BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Bay Area Clean Water Agencies' Petition for Review of Action and Failure to Act by the California Regional Water Quality Control Board, San Francisco Bay Region, in Adopting Order No. R2-2008-0057, NPDES Permit No. CA0037753 and Waste Discharge Requirements for the Sanitary District No. 5 of Marin County.

PETITION FOR REVIEW;
PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF PETITION (WATER CODE SECTIONS 13320 AND 13321)

Petitioner Bay Area Clean Water Agencies ("BACWA"), in accordance with section 13320 of the Water Code, hereby petitions the State Water Resources Control Board ("SWRCB" or "State Board") to review Order No. R2-2008-0057 of the California Regional Water Quality Control Board, San Francisco Bay Region, ("RWQCB" or "Regional Board") reissuing National Pollution Discharge Elimination System ("NPDES") Permit No. CA0037753 and Waste Discharge Requirements for the Sanitary District No. 5 of Marin County (the "District"). A copy of Order No. R2-2008-0057, adopted on July 9, 2008, is attached to this Petition as Exhibit A. The issues and a summary of the bases for the Petition follow. At such time as the full administrative record is
available and any other material has been submitted, BACWA reserves the right to file a more
detailed memorandum in support of the Petition and/or in reply to the Regional Board’s response.¹

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

On March 19, 2008, BACWA submitted written comments on the tentative versions of
NPDES Permit No. CA0037753 ("Permit") and the accompanying Cease and Desist Order
("CDO") No. R2-2008-0059. For the reasons contained herein, and incorporated by reference as
stated above, BACWA asserts that provisions contained in the recently issued Permit for the
District are improper and inappropriate. BACWA hopes that the State Board will choose to take
up this petition and review the issues being raised that are vitally important to Bay Area POTWs.

1. NAME, ADDRESS, TELEPHONE, AND EMAIL FOR PETITIONER:

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¹ The State Board’s regulations require submission of a statement of points and authorities in support of a petition (23
C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary memorandum. However, it is impossible
to prepare a thorough statement or a memorandum that is entirely useful to the reviewer in the absence of the complete
administrative record, which is not yet available.
In addition, all materials in connection with this Petition for Review should also be provided
to BACWA’s special counsel at the following address:

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2. THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE
BOARD IS REQUESTED TO REVIEW:

BACWA seeks review of Order No. R2-2000-000057, reissuing NPDES Permit No.
CA0037753 for the District. The specific requirements of the Permit that BACWA requests the
State Board to review relate to the following:

A. Numeric-based effluent limits for dioxin-TEQ;
B. Daily maximum effluent limitations;
C. Compliance schedule action plans for dioxin-TEQ; and
D. Inclusion of a comprehensive schedule to minimize blending.

The State Board is also requested to review the Regional Board’s actions in adopting the
Permit for compliance with due process and the California Administrative Procedures Act (Cal.
Code §21000, et seq.); 2 the Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000,
et seq.); the Clean Water Act (“CWA”) (33 U.S.C. §§1251, et seq.) and its implementing
regulations (40 C.F.R. Parts 122, 123, 130 and 131); the Water Quality Control Plan, San Francisco
Bay Region (the “Basin Plan”); and the Policy for Implementation of Toxics Standards for Inland
Surface Waters, Enclosed Bays, and Estuaries of California (“SIP”).

2 Although the Permit at II.E. discusses an exemption from CEQA under Water Code §13389, that exemption is narrow,
and only exempts Chapter 3. The remaining non-exempted parts of CEQA require all Regional Boards to consider the
environmental consequences of their permitting actions, and to explore feasible alternatives and mitigation measures
prior to the adoption of waste discharge requirements. See e.g., Cal. Pub. Res. Code §21002; 23 C.C.R. §3733 (which
states that the exemption in §13389 “does not apply to the policy provisions of Chapter 1 of CEQA”). Because this
issue is currently pending before the California Supreme Court by way of a petition for review, BACWA includes this
issue to preserve its rights pending resolution by that Court.
3. **THE DATE ON WHICH THE REGIONAL BOARD ACTED:**

The Regional Board adopted the Permit on July 9, 2008.

4. **A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER:**

   A. **The Regional Board Improperly Imposed Numeric Effluent Limitations for Dioxin-TEQ.**

   BACWA has been concerned about the imposition of numeric effluent limitations for dioxin since the California Toxics Rule (“CTR”) was promulgated, notwithstanding that regulations’ promise that the “rule would not impose undue or inappropriate burden on the State of California or its dischargers.” 65 Fed. Reg. 31687 (May 18, 2000). BACWA was initially hopeful that the United States Environmental Protection Agency’s (“USEPA”) prediction that costs to meet the CTR criteria would be “unlikely to reach the high-end of the [cost] range because State authorities are likely to choose implementation options that provide some degree of flexibility or relief to the point source dischargers” was accurate; unfortunately, in practice, this has not been the case. *Id.* at 31706. The purpose of this petition is to request that the State use its presumed flexibility when issuing discharge permits where compliance with water quality criteria (whether these criteria are CTR criteria or narrative objectives) has been demonstrated to be infeasible.

   The Permit being appealed by BACWA contains concentration limits for dioxin-TEQ. *See* Permit at pg. 12. Similar limits were challenged by BACWA in previous administrative and court appeals. Unfortunately, some of the holdings of those previous appeals are not being upheld by the Regional Board. BACWA tried for several years to settle the outstanding petitions on Bay Area POTW permits filed since 2000 by BACWA and others, but disagreement as to legal requirements prevented consummation of a global settlement. Because these issues remain as important today as they did eight years ago, or perhaps more important since the time for final compliance with CTR criteria becomes shorter every day, BACWA continues to press for a final ruling to re-incorporate the “flexibility or relief” promised over the years.

   BACWA believes that the Regional Board included final numeric water quality-based effluent limitations (“WQBELs”) for dioxin-TEQ in the Permit that are contrary to the requirements
of the CWA and state law.\textsuperscript{3} In most cases, these numeric limitations have been demonstrated to be infeasible to meet,\textsuperscript{4} and could result in the permitted entities having to construct expensive new treatment facilities, if technology even exists to provide such treatment. These treatment technologies far exceed the mandated treatment requirements of the CWA and will likely become unnecessary once new water quality objectives, site specific objectives, or TMDLs for this substance is in place and finally approved.\textsuperscript{5} Such a waste of resources is not reasonable nor required (see Water Code §13000), and ignores the fact that control of dioxin-TEQ may instead require a "carefully conceived, agency-approved, long-term pollution control procedure for a complex environmental setting." \textit{Communities for a Better Environment v. SWRCB}, 109 Cal.App.4th 1089, 1107 (2003). For these reasons, BACWA challenges these limits herein as being contrary to federal and state law requirements.

1) \textbf{Numeric Effluent Limitations are Not Required.}

The Regional Board has imposed numeric water quality-based effluent limitations ("WQBELs") for various constituents in the Permit based on 40 C.F.R. §122.44(d). \textit{See} Permit at pgs. 12. However, as explained below, section 122.44(d) does not require the imposition of \textit{numeric} WQBELs.

\begin{itemize}
  \item \textsuperscript{3} The Regional Board must ensure its actions to implement the CWA are consistent with any applicable provisions of the CWA and its implementing regulations. Cal. Water Code §13372.
  \item \textsuperscript{4} As defined by SWRCB Policy, "infeasible" means "not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." \textit{See} SIP at Appendix 1-3.
  \item \textsuperscript{5} Courts have recognized a step-wise process in pollutant control. In \textit{San Francisco BayKeeper v. Whitman}, 287 F.3d 764,766-767 (April 15, 2002), the Ninth Circuit Court of Appeals determined that:
  \begin{quote}
    "[\textit{When the NPDES system fails to adequately clean up certain rivers, streams or smaller water segments, the Act requires the use of a water-quality based approach. States are required to identify such waters, which are to be designated as ‘water quality limited segments’ (‘WQLSs’). The states must then rank these waters in order of priority, and based on that ranking, institute more stringent pollution limits called ‘total maximum daily loads’ or ‘TMDLs.’} 33 U.S.C. §§1313(d)(1)(A), (C). TMDLs are the maximum quantity of a pollutant the water body can receive on a daily basis without violating the water quality standard. The TMDL calculations are to ensure that the cumulative impacts of multiple point source discharges are accounted for, and are evaluated in conjunction with pollution from non-point sources. States must then institute whatever additional cleanup actions are necessary, which can include further controls on both point and nonpoint pollution sources."
  \end{quote}

Thus, the Court reasoned that the TMDL program is the tool for correcting water quality impairments when they are deemed to exist, not continued ratcheting down under the NPDES permitting program. Any other determination would render the TMDL program superfluous.
EPA regulations require that “each NPDES permit shall include the following requirements when applicable.” See 40 C.F.R. § 122.44 (emphasis added). Subsection (d) of this section imposes “any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of the CWA necessary to achieve water quality standards established under Section 303 of the CWA, including State narrative criteria for water quality . . .” 40 C.F.R. § 122.44(d) (emphasis added). The regulations require the imposition of “requirements,” not numeric effluent limitations. Furthermore, when numeric effluent limitations are infeasible, EPA regulations specifically authorize the use of Best Management Practices (BMPs) and other non-numeric or narrative requirements in lieu of numeric limits. 40 C.F.R. §122.44(k)(3); see also SWRCB Order No. WQ 2003-12 at pg. 9. Alternatively, the Regional Board could have styled this Permit after recent permits in the Central Valley Region, which have imposed final numeric limits, but stated that these limits do not apply if certain actions are undertaken by the discharger. See Order Nos. R5-2007-0036 and R5-2007-0039. This approach, which was not vetoed by USEPA, takes a creative approach to dealing with infeasible final limits without the necessity of compliance schedules.

The California Court of Appeal in the Tesoro case specifically ruled on this issue and stated that numeric limits are not required, and that, where infeasibility is demonstrated, numeric limits can be replaced with non-numeric requirements. See Communities for a Better Environment v. SWRCB, 109 Cal.App.4th at 1103-1105; see accord In the Matter of the Petition of Citizens for a Better Environment, Save San Francisco Bay Association, and Santa Clara Audubon Society, SWRCB Order No. WQ 91-03 (May 16, 1991). This appellate decision is binding on the State Board as a party to that case and must be followed in the case of this Permit.

By including final numeric effluent limitations in lieu of non-numeric or narrative requirements where numeric limits have been demonstrated to be infeasible, the Regional Board exceeded federal law requirements. If the Regional Board chooses to exceed federal law requirements, then it must comply with state law requirements. City of Burbank, et al. v. SWRCB, et al., 35 Cal. 4th 613, 627-628 (2005). However, the Regional Board failed to comply with the requirements of Water Code §13263(a), which requires consideration of several factors including
those contained in Water Code §13241 when adopting numeric effluent limitations more stringent
than required by federal law into this Permit.

Thus, the State Board should remand the Permit to the Regional Board and direct the
Regional Board to comply with the provisions of 40 C.F.R. §122.44(k)(3), by removing the numeric
concentration-based effluent limits for dioxin-TEQ where compliance with such limits has been
demonstrated to be infeasible, and replace these numeric limits with narrative requirements (source
control, best management practices, etc.) in lieu of the numeric limits.6

2) Dioxin-TEQ Limits

The Permit contains the following effluent limitations for dioxin-TEQ:

<table>
<thead>
<tr>
<th>AMEL (µg/L)</th>
<th>MDEL (µg/L)</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4 x 10⁻⁸</td>
<td>2.8 x 10⁻⁸</td>
<td>6/01/2018</td>
</tr>
</tbody>
</table>

The CTR did not promulgate numeric water quality criteria for dioxin-TEQ, only for
2,3,7,8-tetrachlorodibenzo-p-dioxin ("2,3,7,8-TCDD"). In addition, no aquatic life criteria were
promulgated in the CTR or the Basin Plan for dioxin-TEQ. Only a human-health criteria for
municipal ("Water & Organisms"), and non-municipal drinking water supply waters (e.g.,
"Organisms Only") were set at 0.000000013 and 0.000000014 µg/L, respectively, based on a
carcinogenicity risk of 1x10⁻⁶. 40 C.F.R. §131.38(b)(1)(#16). These figures are based on an
assumed exposure pathway of consumption of 6.5 grams per day of organisms from the Bay that
are contaminated at a level equal to the criteria concentration, but multiplied by a
"bioconcentration factor." 65 Fed. Reg. 31693 (May 18, 2000). This amount can be consumed
over a lifetime (70 years) without expecting an adverse effect. Id. However, current detection
technologies cannot measure to these levels.

Neither the Permit nor the accompanying Fact Sheet demonstrated reasonable potential for
2,3,7,8-TCDD. See Permit at pg. F-20. However, the same table containing the reasonable
potential analysis ("RPA") shows reasonable potential ("RP") for dioxin-TEQ, even though no
adopted water quality criteria or objective exists for dioxin-TEQ upon which a RPA could be

6 Such an action would negate the need for compliance schedules as well since the District would presumably be able to
immediately comply with narrative requirements for the constituents at issue.
performed. The Regional Board’s action in finding reasonable potential in the absence of applicable numeric water quality criteria was unreasonable, in violation of Water Code §13000, and 40 C.F.R. §122.44(d).

The number used in the RPA for dioxin-TEQ was exactly the same as the promulgated criterion for 2,3,7,8-TCDD. The Permit provides:

“To determine if the discharge of dioxin or dioxin-like compounds from the Treatment Plant has reasonable potential to cause or contribute to a violation of the Basin Plan’s narrative bioaccumulation WQO, Regional Water Board staff used TEFs [Toxic Equivalent Factors] to express the measured concentrations of 16 dioxin congeners in effluent and background samples as 2,3,7,8-TCDD equivalents. These “equivalent” concentrations were then summed and compared to the CTR numeric criterion for 2,3,7,8-TCDD (1.4x10⁻⁸ µg/L). Although the 1998 WHO scheme includes TEFs for dioxin-like PCBs, they are not included in this Order’s version of the TEF procedure. The CTR has established a specific water quality standard for dioxin-like PCBs, and they are included in the analysis of total PCBs.”

See Permit at pg. F-31. Given that 9 years have passed since the TEFs were first adopted by the World Health Organization, it is unreasonable for the Regional Board to continue to use a broad narrative objective and not adopt numeric objectives and an implementation plan through a formal rulemaking process as required by Water Code §13241 and §13242, and the triennial review process required by CWA section 303, 33 U.S.C. §1313(c) and (e). The use of a narrative objective indefinitely to skirt state law requirements also ignores the congressional mandate that water quality standards criteria “shall be specific numeric criteria for such toxic pollutants.” 33 U.S.C. §1313(c)(2)(B)(emphasis added).

Moreover, the Permit mixes criteria in order to create a finding of RP. The Permit states that “because the maximum ambient background concentration (7.1x10⁻⁸ µg/L) exceeds the CTR

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7 It should be noted that this is contrary to the RPA for other constituents where the Permit states “No Criteria” in the table instead of inserting a non-promulgated criteria. See Permit at pg. F-20-22.

8 The “translated” dioxin-TEQ objective of 0.014 pg/L mirrors the dioxin-TEQ objective in the State Board’s 1991 Enclosed Bays and Estuaries Plan (“EBEP”), which was invalidaled in 1994 by the Sacramento County Superior Court due to the State Board’s failure to consider economics and other factors under Cal. Water Code Section 13241, failure to comply with CEQA, and failure to comply with the Administrative Procedures Act (“APA”). See Water Quality Control Cases, Judicial Council Coordination Proceeding No. JC2610, Statement of Decision (Sacramento County Superior Court, Mar. 23, 1994). Following the Court decision, the State Board rescinded the plan, including the dioxin-TEQ objective of 0.014 pg/L. Thus, this invalidated and later rescinded dioxin-TEQ objective should not be used.
numeric water quality criterion for 2,3,7,8-TCDD (1.4x10^-8 μg/L), and dioxin-TEQ was detected in the effluent (MEC=3.2x10^-9 μg/L),” this somehow demonstrates RP. See Permit at pg. F-31 para. 4.b. The Regional Board should not be allowed to mix and match 2,3,7,8-TCDD and dioxin-TEQ in order to find RP, they must use each independently in order to properly determine RP. This was not done, and should be overturned.

a) The Regional Board Improperly Utilized the Basin Plan’s Narrative Objective for Bioaccumulation to Justify the Imposition of a Dioxin-TEQ Limit.

In adopting a numeric effluent limitation for dioxin-TEQ, the Regional Board attempted to justify its actions by claiming that the applicable water quality objectives specified in the Basin Plan require limits to protect against unsafe levels of dioxin in the fatty tissue of fish and other organisms. See Permit at pg. F-30. The Basin Plan contains no numeric objectives specifically set to define acceptable levels of these constituents in fish tissue or sediment, and the CTR only set numeric criteria for 2,3,7,8-TCDD, not for all the congeners of dioxins. Thus, the Regional Board improperly relied upon the Basin Plan’s narrative objective for Bioaccumulation to justify limits for dioxin-TEQ.

In addition, the Regional Board improperly lumped together all of the congeners of dioxin and furans. Had the RPA been done on each individual congener, most if not all would not show reasonable potential because of the varying TEF for each. See Permit at pg. F-31. However, pooling all of the congeners together creates an unnecessary finding of reasonable potential for all congeners. The Regional Board’s inclusion of an effluent limit for dioxin-TEQ based on all of the congeners of dioxins and furans improperly ignores that the congeners do not create reasonable potential. Imposition of limits on congeners without reasonable potential violates the specific mandates of the Basin Plan and federal regulations.9

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9 The insertion of limits without reasonable potential is contrary to permit findings that state “WQBELs are not included in this Order for constituents that do not demonstrate reasonable potential;” See Permit at pg. F-22, para. C.3.e(2).
A review of the Bioaccumulation objective demonstrates that this objective does not provide authorization for the numeric limits imposed in this instance. The Bioaccumulation objective found on page 3-2 of the Basin Plan provides:

Many pollutants can accumulate on particles, in sediment, or bioaccumulate in fish or other aquatic organisms. Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life. Effects on aquatic organisms, wildlife, and human health will be considered.

(emphasis added)

Courts have acknowledged that the presence of dioxin may be beyond the Discharger’s control. See, e.g., Communities for a Better Environment, 109 Cal.App.4th at 1096 (“Dioxins are not produced intentionally. They are formed as undesired byproducts of combustion and the manufacture and use of certain chlorinated chemical compounds. They exist in the environment worldwide, particularly in air, water, soils, and sediments. They enter the atmosphere through aerial emissions and widely disperse through a number of processes, including erosion, runoff, and volatilization from land or water. For example, automobile exhaust is a common source of dioxins.”) Therefore, the minimal contribution of dioxin-TEQ by the District’s POTW is not a “controllable water quality factor” that is causing a “detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life,” and imposing a limit for dioxin-TEQ is not necessary nor based upon the findings and evidence. Therefore, control of all of these sources is not within the jurisdiction of the District.

Additionally, a numeric effluent limitation can only be imposed through a narrative water quality objective if the narrative objective contains an appropriate mechanism to “translate” the narrative requirement (i.e., to translate a narrative objective into a concentration or mass effluent limitation). In order for a numeric limit derived from a narrative objective to be appropriate, the

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10 Federal regulations mandate that “[w]here a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source dischargers of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards . . . .” 40 C.F.R. §131.11(a)(2). Since the Basin Plan’s narrative objective for Bioaccumulation does not contain an appropriate translation mechanism, the only conclusion can be that subjective, arbitrary, or wholly inapplicable WQBELs for dioxin-TEQ have been imposed in the Permit. The rationale in the EBMUD Order, SWRCB Order No. WQ 2002-0012 at pgs. 6-7 does not apply in this case, since the dioxin-TEQ limits
derivation of the numeric limit must be transparent. A clear explanation of the translation from the
narrative water quality objective must be set forth in the NPDES permit. See 40 C.F.R.
§124.8(b)(4); Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 515
(1974); California Edison v. SWRCB, 116 Cal. App. 3d 751, 761 (1981); see also In re Petition of
the Pinole-Hercules Water Pollution Control Plant and County of San Francisco, State Board
Order No. WQ-95-4 at 10 (Sept. 21, 1995). The failure by the Regional Board to clearly enunciate
the translation from a narrative objective to a numeric limit in the Findings or Fact Sheet of the
Permit was an abuse of discretion.

Moreover, the Permit fails to show that dioxin-TEQ levels in the discharge have caused a
detrimental impact in concentrations of toxic substances found in bottom sediments or aquatic life.
Without such a showing, no limits may be imposed under the narrative bioaccumulation objective.

b) Meeting the Dioxin Concentration Limit is Not Feasible

As stated above, dioxins enter the environment from a variety of sources, primarily
combustion sources. See Communities for a Better Environment, 109 Cal. App. 4th at 1096
(“automobile exhaust is a common source of dioxins.”) Further, the Regional Board has concurred

are final WQBELs and were not adopted in conformance with federal regulations as there are no 304(a) guidance

In EPA's official guidance documents, EPA explains at length the process the State must go through to implement an
adequate translator mechanism. See EPA Water Quality Standards Handbook at 3-13 to 3-26 (1994). Among other
things, EPA provides that a State's translator procedure for narrative criteria should specifically describe:

- specific, scientifically defensible methods by which the state will implement its narrative toxicity standard for
  all priority pollutants;
- how these methods will be integrated into the State's priority pollutant control program;
- methods the State will use to identify those pollutants to be regulated in a specific discharge;
- an incremental cancer risk for carcinogens;
- methods for identifying compliance thresholds in permits where calculated limits are below detection;
- methods for selecting appropriate hardness, pH, and temperature variables for criteria expressed as functions;
- methods or policies controlling the size and in-zone quality of mixing zones;
- design flows to be used in translating chemical-specific numeric criteria for aquatic life and human health into
  permit limits; and
- other methods and information needed to apply standards on a case-by-case basis.

Id. at 3-25; see also EPA, TSD for Water Quality-Based Toxics Control at 30-31(1991).
with the District that compliance with the dioxin-TEQ limits is infeasible. See Permit at pg. F-31. For these reasons, numeric effluent limitations were not required.\textsuperscript{12}

The Regional Board's assertion that other strategies, including potential mass offsets (see Permit at pg. 18), could address the impairment ignores two basic points. First, the Regional Board has historically never agreed that there is an "impairment" for dioxin in the Bay.\textsuperscript{13} In addition, mass offsets will not address the ability to meet a\textit{concentration} limit. Even the Regional Board member, Dr. Terry Young, has previously questioned how an offset can be done for concentration. Offset programs for concentration-based limits have not been demonstrated to be feasible. Further, no state policy for offsets exists, so the feasibility of such an approach has not been determined. For these reasons, the numeric limits for dioxin-TEQ imposed in the Permit represent an abuse of discretion.

B. The Regional Board Improperly Included Daily Maximum Effluent Limitations.

Where effluent limitations are authorized, federal regulations provide that for discharges from POTWs, all permit effluent limits shall, unless impracticable, be stated as average weekly and average monthly discharge limitations.\textsuperscript{14} 40 C.F.R. § 122.45(d)(2). The Permit contains several

\textsuperscript{12} The Regional Board should have done what it did in the Vallejo permit, Order No. R2-2006-0056, which was to state: "Due to the limited monitoring data, no dioxin limits (final or interim) are established. The final limits for dioxin TEQ will be based on the WLA assigned to the Discharger in the TMDL. This Order requires additional dioxin monitoring to complement the Clean Estuary Partnership's special dioxin project, consisting of impairment, assessment, and a conceptual model for dioxin loading into the Bay. The permit will be reopened, as appropriate, to include interim dioxin limitations when additional data become available." Order No. R2-2006-0056 at pg. F-24.

\textsuperscript{13} See Letter and attachments from Loretta Barsamian, RWQCB to Alexis Strauss, EPA Region IX (Jul 14, 1998)("we believe the data do not support any other additions to the list at this time. This is particularly true in the case of dioxin.").(incorporated herein by reference). The existing 303(d) listings for dioxins and furans in San Francisco Bay were made by USEPA Region IX in a letter dated May 12, 1999. These listings were made as changes (additions) to the 1998 303(d) list, which was originally adopted by the SWRCB, based on a 1994 study (San Francisco Regional Board/ SWRCB/ California Department of Fish and Game, \textit{Contaminant Levels in Fish Tissue from San Francisco Bay}, December 1994). EPA based its determination on an OEHHA fish advisory, and by finding impairment of the Commercial and Sportfishing (COMM) use due to human consumption of fish. However, EPA's finding ignored other important information such as later studies and a 1998 national dioxin health risk study that showed that dioxin levels and dioxin consumption rates of other protein sources (e.g., beef, dairy products) is higher than through fish consumption. See Statements by Dr. William Farland, USEPA National Center for Environmental Assessment, 1998. More recent studies have also shown the benefits of eating fish notwithstanding health advisories for mercury or dioxins. Therefore, an advisory to avoid fish consumption may actually increase the health risk to Bay area residents.

\textsuperscript{14} Federal regulations also provide that discharges from all dischargers other than POTWs, effluent limitations shall be stated as maximum daily and average monthly discharge limitations. 40 C.F.R. §122.45(d)(1).
unsupported daily maximum limits, including, among others, the limit for dioxin-TEQ. See Permit at pg. 12.

In order to justify the inclusion of these daily limits, the Regional Board first cited to the language of 40 C.F.R. §122.45(d)(1), which states that: “For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards shall unless impracticable be stated as maximum daily and average monthly discharge limitations for all discharges other than publicly owned treatment works.” See Permit at pgs. F-14, para. C.1.b.(1). This citation ignores that these discharges are from a publicly owned treatment work, and the rule for such a facility is that “average weekly and average monthly discharge limitations [apply] for POTWs.” 40 C.F.R. §122.45(d)(2). Therefore, this first justification for daily limits fails.

The State Implementation Policy (SIP) did not change the federal requirements. In enacting the SIP, the State Board may have attempted to modify the federal regulatory prohibition on the use of daily maximum limits for POTWs by stating: “For this method only [referring to limits for aquatic life protection] maximum daily effluent limitations shall be used for publicly-owned treatment works (POTWs) in place of average weekly limitations.” SIP at 8, §1.4. However, prior to authorizing the use of daily maximum limitations in POTW permits for compliance with aquatic life criteria in the SIP, the State Board did not make the required demonstration that the imposition of average weekly and average monthly effluent limitations for the protection of aquatic life was “impracticable” per the requirements of 40 C.F.R. §122.45(d). Therefore, the State Board’s authorization of daily maximum limitations for compliance with aquatic life criteria does not meet federal requirements or California Water Code Chapter 5.5 requirements for consistency with federal requirements. As such, the Regional Board should remove all daily maximum effluent limitations based on aquatic life criteria.

Further, the State Board did not include in the SIP the same language purportedly allowing for the inclusion of daily maximum limitations in POTW permits for effluent limitations based upon technological requirements (for conventional pollutants) or upon human health criteria. Therefore, even if the SIP provisions pertaining to maximum daily limits for aquatic life criteria were valid, 40
C.F.R. §122.45(d) requires the Regional Board to remove all daily maximum interim and final effluent limitations based on human health criteria or technological requirements. The criteria for 2,3,7,8-TCDD is human health-based. See 40 CFR §131.38(b)(1)(16).

The Permit never specifies why monthly and weekly average limits are impracticable. The Permit merely states that “MDELs are used in this Order to protect against acute water quality effects. The MDELs are necessary for preventing fish kills or mortality to aquatic organisms.” Permit at pg. F-14, para. C.1.c. These statements do not constitute an impracticability analysis, and are inadequate to justify daily limits as there is no evidence to support such generic findings.

Furthermore, at most, these justifications would address only limits based on acute aquatic life criteria. However, the Regional Board did not include limits based on acute aquatic life protection, rather, the limits for dioxin-TEQ are based on long-term chronic human exposure. See In the Matter of the Own Motion Review of the City of Woodland, SWRCB Order No. WQ 2004-0010 (holding that “implementing the limits as instantaneous maximums appears to be incorrect because the criteria guidance value . . . is intended to protect against chronic effects.”)

Therefore, the Regional Board’s inclusion of daily maximum effluent limitations in the Permit, without a specific, pollutant-by-pollutant impracticability analysis, violated 40 C.F.R. §122.45(d)(2) and Water Code Chapter 5.5. By violating federal and state law, the Regional Board proceeded without, or in excess of, its jurisdiction and has committed a prejudicial abuse of discretion by not proceeding in a manner required by law. For these reasons, the State Board should direct the Regional Board to remove the daily maximum effluent limitations not properly analyzed for impracticability. See accord SWRCB Order No. 2002-0012 at pg. 20-21 (July 18, 2002)(“the Regional Board must include a finding in the permit on remand explaining the impracticability of weekly average limits.”); SWRCB Order No. 2002-0015 at pg. 56; City of Woodland v. Regional Water Quality Control Board for the Central Valley Region, and SWRCB, Case No. RG04-188200, Statement of Decision at pg. 20.

C. The Regional Board Improperly Imposed A Compliance Schedule Action Plan for Dioxin-TEQ in the Permit which is Overly Stringent.

BACWA is concerned that having stringent schedules contained in the Permit and CDO will eventually require the construction of capital facilities when BACWA has repeatedly been told
that building additional treatment is not the expected direction of the Bay Area water quality
program. BACWA was under the impression that the direction was to pursue regulatory
alternatives, such as TMDLs, site specific objectives, and pollution prevention (as described in the
implementation plan for the mercury TMDL). The Permit and CDO veers way off of this intended
direction.

Also, this Permit contains compliance schedules for constituents, such as dioxin-TEQ, that
cannot be source controlled, or for which wastewater treatment plant effluents have been identified
as non-significant sources. See Permit at pg. 25-26. Additionally, dioxin-TEQ is already being
addressed through an alternative regulatory strategy that will appropriately resolve beneficial use
concerns for the San Francisco Bay. The compliance schedule in the Permit is overly burdensome
for dioxin-TEQ, as specified below:

The Permit’s compliance schedule for dioxin-TEQ is overly burdensome. The dioxin
congeners found in fish tissue samples, which form the basis for the dioxin 303(d) listing, are
different than the congeners detected in publicly-owner treatment works. Given that the sources of
dioxin are uncontrollable by municipal wastewater treatment plants and are primarily introduced
through air deposition, the compliance requirements for dioxin reduction in the effluent will have
little, if any, environmental benefit to reduce the concentrations of dioxin congeners found in fish
tissue. Thus, a de minimus exception should be granted in this case at least until the TMDL is
finalized. See Ober v. USEPA, 243 F.3d 1190, 1195 (9th Cir. 2001) (“de minimis exception is
allowed for regulation yielding trivial gain.”).

For these reasons, the action plans in the Permit should be revised to remove all activities
related to installation of capital improvements. In addition, any pollution prevention activities
should be identical to resolutions or orders already adopted by the Regional Board for specific
constituents. No new or different activities should be required for dioxin-TEQ.

F. The Regional Board Improperly Imposed a Schedule with Enforceable
   Deadlines to Minimize Blending.

Currently, the District’s exercise of the well established practice of blending during
peak wet weather flows ensures compliance with the CWA. This practice has never resulted in a
violation of the stringent effluent limitations contained in previous NPDES permits, and nothing
suggests that future violations may occur. In order to comply with the compliance schedule imposed by the Regional Board to minimize blending, the District is required to complete improvements to the facility pursuant to deadlines in a workplan to be submitted to the Regional Board for approval by October 1, 2008. See Permit at pgs. 24-25. By including a compliance schedule with enforceable deadlines to minimize blending, the Regional Board violated federal and state law.

1) Inclusion of a Compliance Schedule with Enforceable Deadlines to Minimize Blending in the Permit Violates Applicable Federal Law.

The inclusion of a compliance schedule to minimize blending is contrary to federal and state law and not based on evidence in the record. The Regional Board incorrectly determined that the District’s blending practice constituted an illegal “bypass” in violation of 40 C.F.R. §122.41(m). See Permit at pg. F-10, para. A.4. The requirements of 40 C.F.R. §122.41(m) do not apply where the bypass does not cause effluent limitations to be exceeded as long as a POTW could show that such bypass is “for essential maintenance to assure efficient operation.” See 40 C.F.R. §122.41(m)(2). This regulation does not prohibit operation of treatment facilities in a manner consistent with the design of a facility and does not prohibit blending which is consistent with the design of a facility. See 40 C.F.R. §122.41(m)(2).

On occasions, during peak wet weather flows, the District blends primary treated effluent with secondary treated effluent and then chlorinates and dechlorinates the blended wastewater prior to discharge to the Raccoon Strait, Central San Francisco Bay. See Permit at pg. 5, para.4. This well established practice is essential to assure efficient operation of the District’s treatment facility during peak wet weather. Also, in all previous permits adopted by the Regional Board, the Regional Board staff recognized that the practice of blending contemplated by the District’s engineering design was reasonable and lawful. Thus, the Regional Board is acting contrary to 40 C.F.R. §122.41(m).

2) Inclusion of a Compliance Schedule with Enforceable Deadlines to Minimize Blending in the Permit Violates Applicable State Law.

Water Code section 13360 prohibits the State from dictating the design of treatment facilities or the particular manner in which compliance is achieved. Water Code §13360 ("No
waste discharge requirement or other order of a regional board or the state board or decree of a
court . . . shall specify the design, location, type of construction, or particular manner in which
compliance may be had with that requirement, order, or decree.”)

By requirement that the District minimize blending by imposing a compliance schedule in
the Permit that dictates a re-design of the treatment facility, the Regional Board violated Water
Code §13360. See Permit at pgs. 24-25.

Furthermore, since minimizing blending is not dictated by federal law, the Regional Board
failed to comply with the requirements of Cal. Water Code §13263(a), which requires
consideration of several factors including those contained in Cal. Water Code §13241 when
adopting compliance schedules for minimizing blending into this Permit. Some of the factors the
Regional Board failed to take into consideration when imposing this requirement include economic
effects of the requirement, the level of water quality that could reasonably be achieved through the
coordinated control of all factors which affect water quality in the area, and the need for
developing housing within the region. See Cal. Water Code §13241.

3) The Regional Board should not be Imposing a Compliance Schedule with
Enforceable Deadlines to Minimize Blending Before Clear Guidance Is
Issued from the EPA.

The inclusion of a compliance schedule to minimize blending is a result of
misinterpretation and misapplication of evolving guidance from U.S. EPA on the circumstances
under which blending is appropriate. In particular, correspondence from the U.S. EPA to members
of Congress in March of 2001, presenting the “current thinking” of U.S. EPA, indicated that
blending is appropriate and permissible where certain conditions are satisfied. Blending at the
District meets all of the specific criteria, and there is uncontroversial testimony in the record that
the design of the project is based on generally accepted engineering practices and criteria.

Also, the EPA and the Office of Management and Budget are still reviewing the current
version of a national blending policy. Notably, the EPA has not yet issued a final draft due to the
controversy surrounding the prohibition on blending. Furthermore, BACWA does not believe that
it is national or state policy that a No Feasible Alternatives Analysis (NFAA) be followed up by an
enforcement schedule which may carry penalties. First, the regulation cited, 40 C.F.R.
§122.41(m), to require the development of a NFAA, does not require that an enforceable schedule be then placed in the Permit. Second, requirements in this region should not be developed on a permit by permit bases, in advance of how these significant issues are settled nationally.

Furthermore, the District may incur substantial immediate and irreparable harm if it is required to immediately comply with the Permit’s compliance schedule to minimize blending. The Permit established an enforceable compliance schedule requiring the District to design and construct facilities to minimize blending. See Permit at pgs. 24-25. Public expenditures for such design and construction may represent a waste of scarce public funds because there are no identified water quality benefits or standards associated with minimizing blending.

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

The Permit includes requirements, challenged herein, which are unreasonable, contrary to legal requirements, and not supported by the findings and evidence in the administrative record. The limits for dioxin-TEQ are unreasonable because the District has extremely limited control over influent sources. Further, these requirements could ultimately impose considerable costs on the agency’s ratepayers for potential mandatory and discretionary penalties imposed for non-compliance with the challenged requirements, or for construction of additional treatment units to meet limits imposed without a demonstration that such requirements would result in material improvements in the water quality of the Bay. In fact, such expenditures could have a negative impact on water quality, by diverting limited public funds away from other projects that might have a higher potential for improvements in water quality.

BACWA is aggrieved by unreasonable permit prohibitions that may put the District in non-compliance with the Permit. BACWA’s membership will be aggrieved by any permit provisions that cannot now or in the future be met as federal and state law provide harsh sanctions for non-compliance with effluent limitations in a wastewater discharge permit. For example, California Water Code §13385 prescribes mandatory minimum penalties of $3,000 per day per violation, with narrow exceptions. With this statute, the State has no latitude to excuse noncompliance with the Permit.
Other statutory provisions, while not setting mandatory minimum penalties, create even
greater exposure for BACWA’s members. The CWA authorizes civil penalties of up to $32,500 per
day per violation, 33 U.S.C. § 1319(d), and also authorizes criminal penalties, including the
incarceration of public officials, for knowing or negligent permit violations. 33 U.S.C §1319(c); see
U.S. v. Weitzenhoff, 35 F.3d 1275 (9th Cir. 1994) (managers of treatment plant convicted of permit
violations). In addition to enforcement by administrative agencies, private parties can seek civil
penalties pursuant to the “citizen suit” provisions of the CWA. See 33 U.S.C. §1365.
Likewise, California’s Porter-Cologne Water Quality Act contains stiff penalties for
violation of effluent limitations in a wastewater discharge permit. See Cal. Water Code §§ 13385
and 13387. This act authorizes a penalty of up to $25,000 per day per violation, with additional
liability not to exceed $25 per gallon if the discharge is to navigable waters of the United States and
either is “not susceptible to cleanup or is not cleaned up.” Cal. Water Code §13385(b)(1)-(2), (d).
The act also establishes criminal liability for intentional or negligent violation of effluent limitations
contained within a permit. Cal. Water Code §13387(a)-(d).
Furthermore, the application of illegal or unreasonable effluent limitations in violation of
federal and state law causes substantial harm to BACWA and its members that have a vested
interest in complying with the law. This appeal furthers one of BACWA’s express purposes, which
is “to represent the interests of the Agency or one or more Member Agencies, including, without
limiting the generality of the foregoing, by participating in the appeal of or court challenge of the
issuance or denial of issuance of NPDES permits or the adoption or amendment of water quality
orders, regulations or decisions.”

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH
PETITIONER REQUESTS:

   Petitioner seeks an Order by the State Board that will remand Order No. R2-2008-0057 to
the Regional Board for revisions and will direct the Regional Board to:

   A. Remove the numeric effluent limits for dioxin-TEQ;
   B. Remove daily maximum effluent limitations where the Regional Board failed to
      conduct an impracticability analysis;
C. Revise the compliance schedule action plan for dioxin-TEQ to (1) remove all activities related to installation of capital improvements and (2) ensure that any pollution prevention activities are identical to resolutions or orders already adopted by the Regional Water Board; and

D. Remove the compliance schedule for minimizing blending.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:

BACWA's preliminary statement of points and authorities is set forth in Section 4 above. Nevertheless, BACWA reserves the right to supplement this statement upon receipt and review of the administrative record.

In Section 4, BACWA asserts that provisions of the Permit are inconsistent with the law and otherwise inappropriate for various reasons, including: failure to comply with the Porter-Cologne Water Quality Control Act (Cal. Water Code, §§ 13000 et seq.); failure to comply with the CEQA (Cal. Public Resources Code, §§ 21000 et seq., and 23 C.C.R. § 3733); failure to comply with the APA (Cal. Gov't Code, §§ 11340 et seq.); inconsistency with the Water Quality Control Plan, San Francisco Bay Region (Basin Plan); inconsistency with the Clean Water Act (33 U.S.C. §§ 1251 et seq.) and its implementing regulations (40 C.F.R. Parts 122, 123, 130, and 131); inconsistency with EPA guidance (EPA’s Water Quality Standards Handbook (1994, 3rd edition)); absence of findings supporting the provisions of the Order; Regional Board findings that are not supported by the evidence; and other grounds that may be or have been asserted by Petitioner.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL BOARD AND TO THE DISCHARGER:

A true and correct copy of this Petition was mailed by First Class mail on August 6, 2008, to the Discharger, and to the Regional Board at the following address:

Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board,
San Francisco Region
1515 Clay Street, Suite 1400
Oakland, California 94612
9. **A STATEMENT THAT THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN EXPLANATION WHY NOT:**

The substantive issues and objections were raised before the Regional Board in this permitting action through written comments.

10. **PETITIONER’S REQUEST FOR ABEYANCE:**

Notwithstanding the vital importance of the issues contained herein, BACWA requests that the State Board place its Petition for Review in abeyance pursuant to 23 C.C.R. §2050.5(d) to allow time for BACWA to attempt to resolve its concerns with the Regional Board informally.

DATED: August 6, 2008

Respectfully submitted,

Adam Friedman
DOWNEY BRAND LLP
BACWA Special Counsel
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/sanfranciscobay

ORDER NO. R2-2008-0057
NPDES NO. CA0037753

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

Table 1. Discharger Information

<table>
<thead>
<tr>
<th>Discharger</th>
<th>Sanitary District No.5 of Marin County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Facility</td>
<td>Sanitary District No.5 Wastewater Treatment Plant and wastewater collection system</td>
</tr>
<tr>
<td>Facility Address</td>
<td>2001 Paradise Drive</td>
</tr>
<tr>
<td></td>
<td>Tiburon, CA 94920</td>
</tr>
<tr>
<td></td>
<td>Marin County</td>
</tr>
</tbody>
</table>

The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board (Regional Water Board) have classified this discharge as a major discharge.

The discharge by the Sanitary District No.5 of Marin County Wastewater Treatment Plant from the discharge point identified below is subject to waste discharge requirements as set forth in this Order.

Table 2. Discharge Location

<table>
<thead>
<tr>
<th>Discharge Point</th>
<th>Effluent Description</th>
<th>Discharge Point Latitude</th>
<th>Discharge Point Longitude</th>
<th>Receiving Water</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>POTW Effluent</td>
<td>37°, 52', 12'' N</td>
<td>122°, 27', 5'' W</td>
<td>Raccoon Strait, Central San Francisco Bay</td>
</tr>
</tbody>
</table>

Table 3. Administrative Information

| This Order was adopted by the Regional Water Board on: | July 9, 2008 |
| This Order shall become effective on: | September 1, 2008 |
| This Order shall expire on: | August 31, 2013 |
| CIWQS Regulatory Measure | 340891 |

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 indicated above.

Digitally signed by
Bruce Wolfe
Date: 2008.07.11 16:32:42 -07'00'
Bruce H. Wolfe, Executive Officer
Table of Contents

I. Facility Information .......................................................................................................................... 4
II. Findings ........................................................................................................................................ 4
III. Discharge Prohibitions .................................................................................................................. 10
IV. Effluent Limitations and Discharge Specifications ...................................................................... 11
   A. Effluent Limitations – Discharge Point 001 ............................................................................. 11
   B. Interim Effluent Limitations .................................................................................................. 14
   C. Land Discharge Specifications ............................................................................................... 14
   D. Reclamation Specifications ..................................................................................................... 14
V. Receiving Water Limitations .......................................................................................................... 15
   A. Surface Water Limitations ....................................................................................................... 15
   B. Groundwater Limitations ....................................................................................................... 16
VI. Provisions ...................................................................................................................................... 16
   A. Standard Provisions ................................................................................................................ 16
   B. Monitoring and Reporting Program (MRP) Requirements ....................................................... 16
   C. Special Provisions .................................................................................................................. 16
      1. Re-opener Provisions ........................................................................................................... 16
      2. Special Studies, Technical Reports and Additional Monitoring Requirements ................. 17
      3. Best Management Practices and Pollution Minimization .................................................. 18
      4. Construction, Operation and Maintenance Specifications .................................................. 21
      5. Special Provisions for POTW ............................................................................................. 22
      6. Corrective Measures to Minimize Blending ........................................................................ 24
      7. Compliance Schedules .......................................................................................................... 25
      8. Other Special Provisions ....................................................................................................... 28
VII. Compliance Determination ............................................................................................................ 30

Tables

Table 1. Discharger Information .......................................................................................................... 1
Table 2. Discharge Location ................................................................................................................. 1
Table 3. Administrative Information .................................................................................................... 1
Table 4. Facility Information ................................................................................................................. 4
Table 5. Basin Plan Beneficial Uses of Central San Francisco Bay ..................................................... 7
Table 6. Conventional Effluent Limitations – Discharge Point 001 ..................................................... 11
Table 7. Effluent Limitations for Toxic Pollutants ............................................................................. 12
Table 8. Minimum Levels for Pollutants with Effluent Limitations ..................................................... 12
Table 9. Requirements to Minimize Blending Events ........................................................................ 24
Table 10. Requirements to Ensure Compliance with Dioxin-TEQ Limits .............................................. 25
Table 11. Cyanide Action Plan .......................................................................................................... 28
Table 12. Copper Action Plan ............................................................................................................. 29
Attachments

Attachment A – Definitions .................................................................................................................. A-1
Attachment B – Facility Map ........................................................................................................... B-1
Attachment C – Process Flow Diagram .......................................................................................... C-1
Attachment E – Monitoring and Reporting Program (MRP) .............................................................. E-1
Attachment F – Fact Sheet .............................................................................................................. F-1
Attachment G – The following documents are part of this Permit, but are not physically attached due to volume. They are available on the internet at www.waterboards.ca.gov/sanfranciscobay:

- Standard Provisions and Reporting Requirements, August 1993
- August 6, 2001 Staff Letter: Requirement for Priority Pollutant Monitoring in Receiving Water and Wastewater Discharges
I. FACILITY INFORMATION

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

Table 4. Facility Information

<table>
<thead>
<tr>
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<tr>
<td></td>
<td>Tiburon, CA 94920</td>
</tr>
<tr>
<td></td>
<td>Marin County</td>
</tr>
<tr>
<td>Facility Contact, Title, and Phone</td>
<td>Robert Lynch, District Manager, Phone: 415-435-1501, Fax: 415-435-0221; Email: <a href="mailto:rlync@sani5.org">rlync@sani5.org</a></td>
</tr>
<tr>
<td>CIWQS Place Number</td>
<td>239497</td>
</tr>
<tr>
<td>CIWQS Party ID Number</td>
<td>27783</td>
</tr>
<tr>
<td>Mailing Address</td>
<td>P.O. Box 227 Tiburon, CA 94920</td>
</tr>
<tr>
<td>Type of Facility</td>
<td>Publicly Owned Treatment Works (POTW)</td>
</tr>
<tr>
<td>Facility Design Flow</td>
<td>0.98 million gallons per day (MGD) (dry weather treatment capacity), 2.3 MGD (peak wet weather treatment capacity)</td>
</tr>
</tbody>
</table>

II. FINDINGS

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

A. Background. The Sanitary District Number 5 of Marin County (hereinafter the Discharger) is the owner and operator of the Sanitary District Number 5 Wastewater Treatment Plant (Treatment Plant) and associated wastewater collection system and is currently discharging under Order No. R2-2002-0097 (CIWQS Regulatory Measure number 131222) and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0037753. The Discharger submitted a Report of Waste Discharge, dated May 4, 2007, and applied to renew its NPDES permit to discharge up to 2.3 MGD of treated wastewater from this system.

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 operates the Treatment Plant, which provides secondary treatment of domestic and commercial wastewater collected from the Town of Tiburon, the City of Belvedere, and surrounding, unincorporated areas, serving a current population of approximately 8,400. The Discharger’s collection system consists of 33 miles of gravity sewer line, 5 miles of force main and 22 pump stations within its service area. The Treatment Plant has an average dry weather design treatment capacity of 0.98 MGD and can treat up to 2.3 MGD during wet weather flow periods. A map of the facility and surrounding area is provided in Attachment B.
The treatment processes at the facility include primary sedimentation, biological activated sludge treatment, secondary sedimentation, chlorine disinfection with sodium hypochlorite, and dechlorination with sodium bisulfite. A treatment process schematic diagram is included as Attachment C.

Treated, disinfected, and dechlorinated secondary effluent from the Treatment Plant is combined with treated, disinfected, and dechlorinated effluent from the Sewerage Agency of Southern Marin’s wastewater treatment plant. The combined effluent is discharged through a pipe in Central San Francisco Bay to Discharge Point 001 in Raccoon Straits, a water of the State and the United States. Treated wastewater is discharged through a submerged diffuser at latitude 37 deg 52 min 12 sec North and longitude 122 deg 27 min 5 sec West, which is 840 feet offshore at a depth of 84 feet.

During peak wet weather flow events, when influent flow exceeds 2.3 MGD, the capacity of primary treatment is augmented with the use of a third primary sedimentation tank. This third sedimentation tank has a volume of 0.11 million gallons (capacity of 4.4 MGD for 3 hour peak periods), and therefore assures primary treatment capacity of 6.7 MGD during wet weather events. The third primary sedimentation tank is more often used simply as a short-term holding tank to retain influent flows greater than 2.3 MGD until they can be routed back to the headworks for full treatment.

After primary treatment, a maximum of 2.3 MGD of primary effluent can be directed to the secondary aeration basins and clarifiers. During significant rain events, when the third sedimentation tank must be used for primary treatment (and not just for short term holding), primary treated effluent flows greater than 2.3 MGD must be routed around secondary treatment and blended with secondary effluent to protect the secondary treatment system. "Blended" wastewater is then chlorinated and dechlorinated prior to discharge. Seventeen incidents of "blending" occurred at the Treatment Plant from 2004 to 2006. These blending events resulted in discharges of 0.007 to 3.2 MGD and an average discharge of 0.85 MGD of blended primary and secondary treated effluent.

Biosolids collected from wastewater treatment processes are thickened, anaerobically digested, and dewatered by a screw press. The Treatment Plant generates an average of 86.2 dry metric tons of biosolids per year, which are disposed of at the Redwood Sanitary Landfill.

C. **Legal Authorities.** This Order is issued pursuant to CWA section 402 and implementing regulations adopted by the USEPA and Chapters 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).

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, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order