makes the  
5 Petitioner liable for violations of Discharge Prohibition III.D if it contributes wet weather flows to  
6 East Bay Municipal Utility District’s (“EBMUD”) interceptor system on a day in which EBMUD  
7 discharges from its Wet Weather Facilities regardless of whether the Petitioner has properly  
8 maintained and operated its collection system to eliminate I&I. The Permit even acknowledges  
9 that Discharge Prohibition III.D. is designed to control peak wet weather flows. Section II.O of  
10 the Permit provides that “[t]he Regional Board intends to refine the narrative Prohibition III.D  
11 with a numeric flow limit or other more detailed set of standards that achieves the same result as  
12 the Prohibition when information necessary to develop the limit becomes available.”<sup>2</sup> Similarly,  
13 Section IV.B.2 of the Permit states, “[i]mplementation of the General Collection System WDR  
14 requirements for proper operation and maintenance and mitigation of spills will satisfy the  
15 corresponding federal NPDES requirements specified in this Order *provided the Discharger*  
16 *reduces peak wet weather flows so that it does not cause or contribute to discharges at EBMUD’s*  
17 *Wet Weather Facilities.*” (Emphasis added.) Accordingly, because Prohibition III.D is a wet  
18 weather flow limit rather than an operation and maintenance requirement, it is not authorized by  
19 Section 122.41, subdivision (e).

20 Moreover, if the purpose of Discharge Prohibition III.D was merely to ensure that the  
21 Petitioner properly maintains and operates its collection system to reduce I&I, Discharge  
22 Prohibition III.D would be superfluous because Section IV.B.2 of the Permit requires the  
23 Petitioner to “properly operate and maintain its collection system, which includes but is not  
24 limited to controlling inflow and infiltration.” Similarly, the standard permit conditions set forth

25 \_\_\_\_\_  
26 <sup>2</sup> To the extent that this quoted language prejudices how Prohibition III.D will be refined in the future, Petitioner  
27 contends that action is inappropriate and premature. Similar language is included at page F-13, and Petitioner objects  
28 to that language as well. The proper manner of refining Prohibition III.D cannot be determined until further data is  
gathered and analyzed.

1 in Section I.D of Attachment D require the Petitioner to properly operate and maintain its facilities  
2 in accordance with 40 C.F.R § 122.41(e).

3 **B. Discharge Prohibition III.D Violates Substantive Due Process**

4 Discharge Prohibition III.D violates substantive due process because it is a vague narrative  
5 provision. A permit provision is unconstitutionally vague if it does not “sufficiently convey the  
6 proscribed conduct when measured by common understanding and practices,” (*U.S. v.*  
7 *Christopher*, 700 F.2d 1253, 1258 (9<sup>th</sup> Cir. 1983.)), or if it encourages arbitrary and discriminatory  
8 enforcement. (*Kolender v. Lawson*, 461 U.S. 352 (1983); *People ex. rel. Gallo v. Acuna*, 14  
9 Cal.4<sup>th</sup> 1090 (1997).)

10 Discharge Prohibition III.D merely provides that Petitioner must not “cause or contribute  
11 to discharges from EBMUD’s Wet Weather Facilities that occur during wet weather or are  
12 associated with wet weather.” The permit does not define “cause or contribute,” nor does it  
13 provide Petitioner with any other means of knowing how to control the operation of its collection  
14 system during wet weather to comply with Discharge Prohibition III.D. Accordingly, Discharge  
15 Prohibition III.D. does not sufficiently convey the proscribed conduct as required by due process.

16 Moreover, the Permit does not contain any standards for determining compliance with  
17 Discharge Prohibition III.D, and therefore encourages arbitrary enforcement in violation of due  
18 process. (*Kolender v. Lawson*, 461 U.S. at 358-62 (holding that statute was unconstitutionally  
19 vague because it contains no standard for determining what a person must do to comply with the  
20 requirements of the statute and vests virtually complete discretion in the hands of the police to  
21 determine compliance).)

22 Furthermore, Discharge Prohibition III.D violates due process because it potentially makes  
23 the Petitioner strictly liable for the actions of third parties over which it has no control, such as  
24 EBMUD’s operation of the Wet Weather Facilities and the amount of flow contributed by other  
25 Satellites.

26 **C. Discharge Prohibition III.D Exceeds the Scope of the Clean Water Act**

27 The Permit’s Discharge Prohibition III.D (the "cause or contribute" prohibition) does not  
28 regulate discharges to navigable “waters of the United States,” which is all that the Clean Water

1 Act regulates. Here, by its terms, which terms the regulating agencies have stated in testimony  
2 that they will later be tightening, Prohibition III.D proscribes flows from the Petitioner's and the  
3 other Satellites' collection systems to a **treatment entity** only. This is not a regulation of a  
4 discharge to a water of the United States. A permit term that does not regulate discharges to  
5 waters of the United States is invalid because it is beyond Congress' authority under Article III of  
6 the Constitution.

7 **D. The Regional Board Failed to Consider Factors in Water Code Section**  
8 **13241**

9 The Permit is invalid because it does not demonstrate that the Regional Board considered  
10 the factors in Water Code Section 13241. When issuing waste discharge requirements to a  
11 permittee under the Clean Water Act that impose requirements more stringent than those required  
12 by the Clean Water Act, the Regional Board must consider all of the factors set forth in Water  
13 Code Section 13241, including economic considerations. (Wat. Code § 13263, subd. (a); *City of*  
14 *Burbank v. State Water Resources Control Board*, 25 Cal.4<sup>th</sup> 613, 627 (2005).)

15 The Permit imposes requirements more stringent than those imposed by the Clean Water  
16 Act. The Permit prohibits discharges to EBMUD's interceptor that cause or contribute to  
17 discharges from EBMUD's Wet Weather Facilities, requires the control of I&I and requires the  
18 preparation of a Sewer System Management Plan while the Clean Water Act does not. The  
19 addition of these more stringent requirements to the Permit requires the Regional Board to comply  
20 with Water Code Section 13241. The Regional Board did not do so.

21 **E. The Permit Impermissibly Specifies the Manner of Compliance in**  
22 **Violation of Water Code Section 13360**

23 Water Code Section 13360 prohibits the Regional Board from specifying the manner in  
24 which a permittee achieves compliance with waste discharge requirements and explicitly  
25 authorizes a permittee to comply in any lawful manner. Section IV.B.2 of the Permit violates  
26 Section 13360 by specifying that the Petitioner must achieve compliance with Discharge  
27 Prohibition III.D by controlling I&I. The Permit is therefore invalid because it does not permit the  
28 Petitioner to comply with the discharge prohibitions in any lawful manner, including by

1 constructing additional capacity in its collection system, or by having EBMUD increase capacity  
2 in its treatment and Wet Weather Facilities.

3 **F. The Petitioner's Collection System Does Not Require an NPDES Permit**

4 Because the Petitioner does not discharge pollutants to a water of the United States from a  
5 point source, the Regional Board does not have the authority to require an NPDES permit. In  
6 response to the Satellites' comments on this issue, the Regional Board asserts that an NPDES  
7 permit is appropriate because sanitary sewer overflows ("SSOs") occur in the Satellites' collection  
8 systems which discharge to surface waters and the Satellites' collection systems fall within the  
9 definition of a "publicly owned treatment works" ("POTW"). (Response to Comments, p. 17.)  
10 Neither of these arguments provide the Regional Board with a sufficient legal basis for regulating  
11 Petitioner's collection system under an NPDES permit.

12 **1. Potential SSOs do not Justify Issuance of an NPDES Permit**

13 Potential discharges from the Petitioner's collection system in the form of SSOs do not  
14 provide the Regional Board with authority to regulate the Petitioner's collection system under an  
15 NPDES permit. The Clean Water Act authorizes the Regional Board to issue NPDES permits to  
16 "regulate and control only *actual* discharges-not potential discharges, and certainly not point  
17 sources themselves." (*Waterkeeper Alliance, Inc. v. U.S.* 399 F.3d 486, 505 (2<sup>nd</sup> Cir. 2005).)  
18 Accordingly, unless there is an actual addition of any pollutant to navigable waters from  
19 Petitioner's collection system, "there is no point source discharge, no statutory violation, no  
20 statutory obligation...to comply with EPA regulations for point source discharges, and no  
21 statutory obligation...to seek or obtain an NDPEs permit in the first instance." (*Ibid.*)

22 Indeed, the State Board has recognized its inability to regulate collection systems under an  
23 NPDES permit based on potential SSOs. In adopting Order No. 2006-003, Statewide General  
24 Waste Discharge Requirements for Sanitary Sewer Systems, the State Board considered comments  
25 from stakeholders suggesting that NPDES permits should be required for all collection systems

26 ///  
27 ///  
28 ///

1 because they have the potential to overflow to surface waters. The State Board rejected this  
2 approach, stating that *Waterkeeper Alliance* has “called into question the states’ and USEPA’s  
3 ability to regulate discharges that are only ‘potential’ under an NPDES permit.” (Fact Sheet for  
4 Order No. 2006-003, p. 4.)

5 **2. Petitioner’s Collection System does not Fall Within the Definition of a**  
6 **POTW**

7 While the definition of treatment works in Section 212 of the Clean Water Act is defined  
8 broadly to include sewage collection systems, that definition only applies to the federal grant  
9 program in Subchapter II of the Clean Water Act. For purposes of NPDES permitting  
10 requirements under Subchapter III of the Clean Water Act, EPA’s narrower definition of POTW  
11 set forth in 40 C.F.R. § 122.2 applies. (*Montgomery Environmental Coalition v. Costle*, 646 F.2d  
12 568, 590 (D.C. Cir. 1980). Under that section, a POTW is limited to a “municipality...which has  
13 jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.” (40  
14 C.F.R. §§ 122.2, 403.3(q).) Thus, because Petitioner does not have jurisdiction over the indirect  
15 discharges to, or the discharges from, EBMUD’s wastewater treatment facility, Petitioner’s  
16 collection system does not constitute a POTW and is not subject to NDPEs permitting  
17 requirements.

18 In adopting Order No. 2006-003, Statewide General Waste Discharge Requirements for  
19 Sanitary Sewer Systems, the State Board acknowledged that satellite collection systems fall  
20 outside the scope of EPA’s definition of POTW. The State Board had considered comments from  
21 stakeholders suggesting that NPDES permits should be required for all collection systems leading  
22 to an NPDES-permitted publicly owned treatment works based on EPA’s definition of POTW.  
23 However, the State Board rejected this approach noting that “this interpretation is not widely  
24 accepted and US EPA has no official guidance to this [effect].” (Fact Sheet for Order No. 2006-  
25 003, p. 4.) In addition, the State Board recognized that only the portion of the sanitary sewer  
26 system that is owned by the same agency that owns the permitted wastewater treatment facility is  
27 subject to NPDES permit requirements. (*Ibid.*)

28 ///

1                   **G.     State Board Order No. WQ 2007-004 Was Erroneously Decided**

2           The Permit is invalid because it is based on Order No. WQ 2007-04, which was  
3 erroneously decided by the State Board.<sup>3</sup> The 2007 Order concluded that the permit and time  
4 schedule order issued to EBMUD by the Regional Board in September 2005, which permitted  
5 EBMUD to use its Wet Weather Facilities, were invalid because they failed to implement  
6 secondary treatment requirements and to ensure compliance with applicable water quality  
7 standards. As discussed in EBMUD's Petition for Review of Waste Discharge Requirements  
8 Order No. R2-2009-0004 and Cease and Desist Order No. R2-2009-005, Petition A-1996  
9 ("EBMUD Petition"), the State Board's conclusions in the 2007 Order were erroneous because  
10 secondary treatment standards do not apply to facilities that discharge intermittently during wet  
11 weather. In addition, the Wet Weather Facilities are not subject to secondary treatment standards  
12 because they do not fall within the definition of a "publicly owned treatment works."

13           The Petitioner agrees with and incorporates by reference the arguments made in EBMUD's  
14 Petition regarding the validity of the 2007 Order. Accordingly, to the extent that the State Board  
15 erroneously determined that the Wet Weather Facilities are subject to secondary treatment  
16 standards, the basis for Discharge Prohibition III.D. is invalid.

17                   **H.     The Regional Board is Barred from Requiring Further and Different**  
18                               **Actions than those Set Forth in Previous Orders under the Doctrines of**  
19                               **Res Judicata and Estoppel**

20           The Wet Weather Facilities and the Petitioner's improvements under the East Bay  
21 Infiltration/Inflow Correction Program ("ICP") were constructed at the direction of, and with the  
22 consent of, both the Regional Board and EPA. These projects were undertaken to comply with  
23 injunctive provisions of Regional Board orders issued to resolve the agency's claims under the  
24 Clean Water Act and Porter-Cologne regarding wet weather discharges from the Petitioner's

25 \_\_\_\_\_  
26 <sup>3</sup> The Petitioner understands that the Regional Board must comply with the State Board's Order  
27 No. WQ-2007-004. Nevertheless, the Petitioner believes Order No. WQ 2007-004 was wrongly  
28 decided and should be reconsidered by the State Board.

1 collection systems. These administrative orders are final, and the Regional Board is barred by the  
2 doctrine of res judicata from seeking further relief on the basis of the same claims.

3 In addition, because the Petitioner relied on representations from the Regional Board and  
4 EPA demanding construction of the Wet Weather Facilities and the Petitioner's improvements,  
5 and the Regional Board and EPA knew of this reliance, the Regional Board is now estopped from  
6 requiring further and different actions from the Petitioner and the other Satellites. (*In the Matter of*  
7 *the Petition of William G. Kengel*, Order No. WQ 89-20 (Cal.St.Wat.Res.Bd. 1989) (stating that  
8 estoppel applies in administrative proceedings where the party to be estopped is apprised of the  
9 facts and intends that its conduct be acted on while the party seeking to assert estoppel is ignorant  
10 of the true state of facts and relies on the conduct to his injury.)

11 In response to the Petitioner's and the Satellites' comments, the Regional Board asserts  
12 that it is not barred from seeking further relief because the prior orders "were primarily established  
13 to address untreated sanitary sewer overflows" from the Petitioner's collection system and  
14 EBMUD's interceptor system while the Permit addresses "discharges of partially treated  
15 wastewater in violation of the Clean Water Act from EBMUD's Wet Weather Facilities."  
16 (Response to Comments, p. 18.) The Regional Board's response mischaracterizes the purpose of  
17 the prior orders. The prior orders were designed to address all SSOs from Petitioner's and the  
18 other Satellites' collection systems, not just untreated SSOs (Regional Board Order No. 86-17  
19 "This cease and desist order is directed at addressing in a reasonable manner the public health  
20 aspects of direct contact with overflows from the community collection systems"). Moreover, the  
21 solution developed by the Petitioner and the other Satellites to comply with the orders, which was  
22 approved by the Regional Board, was designed to eliminate all SSOs. (Regional Board Order No.  
23 93-134, p. 3. ("The compliance plans dated October 8, 1985, proposed a 20-year plan to  
24 implement the East Bay Infiltration/Inflow Correction Program (ICP) to eliminate wet weather  
25 overflows from the communities' sanitary sewer system.") Accordingly, because the prior orders  
26 were designed to address all wet weather SSOs from the Petitioner's collection system, and the  
27 Petitioner constructed significant improvements to comply with the prior orders, the Regional  
28 Board is now barred from seeking further relief to address wet weather SSOs.

1                   **I.       The Permit Does not Implement the Basin Plan in Violation of Water**  
2   **Code Section 13263**

3           Water Code Section 13263 requires, among other things, that permits issued by the  
4 Regional Board implement the water quality control plans adopted by the State Board. The Water  
5 Quality Control Plan for the San Francisco Bay Basin ("Basin Plan") permits varying treatment  
6 levels for wet weather flows depending on the beneficial uses to be protected and the recurrence  
7 interval of the wet weather event. For areas, such as Petitioner's service area, where water quality  
8 or aquatic productivity may be limited due to the pollution effects of urbanization, the Basin Plan  
9 requires secondary treatment for flows up to a half-year recurrence interval, requires primary  
10 treatment for flows up to a 5-year recurrence interval, and permits overflows for above five-year  
11 intervals. (Basin Plan, Table 4-6.) The Permit, on the other hand, prohibits all wet weather  
12 discharges from EBMUD's Wet Weather Facilities regardless of the magnitude of the wet weather  
13 event. The Permit is therefore inconsistent with the regulatory strategy for wet weather overflows  
14 set forth in the Basin Plan in violation of Section 13263.

15           The Basin Plan, including its wet weather strategy, has been approved by EPA and is  
16 therefore the "applicable water quality standard" under Clean Water Act Section 1313(c)(3). (33  
17 U.S.C. § 1313(c)(3).) EPA's approval of these Basin Plan provisions in a formal rulemaking by  
18 "determin[ing] that such standard meets the requirements of this chapter [the Clean Water Act],"  
19 (*ibid.*), forecloses any contention that use of the Wet Weather Facilities violates federal law and  
20 forecloses any contention that Discharge Prohibition III.D is required by federal law. Unless and  
21 until a Basin Plan amendment is approved by the State Board, the Office of Administrative Law,  
22 and EPA, the Basin Plan must be implemented.

23           The Regional Board cannot impose limitations more stringent than required by the Basin  
24 Plan, even on a case-by-case basis, without considering the factors listed in Water Code Section  
25 13241 and making sufficient findings. (*In the Matter of the Petition of the City and County of San*  
26 *Francisco, et al.*, Order No. WQ 95-4 (Sept. 21, 1995), p. 13.) As stated in Section 4.D above, the  
27 Regional Board did neither in this case.

28 ///

1 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

2 The Petitioner is aggrieved as a permit holder subject to the conditions and limitations in  
3 the Permit which may be more stringent or onerous than required or provided for under current  
4 law. The Permit and Order also are unsupported by evidence in the record and evidence to be  
5 adduced at a hearing before the State Board. Moreover, Discharge Prohibition III.D is vague,  
6 subject to the actions of third parties over whom Petitioner has no control, and impossible to  
7 comply with by its terms. These inappropriate, improper and unlawful conditions and limitations  
8 will require the Petitioner to expend more money and resources to comply with the Permit than  
9 would have been required if the Permit was comprised of appropriate, proper and lawful  
10 conditions. Because of the severe economic circumstances confronting the Petitioner and the rest  
11 of the state and country, the unnecessary expenditure of money and resources is particularly  
12 harmful.

13 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD**  
14 **REQUESTED**

15 As discussed above, the Petitioner requests that this Petition be held in abeyance. If it  
16 becomes necessary for the Petitioner to pursue its appeal, the Petitioner requests that the State  
17 Board issue an Order:

- 18 • Remanding the Permit to the Regional Board;
- 19 • Requiring the Regional Board to regulate Petitioner's collection system under State  
20 Board Order No. 2006-0003, Statewide General Waste Discharge Requirements for  
21 Sanitary Sewer Systems, or under individual Waste Discharge Requirements under  
22 state law, rather than as an NPDES permit under federal law; and
- 23 • Providing for such other and further relief as is just and proper and as may be  
24 requested by the Petitioner and the other Satellites.

25 Alternatively, the Petitioner requests that the State Board issue an Order:

- 26 • Remanding the Permit to the Regional Board;
- 27 • Requiring the Regional Board to remove or revise Section IV.B.2 of the Permit so  
28 that it no longer impermissibly specifies the manner of compliance;
- Requiring the Regional Board to remove or revise Discharge Prohibition III.D;
- Requiring the Regional Board to analyze the cost of compliance in accordance with  
Water Code Section 13241;

- 1 • Requiring the Regional Board to make sufficient findings; and
- 2 • Providing for such other and further relief as is just and proper and as may be
- 3 requested by the Petitioner and the other Satellites.

4 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF**  
5 **LEGAL ISSUES RAISED IN THIS PETITION**

6 The Petitioner's preliminary statement of points and authorities is set forth in Section 4  
7 above. The Petitioner reserves the right to supplement this statement upon receipt and review of  
8 the administrative record. The Petitioner also requests that it be permitted to submit supplemental  
9 evidence not considered by the Regional Board, including evidence of economic considerations  
10 and weather considerations regarding the Wet Weather Facilities which was not available at the  
11 time of the Regional Board hearing, pursuant to Title 23, California Code of Regulations, Section  
12 2050.6 and Water Code Section 13320(b).

13 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**  
14 **APPROPRIATE REGIONAL BOARD**

15 A true and correct copy of the Petition was mailed by First Class mail on December 21,  
16 2009, to the Regional Board at the following address:

17 Bruce Wolfe, Executive Officer  
18 California Regional Water Quality Control Board,  
19 San Francisco Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

20 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**  
21 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**  
22 **BOARD**

23 Because the Petitioner requests that this Petition be held in abeyance by the State Board, in  
24 the event this Petition is made active, the Petitioner will submit as an amendment to this Petition a  
25 statement that the substantive issues and objections raised in this Petition were either raised before  
26 the Regional Board or an explanation of why Petitioner was not required or was unable to raise the  
27 substantive issues and objections before the Regional Board.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**10. REQUEST TO HOLD PETITION IN ABEYANCE**

The Petitioner requests that the State Board hold this Petition in abeyance pursuant to Title 23, California Code of Regulations, Section 2050.5, subdivision (d).

**11. REQUEST FOR HEARING**

The Petitioner requests that the State Board hold a hearing at which the Petitioner can present additional evidence to the State Board. Because the Petitioner requests that this Petition be held in abeyance by the State Board, in the event this Petition is made active, the Petitioner will submit as an amendment to this Petition a statement regarding that additional evidence and a summary of contentions to be addressed or evidence to be introduced and a showing of why the contentions or evidence have not been previously or adequately presented, as required under Title 23, California Code of Regulations, Section 2050.6(a), (b).

DATED: December 21, 2009

By: Michael G. Biddle  
Michael G. Biddle, City Attorney

1337344.2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**  
**PERMIT**



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Secretary for  
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

November 18, 2009  
CIWQS Place ID: 223685 (RS)

City of Emeryville  
Attn: Maurice Kaufman ([mkaufman@ci.emeryville.ca.us](mailto:mkaufman@ci.emeryville.ca.us))  
1333 Park Avenue  
Emeryville, CA 94608

**Subject: Transmittal of Final Order No. R2-2009-0083, NPDES Permit No. CA0038792 for City of Emeryville, Sanitary Sewer Collection System, Alameda County**

Dear Mr. Kaufman:

Attached is a copy of Final Order No. R2-2009-0083 adopted by the Board on November 18, 2009. The requirements of this order are effective starting on November 18, 2009.

If you have any questions regarding this letter, please contact Robert Schlipf at (510) 622-2478 or email at [rschlipf@waterboards.ca.gov](mailto:rschlipf@waterboards.ca.gov).

Sincerely,

Bruce H. Wolfe  
Executive Officer

Digitally signed by  
Bruce Wolfe  
Date: 2009.11.18  
17:27:46 -08'00'

Attachment: Order No. R2-2009-0083

Copy (sent via email):

Nancy Yoshikawa U.S. EPA, Region 9, [yoshikawa.nancy@epamail.epa.gov](mailto:yoshikawa.nancy@epamail.epa.gov)  
Philip Isorena, SWRCB DWQ, [pisorena@waterboards.ca.gov](mailto:pisorena@waterboards.ca.gov)  
Jae Kim, Tetra Tech, [jae.kim@tetrattech-ffx.com](mailto:jae.kim@tetrattech-ffx.com)  
Ken Greenberg, U.S. EPA, Region 9, [greenberg.Ken@epamail.epa.gov](mailto:greenberg.Ken@epamail.epa.gov)  
Michelle Moustakas, U.S. EPA, Region 9, [moustakas.michelle@epa.gov](mailto:moustakas.michelle@epa.gov)

*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**SAN FRANCISCO BAY REGION**

1515 Clay Street, Suite 1400, Oakland, CA 94612  
510-622-2300 • Fax 510-622-2460  
<http://www.waterboards.ca.gov>

**ORDER NO. R2-2009-0083**  
**NPDES NO. CA0038792**

**WASTE DISCHARGE REQUIREMENTS  
FOR THE CITY OF EMERYVILLE  
SANITARY SEWER COLLECTION SYSTEM  
ALAMEDA COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

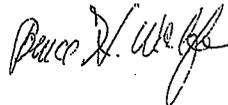
**Table 1. Discharger Information**

<b>Discharger</b>	City of Emeryville
<b>Name of Facility</b>	Sanitary Sewer Collection System
<b>Facility Mailing Address</b>	1333 Park Avenue, Emeryville, CA 94608
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this Discharger as a minor discharger.	

**Table 2. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	November 18, 2009
This Order shall become effective on:	November 18, 2009
This Order shall expire on:	November 17, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date

I, Bruce H. Wolfe, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on the date shown above.



Digitally signed by  
Bruce Wolfe  
Date: 2009.11.18  
17:28:30 -08'00'

Bruce H. Wolfe, Executive Officer

### Table of Contents

I. Facility Information .....	3
II. Findings.....	3
III. Discharge Prohibitions.....	8
IV. Provisions.....	8
A. Standard Provisions.....	8
B. Special Provisions.....	8

### List of Attachments

Attachment A – Not Used	
Attachment B – Collection System Service Area .....	B-1
Attachment C – Not Used	
Attachment D – Standard Provisions (Federal) .....	D-1
Attachment E – Not Used	
Attachment F – Fact Sheet.....	F-1
Attachment G – Regional Water Board May 1, 2008, letter	

## I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 3. Facility Information**

<b>Discharger</b>	City of Emeryville
<b>Name of Facility</b>	Sewer Collection System
<b>Facility Address</b>	Emeryville city limits
	Emeryville, CA
	Alameda County
<b>Facility Contact, Title, and Phone</b>	Maurice Kaufman, Public Works Director (510) 596-4334
<b>Mailing Address</b>	1333 Park Avenue, Emeryville, CA 94608
<b>Type of Facility</b>	Sanitary Sewer Collection System
<b>Facility Design Flow</b>	Not Applicable

## II. FINDINGS

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board), finds:

**A. Background.** The City of Emeryville (hereinafter Discharger) has been regulated by Order No. R2-2004-0011 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038792. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and State laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

**B. Facility Description.** The Discharger owns and maintains approximately 15 miles of mains and one pump station in its sanitary sewer (or wastewater) collection system, which serves a population of about 10,000 people in the City of Emeryville. Additionally, the Discharger's wastewater collection system carries wastewater flows originating from approximately 11 miles of sewer main owned and operated by the City of Oakland which serves a population of approximately 7,000 people.

The Discharger is one of seven "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to the East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the Cities of Alameda, Albany, Berkeley, Oakland, and Piedmont. Wastewaters collected from these East Bay collection systems flow to

interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under separate NPDES permits (CA0037702 and CA0038440) and Cease and Desist Order No. R2-2009-0005.

***Cease and Desist Orders, EBMUD 2009 NPDES Permit, and Stipulated Order for Preliminary Relief.*** In 1986, the Regional Water Board issued a Cease and Desist Order ("CDO") No. 86-17 (reissued in 1993 as CDO No. 93-134) to the Discharger and each of the Satellite Agencies requiring them to cease and desist discharging from their wastewater collection systems. In response, EBMUD and the Satellite Agencies developed a comprehensive Infiltration/Inflow Correction Program ("I/ICP") that contains schedules, called Compliance Plans, for each Satellite Agency to complete various sewer rehabilitation projects specified in the I/ICP. The Compliance Plans were incorporated into CDO No. 93-134 for each Satellite Agency as a compliance schedule.

In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the U. S. Environmental Protection Agency (USEPA), and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

- C. Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).
- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application,

and reports required by Order No. R2-2004-0011. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order.

- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations<sup>1</sup>, require that permits allowing discharges include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. Because this Order does not allow any discharges, no such conditions are required.
- G. Water Quality-Based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits allowing discharges include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. Because this Order does not allow any discharges, no such limitations are required.
- H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay Region (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Because this Order does not allow any discharges, effluent limitations based on the Basin Plan are not required.

The State Water Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for surface waters. Because this Order does not allow any discharges, effluent limitations based on the Thermal Plan are not required.

- I. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants. Because this Order does not allow any discharges, effluent limitations based on the NTR and CTR are not required.
- J. State Implementation Policy.** On March 2, 2000, the State Water Board adopted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). The SIP

---

<sup>1</sup> All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

became effective on April 28, 2000, with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Because this Order does not allow any discharges, effluent limitations based on the SIP are not required.

- K. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on a discharger's request and demonstration that it is infeasible for an existing discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or May 18, 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order does not include compliance schedules, interim effluent limitations or discharge specifications.
- L. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 C.F.R. § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000, may be used for CWA purposes, whether or not approved by USEPA.
- M. Stringency of Requirements for Individual Pollutants.** Because this Order does not allow any discharges, it is the most stringent possible order for all individual pollutants.
- N. Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and State Water Board Resolution No. 68-16.

- O. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and section 122.44(l), title 40 of the Code of Federal Regulations, prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Because this Order prohibits all discharges from the wastewater collection system, there are no effluent limitations in this Order, and this Order is as stringent as the previous permit. The Regional Water Board intends to refine the narrative Prohibition III.D with a numeric flow limit or other more detailed set of standards that achieves the same result as the Prohibition when information necessary to develop the limit becomes available. Accordingly, such future refinement of the effluent limitation is an equivalent effluent limitation and will not be considered to be less stringent than the existing Prohibition III.D.
- P. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). By prohibiting all discharges from the wastewater collection system, this Order protects the beneficial uses of waters of the State. The Discharger is responsible for meeting all requirements of the applicable Endangered Species Act.
- Q. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below), the Discharger must still notify the Regional Water Board and submit a written report if discharges occur.
- R. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account that discharges from its wastewater collection system are prohibited.
- S. Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided it with an opportunity to submit its written comments and recommendations. Details of the notification are provided in the Fact Sheet of this Order.
- T. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

THEREFORE, IT IS HEREBY ORDERED, that Order No. R2-2004-0011 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the

provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

### III. DISCHARGE PROHIBITIONS

- A. The discharge of untreated or partially treated wastewater to waters of the United States, is prohibited.
- B. The discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.
- C. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.
- D. The Discharger shall not cause or contribute to discharges from EBMUD's Wet Weather Facilities that occur during wet weather or that are associated with wet weather.

### IV. PROVISIONS

#### A. Standard Provisions

- 1. **Federal Standard Provisions.** The Discharger shall comply with all Standard Provisions included in Attachment D of this Order that are applicable.

#### B. Special Provisions

- 1. **Enforcement of Prohibition III.A.** The Regional Water Board may take enforcement action against the Discharger for any sanitary sewer system discharge, unless the Discharger documents that an upset, defined in Attachment D, Standard Provisions I.H, occurred.
- 2. **Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements.** The Discharger shall properly operate and maintain its collection system, which includes but is not limited to controlling inflow and infiltration, (Attachment D, Standard Provisions – Permit Compliance, subsection I.D), report any noncompliance with the exception noted below, and mitigate any discharge from the collection system in violation of this Order (Attachment D, Standard Provisions – Permit Compliance, subsection I.C).

The General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) Order No. 2006-0003-DWQ has requirements for operation and maintenance of wastewater collection systems and for reporting and mitigating sanitary sewer overflows. While the Discharger must comply with both the General Collection System WDR and this Order, the General Collection System WDR specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDR requirements for proper operation and maintenance and

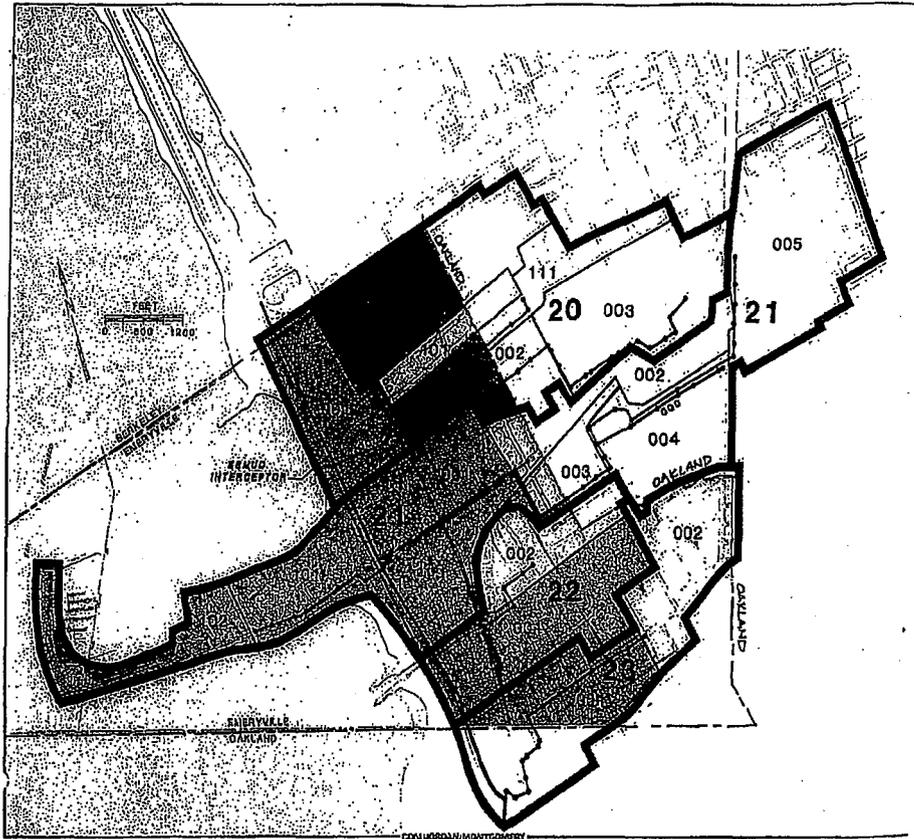
mitigation of spills will satisfy the corresponding federal NPDES requirements specified in this Order provided the Discharger reduces peak wet weather flows so that it does not cause or contribute to discharges at EBMUD's Wet Weather Facilities.

Following reporting requirements in the General Collection System WDR will satisfy NPDES reporting requirements for discharges of untreated or partially treated wastewater from the Discharger's wastewater collection system. Furthermore, Regional Water Board staff issued notification and certification requirements in its letter on May 1, 2008. While not a part of this NPDES permit, the requirements in the May 1, 2008, letter continue to be in effect, and the letter is included in Attachment G for reference.

*Exception to noncompliance reporting.* This Order does not require that the Discharger report noncompliance with Prohibition III.D. EBMUD's NPDES Permit CA0038440 requires EBMUD to report such discharges from its Wet Weather Facilities so reporting by the Discharger is not necessary.

**ATTACHMENT A – NOT USED**

**ATTACHMENT B – COLLECTION SYSTEM SERVICE AREA**



**ATTACHMENT C – NOT USED**

## **ATTACHMENT D – STANDARD PROVISIONS (FEDERAL)**

### **I. STANDARD PROVISIONS – PERMIT COMPLIANCE**

#### **A. Duty to Comply**

1. The Discharger must comply with all of the conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 C.F.R. § 122.41(a).)
2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

#### **B. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

#### **C. Duty to Mitigate**

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

#### **D. Proper Operation and Maintenance**

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

#### **E. Property Rights**

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

#### **F. Inspection and Entry**

The Discharger shall allow the Regional Water Board, State Water Board, United States Environmental Protection Agency (USEPA), and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 C.F.R. § 122.41(i); Wat. Code, § 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (40 C.F.R. § 122.41(i)(1));
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (40 C.F.R. § 122.41(i)(2));
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (40 C.F.R. § 122.41(i)(3)); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (40 C.F.R. § 122.41(i)(4).)

#### **G. Bypass**

##### **1. Definitions**

- a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
  - b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)
2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)

3. **Prohibition of bypass.** Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
  - c. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)
4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)
5. **Notice**
  - a. **Anticipated bypass.** If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 C.F.R. § 122.41(m)(3)(i).)
  - b. **Unanticipated bypass.** The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). (40 C.F.R. § 122.41(m)(3)(ii).)

#### **H. Upset**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. **Effect of an upset.** An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was

caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).)

2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):
  - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
  - b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
  - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
  - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

## II. STANDARD PROVISIONS – PERMIT ACTION

### A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

### B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

### C. Transfers

This Order is not transferable to any person except after notice to the Regional Water Board. The Regional Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the Water Code. (40 C.F.R. § 122.41(l)(3); § 122.61.)

### **III. STANDARD PROVISIONS – MONITORING**

- A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)
- B.** Monitoring results must be conducted according to test procedures under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503 unless other test procedures have been specified in this Order. (40 C.F.R. § 122.41(j)(4); § 122.44(i)(1)(iv).)

### **IV. STANDARD PROVISIONS – RECORDS**

- A.** Except for records of monitoring information required by this Order related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part 503), the Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)
- B. Records of monitoring information shall include:**
  - 1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
  - 2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
  - 3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
  - 4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
  - 5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
  - 6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)
- C. Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):**
  - 1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
  - 2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

## V. STANDARD PROVISIONS – REPORTING

### A. Duty to Provide Information

The Discharger shall furnish to the Regional Water Board, State Water Board, or USEPA within a reasonable time, any information which the Regional Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Regional Water Board, State Water Board, or USEPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, § 13267.)

### B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA). (40 C.F.R. § 122.22(a)(3).)
3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and
  - c. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard

Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (40 C.F.R. § 122.22(d).)

### **C. Monitoring Reports**

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.22(l)(4).)
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. (40 C.F.R. § 122.41(l)(4)(i).)
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

### **D. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

### **E. Twenty-Four Hour Reporting**

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time

the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):
  - a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
  - b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)
3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

#### **F. Planned Changes**

The Discharger shall give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under section 122.42(a)(1) (see Additional Provisions—Notification Levels VII.A.1). (40 C.F.R. § 122.41(l)(1)(ii).)

#### **G. Anticipated Noncompliance**

The Discharger shall give advance notice to the Regional Water Board or State Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with General Order requirements. (40 C.F.R. § 122.41(l)(2).)

#### **H. Other Noncompliance**

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 C.F.R. § 122.41(l)(7).)

#### **I. Other Information**

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Water Board, State Water Board, or USEPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

### **VI. STANDARD PROVISIONS – ENFORCEMENT**

- A.** The Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13385, 13386, and 13387.

### **VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS**

#### **A. Publicly-Owned Treatment Works (POTWs)**

All POTWs shall provide adequate notice to the Regional Water Board of the following (40 C.F.R. § 122.42(b)):

- 1.** Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to sections 301 or 306 of the CWA if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)); and
- 2.** Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order. (40 C.F.R. § 122.42(b)(2).)
- 3.** Adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 C.F.R. § 122.42(b)(3).)

## ATTACHMENT F – FACT SHEET

### Table of Contents

I.	Permit Information .....	2
II.	Facility Description .....	4
	A. Description of Wastewater and Biosolids Treatment or Controls .....	4
	B. Discharge Points and Receiving Waters .....	4
	C. Summary of Existing Requirements and Self-Monitoring Report (SMR) Data .....	4
	D. Compliance Summary .....	4
	E. Planned Changes .....	5
III.	Applicable Plans, Policies, and Regulations .....	9
	A. Legal Authorities .....	9
	B. California Environmental Quality Act (CEQA) .....	10
	C. State and Federal Regulations, Policies, and Plans .....	10
	D. Impaired Water Bodies on CWA 303(d) List .....	12
	E. Other Plans, Policies and Regulations .....	12
IV.	Rationale For Discharge Prohibitions .....	12
V.	Rationale for Provisions .....	14
VI.	Public Participation .....	15
	A. Notification of Interested Parties .....	15
	B. Written Comments .....	15
	C. Public Hearing .....	15
	D. Waste Discharge Requirements Petitions .....	16
	E. Information and Copying .....	16
	F. Register of Interested Persons .....	16
	G. Additional Information .....	16

### List of Tables

Table F-1.	Facility Information .....	2
Table F-2.	Sewer System Discharges and Primary Causes .....	4

## ATTACHMENT F-- FACT SHEET

As described in section II of this Order, this Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order.

This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California. Only those sections or subsections of this Order that are specifically identified as "not applicable" have been determined not to apply to this Discharger. Sections or subsections of this Order not specifically identified as "not applicable" are fully applicable to this Discharger.

### I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility.

**Table F-1. Facility Information**

<b>WDID</b>	2 019445001
<b>Discharger</b>	City of Emeryville
<b>Name of Facility</b>	Sewer Collection System
<b>Facility Address</b>	Emeryville city limits
	Emeryville, CA
	Alameda County
<b>Facility Contact, Title, and Phone</b>	Maurice Kaufman, Public Works Director (510) 596-4334
<b>Authorized Person to Sign and Submit Reports</b>	Same
<b>Mailing Address</b>	1333 Park Avenue, Emeryville, CA 94608
<b>Billing Address</b>	Same
<b>Type of Facility</b>	Sewer Collection System
<b>Major or Minor Facility</b>	Minor
<b>Threat to Water Quality</b>	2
<b>Complexity</b>	B
<b>Pretreatment Program</b>	N
<b>Reclamation Requirements</b>	Not Applicable
<b>Facility Permitted Flow</b>	0 gallons per day
<b>Facility Design Flow</b>	Not Applicable
<b>Watershed</b>	San Francisco Bay
<b>Receiving Water</b>	Various
<b>Receiving Water Type</b>	enclosed bay

- A. The City of Emeryville (hereinafter Discharger) owns and maintains approximately 15 miles of wastewater collection systems and one pump station that serve a population of about 10,000 people in the City of Emeryville. Additionally, the Discharger's

wastewater collection system carries wastewater flows originating from approximately 11 miles of sewer main owned and operated by the City of Oakland which serves a population of approximately 7,000 people.

The Discharger is one of seven East Bay Communities or "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stègè Sanitary District and the Cities of Alameda, Albany, Berkeley, Oakland, and Piedmont. Wastewaters collected from the East Bay Communities' collection systems flow to interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under a separate NPDES permit (CA0037702).

- B. The Discharger's sewer collection system has been regulated by Order No. R2-2004-0011, which was adopted on March 17, 2004, and expired on March 16, 2009. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

## **II. FACILITY DESCRIPTION**

### **A. Description of Sewer Collection System**

The Discharger owns and operates about 15 miles of wastewater collection systems and one pump station that serve a population of approximately 10,000 people in the City of Emeryville in Alameda County. Additionally, the Discharger's wastewater collection system carries wastewater flows originating from approximately 11 miles of sewer main owned and operated by the City of Oakland which serves a population of approximately 7,000 people. The sewer collection system transports wastewater from industrial, commercial, and residential sources to EBMUD's main Wastewater Treatment Plant where EBMUD treats the wastewater and discharges it to San Francisco Bay. During wet weather, because of increased flows caused by inflow and infiltration (I&I) from collection systems tributary to EBMUD facilities, the wastewater also flows to EBMUD's Wet Weather Facilities where EBMUD stores the wastewater or partially treats it prior to discharge to San Francisco Bay.

### **B. Discharge Points and Receiving Waters**

This Order prohibits discharges from the Discharger's sewer collection system so there are no authorized discharge points.

### **C. Summary of Existing Requirements**

The previous permit prohibited discharge with the following requirements:

1. The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited.
2. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.

At B.1 (Implementation and Enforcement of Prohibition A.1), the previous permit noted that prohibition 1 is not violated (a) if the sewer system discharge does not enter a storm drain or surface water body, or (b) if the Discharger contains the sewer system discharge within the storm drain system pipes, and fully recovers and cleans up the spilled wastewater.

### **D. Compliance Summary**

For 2007 and 2008, Table F-2 below shows the estimated number and causes of sewer system discharges in the Discharger's service area. This information is not necessarily indicative of ongoing causes, in part because there are often multiple causes for any one particular sewer system discharge.

**Table F-2. Sewer System Discharges and Primary Causes**

	2007	2008
Number of Discharges	1	1
% Caused by Roots	0	0
% Caused by Grease	100	0
% Caused by Debris	0	100

**E. Planned Changes**

As required by Cease & Desist Order (CDO) No. 93-134, the Discharger rehabilitated and replaced portions of its collection system. This CDO included a compliance plan with projects that the Discharger had to implement each year. The Discharger completed all of its projects associated with CDO No. 93-134 in 2007. The purpose of these projects was to prevent discharges of untreated or partially treated wastewater from its wastewater collection system. The background and history for these requirements are detailed in the subsections below.

***Background and Regulatory History***

- a. *History.* The wastewater collection systems in the East Bay Communities were originally constructed in the early twentieth century. These systems originally included cross-connections to storm drain systems and, while not uncommon at the time of construction, some of the sewers were later characterized as having inferior materials, poor joints, and inadequate beddings for sewer pipes. The construction of improvements and the growth of landscaping, particularly trees, have damaged sewers and caused leaks. Poor construction techniques and aging sewer pipes resulted in significant I&I during the wet weather season. In the early 1980s, it was noted that during storms, the collection systems might receive up to 20 times more flow than in dry weather. As a result, the East Bay Communities' collection systems might overflow to streets, local watercourses, and the Bay, creating a risk to public health and impairing water quality.
- b. *I&I Effect on EBMUD's Interceptor System.* The East Bay Communities' collection systems are connected to EBMUD's interceptors. In the early 1980s, excessive I&I from the East Bay Communities' collection systems could force EBMUD's interceptors to overflow untreated wastewater at seven designed overflow structures in EBMUD's interceptors along the shoreline of central San Francisco Bay.
- c. *EBMUD wet weather permits.* The Regional Water Board first issued an NPDES permit to EBMUD in 1976 for the wet weather discharges from EBMUD's interceptors. This permit required EBMUD to eliminate the discharge of untreated

overflows from its interceptors and to protect water quality in San Francisco Bay. This permit was reissued in 1984, 1987, 1992 and 1998. Additional requirements were incorporated into the reissued permits following construction of wet weather treatment facilities.

- d. *Collection system permits to East Bay Communities.* Following issuance of the wet weather permit to EBMUD in 1976, the Regional Water Board issued similar permits in 1976 to all members of the East Bay Communities except the City of Emeryville. The Regional Water Board reissued these permits in 1984, 1989 and 1994. Emeryville was not originally issued a permit because it was believed that no wet weather overflows occurred in Emeryville's service area. However, wet weather overflows were identified in the City of Emeryville after completion of the East Bay I&I Study and issuance of the Cease and Desist Orders (CDO) in 1986.
- e. *East Bay I&I Study and I/ICP.* In response to the requirements in the Regional Water Board permits and CDOs regarding the control of untreated overflows from EBMUD's interceptors and the East Bay Communities' collection systems, EBMUD and the East Bay Communities coordinated their efforts to develop a comprehensive program to comply with these permit requirements. In 1980, the East Bay Communities, including the Discharger, and EBMUD initiated a 6-year East Bay I&I Study. The I&I Study outlined recommendations for a long-range sewer improvement program called the East Bay Infiltration/Inflow Correction Program (I/ICP). The I&I Study also specified schedules, which are called Compliance Plans, for each member of the East Bay Communities to complete various sewer rehabilitation projects specified in the I/ICP. These Compliance Plans were later incorporated into the CDO for East Bay Communities as compliance schedules.

The \$16.5 million I&I Study was funded under the Clean Water Grant Program with State and federal support paying about 87.5% of the costs. The original Compliance Plans dated October 8, 1985, proposed a 20-year plan to implement the I/ICP to eliminate wet weather overflows from the East Bay Communities' collection systems up to the 5-year storm event. The total program cost was estimated at \$304 million in 1985 dollars.

- f. *Joint Powers Agreement (JPA).* In order to address I&I problems in the East Bay Communities' wastewater collection systems, on February 13, 1979, the East Bay Communities and EBMUD entered into a JPA under which EBMUD serves as administrative lead agency to conduct the East Bay I&I Study. The JPA was amended on January 17, 1986, to designate EBMUD as the lead agency during the initial five-year implementation phase of the East Bay I&I Study recommendations. The amended JPA also delegated authority to EBMUD to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather programs, and to perform other related tasks. Programs developed under the JPA are directed by a Technical Advisory Board (TAB) composed of one voting representative from each of the East Bay Communities and EBMUD. In addition, one non-voting staff member of the Regional Water Board, State Water Board, and USEPA may participate in the TAB.

- g. *Cease and Desist Order (CDO)*. In 1986, the Regional Water Board issued a CDO to the East Bay Communities including the City of Emeryville (Order No. 86-17, reissued with Order No. 93-134). This CDO requires the East Bay Communities to cease and desist discharging from their wastewater collection systems. In CDO No. 86-17, the Regional Water Board accepted the proposed approach in the I/ICP and directed the I/ICP to focus on conducting activities that reduce impacts to public health.
- h. *EBMUD's Wet Weather Program*. From 1975 to 1987, EBMUD underwent its own wet weather program planning, and developed a comprehensive Wet Weather Program. The objective of the Wet Weather Program was that EBMUD's wet weather facilities have the capacity to convey peak flows to EBMUD's system by the East Bay Communities' trunk sewers at the end of the I/ICP implementing period. EBMUD started implementing its Wet Weather Program in 1987. Since then, EBMUD has spent about \$310 million on the wet weather program. This includes construction of three wet weather treatment facilities, and two wet weather interceptors, new storage basins and pumping facilities, expansion of the main wastewater treatment plant, and elimination of two out of the seven designed wet weather overflow structures.
- i. *Updates to original I/ICP*. After receiving a notice from the Regional Water Board for issuing a new CDO in 1993, the East Bay Communities requested the opportunity to revise their Compliance Plans. The impetus of this revision stemmed from increased costs for implementing the original Compliance Plans. New technological developments and the inadequacy of other methods previously thought viable for sewer rehabilitation and relief line installation have increased the cost of the I/ICP from original cost estimates. The revised Compliance Plans incorporated the experience gained from the implementation of I/ICP for the six years from 1987 to 1993 in order to better address the remaining I/ICP projects.
- j. *Extension to Original Compliance Plans*. The increase in project costs necessitated extensions of the schedules in the original Compliance Plans in order to minimize the impact on rate-payers. As a result, all members of the East Bay Communities except the Stege Sanitary District and Emeryville submitted a revised Compliance Plan and Schedule in October 1993. In light of the increased costs, the Regional Water Board granted the Discharger and the Cities of Alameda, Albany, Berkeley, Oakland, and Piedmont a five (5) to ten (10) year extension to the original compliance schedules in the CDO reissuance in October 1993.
- k. *Cost analysis of sewer rehabilitation program*. It is cost prohibitive to eliminate all I&I into a sewer system. The East Bay Communities performed a cost analysis during the I&I Study to determine the cost-effective level of rehabilitation. The cost-effective level of rehabilitation involved balancing the cost of rehabilitation of the East Bay Communities' sewer systems and the cost for increasing the capacity of EBMUD's interceptors and wastewater treatment facilities. A sensitivity analysis was performed to study cost effects of various levels of rehabilitation on various wet

weather alternatives. Cost-Effective Ratios<sup>1</sup> (C-E-Ratio) for various drainage basins were calculated. A C-E Ratio greater than one (1) indicated that I&I rehabilitation is cost effective. The analysis was performed by using a computer program supported by the Corps of Engineers Hydrologic Engineering Center, called STORM. This analysis derived a regional least-cost solution, which involved both East Bay Communities' sewer rehabilitation cost and transportation/treatment cost by EBMUD. The study results were described in the Wet Weather Facilities Update. It was concluded that the most cost effective solution was to rehabilitate the cost effective collection systems and provide relief sewers, interceptor hydraulic capacity, and storage basins to handle wet weather flows up to a 5-year storm event.

- l. *Design goal of I/ICP.* The design goal of East Bay I/ICP was to eliminate overflows from the East Bay Communities' collection systems and EBMUD's interceptor unless the rainfall exceeds a 5-year design storm event. Overflows could continue to occur for events less than the 5-year design storm until the Discharger completed its I/ICP. However, the occurrence of overflows decreased as more of the East Bay I/ICP projects was completed.
- m. *5-year Design Storm Event Definition.* The 5-year design storm event is a storm event that meets the following criteria: a 6-hour duration, and a maximum 1-hour rainfall intensity of a storm with return period of five (5) years. The storm is assumed to occur during saturated soil conditions, and to coincide with the peak 3-hour ultimate Base Wastewater Flow (BWF) condition. BWF consists of domestic wastewater flow from residential, commercial, and institutional sources plus industrial wastewater. BWF specifically excludes I&I from groundwater or storm water. Due to these conservative assumptions, the Wet Weather Facilities Pre-design Report concluded that the estimated peak flow produced by this event had a return period of approximately 13 years. The peak I&I flow from a 5-year storm was selected as the basis of design for the treatment level intended to protect beneficial uses as defined by the San Francisco Bay Basin Plan (Basin Plan), Maintenance Level C. Maintenance Level C requires secondary treatment to the half-year recurrence interval, primary treatment to the 5-year recurrence interval, and above the 5-year interval, overflows are allowed. It should be noted that the State Water Board in 2007 remanded this portion of the Basin Plan in its Order WQ 2007-0004 with direction that the Regional Water Board initiate a Basin Plan amendment to ensure that its regulation of wet weather overflows is consistent with the Clean Water Act.
- n. In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the USEPA, and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO

---

<sup>1</sup> C-E Ratio = (East Bay Communities Cost Savings + EBMUD Cost Savings)/(Rehabilitation Cost)

requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

- o. EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

### ***Progress in Reducing Inflow & Infiltration and Eliminating Overflows***

The East Bay Communities most recent update, dated December 31, 2008, indicates that sewer rehabilitation is 81.1 percent complete. The Communities have completed all of the I&I projects that were designed to eliminate overflow locations identified as high threats to human health and removed all sanitary sewer system bypasses identified in the CDO that diverted wet weather overflows to storm drains. At this time, Stege Sanitary District and the Cities of Alameda, Emeryville, and Piedmont have completed their respective requirements under CDO No. 93-134. The Cities of Albany, Berkeley, and Oakland still have additional rehabilitation work and relief lines to complete. To date, the work under the CDO has also reduced peak wet weather flows from the East Bay Communities to EBMUD's interceptor from about 20 times dry weather flows to just above 10.

## **III. APPLICABLE PLANS, POLICIES, AND REGULATIONS**

The requirements contained in the Order are based on the requirements and authorities described in this section.

### **A. Legal Authorities**

This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as an NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).

## **B. California Environmental Quality Act (CEQA)**

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100 through 21177.

## **C. State and Federal Regulations, Policies, and Plans**

**1. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Basin Plan. In addition, the Basin Plan implements State Water Board No. 88-63, which established State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

Common beneficial uses for central and lower San Francisco Bay, as identified in the Basin Plan, are:

- a. Commercial and sport fishing
- b. Estuarine habitat
- c. Industrial service and process supply
- d. Fish migration
- e. Navigation
- f. Preservation of rare and endangered species
- g. Water contact and non-contact recreation
- h. Shellfish harvesting
- i. Fish spawning
- j. Wildlife habitat

Requirements of this Order implement the Basin Plan.

**2. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants. Requirements of this Order are consistent with the NTR and CTR because discharges from the wastewater collection system are prohibited.

- 3. State Implementation Policy.** On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order are consistent with the SIP because discharges from the wastewater collection facility are prohibited.
- 4. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes (40 C.F.R. § 131.21, 65 Fed. Reg. 24641 (April 27, 2000)). Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000, may be used for CWA purposes, whether or not approved by USEPA.
- 5. Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing water quality be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. The permitted discharge must be consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16. Because this Order prohibits discharge, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.
- 6. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations<sup>2</sup> section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit must be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.

---

<sup>2</sup> All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

#### **D. Impaired Water Bodies on CWA 303(d) List**

On June 28, 2007, the USEPA approved a revised list of impaired water bodies prepared by the State [hereinafter referred to as the 303(d) list], pursuant to provisions of CWA section 303(d) requiring identification of specific water bodies where it is expected that water quality standards will not be met after implementation of technology-based effluent limitations on point sources. Lower and Central San Francisco Bay are listed as impaired water bodies. The pollutants impairing these water bodies include chlordane, DDT, dieldrin, dioxin compounds, exotic species, furan compounds, mercury, PCBs, dioxin-like PCBs, and selenium. The SIP requires final effluent limitations for all 303(d)-listed pollutants to be based on total maximum daily loads (TMDLs) and associated waste load allocations (WLAs). Because this Order prohibits discharge, a detailed discussion of the Regional Water Board's process of developing TMDLs, WLAs and resulting effluent limitations is, therefore, unnecessary.

#### **E. Other Plans, Polices and Regulations**

This Order is not based on any other plans, polices or regulations.

### **IV. RATIONALE FOR DISCHARGE PROHIBITIONS**

- 1. Discharge Prohibition III.A (no sewer system discharges to Waters of the United States):** This prohibition is based on the federal Clean Water Act, which prohibits discharges of wastewater that does not meet secondary treatment standards as specified in 40 CFR Part 133. Additionally, the Basin Plan prohibits discharge of raw sewage or any waste failing to meet waste discharge requirements to any waters of the basin.
- 2. Discharge Prohibition III.B (no sewer system discharges shall create a nuisance as defined in California Water Code Section 13050(m)):** This prohibition is based on California Water Code Section 13263, which requires the Regional Water Board to prescribe waste discharge requirements that prevent nuisance conditions from developing.
- 3. Discharge Prohibition III.C (no discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spill to any surface water body):** The Basin Plan contains a toxicity objective stating, "All waters shall be maintained free of toxic substances in concentrations that are lethal to or produce other detrimental responses to aquatic organisms." Chlorine is lethal to aquatic life.
- 4. Discharge Prohibition III.D (shall not cause or contributes to discharges from EBMUD's three wet weather facilities):** Because excessive I&I has contributed to discharges of partially treated wastewater at EBMUD's Wet Weather Facilities, in violation of Order No. R2-2009-0004, this prohibition is necessary to ensure that the Discharger properly operates and maintains its wastewater collection system (40 CFR Part 122.41(e)) so as to not cause or contribute to violations of the Clean Water Act.

This prohibition is based on 40 CFR 122.41(e) that requires permittees to properly operate and maintain all facilities, and the need for this specific prohibition results from recent changes in permit requirements for EBMUD's wet weather facilities. The requirement for

proper operation and maintenance (O&M) is already specified generically in Attachment D of this permit. However, to properly operate and maintain for I&I control is necessary because of recent changes in permit requirements for EBMUD's WWFs (CA0038440).

The changes in permit requirements for EBMUD's WWFs came about as a result of a 2007 State Water Board remand (Order WQ 2007-0004) that required the Regional Water Board revise the permit for EBMUD's WWFs to require compliance with secondary treatment effluent limitations and effluent limitations that would assure compliance with the Basin Plan or cease discharge. In January 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit. This permit prohibited discharge from the WWFs because the WWFs were not designed to meet secondary treatment standards and compliance with effluent limitations needed to comply with the Basin Plan limitations could not be assured.

Shortly afterwards, USEPA and the Regional and State Water Boards filed suit against EBMUD for discharges in violation of the Clean Water Act-mandated requirements of Order No. R2-2009-0004, and entered into a Stipulated Order. The Stipulated Order requires EBMUD to conduct flow monitoring on satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

The Discharger's entire wastewater collection system connects to EBMUD's interceptor system and contributes to discharges from the WWFs. During wet weather, I&I into the Discharger's wastewater collection system causes peak wastewater flows to EBMUD's system that the WWFs cannot fully store. This in turn causes EBMUD to discharge from the WWFs in violation of Order No. R2-2009-0004. In essence, a portion of the Discharger's wastewater is discharged by EBMUD in violation of the Clean Water Act.

Therefore, the prohibition is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I&I, and by doing so not cause or contribute to violations of Clean Water Act-mandated requirements.

At this time, the Discharger is in violation of this prohibition because excessive I&I into its collection system causes or contributes to discharges from EBMUD's WWFs. Prohibition III.D provides a narrative prohibition because information is not currently available to sufficiently specify an appropriate numeric flow limit or other more detailed set of standards necessary to eliminate the Discharger's contribution to discharges from EBMUD's WWFs. Implementation of the Stipulated Order and the development of a final remedy in the Federal Action are expected to provide the technical information necessary for the Discharger to achieve compliance with Prohibition III.D. The Regional Water Board intends to modify the Discharger's NPDES permit in the future so that compliance can be measured by a specific numeric criterion or other more detailed set of standards rather than the current narrative criterion.

## **V. RATIONALE FOR RECEIVING WATER LIMITATIONS**

Because this Order prohibits discharge, receiving water limits are unnecessary because no impacts on receiving water are allowed. Therefore, a discussion of the rationale for such limits is unnecessary.

## **VI. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS**

Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below) and Provision IV.B.2, the Discharger must still notify the Regional Water Board and submit a written report if discharges occur in violation of Prohibitions III.A-C.

## **VII. RATIONALE FOR PROVISIONS**

### **A. Standard Provisions**

Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account the discharge prohibitions in this Order.

### **B. Special Provisions**

#### **1. Enforcement of Prohibition III.A**

This provision is based on 40 CFR 122.41 (n) regarding treatment facility upset and affirmative defense.

#### **2. Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements**

This provision is to explain the Order's requirements as they relate to the Discharger's collection system, and to promote consistency with the State Water Resources Control Board adopted Statewide General Waste Discharge Requirements for Sanitary Sewer Systems and a related Monitoring and Reporting Program (Order No. 2006-0003-DWQ).

The General Order requires public agencies that own or operate sanitary sewer systems with greater than one mile of pipes or sewer lines to enroll for coverage under the General Order. The General Order requires agencies to develop sanitary sewer management plans (SSMPs) and report all sanitary sewer system discharges, among other requirements and prohibitions. Furthermore, the General Order contains requirements for operation and maintenance of collection systems and for reporting and mitigating sewer system discharges. The Discharger must comply

with both the General Order and this Order. The Discharger and public agencies that are discharging wastewater into the facility were required to obtain enrollment for regulation under the General Order by December 1, 2006.

## **VIII. PUBLIC PARTICIPATION**

The Regional Water Board is considering the issuance of waste discharge requirements (WDRs) that will serve as a National Pollutant Discharge Elimination System (NPDES) permit for the Discharger's sewer collection system. As a step in the WDR adoption process, the Regional Water Board staff has developed tentative WDRs. The Regional Water Board encourages public participation in the WDR adoption process.

### **A. Notification of Interested Parties**

The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Notification was provided through the following: (a) an electronic copy of this Order was relayed to the Discharger, and (b) the Oakland Tribune published a notice that this item would appear before the Regional Water Board on September 9, 2009. Subsequent to this notification, additional notification was provided electronically to interested parties on August 10, 2009, that this item would appear before the Regional Water Board on November 18, 2009.

### **B. Written Comments**

The staff determinations are tentative. Interested persons are invited to submit written comments concerning these tentative WDRs. Comments must be submitted either in person or by mail to the Executive Officer at the Regional Water Board at the address above on the cover page of this Order.

To be fully responded to by staff and considered by the Regional Water Board, written comments were originally requested to be received at the Regional Water Board offices by 5:00 p.m. on August 17, 2009. This written comment deadline was later extended to October 20, 2009, by the notification above. This deadline was further extended until October 23, 2009, by an email dated October 20, 2009.

### **C. Public Hearing**

The Regional Water Board will hold a public hearing on the tentative WDRs during its regular Board meeting on the following date and time and at the following location:

Date: November 18, 2009  
Time: 9:00 a.m.  
Location: Elihu Harris State Office Building  
1515 Clay Street, 1st Floor Auditorium  
Oakland, CA 94612

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDRs, and permit. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our Web address is [www.waterboards.ca.gov/sanfranciscobay/](http://www.waterboards.ca.gov/sanfranciscobay/) where you can access the current agenda for changes in dates and locations.

#### **D. Waste Discharge Requirements Petitions**

Any aggrieved person may petition the State Water Resources Control Board to review the decision of the Regional Water Board regarding the final WDRs. The petition must be submitted within 30 days of the Regional Water Board's action to the following address:

State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100, 1001 I Street  
Sacramento, CA 95812-0100

#### **E. Information and Copying**

The Report of Waste Discharge (RWD), related documents, and special provisions, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Regional Water Board by calling (510) 622-2300.

#### **F. Register of Interested Persons**

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference this facility, and provide a name, address, and phone number.

#### **G. Additional Information**

Requests for additional information or questions regarding this order should be directed to Robert Schlipf at (510) 622-2478 or [RSchlipf@waterboards.ca.gov](mailto:RSchlipf@waterboards.ca.gov).

**ATTACHMENT G – Regional Water Board May 1, 2008, letter**

# Notice of Exemption

To:  Office of Planning and Research P0 Box  
3044, 1400 Tenth Street, Room 222  
Sacramento, CA 95812-3044

From: San Francisco Bay Regional Water Quality  
Control Board  
1515 Clay Street, Suite 1400  
Oakland, California 94612

County Clerk  
County of Alameda \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Project Title:

City of Emeryville, Sanitary Sewer Collection System, Alameda County, Reissuance of NPDES Permit

## Project Location - Specific:

The City of Emeryville owns and maintains approximately 15 miles of mains and one pump station in its sanitary sewer collection system, which serves a population of about 10,000 people in the City of Emeryville.

Project Location - City Emeryville

Project Location - County: Alameda

## Description of Project:

Waste Discharge Requirements prohibit discharges from the City of Emeryville's sanitary sewer collection system.

Name of Public Agency Approving Project: California Regional Water Quality Control Board

Name of Person or Agency Carrying Out Project: California Regional Water Quality Control Board

## Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);  
 Declared Emergency (Sec. 21080(b)(3); 15269(a));  
 Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
 Categorical Exemption. State type and section number: Section 13389 of the California Water Code  
 Statutory Exemptions. State code number: \_\_\_\_\_

## Reasons why project is exempt:

Because project is adoption of waste discharge requirements.

## Lead Agency

Contact Person: Robert Schlipf

Area Code/Telephone/Extension: (510) 622-2478

## If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No



Digitally signed by Bruce

Wolfe

Date: 2009.11.18 17:27:00

-08'00'

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: Executive Officer

Bruce H. Wolfe

Signed by Lead Agency

Signed by Applicant

Date received for filing at OPR: \_\_\_\_\_



# California Regional Water Quality Control Board

## San Francisco Bay Region



Linda S. Adams  
Secretary for  
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

May 1, 2008  
File No. 1210.57 (RS and MC)

To: Attached Mailing List

Subject: 1) New Sanitary Sewer Overflow Notification Procedures for Sanitary Sewer Collection Systems, and 2) New Unauthorized Discharge Notification and Reporting Requirements for Municipal Wastewater Treatment Plants

This letter includes new procedures and requirements for addressing spills from sanitary sewer collection systems and unauthorized discharges from municipal wastewater treatment plants. Part 1 of this letter imposes new procedures for sanitary sewer collection systems (upstream of the plant headworks) to document compliance with the State Water Board's new 2-hour notification and 24-hour certification requirements for sanitary sewer overflows (SSOs). Part 2 of this letter imposes new notification and reporting requirements for municipal wastewater treatment plants that experience an unauthorized discharge at their treatment facilities. The treatment plants covered by this requirement are shown in Attachment A. The requirements of this letter are effective starting June 1, 2008.

### **Part 1: Requirements that Apply to Sanitary Sewer Collection Systems**

To satisfy the notification requirements for SSOs established by the State Water Board's Order No. WQ 2008-0002-EXEC, dischargers must complete the SSO notification form at the following link: [https://www.r2esmr.net/sso\\_login2.asp](https://www.r2esmr.net/sso_login2.asp). The requirement to notify the Regional Water Board, via our online reporting system, is effective starting on June 1, 2008. Additional details on the reporting procedures are posted at that link.

You may recall that this was the web-based SSO reporting system that this Regional Water Board used prior to the State Water Board's statewide SSO reporting system under the California Integrated Water Quality System (CIWQS). In response to the State Water Board's Order No. 2008-0002-EXEC, we have modified and relaunched our regional system. This is to provide a consistent and reliable method for the collection system agencies to notify us as they are required by the State Water Board's Order.

Please note that this system only serves to document that dischargers have notified the Office of Emergency Services, the local health officer/environmental health office, and the Regional Water Board (as directed by the State Water Board's new notification requirements). Dischargers are still required to report sanitary sewer spills through the State Water Board's CIWQS web-database.

*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*

In order to clarify the multiple levels of notification, certification, and reporting, the communication requirements for SSOs are summarized in Table 1 below:

**Table 1: Summary of Communication Requirements for Sanitary Sewer Overflows**

<b>Communication Type (all are required)</b>	<b>Agency Being Contacted</b>	<b>Timeframe Requirements</b>	<b>Method for Contact</b>
1. Notification	Office of Emergency Services	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the SSO.	Telephone – (800) 852-7550 (obtain a control number from OES)
	Local health department	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the SSO.	Depends on local health dept.
	Regional Water Board	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the SSO.	Electronic <sup>1</sup> www.r2esmr.net/ sso_login2.asp
2. Certification	Regional Water Board	As soon as possible, but not later than <b>24 hours</b> after becoming aware of the SSO.	Electronic <sup>2</sup> www.r2esmr.net/ sso_login2.asp
3. Reporting	State Water Board (CIWQS)	Category 1 SSO: initial report within <b>3 business days</b> , final report within <b>15 calendar days</b> after response activities have been completed.	Electronic (only) to CIWQS
		Category 2 SSO: within <b>30 calendar days</b> after the end of the calendar month in which the SSO occurs.	Electronic (only) to CIWQS

**Part 2: Requirements that Apply to Municipal Wastewater Treatment Plants**

<sup>1</sup> In the event a discharger is unable to provide online notification within 2 hours of becoming aware of an SSO, it shall phone the Regional Water Board’s spill hotline at (510) 622-2369 and convey the same information contained in the notification form. In cases where the discharger satisfies 2-hour notification requirements via phone, it must still provide online notification to the Regional Water Board within 3 business days of becoming aware of a SSO.

<sup>2</sup> In most instances, the 2-hour notification will also satisfy 24-hour certification requirements. This is because the notification form includes fields for documenting that OES and the local health department have been contacted. In other words, if a discharger is able to complete all the fields in the notification form within 2 hours, certification requirements are also satisfied. In the event a discharger is unable to provide online certification within 24 hours of becoming aware of an SSO, it shall phone the Regional Water Board’s spill hotline at (510) 622-2369 and convey the same information contained in the certification form. In addition, within 3 business days of becoming aware of an SSO, the certification information must also be entered into the Regional Water Board’s online system in electronic format.

As mentioned above, this letter includes new notification and reporting requirements for unauthorized discharges that occur at municipal wastewater treatment plants. Unauthorized discharges can include such discharges as untreated wastewater, partially treated wastewater, fully treated wastewater to an unauthorized location, oil spills, and spills of hazardous waste. The reason for this modification is because the time prescribed in Self-Monitoring Programs for the filing of the initial report of an unauthorized discharge is too long to adequately protect public health or the beneficial uses of waters of the State when such incidences occur. Therefore, the facilities shown in Attachment A shall comply with the following:

“Notification and Certification

For any unauthorized discharges<sup>3</sup> that result in a discharge to a drainage channel or a surface water, the discharger shall, as soon as possible, but not later than two (2) hours after becoming aware of the discharge, notify the State Office of Emergency Services, the local health officer or directors of environmental health with jurisdiction over affected water bodies, and the Regional Water Board. At that time, the discharger must submit to the Regional Water Board, via our online reporting system, the following:

- (a) A description of what happened (i.e., the cause),
- (b) The location of threatened or involved waterway(s) or storm drains,
- (c) The date and time the unauthorized discharge is known to have started,
- (d) The estimated quantity and duration of the unauthorized discharge so far, and the estimated amount recovered,
- (e) The level of treatment (e.g., raw wastewater, primary treated, undisinfected secondary treated, and so on), and
- (f) The identity of the person reporting the unauthorized discharge, and
- (g) A certification (within 24 hours) that the State Office of Emergency Services and the local health officer or directors of environmental health with jurisdiction over the affected water bodies have been notified of the discharge.

Reporting

---

<sup>3</sup> Title 23 California Code of Regulations Section 2250 (b) states that an unauthorized discharge is defined to be a discharge, not regulated by waste discharge requirements, of treated, partially treated, or untreated wastewater resulting from the intentional or unintentional diversion of wastewater from a collection, treatment or disposal system.

Within five (5) business days, the discharger shall submit a written report, via the Regional Water Board's online reporting system, that includes, in addition to the information required above, the following:

- (a) The methods used to delineate the geographical extent of the unauthorized discharge on receiving waters,
- (b) The efforts implemented to minimize public exposure to the unauthorized discharge,
- (c) A visual observation of the impacts (if any) that were noted in the receiving water (e.g., fish kill, discoloration of water), and the extent of sampling if any was conducted,
- (d) The corrective measures taken to minimize the impact of the unauthorized discharge,
- (e) The measures to be taken to minimize the chances of a similar unauthorized discharge occurring in the future,
- (f) How (if necessary) its Spill Prevention and Contingency Plan or Operation & Maintenance Manual will be modified to minimize the chances of future unauthorized discharges, and
- (g) The quantity and duration of the unauthorized discharge, and the amount recovered.

#### Communication Protocol

In order to clarify the multiple levels of notification, certification, and reporting, the current communication requirements for unauthorized discharges from municipal wastewater treatment plants are summarized in Table 2 on the following page.

**Table 2: Summary of Communication Requirements for Unauthorized Discharges from Municipal Wastewater Treatment Plants**

<b>Communication Type (all are required)</b>	<b>Agency Being Contacted</b>	<b>Timeframe Requirements</b>	<b>Method for Contact</b>
1. Notification	Office of Emergency Services	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the unauthorized discharge.	Telephone – (800) 852-7550 (obtain a control number from OES)
	Local health department	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the unauthorized discharge.	Depends on local health dept.
	Regional Water Board	As soon as possible, but not later than <b>2 hours</b> after becoming aware of the unauthorized discharge.	Electronic <sup>4</sup> www.r2esmr.net/ sso_login2.asp
2. Certification	Regional Water Board	As soon as possible, but not later than <b>24 hours</b> after becoming aware of the unauthorized discharge.	Electronic <sup>5</sup> www.r2esmr.net/ sso_login2.asp
3. Reporting	Regional Water Board	Within <b>5 business days</b> , submit written report.	Electronic <sup>6</sup> www.r2esmr.net/ sso_login2.asp

The 2-hour notification/certification and 5-day reporting requirements to the Regional Water Board shall be accomplished through our online reporting system, starting June 1, 2008. The procedures and instructions for online reporting are provided at the following link:  
[https://www.r2esmr.net/sso\\_login2.asp](https://www.r2esmr.net/sso_login2.asp).

<sup>4</sup> In the event a discharger is unable to provide online notification within 2 hours of becoming aware of an unauthorized discharge, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the notification form. In addition, within 3 business days of becoming aware of the unauthorized discharge, the notification information must also be entered into the Regional Water Board's online system in electronic format.

<sup>5</sup> In most instances, the 2-hour notification will also satisfy 24-hour certification requirements. This is because the notification form includes fields for documenting that OES and the local health department have been contacted. In other words, if a discharger is able to complete all the fields in the notification form within 2 hours, certification requirements are also satisfied. In the event a discharger is unable to provide online certification within 24 hours of becoming aware of an unauthorized discharge, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the certification form. In addition, within 3 business days of becoming aware of the unauthorized discharge, the certification information must also be entered into the Regional Water Board's online system in electronic format.

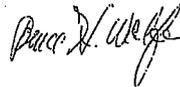
<sup>6</sup> If a discharger cannot satisfy the 5-day reporting requirements via our online reporting system, it must submit a written report (preferably electronically in pdf), to the appropriate case manager. In cases where the discharger cannot satisfy 5-day reporting requirements via our online reporting system, it must still complete the Regional Water Board's online reporting requirements within 15 calendar days of becoming aware of the unauthorized discharge.

Unauthorized Discharge vs. Bypass

The above notification and reporting requirements for municipal wastewater treatment plants shall satisfy the unauthorized discharge notification and reporting requirements under Self-Monitoring Program Part A, Sections F.1 and F.2. Please note that dischargers must still comply with the bypass provisions (e.g., submitting prior notice for an anticipated bypass) under 40 CFR Part 122.41(m). Additionally, in the event of a bypass, dischargers must also continue to comply with Self Monitoring Program Part A, Section C.2.h, and accelerate monitoring to daily for all constituents with effluent limits, unless this condition is modified in its existing permit.”

Please be aware that the requirements of this letter are made pursuant to section 13383 of the California Water Code. Failure to respond, late response, or incomplete response may subject you to civil liability imposed by the Regional Water Board to a maximum of \$10,000 per day. If you have any questions regarding this letter, please contact Robert Schlipf at (510) 622-2478 or Michael Chee at (510) 622-2333.

Sincerely,



Digitally signed by Bruce  
Wolfe  
Date: 2008.05.01 11:18:20  
-07'00'

Bruce H. Wolfe  
Executive Officer

Enclosures: Attachment A - Municipal Wastewater Treatment Plants

Attachment A – Municipal Wastewater Treatment Plants

Discharger	NPDES Permit No.	Existing Order No. <sup>1</sup>
American Canyon, City of	CA0038768	R2-2006-0036
Benicia, City of	CA0038091	01-096
Burlingame, City of	CA0037788	R2-2008-0008
C&H Sugar Company Inc., and Crockett Community Services District <sup>2</sup>	CA0005240	R2-2007-0032
Calistoga, City of	CA0037966	R2-2006-0066
Central Contra Costa Sanitary District	CA0037648	R2-2007-008
Central Marin Sanitation Agency	CA0038628	R2-2007-007
Contra Costa County Sanitation District No. 5, Port Costa to be transferred to Crockett Community Services District	CA0037885	R2-2008-0005
Delta Diablo Sanitation District	CA0038547	R2-2003-0114
East Bay Dischargers Authority, City of Hayward, City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, Union Sanitary District, and LAVWMA	CA0037869	R2-2006-0053
Union S.D. Wet Weather Outfall	CA0038733	R2-2004-0002
Union S.D. Hayward Marsh	CA0038636	R2-2006-0031
Dublin San Ramon Services District	CA0037613	R2-2006-0054
City of Livermore	CA0038008	R2-2006-0055
LAVWMA Wet Weather Outfall	CA0038679	R2-2006-0026
East Bay Municipal Utilities Dist. WWTP	CA0037702	01-072
EBMUD Wet Weather Facilities	CA0038440	R2-2005-0047
East Brother Light Station, Inc.	CA0038806	R2-2004-0079
Fairfield-Suisun Sewer District	CA0038024	R2-2003-0072
Las Gallinas Valley Sanitary District	CA0037851	R2-2003-0108
Marin County (Paradise Cove), Sanitary District No. 5 of	CA0037427	R2-2006-0037
Marin County (Tiburon), Sanitary District No. 5 of	CA0037753	R2-2002-0097
Millbrae, City of	CA0037532	01-143
Mt. View Sanitary District	CA0037770	R2-2006-0063
Napa Sanitation District	CA0037575	R2-2005-0008
Novato Sanitary District	CA0037958	R2-2004-0093
Palo Alto, City of	CA0037834	R2-2003-0078
Petaluma, City of	CA0037810	R2-2005-0058
Pinole, City of	CA0037796	R2-2007-0024
Rodeo Sanitary District	CA0037826	R2-2006-0062
Saint Helena, City of	CA0038016	R2-2005-0025
San Francisco, City and County of, San Francisco International Airport, Sanitary	CA0038318	R2-2007-0058
San Francisco (Southeast Plant), City and County of	CA0037664	R2-2008-0007
San Jose/Santa Clara, Cities of	CA0037842	R2-2003-0085
San Mateo, City of	CA0037541	R2-2007-0075
Sausalito-Marin City Sanitary District	CA0038067	R2-2007-0054
Seafirth Estates Company and Property Owners with the Seafirth Estates Subdivision	CA0038893	R2-2006-0082
Sewerage Agency of Southern Marin	CA0037711	R2-2007-0057
Sonoma Valley County Sanitary District	CA0037800	R2-2002-0046
South Bayside System Authority	CA0038369	R2-2007-0006
South San Francisco and San Bruno, Cities of	CA0038130	R2-2003-0010
Sunnyvale, City of	CA0037621	R2-2003-0079
US Naval Support Activity, Treasure Island	CA0110116	R2-2004-0036
Vallejo Sanitation and Flood Control District	CA0037699	R2-2006-0056
West County Agency (West County Wastewater District and City of Richmond Municipal Sewer District)	CA0038539	R2-2008-0003
Yountville, Town of	CA0038121	R2-2004-0017

Discharger	NPDES Permit No.	Existing Order No. <sup>1</sup>
East Bay Regional Parks District, Del Valle Regional Park	Not applicable	90-157
East Bay Regional Parks District, Arroyo Del Valle Environmental Education Center and Youth Camp	Not applicable	01-143
Contra Costa Sanitation District #6, Stonehurst Subdivision	Not applicable	91-096
Bolinas Community P.U.D., Bolinas Sewage Pond System	Not applicable	88-100
California Dept. of Parks & Recreation, Samuel P. Taylor Park – WW System	Not applicable	91-181
Tomales Village CSD, Tomales Sewage Pond System	Not applicable	86-086
California State Parks Foundation, Marconi Conference Center WWTP	Not applicable	02-067
French Ranch LLC, French Ranch Community WWTP	Not applicable	97-10DWQ
City & County of San Francisco, Log Cabin Ranch School	Not applicable	91-054
California Dept of Parks & Recreation, Portola Redwoods State Park WWTP	Not applicable	86-087
San Mateo County, Memorial Park	Not applicable	86-046
San Mateo County, Glenwood Boys Ranch	Not applicable	88-140
San Mateo County, San Mateo County Honor Camp #1	Not applicable	88-141
University of California, Elkus 4-H Ranch	Not applicable	92-124
County of Santa Clara, Mariposa Lodge – Alcohol Rehab	Not applicable	78-053
Lake Canyon Community Services District, Lake Canyon Community WW System	Not applicable	94-143

<sup>1</sup> The orders shown are for the primary permit reissuance and do not include permit amendments.

<sup>2</sup> This industrial facility also treats municipal wastewater from the Crockett Community Services District.

Phil Scott  
City of Burlingame  
Public Works Superintendent  
501 Primrose  
Burlingame, CA 94010

Paul Wade  
City of Calistoga  
Public Works Director  
414 Washington Street  
Calistoga, CA 94515

Warren Lai  
Contra Costa County Sanitation District No. 5,  
Port Costa  
Contra Costa County Public Works  
255 Glacier Drive  
Martinez, CA 94553

Gary W. Darling  
General Manager  
Delta Diablo Sanitation District  
2500 Pittsburg-Antioch Highway  
Antioch, CA 94509

Dave Williams  
Director of Wastewater  
East Bay Municipal Utilities District  
P.O. Box 24055  
Oakland, CA 94623-1055

Tom Butt  
President, East Brother Light Station Inc.  
117 Park Place  
Point Richmond, CA 94801

Taylon Sortor  
Engineering and Operations Director  
Fairfield-Suisun Sewer District  
1010 Chadbourne Road  
Fairfield, CA 94534

Khee Lim  
City Engineer  
City of Millbrae  
621 Magnolia Avenue  
Millbrae, CA 94030

Dean Allison  
Plant Manager  
City of Pinole  
1 Tennant Avenue  
Pinole, CA, 94564

Thomas Franza  
Assistant General Manager of Wastewater  
City and County of San Francisco  
1155 Market Street, 11th Floor  
San Francisco, CA 94103

Mark Von Aspern  
Plant Manager  
City of San Mateo  
2050 Detroit Drive  
San Mateo, CA 94404

Don Miller  
Seafirth Estates Wastewater Treatment Plant  
33 Seafirth Place  
Tiburon, CA 94920

Daniel Child  
Manager  
South Bayside System Authority  
1400 Radio Road  
Redwood City, CA 94065

Cassie Prudhel  
Technical Services Director  
South San Francisco-San Bruno Water Pollution  
Control Plant  
195 Belle Air Road  
South San Francisco, CA 94080

Lorrie Gervin  
Division Manager  
City of Sunnyvale  
Sunnyvale Water Pollution Control Plant  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Patricia A. McFadden  
Brac Field Team Leader  
San Francisco Bay Area  
Navy BRAC PMOW  
410 Palm Avenue, Bldg 1, Suite 161  
Treasure Island  
San Francisco, CA 94130-1807

Barry Pomeroy  
Director of Operations and Maintenance  
Vallejo Sanitation and Flood Control District  
450 Ryder Street  
Vallejo, CA 94590

Myke Praul  
Director of Public Works  
City of Yountville  
6550 Yount Street  
Yountville, CA 94599

Tanya R. Akkerman  
Environmental Compliance Manager  
C&H Sugar  
830 Loring Avenue  
Crockett, CA 94525

Rich Davidson  
City of Richmond & Richmond Municipal Sewer  
District No. 1  
601 Canal Boulevard  
Richmond, CA 94804

Michael Bakaldin  
Public Works Director  
City of San Leandro  
14200 Chapman Road  
San Leandro, CA 94578

Vivian Housen  
General Manager  
Livermore-Amador Valley Water Management  
Agency  
7051 Dublin Blvd  
P.O. Box 2945  
Dublin, CA 94568

Paul Zolfarelli  
Director of Water Quality Services  
Oro Loma Sanitary District  
2600 Grant Avenue  
San Lorenzo, CA 94580

Rich Curry  
General Manager  
Union Sanitary District  
5072 Benson Road  
Union City, CA 94587

Kenneth Burger  
East Bay Regional Parks District  
2950 Peralta Oaks Court  
Oakland, CA 94605

California Dept. of Parks & Recreation  
Samuel P Taylor St Parkway – WW System  
845 Casa Grande Road  
Petaluma, CA 94954

Eugene Burger  
French Ranch Homeowners Association  
6600 Hunter Drive  
Rohnert Park, CA 94928

Norman Cole  
City and County of San Francisco  
Log Cabin Ranch School  
375 Woodside Avenue  
San Francisco, CA 94127

California Dept. of Parks & Recreation  
Portola Redwoods St. Park WWTP  
303 Big Trees Park Road  
Felton, CA 95018

Wayne Zion  
California Dept. Of Parks & Recreation  
Marconi Conference Center WWTP  
P.O. Box 789  
Marshall, CA 94940

Connie Wagner  
San Mateo County  
Memorial Park  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

Neil Cullen  
San Mateo County  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063

Bob Bowers  
UC Coop Extension – Richard J.E.  
Elkus 4-H Ranch  
80 Stone Pine Road, #10025 MIR  
Half Moon Bay, CA 94019

Shirley Wilson  
County of Santa Clara  
Mariposa Lodge – Alc Rehab  
1101 S. Winchester Blvd. J-220  
San Jose, CA 95128

Bruce Cunningham  
Lake Canyon Community Services District  
P.O. Box 866  
Los Gatos, CA 95031

Bonner Beuhler, Manager  
Almonte Sanitary District  
450 Sycamore Avenue  
Mill Valley, CA 94941

Jennifer Blackman, General Manager  
Bolinas Community Public Utility  
District  
P.O. Box 390  
Bolinas, CA 94924

Chris Hansen  
CA Dept. of Parks & Recreation  
c/o Marconi Conference Center  
P.O. Box 789  
Marshall, CA 94940

Jim Kelly, General Manager  
Central Contra Costa Sanitary District  
5019 Imhoff Place  
Martinez, CA 94553

Arleen Navarett, Regulatory Manager  
City & County of San Francisco  
c/o SF PUC Wastewater Enterprise  
1145 Market Street, 5th Floor  
San Francisco, CA 94103

Wali Waziri, Director of Public Works  
City of Alameda  
Alameda Point, Building 1  
950 West Mall Square, Room 110  
Alameda, CA 94501

Fred Simonson, Superintendent  
City of American Canyon  
Dept of Public Works  
205 Wetlands Edge Drive  
American Canyon, CA 94503

Daniel Akagi, Dept of Public Works  
City of Berkeley  
1947 Center Street, 4th Floor  
Berkeley, CA 94704

Dan Takasugi, Director  
City of Calistoga  
Dept. of Public Works  
1232 Washington Street  
Calistoga, CA 94515

Bruce Good, Infrastructure Manager  
City of Concord  
1455 Gasoline Alley  
Concord, CA 94520

Tom Roberst, Manager  
Alto Sanitary District  
P.O. Box 163  
Mill Valley, CA 94941

Don Toy, Administrator  
Burbank Sanitary District  
20833 Stevens Creek Blvd. #104  
Cupertino, CA 95014

Chris Hansen  
CA Dept. of Parks & Recreation  
c/o Angel Island and China Camp  
P.O. Box 1016  
Novato, CA 94948

Doug Craig, Director  
Central Contra Costa Sanitary District  
Plant Operations  
5019 Imhoff Place  
Martinez, CA 94553

Mark Costanzo, Utility Manager  
City and County of San Francisco  
San Francisco International Airport  
P.O. Box 8097  
San Francisco, CA 94128

Rich Cunningham, Manager  
City of Albany  
Public Works Dept.  
1000 San Pablo Avenue  
Albany, CA 94706

Karen Borrmann, City Engineer  
City of Belmont  
1 Twin Pines Lane, Suite 385  
Belmont, CA 94002

Matthew Fabry, Civil Engineer  
City of Brisbane  
Public Works Department  
50 Park Place  
Brisbane, CA 94005

Qumar Khan, Director of Public Works  
City of Concord  
1455 Gasoline Alley  
Concord, CA 94520

Jeff Roubal, Manager  
City of Concord  
Clean Water Program  
1455 Gasoline Alley  
Concord, CA 94520

Joanne Landi  
Bayshore Sanitary District  
36 Industrial Way  
Brisbane, CA 94005

Robert Ayers, Warden  
CA Department of Corrections  
1 Main Street  
San Quentin, CA 94964

Roland Williams, General Manager  
Castro Valley Sanitary District  
21040 Marshall Street  
Castro Valley, CA 94546

Rob Cole, Manager  
Central Marin Sanitation Agency  
Environmental Services  
1301 Andersen Drive  
San Rafael, CA 94901

Arieen Navarett, Regulatory Manager  
City and County of San Francisco PUC  
c/o Treasure Island WPCP  
1145 Market Street, 5th floor  
San Francisco, CA 94103

Robert Weil, Public Works Director  
City of American Canyon  
205 Wetlands Edge Drive  
American Canyon, CA 94503

Jerry Gall, Plant Superintendent  
City of Benicia  
614 East 5th Street  
Benicia, CA 94510

Rob Mallick, Superintendent  
City of Burlingame  
Street & Sewer Department  
1360 North Carolyn  
Burlingame, CA 94010

Qumar Khan, Director of Public Works  
City of Concord  
c/o City of Clayton  
1455 Gasoline Alley  
Concord, CA 94520

Maurice Kaufman, Director  
City of Emeryville  
Dept. of Public Works  
1333 Park Avenue  
Emeryville, CA 94608

George Shimboff, Manager  
City of Fairfield  
Water & Sewer Division  
420 Gregory Street  
Fairfield, CA 94553

Alex Ameri, Deputy Director - Utilities  
City of Hayward  
Department of Public Woks  
777 "B" Street  
Hayward, CA 94541

Jim Gustafson, Manager  
City of Los Altos  
Engineering Services  
1 N. San Antonio Road  
Los Altos, CA 94022

Greg Armendariz, Director  
City of Milpitas  
Dept. of Public Works  
1256 N. Milpitas Boulevard  
Milpitas, CA 95035

Dave Serge, Utlity Manager  
City of Mountain View  
P.O. Box 7540  
Mountain View, CA 94039

Brian Martinez, Superintendent  
City of Pacifica  
Collection Systems  
700 Coast Highway  
Pacifica, CA 94044

Michael Ban, Director  
City of Petaluma  
Water Resources & Conservation  
11 English Street  
Petaluma, CA 94952

Walter Pease  
Assistant Director of Public Works  
City of Pittsburg  
357 East 12th Street  
Pittsburg, CA 94565

Jeff Ballou, Chief Systems Operator  
City of Pleasanton  
3333 Busch Road  
Pleasanton, CA 94566

Parviz Mokhtari, Director  
City of San Carlos  
Dept. of Public Works  
600 Elm Street  
San Carlos, CA 94070

Ray Towne, Director of Public Works  
City of Foster City  
610 Foster City Boulevard  
Foster City, CA 94404

Jeff Brown, Superintendent  
City of Hercules  
Public Works Dept.  
111 Civic Drive  
Hercules, CA 94547

Wayne Bush, Director of Public Works  
City of Mill Valley  
26 Corte Madera Avenue  
Mill Valley, CA 94941

Steve Smith, Director  
City of Milpitas  
Public Utilities  
1256 N. Milpitas Boulevard  
Milpitas, CA 95035

Allen Law, Civil Engineer  
City of Oakland  
250 Frank Ogawa Plaza, Suite 4314  
Oakland, CA 94612

Phil Bobel, Manager  
City of Palo Alto  
Environmental Compliance  
2501 Embarcadero Way  
Palo Alto, CA 94303

Larry Rosenberg, Director  
City of Piedmont  
Public Works Dept.  
120 Vista Avenue  
Piedmont, CA 94611

John Fuller, Director of Public Works  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

Larry Barwacz, Director  
City of Redwood City  
Public Works Services  
1400 Broadway  
Redwood City, CA 94063

Jim Helmer, Director  
City of San Jose  
Department of Transportation  
4 North 2nd Street, Suite 1000  
San Jose, CA 95113

Richard Mao, Interim Director  
City of Half Moon Bay  
Public Works Dept.  
501 Main Street  
Half Moon Bay, CA 94019

Darren Greenwood, Manager  
City of Livermore  
Water Resources Dept.  
101 West Jack London Boulevard  
Livermore, CA 94551

Joe Magner, Superintendent  
City of Millbrae  
Dept of Public Works  
400 East Millbrae Avenue  
Millbrae, CA 94030

Mario Iglesias, Utility Systems  
Manager  
City of Morgan Hill  
100 Edes Court  
Morgan Hill, CA 95037

David Gromm, Deputy Director  
City of Pacifica  
Public Works Dept.  
700 Coast Highway  
Pacifica, CA 94044

Javad Ghaffari, Manager - Water, Gas,  
Wastewater Utilities Operations  
City of Palo Alto  
3201 East Bayshore Road  
Palo Alto, CA 94303

Mark Adams, Maintenance Supervisor  
City of Pinole - Public Works Dept.  
Sewer Collection Systems  
2131 Pear Street  
Pinole, CA 94564

Richard McDonald  
Water Treatment Plant Superintendent  
City of Pittsburg Public Works  
300 Olympia Drive  
Pittsburg, CA 94565

Jan Chambers, Director  
City of San Bruno  
Dept. of Public Works  
567 El Camino Real  
San Bruno, CA 94066

Joe Garcia, Division Manager  
City of San Jose  
4 North 2nd Street, Suite 1000  
San Jose, CA 95113

Dean Wilson, Plant Manager  
City of San Leandro  
Water Pollution Control  
3000 Davis Street  
San Leandro, CA 94577

Todd Teachout, City Engineer  
City of Sausalito  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965

Fernando Bravo, City Engineer  
City of Suisun City  
701 Civic Center Boulevard  
Suisun City, CA 94585

Eric Nugteren, Deputy Superintendent  
City of Vallejo  
Water Department  
202 Fleming Hill Road  
Vallejo, CA 94589

Kent Peterson  
Crockett Valona Sanitary District  
P.O. Box 578  
Crockett, CA 94525

Steve Machida, District Manager  
Cupertino Sanitation District  
20833 Stevens Creek Blvd., Suite 104  
Cupertino, CA 95014

Chuck Duffy, General Manager  
Dudek Associates  
c/o Granada Sanitary District  
605-3rd Street  
Encinitas, CA 92024

Maura Bonnarens, Senior Engineer  
East Bay Municipal Utility District  
P.O. Box 24055  
Oakland, CA 94623

Karen Maxey, Director  
East Palo Alto Sanitary District  
Administrative Services  
P.O. Box 51686  
Palo Alto, CA 94303

Delia Comito, Office Administrator  
Granada Sanitary District  
P.O. Box 335  
El Granada, CA 94018

Larry Patterson, Public Works Director  
City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403

Terry White, Public Works Director  
City of South San Francisco  
P.O. Box 711  
South San Francisco, CA 94083

Jim Craig, Superintendent  
City of Sunnyvale  
Public Works - Field Services  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Maurice Shiu, Director of Public Works  
Contra Costa Sanitary District  
c/o Port Costa WWTP  
255 Glacier Drive  
Martinez, CA 94553

Eileen Franke, Manager  
CSU East Bay  
Environmental Compliance  
25800 Carlos Bee Boulevard  
Hayward, CA 94542

Mike Dickson, Maintenance Manager  
Delta Diablo WWTP  
2500 Pittsburg-Antioch Hwy  
Antioch, CA 94509

Karl Royer, Manager  
East Bay Dischargers Authority  
Operations & Maintenance  
2651 Grant Avenue  
San Lorenzo, CA 94580

Vin de Lange, Senior Engineer  
East Bay Municipal Utility District  
P.O. Box 24055  
Oakland, CA 94623

Greg Baatrup  
Fairfield-Suisun Sewer District  
1010 Chadbourne Road  
Fairfield, CA 94533

Tom Roberts, Manager  
Homestead Valley Sanitary District  
P.O. Box 149  
Mill Valley, CA 94942

Bill Weisend, Acting Director  
City of Santa Clara  
Water & Sewer Utilities  
1500 Warburton Avenue  
Santa Clara, CA 95050

Jonathan Goldman, Director  
City of St. Helena  
Dept. of Public Works  
1480 Main Street  
St. Helena, CA 94574

Gary Leach, Public Works Director  
City of Vallejo  
555 Santa Clara Street  
Vallejo, CA 94590

Maurice Shiu, Director of Public Works  
Contra Costa Sanitary District #6  
c/o Stonehurst  
255 Glacier Drive  
Martinez, CA 94553

Adam Bayer  
CSU San Jose  
1 Washington Square  
San Jose, CA 95192

Dan Gallagher, Operations Manager  
Dublin-San Ramon Service District  
7051 Dublin Boulevard  
Dublin, CA 94568

Chuck Weir, General Manager  
East Bay Dischargers Authority  
2651 Grant Avenue  
San Lorenzo, CA 94580

Neil Fujita, Water Resources Manager  
East Bay Regional Parks District  
2950 Peralta Oaks Court  
Oakland, CA 94606

Brian O'Neill, General Superintendent  
Golden Gate National Recreation Area  
Fort Mason, Building 201  
San Francisco, CA 94123

Mark Williams, District Manager  
Las Gallinas Valley SD  
300 Smith Ranch Road  
San Rafael, CA 94903

Ron Pauer, Environmental Manager  
Lawrence Berkeley National Lab  
1 Cyclotron Road  
Berkeley, CA 94712

George Irving, District Manager  
Montara Sanitary District  
8888 Cabrillo Highway  
P.O. Box 370131  
Montara, CA 94037

Tim Healy, Assistant General Manager  
Napa Sanitation District  
935 Hartle Court  
Napa, CA 94559

Michael Cameron, General Manager  
Oro Loma Sanitary District  
2600 Grant Avenue  
San Lorenzo, CA 94580

Bonner Buehler, Manager  
Richardson Bay Sanitary District  
500 Tiburon Boulevard  
Tiburon, CA 94920

Ann Stillman, Principal Civil Engineer  
San Mateo County  
Department of Public Works  
555 County Center, 5th Floor  
Redwood City, CA 94063

Bob Correa, Manager  
San Mateo WQCP  
Collection Systems  
1949 Pacific Boulevard  
San Mateo, CA 94403

Eric Stassevitch, District Engineer  
Sanitary District No. 1 of Marin County  
1301 Andersen Drive  
San Rafael, CA 94901

Robert Simmons, General Manager  
Sausalito-Marín City SD  
#1 Forth Baker Road  
P.O. Box 39  
Sausalito, CA 94965

Steve Danchy, General Manager  
Sewerage Agency of Southern Marin  
26 Corte Madera Avenue  
Mill Valley, CA 94941

Tim O'Day, Facility Manager  
Marin County SD #5 Tiburon Plant  
P.O. Box 227  
Tiburon, CA 94920

David Contreras, District Manager  
Mt. View SD  
3800 Arthur Road  
Martinez, CA 94553

Patrick Sweetland, Director  
North San Mateo County SD  
Water & Wastewater Resources  
153 Lake Merced Boulevard  
Daly City, CA 94015

Liem Nguyen, Water Systems Engineer  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

Steve Beall, Engineer - Manager  
Rodeo Sanitary District  
800 San Pablo Avenue  
Rodeo, CA 94572

Brian Lee, Deputy Director  
San Mateo County  
Public Works Department  
555 County Center, 5th floor  
Redwood City, CA 94063

Andrew Preston,  
San Rafael Sanitation District  
P.O. Box 151560  
San Rafael, CA 94915

Barry Hogue, Manager  
Sanitary District No. 2 of Marin County  
Sanitary Services  
233 Tamalpais Drive, Suite 200  
Corte Madera, CA 94925

Bonner Buehler, Plant Operator  
Seafirth Estates Company  
33 Seafirth Place  
Tiburon, CA 94920

Hody Wilson, Agency Coordinator  
Sonoma County Water Agency  
c/o Penngrove Sanitation Zone  
P.O. Box 11628  
Santa Rosa, CA 95406

Robert Lynch, District Manager  
Marin County SD #5 Tiburon Plant  
P.O. Box 227  
Tiburon, CA 94920

Larry Hoffman, Chief Plant Operator  
Napa Reclamation District #2109  
1501 Milton Road  
Napa, CA 94559

Bev James, General Manager  
Novato SD  
500 Davidson Street  
Novato, CA 94945

Richard Berman  
Environmental Specialist  
Port of San Francisco  
Pier 1  
San Francisco, CA 94111

Dale Ihrke, Plant Superintendent  
San Jose/Santa Clara WPCP  
Environmental Services Dept.  
700 Los Esteros Road  
San Jose, CA 95134

Darla Reams, Deputy Director  
San Mateo WQCP  
Dept. of Public Works  
330 West 20th Avenue  
San Mateo, CA 94403

Robert Holland, Program Lead  
Environmental Monitoring  
Sandia National Labs, California  
7011 East Avenue  
Livermore, CA 94550

Sid Nash, Administrator  
Santa Clara County SD #2-3  
20833 Stevens Creek Blvd, #104  
Cupertino, CA 95014

Tony Pullin, Supervisor  
Sewer Authority Mid-Coastside  
Technical Services  
1000 North Cabrillo Highway  
Half Moon Bay, CA 94019

Jim Zambenini, Agency Coordinator  
Sonoma County Water Agency  
P.O. Box 11628  
Santa Rosa, CA 95406

Robert Donaldson  
South Bay Side System Authority  
1400 Radio Road  
Redwood City, CA 94065

Steve Oster  
Sunol Sanitary District  
253 Lincoln Avenue  
San Jose, CA 95126

Karl Drexel, Administrator  
Tomales Village Community Services  
District  
P.O. Box 303  
Tomales, CA 94971

Richard Chiu, Director of Public Works  
Town of Los Altos Hills  
26379 Fremont Boulevard  
Los Altos Hills, CA 94022

Sara Shirazi, Associate Director  
UC Berkeley  
Campus Facilities Services  
317 University Drive, Suite 1150  
Berkeley, CA 94704

Ryan Johnson, Collections Supervisor  
Veolia Water  
601 Canal Boulevard  
Richmond, CA 94804

Robert Reid, District Manager  
West Valley Sanitation District  
100 E. Sunnyoaks Avenue  
Campbell, CA 95008

Julie Sayre  
State of California  
Dept. of Parks and Recreation  
845 Casa Grande Road  
Petaluma, CA 94954

John Elam, Manager  
Tamalpais Community Sanitary District  
305 Bell Lane  
Mill Valley, CA 94941

Rick Mao, City Engineer  
Town of Colma  
1188 El Camino Real  
Colma, CA 94014

Paul Nagengast, Director  
Town of Woodside  
Dept. of Public Works  
P.O. Box 620005  
Woodside, CA 94062

Andy Morrison, Collection Service  
Manager  
Union Sanitary District  
5072 Benson Road  
Union City, CA 94587

Tim Clayton, District Manager  
West Bay Sanitary District  
500 Laurel Street  
Menlo Park, CA 94025

Don Moore, Joint Treatment Plant  
Yountville Town  
6550 Yount Street  
Yountville Town, CA 94599

Douglas Humphrey, District Manager  
Stege Sanitary District  
P.O. Box 537  
El Cerrito, CA 94530

William Hargis, Chief  
The California Veterans Home  
Plant Operations  
P.O. Box 1200  
Yountville, CA 94599

Martha DeBry, Public Works Director  
Town of Hillsborough  
1600 Flibunda Avenue  
Hillsborough, CA 94010

Christopher Krettecós, Manager  
Travis Air Force Base  
Water Program  
60 CES/CEV, 411 Airmen Drive  
Travis AFB, CA 94535-2001

Daniel Tafolla, Director  
Vallejo Sanitary & Flood Control  
District - Environmental Services  
450 Ryder Street  
Vallejo, CA 94590

E.J. Shalaby, District Manager  
West County Wastewater District  
2910 Hilltop Drive  
Richmond, CA 94806

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**

**REQUEST FOR PREPARATION OF THE RECORD**



# CITY OF EMERYVILLE

INCORPORATED 1898

OFFICE OF THE CITY ATTORNEY

1333 PARK AVENUE

EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4370

FAX: (510) 596-3724

December 21, 2009

Bruce H. Wolfe, Executive Officer  
California Regional Water Quality Control Board,  
San Francisco Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**RE: Request for Preparation of the Administrative Record Concerning Adoption of Order No. R2-2009-0083 (NPDES Permit No. CA0038792 for the City of Emeryville)**

Dear Mr. Wolfe:

On November 18, 2009, the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") adopted Order No. R2-2009-0083, Waste Discharge Requirements for the City of Emeryville ("Permittee") Sanitary Sewer Collection System. The Order is also National Pollutant Discharge Elimination System Permit No. CA0038792 ("Permit"). The Permittee intends to file a Petition for Review of the Order and the Permit.

With this letter, the Permittee is respectfully requesting that the Regional Board prepare and deliver to the undersigned the full administrative record and proceedings related to the Permit ("Administrative Record"). The Permittee requests that the Administrative Record for the Permit include, but not be limited to, the following documents:

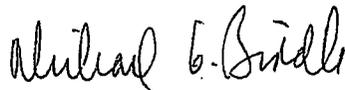
- (1) a copy of the tape recordings, transcripts and/or notes regularly made during each and every public meeting at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, approved or included on the public agenda;
- (2) the agendas and minutes of any public meeting or hearing at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, or approved;
- (3) a copy of all draft and tentative versions of the Permit;
- (4) a copy of the Permit as adopted;

- (5) any and all documents or other evidence, regardless of authorship, relied upon, relating to, or used to formulate the requirements contained in any draft, tentative, or adopted version of the Permit;
- (6) any and all documents received by the Regional Board from the Permittee or its employees, agencies, consultants, or attorneys pertaining to the draft, tentative, or adopted versions of the Permit;
- (7) any and all documents received by the Regional Board from any individual, company, partnership, corporation, agency, trade organization, and/or government entity (other than the Permittee), pertaining to the draft, tentative or adopted versions of the Permit;
- (8) any document or material incorporated by reference by the Permittee, an individual, company, partnership, corporation, agency, trade organization, and/or government entity in any document submitted to the Regional Board pertaining to the draft, tentative or adopted version of the Permit;
- (9) any record of any type of communication among members or staff of the Regional Board, or between or among the Regional Board or its staff and other persons or agencies pertaining to the draft, tentative or adopted versions of the Permit.

It should be noted that the Petition to be filed on behalf of the Permittee does request that the matter be held in abeyance until further notice. Therefore, provided that the State Board agrees to hold the Permittee's petition in abeyance, preparation of the Administrative Record need not commence unless and until the Permittee's petition is taken out of abeyance.

Thank you for your cooperation in this matter.

Sincerely,



Michael G. Biddle  
City Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ALAMEDA:

I am a citizen of the United States. My business address is 1333 Park Avenue, Emeryville, California 94608. I am employed in the County of Alameda, where this service occurred. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the foregoing document(s) described as:

- **CITY OF EMERYVILLE'S PETITION FOR REVIEW; PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF PETITION (Wat. Code § 13320)**

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bradshaw, Legal Analyst  
PO Box 100  
Sacramento, CA 95812-0100

California Regional Water Quality Control Board  
San Francisco Bay Region  
Attn: Bruce H. Wolfe, Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

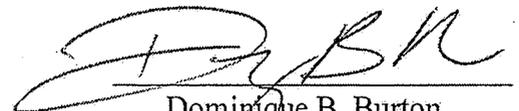
[jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov)

[BWolfe@waterboards.ca.gov](mailto:BWolfe@waterboards.ca.gov)

[X] (BY FIRST-CLASS MAIL) I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope, placed it for collection, and certified mailing on Monday, December 21, 2009, following ordinary business practices.

[X] (BY ELECTRONIC SERVICE/MAIL) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on Monday, December 21, 2009, Emeryville, California.

  
\_\_\_\_\_  
Dominique B. Burton  
City Attorney's - Paralegal