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# Bay Area Clean Water Agencies

*Leading the Way to Protect Our Bay*

*A Joint Powers Public Agency*

*P.O. Box 24055, MS 702*

*Oakland, California 94623*


April 16, 2007

**VIA EMAIL AND FACSIMILE: (510) 622-2460**

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

RE: Comments on the Tentative Order For Mercury from Wastewater Discharges in the San Francisco Bay Region (CA0038849)

Dear Mr. Wolfe:

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to comment on the Tentative Order for the Mercury Watershed Permit. BACWA members own and operate publicly-owned treatment works (POTWs) that discharge to San Francisco Bay and its tributaries. Collectively, BACWA's members serve over 6.5 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-terms 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.

Our comments are summarized below. Attached you will also find the tentative order showing revisions in a mark-up format with the specific language that BACWA is requesting. BACWA wants to specifically thank the Water Board staff for developing this permit so that all interested parties can clearly see how the TMDL is intended to be implemented.

## 1. BACWA Supports the Watershed Approach to the Permit

BACWA supports the watershed approach to wasteload allocations and the subsequent watershed permit to implement the Mercury TMDL. We know of no other permit like this which regulates the point sources from both municipal and industrial wastewater under one permit. We believe that this is not only an issue of convenience, rather it establishes a method of developing and accounting for future offsets should the State develop a fair, equitable and voluntary program. We strongly urge this approach to be maintained and perhaps carried forward with other legacy pollutants which call for

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watershed remedies.

This permit generally is consistent with the Mercury TMDL which was adopted by the Regional Water Board on August 9, 2006 with one major exception; an additional level of enforcement has been added in the permit on Table 6. Municipal -- Individual Mercury Effluent Limitations. There are a few other inconsistencies which we point out in other comments below.

III.2 Table 6 clearly requires another level of control over and above the aggregate allocation. The aggregate allocation must be included in the permit not only because it is in the approved TMDL, but also because it measures the annual mass loads from clean water agencies and industrial dischargers to determine watershed-wide compliance with the TMDL. The concentration triggers (Section V.C.1.), which are fully enforceable by the Regional Water Board, allow both clean water agencies and the regulatory agencies to view the trend of the effluent discharges to take corrective actions as needed. Table 6 provides the Regional Water Board and others with the ability to immediately take action against an individual agency without regard to trends or plans for correction and mitigation. III.2

This three-tiered approach will ensure that each clean water agency knows what is expected for effluent quality. We do hope that with the addition of this third tier that neither the Regional Water Board nor the public will lose sight of the most important aspect of this permit, which is attainment of the aggregate allocation.

III.7 Both the Fact Sheet of this permit and the TMDL require a 40% reduction of effluent loading from clean water agencies by the end of 20 years. Achieving a 40% reduction at secondary treatment facilities will require the implementation of a voluntary, fair and equitable pollution offset and credits program, consistent with the Resolution No. 2005-0060. The remand Resolution adopted by the SWRCB specifically states that any offset policy developed for the purposes of reducing the impacts of mercury on the environment will not result in an undue burden on municipal wastewater. If a fair and equitable offset program cannot be developed, BACWA cannot be expected to meet the 40% reduction in the wasteload allocation that is required by the Mercury TMDL and as described in this permit Fact Sheet. Compliance through treatment would require a public investment of approximately $300 million per year, every year, over 20 years (in 2004 dollars) to develop advanced treatment at each existing secondary facility. This would then allow these facilities to reduce from 14 kg/yr to 11/kg year. If no viable offset program is in place, rather than proceed with such an investment, BACWA will ask that the TMDL and the permit be reopened so that the 40% reduction of the WLA can be reviewed and revised. III.7

**2. POTWs Must Have 20 Years to Achieve the 40% Reduction in Mass Loading.**

III.8 The mercury watershed permit includes information in the Fact Sheet regarding implementation of the TMDL in that the mercury mass loads must be reduced after the first 10 years, with final mercury reductions after 20 years. BACWA members will need III.8

the full 20 years to implement the final 40% reductions, because it will take time to develop pollution prevention programs, to conduct the various studies that are planned to advance the knowledge of mercury fate and transport (and thereby be able to control mercury more effectively), and to develop a regional offset program, a critical aspect of the compliance attainability of the 40% reductions for POTWs (see also Comment No. 1 regarding offsets).

III. 8

3. **BACWA Urges that the Regional Water Board Make a Commitment Now to Combine Future Pollutant-Specific Permit Requirements into the Mercury Permit.**

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BACWA is very concerned that having several different NPDES permits that cover various pollutants will increase the likelihood that one or more will conflict with each other, and that multiple permits will be very confusing to municipal permittees. Therefore, we strongly request that the Regional Water Board make a commitment *now* to combine any future pollutant-specific permits with this one. See also suggested revisions for language in the attached mark-up.

4. **The Schedule for Trigger Exceedance Action Plans Must be Revised to be Feasible**

The current deadline for submittal of a trigger exceedance action plan (Table 12) is "Within 60 days of the initial trigger exceedance." Many clean water agencies send effluent samples to a contract laboratory, which will return the analytical results within two to four weeks. Until these results are received, the clean water agencies are not even aware of an exceedance. To prepare an action plan a clean water agency will then begin accelerated sampling, and those samples also take time to be analyzed.

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We understand that the Mercury TMDL indicates an intention for the plans to be submitted within 60 days. However, 60 days from the date of initial trigger exceedance is inadequate for most agencies. In addition, the scope of the required action plan is broad, and sufficient time should be provided to prepare a meaningful action plan and in some cases, procurement of services to implement the plan. Therefore, BACWA requests that the deadline for the plan in Table 12 be revised to "Within 6 months of receiving analytical results from accelerated monitoring." BACWA believes that the Regional Water Board can make this change from the TMDL because the mercury permit is an implementation document with the practical details more thoroughly considered and the change in the requirement does not have any impact on water quality because mercury is a pollutant that is being addressed in a long term context. See also suggested revisions to language in the attached mark-up.

5. **BACWA Supports the Mercury Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers**

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BACWA and BACWA member agencies are focused on the net environmental benefits that are realized though recycled water and we have encouraged Regional Water Board

staff and the State Water Resources Control Board (SWRCB) to look at regulatory actions to ensure that they are encouraging recycling rather than establishing barriers. BACWA especially appreciates and supports the inclusion of this section in the NPDES permit as it encourages the implementation of recycled water without jeopardizing compliance with mass loading limits.

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BACWA suggest that the approach is difficult to grasp conceptually and tends to harm the agency that is attempting to provide reclaimed water for industrial reuse. EBMUD in cooperation with West County Agency currently have a reclaimed water project with Chevron and therefore these two agencies most impacted by this approach at this time. BACWA supports the EBMUD comments on adjustments for recycled water use by industrial discharges.

**6. The Risk Reduction Will Be Most Effective as a Regional Collaboration.**

BACWA has been working collaboratively with the other CEP Partners, with DOHS and OEHHA regarding Risk Reduction. Last December, we participated in a day long workshop to discuss the options that the CEP should consider for developing a region wide risk reduction program. We expect that CEP and BACWA to have a more developed plan by the end of June 2007, which may include investigations, and support of local Community Based Organizations as they work with specific at risk communities.

BACWA believes that the TMDL requires a cooperative approach to the development and implementation of the Risk Reduction across the region. This means that the development of programs that "mitigate health impacts" and "measure effectiveness" of a program will likely be undertaken by agencies that have some expertise and responsibility in these areas. BACWA strongly urges the Water Board to not hold BACWA member agencies responsible for measuring the effectiveness of the risk reduction program. The requirement and responsibility to ascertain the effectiveness of risk reduction more correctly falls to DOHS or other state health based organizations. The language in the permit seems to have the potential to shift the societal burden that should be shared by all of the state citizens from the legacy of mining practices directly to a handful of Bay-area cleanwater agencies that represent only a small fraction of the State. BACWA has concerns on the notion that is even possible, never mind appropriate, for cleanwater agencies to quantify risk reductions from these activities we may be required to perform.

V.12

V.12

Likewise the requirement to mitigate health impacts should not be the responsibility of clean water agencies. The TMDL requires that investigation into ways to mitigate health impacts be undertaken, therefore BACWA strongly objects to Provision V.C. 4 that clean water agencies mitigate health impacts. BACWA will continue to work as required by the TMDL and the permit on programs but we cannot accept the responsibility in a permit to measure the effects nor to potential adverse mitigate health impacts of eating fish.

7. **The Federal Standard Provisions (Attachment D) Should Not be Included because these are Already in the Existing NPDES Permits (or are otherwise required).**

In the interest of simplifying the permit, making it less confusing, and reducing the possibility of conflicting requirements, BACWA requests that the federal standard provisions (Attachment D) be removed from this permit. This section is unnecessary because all the covered permittees are already subject to these requirements elsewhere. In addition to removing Attachment D, the following language should be revised as shown in the attached tentative order mark-up.

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8. **The Monitoring and Reporting Program for this Permit Should More Clearly Specify that it is Applicable Only to Mercury.**

In order to prevent confusion among permittees, BACWA requests language revisions to make it more clear that the permit Monitoring and Reporting Program focuses on mercury. Language in the permit should be revised as shown in the attached tentative order mark-up.

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9. **The Fact Sheet Should Indicate that the Mercury Requirements Do Not Place Limits on Growth**

The following language should be inserted into the Fact Sheet:

> "It is not the policy of the Regional Water Board to limit the municipal Dischargers' ability to accommodate growth by providing wastewater treatment services up to the full extent of design capacity. The Regional Water Board recognizes that the mass and concentration limits contained in this permit could have such a limiting effect, particularly if the removal efficiency of the POTW is diminished at higher flow rates despite all reasonable efforts by the Discharger. If it appears likely that such an effect will occur, then the Regional Water Board will use its best efforts to modify such limits so as to avoid such effect."

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10. **Reference Should be Made to Chapter 3 for the Applicable Water Code Section of CEQA.**

BACWA requests that the language in the permit (and similar section in the Fact Sheet) be revised as follows:

> E. **California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions in Chapter 3 of CEQA, Public Resources Code sections 21100-21177.

II.1

11. **BACWA Supports the Special Studies for Municipal Wastewater Treatment Plants**

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BACWA believes that the special studies listed in the permit for municipal wastewater treatment plant are feasible, and will work with the Regional Water Board to ensure the studies are meaningful and useful, and that they advance the knowledge of mercury in San Francisco Bay.

**12. The Water Environment Research Foundation Collaborative Research Project With BACWA Has Begun.**

As an example of BACWA's commitment to advancing the knowledge of mercury in San Francisco Bay, the Water Environment Research Foundation (WERF) study funded by BACWA has already begun. A nationally renowned Project Review Committee developed an RFP to which six responses were received. ArcTellis was selected and the research started in February 2007. This study is looking at the bioavailability of mercury from municipal wastewater treatment plants in comparison to other sources of mercury such as stormwater, mining sources, contaminated sediments and air deposition, among other sources. The major objectives of this study are as follows:

- Develop a working definition of bioavailable mercury
- Identify enhancers that promote production of bioavailable mercury in three aquatic environments (fresh, brackish and saline waters)
- Profile and rank sources of mercury with respect to bioavailable mercury
- Develop a two-tiered Guidance Document for use by wastewater utilities for a screening level and detailed assessment level

BACWA appreciates the opportunity to comment on the Mercury Watershed Permit and is dedicated to supporting improvement to the state of mercury knowledge in San Francisco Bay. I would be more than happy to meet with you to discuss our comments in more detail if you wish.

Respectfully submitted,

Michele Pla

BACWA Executive Director

cc: BACWA Executive Board
Lila Tang, Regional Water Quality Control Board
Thomas Mumley, Regional Water Quality Control Board

## II. FINDINGS

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

A. **Background.** The dischargers listed in this Order in Tables 1A and 1B (collectively, Dischargers; individually, Discharger) are currently discharging pursuant to the Order Nos. and National Pollutant Discharge Elimination System (NPDES) Permit Nos. as shown in Attachment B. This Order is the mercury watershed permit and implements the wasteload allocations and implementation requirements of the mercury TMDL and implementation plan adopted by the Regional Water Board on August 9, 2006, and supersedes mercury requirements in those permits. It is the intention of the Regional Water Board that future special NPDES permits needed for pollutant-specific requirements, for example for implementation of some TMDLs and site-specific objectives, be appended to this permit for efficiency in implemtation of new requirements

For the purposes of this Order, references to the "dischargers" or "permittees" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Dischargers herein.

B. **Facility Description.** The Dischargers listed in Table 1A own and operate secondary and advanced secondary wastewater treatment facilities as described in their respective Orders. The Dischargers listed in Table 1B own and operate wastewater treatment facilities as described in their respective Orders. Wastewater is discharged from the Discharge points indicated in Tables 2A and 2B to San Francisco Bay and its tributaries, which are waters of the United States within the San Francisco Bay watershed. Attachment C shows a map of the Dischargers subject to this Order.

C. **Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (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 of mercury from Dischargers' facilities 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 detailed technical analyses which provide the foundation for the mercury TMDL. 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. Attachments A through G are also incorporated into 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 in Chapter 3 of CEQA, Public Resources Code sections 21100-21177.

National Toxics Rule, and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. 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 implement the SIP.

J. **Antidegradation Policy.** Section 131.12 requires that the 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 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. As discussed in detail in the Fact Sheet, the permitted discharges are consistent with the antidegradation provision of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16.

K. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations section 122.44(l) 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 the water quality-based effluent limitations in this Order are based on a TMDL, there is no backsliding.

L. **Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Water Code sections 13267 and 13383 authorize the Regional Water Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.

M. **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~~ incorporated into each individual permit ~~Attachment D~~. The Dischargers ~~must~~ are therefore already obligated to comply with all standard provisions and with those additional conditions that are applicable under section 122.42, so additional requirements are not included herein. The Regional Water Board has also included in this Order special provisions applicable to the Dischargers. A ~~rationale~~ discussion of ~~for~~ the special provisions contained in this Order is provided in the attached Fact Sheet (Attachment F).

N. **Provisions and Requirements Implementing State Law.** Not applicable.

O. **Notification of Interested Parties.** The Regional Water Board has notified the Dischargers and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharges and has provided them with an opportunity

IV. RECEIVING WATER LIMITATIONS – Receiving water limitations are provided in each Discharger's individual NPDES Permits (see Attachment B).

V. PROVISIONS

A. Standard Provisions

The Dischargers shall are already required to comply with all Standard Provisions ~~included~~ in Attachment D of this Orderthe separate NPDES permits that regulate each facility, ~~except for Standard~~ Provisions V.D ~~related to compliance schedules~~. No additional Standard Provisions beyond those already required as part of the Dischargers' individual permits are necessary in this Order.

B. **Monitoring and Reporting Program Requirements.** The Dischargers ~~shall~~ are already required to comply with the Monitoring and Reporting Program (MRP)~~, and future revisions~~ thereto, in Attachment E of this Orderrequirements attached to their individual permits. However, this Order includes a requirement to comply with mercury monitoring requirements. The Dischargers shall are also currently required by their individual permit to comply with the requirements contained in Self-Monitoring Program, Part A (August 1993) (Attachment G), including any amendments thereto.

C. Special Provisions

1. Triggers for Additional Mercury Control

a. Each individual Discharger shall comply with C.1.c. of this Order if its discharge exceeds any of the applicable triggers described in Tables 10 and 11.

Table 10. Triggers for Municipal Dischargers

| Type of Trigger | Average Monthly | Maximum Daily |
|---|---|---|
| Concentration for Secondary Treatment Plants | 0.041 µg/l | 0.065 µg/l |
| Concentration for Advanced Secondary Treatment Plants | 0.011 µg/l | 0.021 µg/l |
| Mass Emission | Individual annual mass emission limit, as depicted in Table 6, above, and computed as a 12-month running average, as shown in C.1.b., below. | |

Table 11. Triggers for Industrial Dischargers

| Type of Trigger | Average Monthly | Maximum Daily |
|---|---|---|
| Concentration | 0.037 µg/l | 0.062 µg/l |
| Mass Emission | Individual annual mass emission limit, as depicted in Table 8, above, and computed as a 12-month running | |

| | |
|---|---|
| | average, as shown in C.1 b., below |

b. The running 12-month average mass emission shall be computed monthly for each calendar month as follows:

$$(12-month\ Running\ Average, kg) = (Current\ Mass\ Emission, kg) + \sum (Previous\ 11\ months'\ mass\ emissions, kg)$$

where the current mass emission is the emission for the current calendar month computed as shown in III.A. above.

c. Each Discharger who exceeds the applicable triggers listed in Table 10 or 11, above, shall comply with the following action requirements:

**Table 12. Action Plan for Trigger Exceedance**

| Task | Deadline |
|---|---|
| I. ***Accelerated Sampling.*** As soon as the Discharger becomes aware of the exceedance, resample within 48 hours and commence weekly sampling for 3 weeks for a total of 4 samples. If all 4 samples show mercury levels below the triggers, return to routine sampling. If during the accelerated sampling, any of the samples are above either the concentration or mass trigger, proceed with action plan for mercury reduction and continue sampling monthly until the observed mercury discharge is below the trigger levels for 3 consecutive months, at which point the Discharger may return to routine monitoring and discontinue efforts under Task iii, below. | See deadlines in task description. |
| ii. ***Report Trigger Exceedance.*** The Discharger shall report to the Regional Water Board any exceedance of trigger levels in the cover letter of its Self-Monitoring Report, and the status of its plans and actions to accelerate monitoring and/or develop and implement an action plan for mercury reduction. | In the Self-Monitoring Report due 30 days after the end of the monitoring period. |
| iii. ***Action Plan for Mercury Reduction.*** Develop, submit, and implement an Action Plan that (1) evaluates the cause[1] of the trigger exceedance(s); (2) evaluates the effectiveness of existing pollution prevention or pretreatment programs and methods for preventing future exceedances; (3) evaluates the feasibility and effectiveness of technology enhancements to improve treatment plant performance; and (4) evaluates other measures for preventing future exceedances. In addition, the Discharger shall identify in the Action Plan mercury reduction measures it will take along with an implementation schedule for those measures to correct current and prevent future trigger exceedances<br><br>[1] Possible causes of exceedances include (but are not limited to) changes in reclamation, increases in the number of sewer connections, increases in infiltration and inflow (I/I), changes in the type or number of industrial, commercial, or residential sources, changes in the raw material used in manufacturing processes, changes in treatment system operation, or factors beyond the Discharger's control, such as a natural disaster, vandalism, illegal dumping, or extreme flood event. | Within 60 ~~days~~6 months of the ~~initial~~ trigger ~~exceedance~~receiving analytical results from accelerated monitoring |
| iv. ***Annual Reporting.*** The Discharger shall provide a status of its mercury reduction efforts in the annual Self-Monitoring Report. Additionally, as causes and corrective actions are identified, the Discharger shall amend or | Annually due February 1st of each year. |

Dischargers shall develop and implement, or participate in, one or more of the following risk management programs to reduce mercury-related risks to humans and wildlife ~~and quantify risk~~ reductions ~~resulting from these activities~~. The activities may be performed by a third party if the Dischargers wish to provide funding for this purpose. The risk management activities include:

a. Providing multilingual fish-consumption advice to the public.

b. Informing the public on a regular basis about monitoring data and findings of environmental health professionals about the hazards of eating mercury-contaminated fish.

c. Performing special studies needed to support health-risk assessment and risk communication.

d. Investigating ways to address public health impacts of mercury in San Francisco Bay/Delta fish~~,~~ ~~including activities that reduce~~ actual and potential ~~exposure of~~ and mitigate ~~health impacts to those people~~ and ~~communities most likely to be~~ affected by ~~mercury in San Francisco Bay caught~~ fish, such as for subsistence fishers and their families.

**5. Mercury Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers**

When an industrial Discharger named on Table 1B of this Order uses recycled wastewater from a municipal Discharger named on Table 1A of this Order, the industrial Discharger may, at its option, apply an adjustment (hereinafter Adjustment) to its mercury mass emission or discharge concentration when determining compliance with its concentration and mass limits specified in III.B. of this Order. The Adjustment shall be based on measured influent mercury levels from the recycled wastewater in accordance with the following:

a. The Discharger shall sample and analyze the influent recycled wastewater and the effluent discharge at least monthly. Influent sampling shall include measurement of daily flow volume for the entire duration that Adjustments are applied. Influent sampling shall occur at an appropriate influent sampling station as identified in the Discharger's individual permit.

b. The Discharger shall determine the time interval between introduction of a given constituent of concern in the influent recycled water and the first appearance of the constituent in the final effluent. The basis for this determination must be included in any calculation of Adjustment.

c. Calculation of Mercury Discharge Adjustment.

Concentration Adjustment
Influent concentration multiplied by total influent recycled water flow volume for that monitoring interval will yield an influent mass, which is valid for that

# ATTACHMENT D – STANDARD PROVISIONS

No additional Standard Provisions beyond those already required as part of the Dischargers' individaul permits are necessary in this order.

## I. STANDARD PROVISIONS – PERMIT COMPLIANCE

### A. Duty to Comply

1. The Dischargers 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 Dischargers 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 Dischargers 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 Dischargers 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 Dischargers 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 Dischargers 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 Dischargers 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)(ii)):

   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 a 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. A 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 a 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 Dischargers wish to continue an activity regulated by this Order after the expiration date of this Order, the Dischargers 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 a 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 a 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 Dischargers 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 Dischargers 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).)

PLUS

*For Industrial Dischargers that are corporations.*

2. All permit applications shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations, the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (40 C.F.R. § 122.22(a)(1).)

*For Industrial Dischargers that are partnerships or sole proprietorships:*

2. All permit applications shall be signed by a general partner or the proprietor, respectively. (40 C.F.R. § 122.22(a)(2).)

*For a municipality, State, federal, or other public agency:*

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).).

PLUS, for all Dischargers:

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 a 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 Dischargers shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Dischargers become aware of the circumstances. A written submission shall also be provided within five (5) days of the time a 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 Dischargers 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

***For Municipal Dischargers:***

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).)

***For Industries:***

2. 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).)

3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 C.F.R.§ 122.41(l)(1)(iii).)

## G. Anticipated Noncompliance

The Dischargers 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 Dischargers 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 a 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. Non-Municipal Facilities

Existing manufacturing, commercial, mining, and silvicultural Dischargers shall notify the Regional Water Board as soon as they know or have reason to believe (40 C.F.R. § 122.42(a)):

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following "notification levels" (40 C.F.R. § 122.42(a)(1)):

   a. 100 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(1)(i));

   b. 200 µg/L for acrolein and acrylonitrile; 500 µg/L for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(1)(ii));

   c. Five (5) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(1)(iii)); or

   d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(1)(iv).)

2. That any activity has occurred or will occur that would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in this Order,

if that discharge will exceed the highest of the following "notification levels" (40 C.F.R § 122.42(a)(2)):

a. 500 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(2)(i)),

b. 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(2)(ii));

c. Ten (10) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(2)(iii)); or

d. The level established by the Regional Water Board in accordance with section 122.44(f) (40 C.F.R. § 122.42(a)(2)(iv).)

## 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 E – MONITORING AND REPORTING PROGRAM

## Table of Contents



## List of Tables

(4) Monitoring frequency: Monitoring frequency may be increased subsequent to reissuance of this Order.

(5) Total mercury: The Dischargers shall use ultra-clean sampling (USEPA 1669), and ultra-clean analytical methods (USEPA 1631) for total mercury monitoring.

(6) Grab Samples shall be collected coincident with composite samples collected for the analysis of other regulated parameters

(7) Methylmercury: These Dischargers shall use ultra-clean sampling (USEPA 1669) to collect unfiltered methylmercury samples, and ultraclean analytical methods (USEPA 1630/1631, Revision E) with a method detection limit of 0.02 ng/L.

## IV. REPORTING REQUIREMENTS

### A. General Monitoring and Reporting Requirements

The Dischargers shall comply with all Standard Provisions ~~(Attachments D and G)~~ related to monitoring, reporting, and recordkeeping as indicated in individual permits.

### B. Individual Reporting in Self Monitoring Reports (SMRs)

1. At any time during the term of this permit, the State or Regional Water Board may notify the Dischargers to electronically submit Self-Monitoring Reports (SMRs) using the State Water Board's California Integrated Water Quality System (CIWQS) Program Web site (http://www.waterboards.ca.gov/ciwqs/index.html). Until such notification is given, the Dischargers shall submit hard copy SMRs. The CIWQS Web site will provide additional directions for SMR submittal in the event there will be service interruption for electronic submittal.

2. The Dischargers shall submit mercury data collected as part of this Order in the regular monthly or quarterly Self Monitoring Reports, and in the annual Self Monitoring Reports required in each Discharger's individual permit. If a Discharger monitors mercury more frequently than required by this Order, the results of this monitoring shall be included in the calculations and reporting of the data submitted in the SMR. As required in each Discharger's individual permit, for those dischargers required to report monthly, monthly reports shall be due no later than 30 days after the end of each calendar month. For those dischargers required to report quarterly in its individual permit, quarterly reports shall be due 30 days after the end of each calendar quarter. Annual reports shall be due on February 1 following each calendar year.

3. Monitoring periods and reporting for all required monitoring shall be completed according to the following schedule:

| Sampling Frequency | Monitoring Period Begins On... | Monitoring Period |
|---|---|---|
| Monthly | Effective date of permit | 1st day of calendar month through last day of calendar month |

the end of this section (pages E-9 through E-13) as an attachment to the cover letter for the annual report. Furthermore, by February 1, each Discharger shall send an additional copy of its completed forms to the Regional Water Board by email (in PDF), mail, or fax to the Attention: "SF Bay Mercury Watershed Wastewater Permit Compliance Reporting". This duplicate reporting is necessary to facilitate the Regional Water Board's compilation of the data for compliance determination with the group annual average limitation from all affected Dischargers. The reporting required in this subsection is waived if the Discharge participates in the Group Compliance Reporting described in IV.C, below.

6. Each Discharger ~~shall attach a cover letter to the SMR. The information~~ contained in the cover letter ~~shall clearly identify violations of the WDRs and any exceedances of~~ trigger levels; ~~discuss corrective actions taken or planned; and the~~ proposed time schedule for ~~corrective actions. Identified violations must include a description of the requirement~~ that was violated ~~and a description of the violation or trigger level~~ exceedance. Dischargers shall report mercury mass and concentration results with other constituents in the regular monthly and annual SMRs. As is currently allowed.

~~7. SMRs must be submitted~~ to the ~~Regional Water Board, signed and~~ certified as ~~required by the Standard Provisions~~ (Attachment D), ~~to the address~~ listed below:

~~Executive Officer~~
~~California Regional Water~~ Quality ~~Control Board~~
~~San Francisco~~ Bay Region
~~1515 Clay Street, Suite~~ 1400
~~Oakland, CA 94612~~
~~ATTN: NPDES~~ Wastewater ~~Division~~

~~8. T~~the Dischargers have the option to submit all monitoring results in an electronic reporting format approved by the Executive Officer. The Electronic Reporting System (ERS) format includes, but is not limited to, a transmittal letter, summary of violation details and corrective actions, and transmittal receipt.

## C. Optional Group Compliance Reporting

As an alternative to IV.B.5.b. above, each Discharger at its option, may submit its annual mercury discharge forms to a regional entity, such as the

- Bay Area Clean Water Agencies (BACWA) for Dischargers listed in Table 4A of the Order, at
  BACWA
  P.O. Box 24055, MS 702
  Oakland, CA 94623
  Attention: SF Bay Mercury Watershed Wastewater Permit Compliance Reporting

## D. Discharge Monitoring Reports (DMRs)

Dischargers shall report mercury mass and concentration results with other constituents in their regular Discharge Monitoring Reports (DMRs).

1. As described in Section X.B.1 above, at any time during the term of this permit, the State or Regional Water Board may notify the Dischargers to electronically submit self-monitoring reports. Until such notification is given, major Dischargers (See Tables 1A and 1B in cover section of permit) shall submit mercury results as part of their discharge monitoring reports (DMRs) in accordance with the requirements described below.

2. DMRs must be signed and certified as required by the standard provisions (Attachment D). Each Discharger shall submit the original DMR and one copy of the DMR to the address listed below:

| STANDARD MAIL | FEDEX/UPS/ OTHER PRIVATE CARRIERS |
|---|---|
| State Water Resources Control Board<br>Division of Water Quality<br>c/o DMR Processing Center<br>PO Box 100<br>Sacramento, CA 95812-1000 | State Water Resources Control Board<br>Division of Water Quality<br>c/o DMR Processing Center<br>1001 I Street, 15th Floor<br>Sacramento, CA 95814 |

3. All discharge monitoring results must be reported on the official US EPA pre-printed DMR forms (EPA Form 3320-1). Forms that are self-generated will not be accepted unless they follow the exact same format of EPA Form 3320-1.

### D. Compliance Summary

There have been no serious exceedances of mercury effluent limitations for the Dischargers in recent years.

## III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

The requirements contained in the proposed 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 the U.S. Environmental Protection Agency (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 or mercury from the facilities listed in this Order 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 in Chapter 3 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 Quality Control Board (Regional Water Board) adopted a Water Quality Control Plan for the San Francisco Bay Basin (Region 2) (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. In addition, the Basin Plan implements State Water Resources Control Board (State Water Board) Resolution 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. Beneficial uses applicable to San Francisco Bay Water are as follows:

Notes to Table F-5:

**Bold** text indicates advanced secondary treatment.

[a] This allocation includes wastewater treatment and all wet weather facilities

[b] Total differs slightly from the column sum due to rounding.

[c] Mercury monitoring data quality concerns pertaining to this Discharger will need to be addressed during the next review.

It is not the policy of the Regional Water Board to limit the municipal Dischargers' ability to accommodate growth by providing wastewater treatment services up to the full extent of design capacity. The Regional Water Board recognizes that the mass and concentration limits contained in this permit could have such a limiting effect, particularly if the removal efficiency of the POTW is diminished at higher flow rates despite all reasonable efforts by the Discharger. If it appears likely that such an effect will occur, then the Regional Water Board will use its best efforts to modify such limits so as to avoid such effect.

FS.1

The San Francisco Bay mercury TMDL's wasteload allocations for industrial Dischargers, summing to 1.3 kg/yr, are shown in Tables F-6 and F-7 below.

**Table F-6. TMDL Wasteload Allocations for Industrial (Non-Petroleum Refinery) Wastewater Discharges[c]**

| Permitted Entity | NPDES Permit | Allocation (kg/yr) |
|---|---|---|
| C&H Sugar Co. | CA0005240 | 0.0013 |
| Crockett Cogeneration | CA0029904 | 0.0047 |
| The Dow Chemical Company | CA0004910 | 0.041 |
| General Chemical | CA0004979 | 0.21[a] |
| GWF Power Systems, Site I | CA0029106 | 0.0016 |
| GWF Power Systems, Site V | CA0029122 | 0.0025 |
| Hanson Aggregates, Amador Street | CA0030139 | 0.000005 |
| Hanson Aggregates, Olin Jones Dredge Spoils Disposal | CA0028321 | 0.000005 |
| Hanson Aggregates, Tidewater Ave, Oakland | CAA030147 | 0.000005 |
| Pacific Gas and Electric, East Shell Pond | CA0030082 | 0.00063 |
| Pacific Gas and Electric, Hunters Point Power Plant | CA0005649 | 0.020 |
| Rhodia, Inc. | CA0006165 | 0.011 |
| San Francisco, City and Co., SF International Airport Industrial WWTP | CA0028070 | 0.051 |
| Southern Energy California, Pittsburg Power Plant | CA0004880 | 0.0078 |
| Southern Energy Delta LLC, Potrero Power Plant | CA0005657 | 0.0031 |
| United States Navy, Point Molate | CA0030074 | 0.013 |
| USS-Posco | CA0005002 | 0.045 |
| Total | | 0.4[b] |

FS.1

**Table F-7. TMDL Wasteload Allocations for Petroleum Refinery Wastewater Discharges**

| Permitted Entity | NPDES Permit | Allocation (kg/yr) |
|---|---|---|
| Chevron Products Company | CA0005134 | 0.34 |

The mercury TMDL contains a requirement to "prepare an annual report that documents mercury loads from each facility, mercury and methylmercury effluent concentrations, and ongoing source control activities, including mercury loads avoided through control actions." Dischargers are therefore required by this Order to report mercury discharge levels and trends, and mercury reduction measurements in Self-Monitoring Reports to facilitate the adaptive management process for implementation of the San Francisco Bay mercury TMDL. A special form is provided for use in compiling information for determining compliance with the group mass limit. Duplicate reporting using the form is required which the Regional Water Board believes is not burdensome for the Dischargers, but will facilitate the Regional Water Board's timely determination of compliance with the group mass limit. Incentive is provided for the optional group reporting by eliminating the duplicative reporting requirement, and allowing the Dischargers a little more time to provide the data. This optional group reporting facilitates adaptive management, and also consolidates the information in one place for ease of access by the public.

The monitoring frequencies specified in the MRP are dependent on each Discharger's contribution of mercury, and its resources to conduct the monitoring. For example, those with higher mercury limits and/or are major dischargers are required to monitor more frequently.

The Regional Water Board finds that these monitoring and reporting requirements bear a reasonable relationship to the Regional Water Board's need for and the benefits obtained from the reports.

## VII. RATIONALE FOR PROVISIONS

### A. Standard Provisions

No additional Standard Provisions beyond those already required as part of the Dischargers' indivdaul permits are necessary in this order.

~~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 Dischargers must comply with all standard provisions and with those additional conditions that are applicable under section 122.42. Standard Provisions section V.D does not apply in this Order because it pertains to compliance schedule which is not required in this Order.~~

~~Section 122.41(a)(1) and (b) through (n) establish conditions that apply to all State-issued NPDES permits. These conditions must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the regulations must be included in the Order. Section 123.25(a)(12) allows the state to omit or modify conditions to impose more stringent requirements. In accordance with section 123.25, this Order omits federal conditions that address enforcement authority specified in sections 122.41(j)(5) and (k)(2) because the enforcement authority under the Water Code is more stringent. In lieu of these conditions, this Order incorporates by reference Water Code section 13387(e).~~

BAYKEEPER®

*Defending Our Waters—from the High Sierra to the Golden Gate*

Received via email
4/16/07 @ 14:55.
WQT

April 16, 2007

Ms. Lila Tang
Chief, NPDES Permitting Division
SF Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

*Sent via electronic mail to ltang@waterboards.ca.gov*

**RE: Draft NPDES Permit and Waste Discharge Requirements for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay**

Dear Ms. Tang:

On behalf of Baykeeper, NRDC, Clean Water Action, and their members, thank you for the opportunity to review and comment on the tentative NPDES permit and Waste Discharge Requirements for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay, NPDES Permit No. CA 0038849 ("draft permit").

We support the Regional Board's decision to issue one permit for all dischargers in order to avoid reopening more than fifty permits. We strongly oppose, however, using the group permit as a means to circumvent federal and state permitting requirements. Substantial changes must be made to the proposed effluent limitations and monitoring requirements to ensure a permit that is both legally and environmentally sound. G.1

In addition to our comments below, we note that the State Water Resources Control Board ("SWRCB") has yet to approve the San Francisco Bay Region's Water Quality Control Plan ("Basin Plan Amendment" or "BPA") to establish a Total Maximum Daily Load ("TMDL") for mercury, upon which this permit is based. We have received staff's assurances that this permit will not issue before the SWRCB acts on the BPA. However, we reiterate our request that, if changes are made to the BPA, the public comment period for this permit be reopened. G.2

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1. **Compliance. Individual mass limits must be enforceable regardless of group performance.**

Our most significant concern is the proposed permit's lack of enforceable mass limits for individual discharges, which contravenes federal law and is inconsistent with the TMDL. Federal law requires permit effluent limits be established for "*each* outfall or discharge point" of a permitted facility. 40 C.F.R. § 122.45(a) (emphasis added); 40 C.F.R. § 123.25 (making requirements applicable to State programs). Permit effluent limits for each discharge point must be expressed in terms of mass. *Id.* at 122.45(f)(1). Therefore, every permit must contain mass limits applicable to every discharge point.

These mass limits must also be enforceable. When permits limits are expressed in terms of mass and another "unit of measurement," such as concentration, "the permit shall require the permittee to comply with both limitations." *Id.* at 122.45(f)(2) (emphasis added). When a permittee fails to comply with any permit limitation, the Regional Board, EPA, and citizens with standing may bring suit to enforce them. *See* 33 U.S.C. §§ 1319, 1365;[1] Cal. Water Code § 13385.

III.1

III.1

The draft permit language defining compliance with mass effluent limits in terms of group performance attempts to bypass these legal requirements. While it contains mass limits applicable to each discharger, it does not require constant compliance with those mass limits. Rather, the draft permit exempts the discharger from compliance with legally mandated mass effluent limits as long as the group limit is not exceeded. Making the mass limits enforceable in only limited circumstances blatantly disregards permitting requirements spelled out in the CWA and its implementing regulations.

Conditioning permit compliance on group performance is also inconsistent with the TMDL approved by this Regional Board in August of 2006. Federal regulations require that all effluent limits in permits be "consistent with the assumptions and requirements of any available wasteload allocation" in a TMDL. 40 C.F.R. § 122.44(d)(1)(vii)(B). The Bay mercury TMDL states how the Regional Board will exercise its enforcement discretion, stating the Regional Board's intent to "pursue enforcement actions against those individual dischargers whose mass discharges exceed their mass limits." BPA at 18, 20. The draft permit, however, goes beyond an articulation of enforcement discretion and defines *compliance* with effluent limits in terms of group performance. Draft Permit at 12, 14. This distinction is significant in that it appears to prevent all parties—the Regional Board, EPA, and citizens with standing—from enforcing the individual mass limits when the group limit is not exceeded.

We also object to the group compliance regime because it appears to encourage de facto trading wherein mercury reductions at one facility enable another facility to discharge more mercury than allowed by its individual limit. Bioaccumulative pollutants are unsuitable for trading, whether explicit or implicit. *See* EPA Water Quality Trading

[1] In providing for citizen enforcement, Congress explicitly recognized that government often lacks the means or will to enforce water quality laws. *See* S. Re. No. 414, 92d Cong., 1st Sess. 2-3 (1971). This is why Congress specifically authorized enforcement suits by any private person with standing.

Policy (January 13, 2003) (available at http://www.epa.gov/owow/watershed/trading/tradingpolicy.html). Furthermore, the group compliance regime lacks the formal safeguards—such as a trading association and procedures for formally adjusting post-trade effluent limits—of established trading programs. To ensure that the permit is consistent with federal law and the TMDL, it must contain mass limits, based on the TMDL WLAs, that are enforceable at all times against individual dischargers.

***Requested Change:*** Revise Footnote 1 of Tables 6 and 8:

> Compliance with the Average Annual Mass Limitations is determined annually for each Discharger each calendar year~~,~~. The Water Board will pursue enforcement actions against those ~~and is attained if the sum of the~~ individual Dischargers~~'~~ whose mercury mass emissions, calculated as described below, ~~is not~~ are greater than ~~the aggregate mass~~ their individual emission limits…"

**2. Anti-backsliding. The permit contains effluent limits that unlawfully "backslide" from current permit limits.**

If adopted as currently written, this permit violates federal anti-backsliding requirements because it contains permit limits less stringent than those in current permits. The Clean Water Act's anti-backsliding provisions provide that, in general, "a permit may not be renewed…to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit." 33 U.S.C. § 1342(o)(1). These provisions were adopted specifically to further the CWA's goal of *eliminating* pollutant discharges entirely. 49 Fed. Reg. 37,898, 38,019 (Sept. 26, 1984).

The proposed permit, however, contains effluent limits that are less stringent than those in current permits because the average monthly effluent limitations ("AMELs") for at least five dischargers[2] are higher than those in their current permits. No question exists about whether the proposed AMELs are "comparable" to the current limits. Both are interim limits and are based on current performance, so less stringent limits are inappropriate. *See* SWRCB Order WQ 2001-06 (reasoning that a WQBEL is not "comparable" to a performance based limit); *NRDC v. EPA*, 859 F.2d 156 (D.C. Cir. 1988) (upholding EPA's authority to prohibit backsliding from BPJ-based permits).

The proposed permit also appears to backslide from previous permits because it lacks maximum daily effluent limitations ("MDELs"). The AMELs in the draft permit are comparable to those in current permits, but nothing in the draft permit is comparable to the MDELs contained in most dischargers' current permits. Complete removal of a permit limit clearly constitutes backsliding. Any final permit must specify an MDEL for each discharger that is at least as stringent as the one in its current permit.

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[2] These dischargers are: Petaluma, San Jose/Santa Clara, South Bayside, Sunnyvale, and Tesoro. Tesoro's limit is especially troubling because it is more than three times its current performance-based limit. Draft Permit at F-10, 20.

Exceptions to the backsliding prohibition are narrow and not applicable here. Under section 303(d)(4)(1), effluent limits based on a WLA may be relaxed provided that the cumulative effect of all revised limits ensures attainment of the applicable water quality standard. The current permit limits, however, are not based on a WLA, therefore, the section 303(d)(4)(1) exception does not apply. Even if section 303(d)(4) applied in situations where only the current permit limit is based on a WLA, the Regional Board's own analysis in the TMDL shows that the WLAs will not achieve water quality standards for many decades after this permit expires. Thus, the cumulative effect of the revised limits does not ensure attainment of the water quality standard and the section 303(d)(4)(1) exception is inapplicable.

Similarly, none of the exceptions outlined in section 402(o)(2) apply. There have been no material and substantial alternations to the facilities. 33 U.S.C. § 1342(o)(2)(A). No new information is available that would have justified less stringent standards in the current permits. *Id.* at 1342(o)(2)(B). No events have occurred over which the permittees have no control, but which justify a less stringent limit. *Id.* at 1342(o)(2)(C). The permittees have not received permit modifications. *Id.* at 1342(o)(2)(D). Finally, the permittees have not installed the treatment facilities required to meet the effluent limits in the current permit. *Id.* at 1342(o)(2)(E). Because none of the situations contemplated by section 402(o)(2) exist, no exception to backsliding is warranted.

Finally, even if one of the exceptions to the backsliding rule applied, section 402(o)(3) bars less stringent limits in this situation. Section 402(o)(3) acts as a floor to restrict the situations in which the State can relax limits. It prohibits relaxation of limits if it would cause the receiving waters to violate applicable state water quality standards. 33 U.S.C. § 1342(o)(c). Because the Bay is already impaired for mercury, any increase in the amount discharged by a particular discharger constitutes an exceedance of applicable water quality standards. Therefore, the proposed limits must be at least as stringent as current limits.

***Requested Changes***: To ensure compliance with antibacksliding requirements, the draft permit should be amended to incorporate AMELs and MDELs for each discharger that are at least as stringent as those in current permits.

**3. <u>Concentration-Based Effluent Limitations.</u> The concentration-based effluent limitations must be protective of water quality.**

The Clean Water Act requires that all permits for the discharge of pollutants contain effluent limitations sufficient to achieve all applicable water quality standards. C.F.R. § 122.44(b)(1), (d). WLAs are a type of water quality based effluent limitation. *Id.* at § 130.4(h). They do not supersede, however, all other water quality based effluent limits. As recognized by EPA guidance, "[t]he goal of the permit writer is to derive permit limits that…protect against acute and chronic impacts…*and* assure attainment of the WLA and water quality standards. EPA Permit Writers' Manual, p 111 (emphasis added). Thus, if

the WLA-derived permit limits are not sufficient to protect against acute and chronic impacts, then the permit must contain additional limits.

It is unclear whether the limits in the proposed permit are adequate to achieve all applicable water quality standards, including those related to toxicity. Current permits issued by this Regional Board contain WQBELs based on the Basin Plan's criteria for protection of salt water aquatic life from toxicity. While these limits are not yet in effect, they are substantially lower than the limits in the proposed permit. This suggests that lower concentration-based limits may be necessary to protect against toxicity and to implement the Basin Plan's acute toxicity criteria of 2.1 µg per liter. We ask that the Regional Board demonstrate how the proposed limits will ensure compliance with all applicable water quality standards, including those for toxicity.

III.4

***Requested Change*:** Provide more detail in the fact sheet to demonstrate that compliance with the permit effluent limitations will also ensure compliance with the one-hour marine water quality objective of 2.1 µg per liter, or revise the permit to ensure compliance with that and any other applicable objective.

4. **<u>Effluent Limits.</u> The permit must contain Maximum Daily Effluent Limitations.**

As discussed above in the backsliding context, the draft permit incorrectly fails to include MDELs. Federal and state regulations require that permits for continuous discharges contain MDELs. 40 C.F.R. § 122.45(d); SWRCB, *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California,* p. 10 (2005). As recognized by the Regional Board, MDELs are effective at protecting against acute water quality effects, including preventing mortality to aquatic organisms. *See* Order No. R2-2007-0024, RWQCB, San Francisco Bay Region, Waste Discharge Requirements for the Pinole-Hercules Wastewater Treatment Plant (adopted March 14, 2007). Failure to include them in this permit is unjustified and illegal.

III.5

***Requested Change:*** In addition to the mass limits and the AMELs, the permit should assign each discharger an appropriate MDEL.

5. **<u>Monitoring.</u> More frequent monitoring is necessary to determine compliance with effluent limitations.**

MRP 2

We are concerned that the monitoring frequency required in the draft permit is insufficient. Federal regulations require that all permits contain monitoring sufficient to assure compliance with permit limitations and to generate data that is representative of the monitored activity. 40 C.F.R. §§ 122.44(i), 122.48(a). Although the permit requires compliance with AMELs, it only requires monitoring monthly or quarterly. We fail to see how monthly or quarterly monitoring will generate data sufficient to determine

compliance with AMELs, which by definition suggest the averaging of more than one sample each month.

Furthermore, the record lacks any evidence that the monitoring requirements will produce data that will be representative of the discharges or that will enable a compliance determination. EPA guidance specifies several factors to be considered in determining the appropriate monitoring frequency. These factors include the variability of the pollutant in the discharge, the discharger's history of compliance, and the number of monthly samples used in developing the permit limits or effluent guidelines. *U.S. EPA NPDES Permit Writers' Manual*, EPA 833-B-96-003, pp. 119-122 (December 1996). None of these factors appear to have been considered in determining monitoring frequency. Instead, the fact sheet erroneously and unpersuasively concludes that the monitoring frequencies are justified by each discharger's contribution of mercury and its resources to conduct the monitoring. Consideration of either these factors is not relevant under federal regulations and will not necessarily lead to representative data.

***Requested Change:*** The monitoring requirements must be increased so that they are sufficient to produce data that (1) is representative of the discharge and (2) enables a determination of compliance with effluent limitations. The fact sheet must also be amended to demonstrate how federal regulations and guidance were applied to arrive at the appropriate monitoring frequency.

**6. <u>Triggers</u>. The triggers are too high to prevent mass limit exceedances.**

The draft permit illogically sets concentration limits for American River Canyon, PG&E, Rhodia, and Mirant Potrero that are lower than the applicable MDEL and/or AMEL triggers. Specifying triggers that are higher than the applicable limit essentially makes the triggers meaningless because, by the time the additional requirements are triggered, the discharger is already in violation.

***Requested Change:*** Unless the Regional Board can demonstrate that the rolling average trigger is sufficient to serve as an early detector of exceedances, the dischargers should be assigned new triggers that are less than their concentration-based limits.

**7. <u>Source Control, Special Studies, and Risk Management.</u> The permit should specify the level of effort required by each discharger and emphasize risk reduction.**

We strongly support the source control, special studies, and risk management requirements contained in the permit but note that the permit needs more specificity. Other than the dental program, none of the draft permit provisions specify the level of effort required by each discharger.

More importantly, the risk management requirements are insufficient. As eloquently stated by representatives of local environmental and community groups during a December 2006 meeting sponsored by the Clean Estuary Partnership, education and outreach are of limited value when people depend on fishing local waters for sustenance. Risk reduction needs to go beyond signage and, ultimately, provide community-based alternatives to Bay-caught fish. We ask that the risk management section be changed to emphasize provisions c and d, related to health-risk assessments and communication and investigating ways to reduce actual and potential exposures. V.13

***Requested Change:*** (1) Amend the Special Provisions related to source control, special studies, and risk management so that they state how much effort—in terms of funding, programs and results—are required of the dischargers. (2) Revise the risk management section to emphasize risk reduction provisions c and d instead of mere signage.

8. **<u>Recycled Water.</u> Demonstrate that increases in the total mercury discharged will not cause local effects.**

We support the use of recycled wastewater by industrial dischargers and appreciate the Regional Board's efforts to facilitate reuse. We are, however, concerned that the increase of mercury discharged by the industrial permittee may have unintended local effects. Although the total amount of mercury being discharged does not increase, the mass being emitted at a particular discharge point will. The permit and accompanying fact sheet should discuss how the permit will ensure that the increase does not result in local impacts or a violation of receiving water limitations. V.17

***Requested Change:*** Include in the permit and fact sheet an analysis of potential local impacts and how the permit will address them.

9. **<u>Noncompliance Reporting.</u> Require written reporting of all noncompliance.**

We ask that the Regional Board require written reporting of all noncompliance. While we recognize that provision E.3. (page D-9) is a standard provision laid out by federal regulations, we strongly urge the Regional Board not to accept oral reports in lieu of written ones. A written record of compliance enhances transparency and facilitates outside review of compliance and should be required in all situations. D.1

***Requested Change:*** Revise the permit to require written reporting of all noncompliance regardless of whether an oral report is provided.

***

Again, thank you for consideration of these comments. We encourage you to contact us with any questions.

Sincerely,

Sejal Choksi, Esq.
Baykeeper

Michael Wall, Esq.
NRDC

Michelle Mehta, Esq.
NRDC

Andria Ventura
Clean Water Action

cc: Alexis Strauss, Environmental Protection Agency
Bruce Wolfe, San Francisco Regional Water Quality Control Board

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WT

April 16, 2007

Via Email and Facsimile: (510) 622-2460

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

Dear Mr. Wolfe:

COMMENTS ON THE TENTATIVE ORDER FOR MERCURY FROM WASTEWATER DISCHARGES IN THE SAN FRANCISCO BAY REGION (CA0038849)

The Central Contra Costa Sanitary District (CCCSD) appreciates the opportunity to comment on the Tentative Order (TO) for the Mercury Watershed Permit. CCCSD provides wastewater collection and treatment for approximately 450,000 people in Central Contra Costa County. CCCSD is dedicated to providing excellent customer service at reasonable rates and to meeting all applicable safety and environmental regulations. CCCSD is a member of Bay Area Clean Water Agencies (BACWA) and supports the comments submitted by BACWA in a separate letter.

See Responses to BACWA Comments

CCCSD supports the watershed approach to the waste load allocations and the subsequent watershed permit to implement the mercury total maximum daily load (TMDL). The Mercury Watershed Permit regulates both municipal and industrial wastewater dischargers in a manner that is fair and equitable. The Mercury Watershed Permit, for the most part, is consistent with the mercury TMDL adopted by the Regional Water Quality Control Board (RWQCB) on August 9, 2006. The one exception is the addition of enforceable concentration limits summarized in Table 6.

These enforceable concentration limits were not in the TMDL, and require another level of control over and above the aggregate allocations. The inclusion of the enforceable concentration limits adds a third tier to the compliance approach for mercury. CCCSD does not object to the inclusion of the enforceable concentration limit, but hopes that the focus will remain on the attainment of the aggregate allocations.

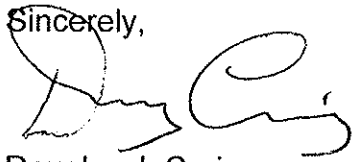
III. 2

CCCSD also supports the use of the Monthly Average Effluent Limit (MAEL) and Daily Maximum Effluent Limit (DMEL) concentration triggers for investigative action. By having trigger levels, CCCSD can investigate, identify, and respond to any elevated mercury levels to minimize mercury discharges into the receiving water. Information developed can further expand pollution prevention activities to address the identified sources.

To summarize, CCCSD fully supports the concepts presented in Mercury Watershed Permit as presented in the Draft TO. CCCSD has included additional comments as an attachment to this letter, which are primarily editorial.

If you have any questions, please contact me at 925-229-7284.

Sincerely,



Douglas J. Craig
Director of Plant Operations

DJC:RS:pk:dk

cc: B. Dhaliwal
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M. LaBella
M. Penney
T. Pilecki
T. Potter
R. Schmidt
B. Than

## ATTACHMENT 1: ADDITIONAL CCCSD COMMENTS

### Pages 11 through 15 – Effluent Limitations and Discharge Specifications

Each sub-heading under this section is labeled "Municipal Discharger Effluent Limits" and "Industrial Discharger Effluent Limits," yet almost all subsequent references (except Footnotes 1d and 5) use the word "Discharger" without distinction. CCCSD recommends that either each section maintain the distinction between municipal and industrial when "Discharger" is referenced (at a minimum in the references in Footnote 1a), or that the opening paragraph explicitly specifies that "Discharger" in the subsection only refer to "Municipal Discharger" and "Industrial Discharger," as appropriate. The worst-case scenario is that a violation of the aggregate limit from one group triggers a review and enforcement for all individual dischargers (municipal and industrial) that have exceeded their average annual mercury mass effluent limit if the scope of these sections were to be broadly interpreted by a third party. II.11

Footnote 1a states, "The sum shall be rounded to the nearest kilogram for comparison with the 17 kg/yr" aggregate limit. Using the current language regarding rounding, the evaluation of individual limits for compliance determinations will occur for any aggregate amount over 16.5 kg/yr. This rounding is not necessary. With the exception of limits for four agencies in Table 6, all the municipal and industrial discharger limits have at least two significant digits. CCCSD recommends rounding at least to the nearest tenth, if not hundredth, of a kg/yr. II.12

### Page 17 – Table 12. Action Plan for Trigger Exceedence

The relationship between "i. Accelerated Sampling," "iii. Action Plan for Mercury Reduction," and "iv. Annual Reporting" requirements in this table are not clear.

With regard to "iv. Annual Reporting," is this requirement invoked indefinitely once a Discharger experiences a trigger exceedence? The text in the "Deadline" column of Table 12 implies this situation to be true. CCCSD recommends that the scope of the annual reporting requirement be explicitly established (e.g. modify "Deadline" text to read "Annually until Discharger demonstrates compliance with the trigger levels for a continuous 12-month period of sampling"). V.8

With regard to "i. Accelerated Sampling," the initial accelerated sampling is clear as it applies to the maximum daily trigger levels. However, how does this initial sampling compare to situations where the average monthly trigger level is exceeded, and the timing of the initial accelerated four sampling events spans two calendar months? If a Discharger chose to conduct more sampling than the amount identified in this section of the table, would this data be accepted, especially to demonstrate compliance with the average monthly trigger level? CCCSD recommends modifying the text to clarify this requirement as it applies to the average monthly trigger levels. V.6

If a Discharger demonstrates compliance with the trigger level during the initial four accelerated sampling events, is the requirement in "iii. Action Plan for Mercury Reduction" still invoked? The last sentence of "i. Accelerated Sampling" identifies that a Discharger may discontinue efforts under "iii. Action Plan for Mercury Reduction" if they demonstrate compliance with the trigger levels for three consecutive months after one or more of the four samples during the initial accelerated sampling events exceeds the triggers, but it is silent on the scenario when all four of the initial accelerated sampling events are below the triggers. CCCSD recommends that additional text be added to the second sentence in "i. Accelerated Sampling" section of Table 12 so that it reads "If all four samples show mercury levels below the triggers, return to routine sampling, complete the reporting of this exceedence as required, and do not initiate the Action Plan for Mercury Reduction as required in section iii of this Table." Is an annual report required if an Action Plan for Mercury Reduction is not initiated under the above scenario? CCCSD recommends modifying the text to clarify the scope of the annual report requirement to reflect the appropriate standard for the potential scenarios.

V.7

V.7

The content of the annual reporting under "iv. Annual Reporting" overlaps with the information required under the Pollution Prevention Program Annual Report of the National Pollutant Discharge Elimination System (NPDES) Permit issued to municipal dischargers. Assuming that RWQCB staff still wants to have mercury reduction programs included in the Pollution Prevention Program Annual Report (even though the text on page i of the mercury watershed TO identifies that it supersedes all mercury requirements in the NPDES Orders issued to dischargers), can the requirement in section iv of Table 12 allow the information to be reported in the Pollution Prevention Program Annual Report? The text in the "Deadline" column of Table 12 would need to be amended to read "Annually due February 1st of each year, or with the Pollution Prevention Program Annual Report submitted by the Municipal Discharger under the Order identified in Attachment B."

V.8

V.8

**Pages 17 to 18 – Mercury Source Control Program for Municipal Dischargers**

The dental program identifies that 85 percent of dental offices in the region will be participating in an amalgam program within five years after approval of the TMDL. This reference does not distinguish between dental practices that generate amalgam waste and specialty dental practices that do not generate amalgam waste as part of their routine operations (e.g. orthodontics, periodontics). If the 85 percent standard applies to all dental practices including non-amalgam-generating dental specialties, then achieving the standard will be more difficult region-wide. CCCSD recommends that the text establishing the dental amalgam control program be modified to specify that the 85 percent participation rate only apply to amalgam waste-generating dental practices.

V.9

V.9

**Page 19 – Mercury Discharge Adjustments for Recycled Wastewater Use by Industrial Dischargers**

In subsections 5a, 5b, and 5c, the "Discharger" is not identified as the Municipal Discharger or the Industrial Discharger. CCCSD recommends that "Municipal" or

V.10

V.10

V.10 "Industrial" be included with the text of subsections 5a, 5b, and 5c. V.10

**Page D-11 – A. Publicly Owned Treatment Works (POTWs) under Section VII Additional Provisions – Notification Levels of the Standard Provisions Attachment**

The reference to the subsection is labeled "A" but it should be "B" since the provisions for Non-Municipal Facilities is labeled "A."

V.1 Are these subsections (1 through 3) needed with this watershed permit? CCCSD recommends that the conditions be limited to mercury in lieu of the generic reference to pollutants. The standard language is present in the NPDES Permit issued to the Dischargers, so the requirements are already applicable to pollutants. V.1

Replaces Fax transmitted prior to 17:00. LWT

EAST BAY
MUNICIPAL UTILITY DISTRICT

**VIA EMAIL AND FACSIMILE: (510) 622-2460**

April 16, 2007

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

RE: Comments on the Tentative Order For Mercury from Wastewater Discharges in the San Francisco Bay Region (CA0038849)

Dear Mr. Wolfe:

The East Bay Municipal Utility District (EBMUD) is pleased to have the opportunity to provide comments on the tentative order for mercury from wastewater discharges in the San Francisco Bay. EBMUD strongly supports the watershed approach to wasteload allocations and the related watershed permit for implementation of the SF Bay Mercury TMDL. We believe this is a fair, appropriate and legal approach and that it begins to lay the groundwork for a methodology to develop and account for offsets under a future State Policy and offset program – which is a reasonable and rational way forward for the State to address legacy mercury issues and the resultant impairment in many water bodies, including SF Bay.

G.1

EBMUD supports the comments made in the BACWA comment letter. In addition to those comments, we have some additional comments, including concerns on how the watershed permit addresses water recycling. EBMUD believes, consistent with State Water Code and expressed Water Board policy, of the need to ensure that TMDLs, implementing permits, and any offset policy be structured to support water recycling. In the case of this mercury watershed permit, we are concerned that the method of transference of allocations and how these are reported in terms of compliance may be a disincentive for agencies to provide wastewater effluent for recycled water projects.

See response to BACWA comments

Chevron U.S.A. Inc. (Chevron) currently uses tertiary treated recycled water from the East Bay Municipal Utility District's (EBMUD) North Richmond Water Reclamation Plant (NRWRP) in refinery cooling towers. Chevron and EBMUD are planning to expand the use of recycled water at the refinery by treating additional secondary effluent from West County Wastewater District's (WCWD) Water Pollution Control Plant (WPCP) through new microfiltration (MF) and reverse osmosis (RO) facilities (MF/RO) to produce high-purity recycled water suitable for boiler feed water. The use of recycled water versus EBMUD potable water for nonpotable industrial uses will result in slightly higher effluent concentrations and mass of certain pollutants through discharge of the cooling tower blowdown and the RO reject (concentrate) via the Chevron Effluent Treatment System (ETS) E-001 permitted outfall.

V.15

EBMUD is pleased that the Water Board has included recycled water mass and concentration credit provisions in the Mercury Watershed permit. The Mass Emission Adjustment credit provisions (Special Provision V.C.5.) provide an appropriate incentive for industries to utilize recycled water. However, the Reverse Mass Adjustment, if this is applied as written, may result in a disincentive for WCWD (and others) to provide wastewater effluent for recycled water projects due to a potential reduction in their effective mercury mass allocation.

We request the Regional Board reconsider the draft permit approach of recycled water credits and reverse adjustments and instead implement a simpler and more direct "transference of pollutant allocations" in these types of water recycling projects. This was discussed in greater detail in our June 5, 2006 letter (attached).

V.15

If the Regional Board maintains the draft permit approach, we request removing Special Provisions C.5. from the final Waste Discharge Requirements. If the provision must be retained, the District requests an alternate method of determining permit compliance with the mass effluent limits. A permit violation would be determined ***only if*** the recycled water provider (the Municipal Discharger) ***and*** recycled water user (the Industrial Discharger) exceed their average annual mercury mass effluent limits. This approach of effectively combining the two discharger's mass allocations would ensure there is no net increase in the mass of mercury discharged to the SF Bay. Suggested changes to the current enforcement language are provided in the following paragraph:

V.15

> *Special Provisions C.5.d. If an industrial Discharger opts to apply a Mass Emission Adjustment, the Regional Water Board shall transfer that Adjustment to the mass emission for the corresponding discharge interval from the municipal Discharger who is the producer and source of the recycled wastewater. If the reverse Adjustment results in calculated mass discharge levels above the municipal Discharger's <u>and the industrial Discharger's</u> Average Annual Mercury Mass Limits, and the Total <u>Municipal</u> Group mass limit as specified in the III.A <u>is also exceeded</u>., that municipal Discharger is in violation of its mass limit and is subject to enforcement action by the Regional Water Board.*

EBMUD has provided some suggested permit language modifications in redline-strikeout mode to relevant sections of the watershed permit (for ease of review the excerpted sections are presented in the Attachment in the order they occur in the permit). The intent is to clarify how municipal recycled water producers track and report the mercury mass in recycled water provided to industrial users like Chevron. Rationale for the suggested language changes to Special Provisions C.5.d has been provided in modifications to the Fact Sheet.

V.12

An additional comment we have is regarding the approach to Risk Management, particularly Section 4.d. The specific concerns we have on this section is twofold; first, it places a burden that is difficult to understand and quantify and, in fact, may be impossible to meet, of performing

V.12

"activities that reduce actual and potential exposure (presumably beyond communications)" and that "mitigate health impacts". Our second concern is that there are existing public agencies, including DHS, that are practiced and chartered to perform these activities and it seems our actions would at best be duplicative of the role of health agencies. The language in the permit seems to have the potential to shift the societal burden that should be shared by all of the state citizens from the legacy of mining practices directly to a handful of Bay-area wastewater dischargers that represent only a small fraction of the State. We also have concerns on the notion that is even possible, never mind appropriate, for wastewater dischargers to quantify risk reductions from these activities we may be required to perform.

V.12

Lastly, EBMUD believes that the Regional Board should continue to coordinate with the SWRCB in regards to the development, including a timetable, for an offset policy. This language should include consideration that if the SWRCB has not adopted a policy within a certain timeframe then the Regional Board will proceed with a region-specific offset approach.

III.7

EBMUD appreciates the opportunity to comment on the Mercury Watershed Permit and we look forward to being engaged as a stakeholder as we collectively move forward in our regional efforts to protect and enhance San Francisco Bay.

Sincerely,

David R. Williams
Director of Wastewater

DRW:BKH:kl

Attachments

cc: Lila Tang, Regional Water Quality Control Board
Robert Schlipf, Regional Water Quality Control Board

W:\NAB\ESD\BKH\BACWA\BACWA Comments Watershed Permit.doc

# SUGGESTED WORDING CHANGES TO THE SF BAY MERCURY WATERSHED PERMIT FOR MUNICIPAL AND INDUSTRIAL WASTEWATER DISCHARGERS TO ACCOMMODATE RECYCLED WATER USE

## 1) Tentative Order p. 13 Effluent Limitations and Discharge Specifications III.A. Table 6. Footnote 1.d

**A. Municipal Discharger Effluent Limits**

**Table 6. Municipal -- Individual Mercury Effluent Limitations**

**Footnote 1.d.** The Monthly Mass Emission for a Discharger who provides recycled wastewater for industrial supply, shall include the effluent discharge adjustment granted to the industrial Discharger for its recycled wastewater use as described in III.B and Provision V.C.5 of this Order. The monthly effluent discharge adjustment mass shall be reported in each Self-Monitoring Report and in the Comments on Data field on the Annual Mercury Information Reporting Form Part 2 or 3 -- Mercury Data.

## 2) Tentative Order p. 20 Special Provision V.C.5.d

V.15

V.15

**5. Mercury Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers**

d. If an industrial Discharger opts to apply a Mass Emission Adjustment, the Regional Water Board shall transfer that Adjustment to the mass emission for the corresponding discharge interval from the municipal Discharger who is the producer and source of the recycled wastewater. If this reverse Adjustment results in calculated mass discharge levels above the municipal Discharger's Average Annual Mercury Mass Limit and the industrial Discharger is at or above its Average Annual Mercury Mass Limit, and the Total Municipal Group mass limit as specified in III.A. is exceeded, that municipal Discharger is in violation of its mass limit and is subject to enforcement action by the Regional Water Board.

## 3) Attachment E – MRP page E-8 Optional Group Compliance Reporting IV.C.2.b.iii

MRP revised

MRP revised

**2. Report on Mercury Reduction Efforts**

b. A description of mercury source control projects, planned or under way, including where applicable, but not limited to:

iii. estimates of mercury mass loads that can be avoided through program activities unrelated to normal treatment, including recycled water delivered, summarized by activity if-appropriate.

**4) Attachment E – MRP page E-10 Annual Mercury Information Reporting Form Part 2 of 3 – Mercury Data**

Comments on data (if any): *For Dischargers claiming an effluent credit for recycled wastewater use pursuant to Provision V.C.5 of the Order, please indicate the credit(s) that will be applied to the mass loads listed above, and show below the credit calculation and basis (use additional sheets if necessary) For Dischargers who provide recycled wastewater for industrial supply pursuant to Provision V.C.5 of the Order, please indicate any reverse credit(s) that have been applied to the mass loads listed above.*

MRP revised

**5) Attachment F – Fact Sheet Pages F-28 – F-29 Rationale for Special Provisions VII.B.5**

**5. Effluent Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers**

As dictated by California Water Code sections 13510 through 13512, the Regional Water Board should support and encourage water recycling facilities. The use of recycled wastewater preserves fresh potable water supply sources. The effluent discharge adjustment (or Adjustment) provided in this Order is to avoid penalizing Dischargers who produce recycled water and Dischargers who use recycled wastewater in its industrial processes, and is based on the principals outlined in the Basin Plan at 4.6.1.1. It is also similar to an existing provision in the individual permits for the petroleum refineries.

V.C.5

The Adjustment is only applicable if the mercury in the recycled wastewater is ultimately discharged through the industrial discharger's outfall. The Adjustments are calculated based on a mass balance principals and will thus not result in any net increase in mercury loadings to the Bay. The mass Adjustment subtracted from one industrial discharger, is then added to the municipal discharger who supplied the recycled wastewater and who would have otherwise discharged that mercury through its municipal treatment plant discharge outfall. Any such reverse mass adjustment is tracked and reported by the municipal discharger in its Self-Monitoring Reports so that there does not result in a de facto reduction in its individual wastewater allocation, and potential reduction in available discharge capacity, for its environmentally beneficial efforts providing recycled water. Furthermore, the discharge locations for the two will be to the same receiving water body because the cost of water transport between facilities that are very far apart would make the reuse project infeasible.

A concentration Adjustment is also provided because a typical reuse project involves use of the recycled wastewater in cooling towers or boilers where the concentration of mercury increases through evaporative losses. The blowdown

would go to the industrial discharger's sewer and potentially elevate its discharge concentration. Since the concentration limit is established based on past performance, future recycled wastewater use could impact the industrial discharger's compliance with the performance limit. Therefore, a concentration Adjustment is provided. Unlike the mass Adjustment, it is inappropriate to apply the concentration Adjustment in reverse to the municipal discharger because the reason for the Adjustment is to account for evaporative losses. These losses occur at the industrial facility and do not affect the municipal discharger's performance.

It would be appropriate to provide a concentration Adjustment but not a mass Adjustment where a municipal discharger installs advanced recycled water treatment facilities at its treatment plant site (e.g. RO) and blends the concentrated waste stream with its effluent prior to discharge. The mass discharged through the municipal discharger's outfall would not increase but the concentrations in the final effluent would increase based on the relative proportions of the effluent and concentrated waste stream.

Currently, the only reuse projects where an Adjustment would be applied is between the Chevron Richmond Refinery and the West County Wastewater District (WCWD). Chevron currently uses about ~~3~~4 million gallons per day of recycled wastewater. A new reuse project is scheduled to go on line in 200~~7~~9 that will bring the amount to ~~over~~approximately ~~4-7~~-8 million gallons per day. West County Wastewater District discharges through a joint outfall with the City of Richmond under the West County Agency NPDES permit. Based on this provision, for mass accounting purposes, any mass Adjustment subtracted from Chevron would be added to the mass emission reported by the West County Agency prior to determining compliance with the average annual mass limit.

Under this two way Adjustment formulation, for projects like the WCWD and Chevron recycled water project, the allowable mass discharge to the bay under the mercury TMDL and this watershed permit would be the sum of the WCWD and Chevron wasteload allocations (WLAs). Only if WCWD and Chevron together both exceed their individual WLAs would there be a "real" mass discharge greater than that calculated for them in the TMDL. Therefore the following language is included in Special Provisions VII.B.5 to clarify when the Water Board may consider enforcement action when mass Adjustments are being applied:

> *If this reverse Adjustment results in calculated mass discharge levels above the municipal Discharger's Average Annual Mercury Mass Limit and the industrial Discharger is concurrently at or above its respective Average Annual Mercury Mass Limit and the Total Municipal Group mass limit as specified in III.A. is exceeded, that municipal Discharger is in violation of its mass limit and is subject to enforcement action by the Regional Water Board.*

EAST BAY
MUNICIPAL UTILITY DISTRICT

DAVID R. WILLIAMS
DIRECTOR OF WASTEWATER

June 5, 2006

VIA FACSIMILE

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

Re: Amendment to the Water Quality Control Plan for the San Francisco Bay Basin Related to Mercury in the San Francisco Bay

Dear Mr. Wolfe:

V.15

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the revised portions of the Mercury TMDL/Basin Plan Amendment (BPA). EBMUD supports the comments submitted by the Bay Area Clean Water Agencies (BACWA) on the Mercury TMDL/BPA and would like to further elaborate on the BACWA comments related to recycled water credit transfer provisions to encourage, not penalize, water recycling projects.

EBMUD is a local government entity that serves drinking water to approximately 1.3 million people in its 325- square-mile service area that encompasses portions of Alameda and Contra Costa counties. A limited supply of water, restricted by both nature and by regulatory measures, combined with a growing population have compelled EBMUD to exercise leadership in the area of demand management, as it aggressively finds ways to wisely and efficiently stretch its water resources.

In October 1993, EBMUD established water recycling as an important component of its Water Supply Management Program (WSMP). The WSMP serves as a planning guide for providing a reliable high-quality water supply to the EBMUD service area through year 2020. The WSMP sets a goal of delivering a total of 14 million gallons per day (mgd) of recycled water by the year 2020. In addition to the WSMP, as part of its Urban Water Management Plan (UWMP) adopted in 2005, EBMUD is committed to delivering 14 mgd of recycled water by the year 2020 to limit customer rationing during a critical drought to 25 percent. EBMUD supports the State's goal to recycle 1 million acre-feet of water per year by the year 2010.

There are two major petroleum refineries located within EBMUD's service area, the Chevron Richmond Refinery and ConocoPhillips Rodeo Refinery. These two refineries currently are EBMUD's largest users of potable water and have the greatest potential to use recycled water

for nonpotable water uses. Since 1995, Chevron has used approximately 3 mgd of tertiary treated recycled water for cooling at the Richmond Refinery. EBMUD is aggressively pursuing recycled water projects with both refineries that would replace potable water currently used for boiler feedwater with high-purity recycled water. The two projects would offset over 5 mgd of potable water, thus conserving EBMUD's limited high-quality drinking water supplies. The high-purity recycled water would be produced by further treating secondary wastewater effluent through a microfiltration/reverse osmosis treatment process.

In many cases, recycled water projects will reduce the mass loading of all pollutants to the Bay. In some cases, such as industrial uses of recycled water for cooling or boiler feedwater, higher effluent concentrations may result from the water recycling projects through cooling tower blowdown and/or disposal of the reverse osmosis reject (concentrate) via the industry's permitted outfall. In this case, the transfer of municipal wastewater effluent for beneficial reuse would decrease one permittee's mercury mass emission while increasing another permittee's mass emission by a corresponding amount. There would be no net change in the mercury mass discharged to the Bay from such projects, only a change in the location where the mass would be discharged. The use of recycled water in this case would cut across municipal and industrial load allocations.

EBMUD requests that the TMDL, the implementing permits and any offset policy include provisions recognizing this circumstance and authorizing that recycled water credits be transferred between individual municipal and/or industrial wasteload allocations where needed to accommodate and promote water recycling. EBMUD believes that inclusion of recycled water credit transfer provisions is consistent with State Water Code Section 13512 which states, "It is the intention of the Legislature that the state undertake all possible steps to encourage development of water recycling facilities so that recycled water may be made available to help meet the growing water requirements of the state." It is also consistent with State Water Code Sections 13550 and 13551 that state that use of potable domestic use for nonpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of water, if suitable recycled water is available.

The original TMDL policy assumptions used to derive the mercury wasteload allocations did not consider the fact that implementation of certain water recycling projects would result in the transfer of mercury mass loading from one permittee's effluent outfall to another. To comply with the state mandate to encourage water recycling, and to not penalize permittees for using recycled water, the wasteload allocation derivation needs to include a provision that allows portions of individual wasteload allocations to be transferred from one municipal and/or industrial permittee to another.

EBMUD appreciates the opportunity to comment on the mercury TMDL and work with the Board and staff to ensure the mercury TMDL does not limit the ability for agencies to continue to develop water recycling projects as one means to addressing future water supply challenges.

If you have any questions, please contact me at (510) 287-1496.

Sincerely,

David R. Williams

DAVID R. WILLIAMS
Director of Wastewater

DRW:JRL:sma

cc: Jan Lee, EBMUD
Tom Hall, EOA

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File: PT39V.D04

bcc: Edward McCormick, EBMUD
Linda Hu, EBMUD
Walt Gill, Chevron
Rich Sandman, Chevron

MT. VIEW SANITARY DISTRICT
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April 12, 2007

Lila Tang, Chief
NPDES Division
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay St., Suite 1400
Oakland, CA 94612

Subject: Comments on Tentative Order
San Francisco Bay Mercury Watershed Permit

Dear Ms. Tang:

Thank you for the opportunity to review and comment on the tentative order for the San Francisco Bay Mercury Watershed Permit that implements the San Francisco Bay Mercury TMDL. While we find the proposed limits and triggers in the permit challenging, we fully support and participate in regional efforts to minimize mercury in wastewater discharges.

Along with four other municipal dischargers, we have been categorized as "advanced secondary" and have received a significantly lower monthly average trigger of 0.011 ug/L compared to the other secondary plants (0.041 ug/L) and the industrial dischargers (0.037 ug/L). Our monthly limit of 0.021 ug/L has not been violated in the last eight years in any single sample of our effluent, and this concentration level is equivalent to the proposed maximum daily trigger. However, we have some concern that about 9% of our single sample results since 1999 exceed the proposed average monthly mercury trigger, which could lead to increased costs to the District for monitoring and reporting.

Our comments are numbered below.

1. The tiered policy of trigger levels appears to punish the best performers with more restrictive limitations and monitoring and reporting requirements that are unlikely to explain minor exceedances. These additional requirements associated with the triggers will also create more work for Water Board staff that is unlikely to yield definitive or useful answers. We hope that this trigger policy does not end up sending both dischargers and Water Board staff down a pathway chasing parts per trillion with no measurable environmental benefit.

2. Whether we violate a trigger or a limit, the response actions would be the same, given the extremely low levels and how close the effluent limit values and the trigger values are to each other (only 10 parts per trillion apart). We propose that triggers be eliminated for advanced secondary treatment

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plants as an incentive for improving treatment processes. We have three dentists in our service area, no industrial sources of mercury, and participate with Central Contra Costa Sanitary District in a central county partnership for household hazardous waste collection to reduce sources of mercury in the watershed. A monthly average result above 0.011 ug/L would not lead us to uncover any significant sources that we would not otherwise find due to violations of the monthly average limit of 0.021 ug/L violated in a single sample (equal to the proposed maximum daily trigger).

3. Perhaps a more equitable approach would be to eliminate all triggers for all NPDES dischargers. Limits provide enough incentive to track down and eliminate sources of mercury and maintain existing loading levels. Triggers and associated requirements represent a ratcheting down of regulatory requirements that will not yield measurable environmental results on mercury in San Francisco Bay, but will certainly increase the paperwork generated by dischargers and the Water Board.

We appreciate the unique challenge facing the Water Board staff to balance the need to maintain existing loading and create an equitable system of regulation for mercury. We do not believe that our requests above will weaken the permit – the same actions by local agencies are likely to occur on mercury with or without the triggers. Because NPDES discharges make up only 1% of the load to the San Francisco Bay, we urge the Water Board to reconsider the proposed trigger policy. The final concentration and mass limits implement the TMDL. On the other hand, the proposed triggers are a discretionary component in the tentative order and one that is not required to advance the admirable goal of minimizing mercury in wastewater discharges.

If you have any questions, do not hesitate to contact me.

Sincerely,

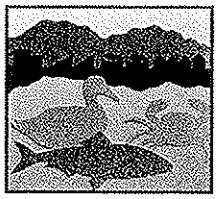
MT. VIEW SANITARY DISTRICT

Dale W. Riddle
District Manager

CC: Steve Moore, Nute Engineering
Dick Bogaert, Mt. View Sanitary District

**Regional Water Quality Control Plant**

**Operated by the City of Palo Alto**
for the East Palo Alto Sanitary District,
Los Altos, Los Altos Hills, Mountain View,
Palo Alto, and Stanford



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WT

April 12, 2007

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

**Re: Comments on Tentative Order for Mercury Discharges from Wastewater Discharges in the San Francisco Bay Region**

Dear Mr. Wolfe:

Thank you for the opportunity to comment on the Tentative Order for Mercury Discharges from Wastewater Discharges in the San Francisco Bay Region. The City of Palo Alto operates a regional wastewater treatment facility that discharges an average of 25 million gallons per day of treated wastewater to Lower South San Francisco Bay. The City of Palo Alto is committed to protecting San Francisco Bay, and we take special pride in the proactive leadership role that we have assumed with regard to pollution issues affecting the Bay. We have been engaged in mercury pollution prevention efforts for the past decade, and are currently very pleased to be observing decreases in mercury levels that we attribute to our mandatory dental amalgam control program.

We are supportive of the Mercury TMDL for San Francisco Bay, and we appreciate Regional Water Board staff's efforts to complete the TMDL and to begin moving forward with the TMDL's Implementation Plan. In general, our comments focus on improvements to the language of the Tentative Order that clarify the requirements or add flexibility when appropriate. However, we are very concerned that the inclusion of specific monitoring and reporting requirements in a Watershed Permit, such as the current Tentative Order for mercury, will inevitably lead to confusion when permit requirements conflict with dischargers' existing NPDES permits. **Therefore, we strongly suggest that any future such documents (e.g., one for cyanide) be combined with this one.** We appreciate your consideration of the following comments:

G-1

**1. Monthly Mass Emission Calculation (page 13)**

III-6

The formula provided for calculating a discharger's monthly mass emission uses the mercury concentration and discharger flow rate from the day of the sample, then multiplies the calculated mass value by 30.5 to obtain the monthly mass emission. This method of calculating the monthly mass emission allows the result to be strongly influenced by the flow on the day that the sample is collected. For



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example, a significant rainfall event that dramatically increased the flowrate on the sampling day could cause the calculated monthly mass emission for the entire month to be grossly overstated. It would be more accurate, and consistent with typical practices, to use the average effluent flowrate for the entire month in calculating the mass emission. This is the method for calculating monthly mass emission that is required by Palo Alto's individual NPDES permit, as follows:

> Monthly Mass Emission, kg/mo = 0.1154425*Q*C, where Q = monthly average effluent flow (MGD), and C = effluent concentration in µg/L
>
> If more than one concentration measurement is obtained in a calendar month, the average of these measurements is used as the monthly concentration value for that month.

2. **Action Plan for Trigger Exceedance (page 17)**

Provision C.1.c states "Each discharger who exceeds the applicable triggers listed in Table 10 or 11, above, shall comply with the following action requirements:" This sentence should read "..exceeds any of the applicable triggers..", as in Provision C.1.a.

3. **Action Plan for Trigger Exceedance: Comparison of Accelerated Monitoring Data with Triggers (page 17)**

Table 12 describes the requirements for conducting accelerated monitoring upon becoming aware of a trigger exceedance. The accelerated monitoring section states that the discharger should proceed with an action plan for mercury reduction if any of the four accelerated monitoring samples are above either the concentration or mass trigger. It is unclear how a single sample would be compared to the average monthly concentration trigger or the running annual mass emission trigger. The four sampling events required would most likely occur during two calendar months, so that in evaluating the compliance of the accelerated monitoring data with the triggers the discharger would evaluate four daily data points with the daily maximum trigger, two monthly data points with the average monthly trigger, and two monthly data points with the running annual mass emission trigger. We recommend that the Table 12 language referred to be changed to the following: "*...If the 4 samples collected during accelerated monitoring do not cause an additional exceedance of any of the applicable triggers, return to routine sampling. If the samples collected during accelerated monitoring cause an additional exceedance of any of the applicable triggers, proceed with action plan for mercury reduction and continue sampling monthly...*"

4. **Action Plan for Trigger Exceedance: Deadline for Submission of Action Plan for Mercury Reduction (page 17)**

Table 12 describes the requirements for an Action Plan for Mercury Reduction which must be developed, submitted, and implemented if accelerated monitoring

in response to an initial trigger exceedance indicates one or more additional trigger exceedances. The deadline for submission of the Action Plan is "Within 60 days of the initial trigger exceedance". 60 days is a wholly inadequate amount of time to prepare the required Action Plan. Most dischargers send effluent mercury samples to a contract laboratory that can attain the required low detection limits. Hence, the discharger may not even be aware that an exceedance occurred until three to four weeks from the sample date. At that time, the discharger must begin four weeks of accelerated sampling, the outcome of which determines whether or not to proceed with the Action Plan. It is very likely that the results of all four accelerated samples will not be known within 60 days of the original trigger exceedance.

V.5

The scope of the required Action Plan is broad, requiring consideration of the cause of trigger exceedance(s), evaluation of existing programs, the feasibility of technology enhancements to improve plant performance, and an implementation schedule. Preparation of such an Action Plan should not be required until the four weeks of accelerated sampling have confirmed the need to proceed with the Action Plan, and enough time should then be provided for preparation of a meaningful Plan. We recommend that the deadline for the plan in Table 12 be changed to "Within 6 months of completing accelerated monitoring".

5. **Effluent Monitoring Requirements: Requirement of Grab Samples for Methylmercury (page E-3)**

Table E-2 defines the mercury monitoring requirements. According to the table, total mercury samples may be collected as 24-hour composite or grab samples, but methylmercury samples must be collected as grab samples. Methylmercury samples should also be allowed to be collected as 24-hour composite or grab samples. Palo Alto collects total mercury as a 24-hour composite sample using ultraclean sampling methods. The contract laboratory analyzes this single sample for both total and methyl mercury. Utilizing one sample, be it a grab or composite sample, for both total and methyl mercury analyses decreases the chances of sample contamination and provides stronger data on the proportion of total mercury present in the methylated form. If the table is not changed to allow composite samples for methylmercury, we request that a footnote be included stating that the Executive Officer may approve composite samples upon request of the discharger.

MRP.3

6. **General Monitoring and Reporting Requirements: Duplication of Reporting Requirements**

Palo Alto is concerned about the continuing proliferation of duplicate requirements for reporting, and about the confusion that is caused by inclusion of and reference to multiple sets of standard provisions in NPDES permits. Using mercury as an example and assuming adoption of the current Mercury Watershed Permit, Palo Alto will be subject to the following reporting requirements:

MRP.4

- Monthly Self Monitoring Reports providing results of regular monitoring

- Monthly Discharge Monitoring Reports providing results of regular monitoring in EPA format
- Annual Self Monitoring Report due on Feb. 1 of each year to be submitted to the Regional Water Board's Executive Officer and to a Mercury Watershed Permit Reporting address
- Report on all mercury source control programs in annual Pollutant Minimization Program (PMP) report due on last day of February
- Annual Report on Advanced Mercury Source Control program due on last day of February
- Annual Report on Mercury Public Outreach and Pollution Prevention Programs as part of stormwater annual report

MRP 4

These duplicative reporting requirements use significant staff resources that are limited and could better be applied to implementing programs. New initiatives such as the Mercury Watershed Permit should attempt to minimize duplicative reporting to the extent possible. For instance, all of the necessary data used to calculate the mass loading values on the "Annual Mercury Information Reporting Form Part 2 of 3" (page E-10) are already submitted to the Electronic Reporting System (ERS) by those dischargers using the ERS. The mass loadings could easily be calculated by the Regional Water Board using the ERS information, or new fields could be added to the ERS allowing dischargers to submit monthly and rolling annual average mass emission data. If it is necessary to utilize the reporting form because some dischargers are not yet using the ERS, the form should include a footnote stating that it will be discontinued once all dischargers are using the ERS.

MRP 4

Similarly, the information requested on the "Annual Mercury Information Reporting Form Part 3 of 3" (page E-12) duplicates information that would already be included in the annual PMP report (Palo Alto's Clean Bay Plan) that is due on the last day of February. The Mercury Watershed Permit should simply require that PMP reports contain this information.

7. **General Monitoring and Reporting Requirements: Compliance With Multiple Sets of Standard Provisions and Reporting Requirements**

MRP 5

We are concerned that including specific monitoring and reporting requirements in Watershed Permits, such as the current Tentative Order for mercury, will inevitably lead to confusion when permit requirements conflict with dischargers' existing NPDES permits. Permit requirements for submittal of Self Monitoring Program (SMP) Annual Reports provide a useful example.

MRP 5

Palo Alto's existing NPDES permit requires submission of monthly SMP Reports and a SMP Annual Report. The SMP Annual Report is due on the last day of February. However, a provision of the permit states that the Annual Report need not be submitted if all data has been previously submitted electronically. Palo Alto participates in the ERS, and therefore is not required to submit a SMP Annual Report.

In the Mercury Watershed Permit, Section IV.B.2 of the Monitoring and Reporting Program states: "*The Dischargers shall submit mercury data collected as part of this Order in the regular monthly or quarterly Self Monitoring Reports, and in the annual Self Monitoring Reports required in the Discharger's individual permit...*" Section IV.B.5 then states: "*Additionally, for reporting in the annual Self Monitoring Report due February 1, each Discharger shall provide its mercury information on the forms shown at the end of this section (pages E-9 through E-13) as an attachment to the cover letter for the annual report...*" This permit language seems to say that mercury data must be submitted in the SMP Annual Report only if required by the individual permit, but then goes on to require submission of mercury information forms as an attachment to the annual report. Further complicating the situation, Section IV.C of the Monitoring and Reporting Program says that dischargers participating in Optional Group Compliance Reporting must provide the mercury information forms to the a regional entity by February 15th, but must indicate in the cover letter of the February 1st SMP Annual Report their commitment to participate in the Group Compliance Reporting.

MRP-5

MRP-5

While the Mercury Watershed Permit may be attempting to standardize sampling and reporting requirements for all dischargers, we believe that a pollutant-specific permit is the wrong place to do this. Inclusion of sampling and reporting language in the Mercury Watershed Permit, even if intended to be specific to mercury, will conflict with the provisions of individual permits and lead to confusion. This effect will be exacerbated if additional pollutant-specific watershed permit are adopted in the future. Specific language on monitoring and reporting should remain in individual permits or, if the Regional Water Board wishes to fully standardize permit language, in a general permit for municipal wastewater dischargers.

Thank you very much for your consideration of these comments.

Best regards,

Phil Bobel, Manager
Environmental Compliance Division

# CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061






April 16, 2007

Received Fax copy
4/16/07 @ 13:55.
WT

Bruce Wolfe
Executive Officer
Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

*Via Facsimile 510.622.2457 and US Mail*

**Subject: Comments on Tentative Order NPDES No. CA0038849 (Waste Discharge Requirements for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay)**

Dear Mr. Wolfe:

The City of Petaluma appreciates the opportunity to comment on the proposed requirements for mercury discharges to the San Francisco Bay. Our only comment is to ask that the information related to Petaluma be updated. The correct contact information to be included in Table 4A is shown below:

| Facility Contact, Title, and Phone | Mailing Address |
|---|---|
| Michael J. Ban, P.E.<br>Director of Water Resources and Conservation<br>(707) 778-4487 | 202 N. McDowell Blvd.<br>Petaluma, CA 94954 |

If you have any questions, please feel free to contact me at (707) 778-4589.

Sincerely,

Margaret P. Orr, PE
Engineering Manager

***Water Resources & Conservation***
*202 N. McDowell Boulevard*
*Petaluma, CA 94954*

*Phone (707) 778-4546*
*Fax (707) 778-4508*
*E-Mail:*
*dwrc@ci.petaluma.ca.us*

cc. Lila Tang, Chief, Regional Water Board (*Via Facsimile 510.622.248 and US Mail*
Betsy Elzufon, Larry Walker Associates
Michael J. Ban, P.E., Director, Water Resources & Conservation
File 6210.10.10.1.9.2

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April 16, 2007

**VIA FACSIMILE: (510) 622-2460**

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

RE: Comments on the Tentative Order For Mercury from Wastewater Discharges in the San Francisco Bay Region (CA0038849)

Dear Mr. Wolfe:

The City of Sunnyvale appreciates the opportunity to comment on the Tentative Order (TO) for the Mercury Watershed Permit. Sunnyvale has actively participated throughout the course of the multi-year process involved in developing the San Franciso Bay mercury TMDL as well as the State Board's review of the TMDL, which form the basis of the subject Tentative Order. We concur with and incorporate by reference the comments submitted by BACWA on the subject TO.

See responses to BACWA comments.

Thank you again for the opportunity to participate once more in this process.

Very truly yours,

Lorrie B. Gervin, P.E.
Environmental Division Manager
City of Sunnyvale

Cc: David Kahn, City Attorney, City of Sunnyvale
Marvin Rose, City of Sunnyvale
Robert C. Thompson, LeBoeuf, Lamb, Greene & MacRae, LLP
Kathryn A. Berry, Assistant City Attorney, City of Sunnyvale
Michele M. Pla, Executive Director, BACWA
Adam W. Olivieri, EOA, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901



Lila Tang, Chief
NPDES Permits Division
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

April 16, 2007

Dear Ms. Tang:

Thank you for the opportunity to comment on the tentative order for the proposed NPDES permit reissuance for the waste discharge requirements for municipal and industrial wastewater discharges of mercury to San Francisco Bay (permit number CA0038849). We appreciate the hard work of the Water Board staff in developing this permit well in advance of submittal of the TMDL to EPA; the availability of this watershed permit will provide more certainty regarding TMDL implementation procedures.

As noted in footnote 5 on page 13 of the draft permit, the compliance schedule authorizing provisions in the TMDL implementation plan will be submitted to USEPA for approval. The compliance schedule provisions should be submitted to EPA concurrently with the TMDL, as EPA approval of the compliance schedule provisions is needed prior to the effective date of the watershed permit. With that understanding, we have the following comments on the CS provisions included in the watershed permit:

1. Consistent with EPA's November 29, 2006 letter from Alexis Strauss to Tom Howard, while compliance schedules may extend beyond the permit term, the permit must include, as enforceable permit provisions, all of the actions necessary under the compliance schedule, including interim requirements and final permit limitations. Please amend the draft permit to include the final waste load allocations, as well as the 10 year interim requirements. III.9

2. Given that the authorizing provision in the TMDL implementation plan requires compliance with the WLAs "within 10 and 20 years," we recommend adding the words "up to....." in two locations in footnote (5) located on page 13 of the permit. The language should read "the Municipal Dischargers listed in this table have *up to* 10 years to achieve the interim aggregate load limit and associated individual load limits, and *up to* 20 years to achieve the aggregated final...." III.10

3. Compliance schedules need to be consistent with EPA regulations at 40 CFR 122.47, which require that the compliance schedule be appropriate and require compliance as soon as possible. The Fact Sheet for the permit should describe how the "appropriate" and "as soon as possible" requirements have been satisfied. F.S.2

Thank you for your consideration of these comments. If you have any questions, please contact me at (415) 972-3420 or Nancy Yoshikawa at (415) 972-3535.

Sincerely,

Douglas E. Eberhardt, Chief
CWA Standards and Permits Office

# WEST COUNTY WASTEWATER DISTRICT

A Public Agency

2910 Hilltop Drive • Richmond, CA 94806-1974
Telephone (510) 222-6700 • Fax (510) 222-3277 • www.wcwd.org




April 16, 2007

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

**Subject: Comments on Tentative Order NPDES No. CA0038849 (Waste Discharge Requirements for Municipal and Industrial Wastewater Discharges of Mercury to San Francisco Bay)**

Dear Mr. Wolfe:

The West County Wastewater District (District) appreciates the opportunity to comment on the proposed requirements for mercury discharges to the San Francisco Bay. The District produces secondary effluent which is combined with City of Richmond effluent and discharged to the San Francisco Bay through the West County Agency Combined Outfall. A portion (currently 4 mgd) of the District's wastewater is diverted to East Bay Municipal Utility District's (EBMUD's) North Richmond Water Reclamation Plant (NRWRP). The District's secondary effluent is further treated to Title 22 tertiary standards at the NRWRP and provided to Chevron Products Company for use as cooling water at their Richmond Refinery. The cooling water tower blowdown is then discharged to the San Francisco Bay through Chevron's outfall. The District is proud to be a part of this project which saves approximately 1.5 billion gallons of potable water each year.

The District's comments on the proposed mercury requirements are related to **Special Provisions C.5. Mercury Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers** (located on page 19). This provision applies directly to the District's agreement to provide secondary effluent to EBMUD for its recycled water projects. The District's comments are itemized below (where specific changes to permit language are proposed, ~~strike-through~~ indicates text to be removed, while <u>underline</u> indicates text to be added):

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1. The mercury discharge adjustment is a complicated process that only benefits recycled water users, not the recycled water providers. In addition, it is inappropriate to make the recycled water provider accept responsibility for mercury that is not being discharged through its own outfall. By implementing this reverse adjustment, the Water Board may be discouraging future investments in recycled water infrastructure.

V.16

2. The impacts on the San Francisco Bay that occur from transferring wastewater (and its associated mercury content) can be tracked by the Water Board through bookkeeping and examination of monthly and annual Self Monitoring Reports submitted by the dischargers. The total mercury discharged to the Bay will be presented in these reports. It is not necessary to institute the concentration and mass adjustment procedures.

V.16

3. The Tentative Order does not provide notice to the recycled water provider of the recycled water user's intent to apply the Mass Adjustment. The annual report submitted by individual Dischargers to the Water Board (sample form provided on page E-10 of the T.O.) is the only mechanism shown for reporting the mass adjustment/effluent credit. If the effluent credit is claimed by the recycled water user, the provider should receive information on a monthly basis to determine the magnitude of the adjustment. This information may be critical in assessing actions required by the District under **Special Provisions V.C. 1. Triggers for Additional Mercury Control**. Additionally, this information may be needed by the District to prevent a de facto reduction in the District's individual wastewater allocation and an associated reduction in discharge capacity.

   The District is requesting removal of Special Provisions V.C.5. from the final Waste Discharge Requirements. If the provision must be retained, the District requests monthly information from the industrial Discharger on the amount of credit being claimed. If this information is received by the District in a timely manner, it will be included in the District's monthly Self Monitoring Reports. In order for the District to obtain and report the mass adjustment, the following change is suggested to Attachment E. Monitoring and Reporting Program:

MRP.6

MRP.6

> *Reporting Requirements IV.B.2. The Dischargers shall submit mercury data collected as part of the Order in the regular monthly or quarterly Self Monitoring Reports, and in the annual Self Monitoring Reports required in each Discharger's individual permit. If a Discharger monitors mercury more frequently than required by the Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the SMR. As required in each Discharger's individual permit, for those dischargers required to report monthly, monthly reports shall be due no later than 30 days after the end of the calendar month. For industrial Dischargers claiming an effluent credit for recycled water use pursuant to Provision V.C.5, the amount of credit claimed for that month shall be reported monthly to the municipal Discharger that supplied the recycled water. The reporting from the industrial Discharger to the municipal discharger shall be completed no later than 15 days following the end of the calendar month. The municipal and industrial Dischargers shall then include this information in their respective monthly SMRs. For those dischargers required to report quarterly in its individual permit, quarterly reports shall be due 30 days after the end of each calendar quarter. Annual reports shall be due on February 1 following each calendar year.*

V.15

4. The District is requesting removal of Special Provisions V.C.5. from the final Waste Discharge Requirements. If the provision must be retained, the District requests an alternate method of determining permit compliance with the mass effluent limits. A permit violation would be determined ***only if*** the recycled water provider (the Municipal

V.15

Discharger) ***and*** recycled water user (the Industrial Discharger) exceed their average annual mercury mass effluent limits ***and*** the total Municipal group limit is exceeded. This would be the situation where harm to the San Francisco Bay may actually be occurring. Suggested changes to the current enforcement language are provided in the following paragraph:

> *Special Provisions C.5.d. If an industrial Discharger opts to apply a Mass Emission Adjustment, the Regional Water Board shall transfer that Adjustment to the mass emission for the corresponding discharge interval from the municipal Discharger who is the producer and source of the recycled wastewater. If the reverse Adjustment results in calculated mass discharge levels above the municipal Discharger's and the industrial Discharger's Average Annual Mercury Mass Limits, and the Total Municipal Group mass limit as specified in the III.A is also exceeded., that municipal discharger is in violation of its mass limit and is subject to enforcement action by the Regional Water Board.*

V.15

We have also included the following editorial comments to ensure accuracy of permit information related to West County Agency and its members.

5. Table 4A. Additional Information on Municipal Facility (page 6)
   Facility Contact, Title, and Phone: E.J. Shalaby, District Manager ~~(510) 620-6538~~ (510) 222-6700
   Facility Design Flow (mgd): ~~18.5~~ 28.5

I.2

6. Table F-5. TMDL Mass Limits and Wasteload Allocations for Municipal Wastewater Dischargers (page F-16). Footnote (c) is attached to the West County Agency, Combined Outfall, 2000-2003 Initial Load Limit. This footnote indicates data quality concerns. The exact nature of these concerns should be detailed in the permit or through communication with West County Agency.

F.5.3

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me at (510) 222-6700 or eshalaby@wcwd.org.

Sincerely,

E.J. Shalaby
District Manager

cc. Lila Tang, Chief, S.F. Bay Regional Water Quality Control Board
Robert Schlipf, S.F. Bay Regional Water Quality Control Board
Dave Williams, East Bay Municipal Utility District
Denise H. Conners, Larry Walker Associates

**From:** "Kevin Buchan" <kbuchan@wspa.org>
**To:** "Lila Tang" <LTang@waterboards.ca.gov>
**Date:** 4/13/2007 12:59:46 PM
**Subject:** RE: Hg Watershed Permit & WSPA: cmts due 5pm, 4/16

We would be willing to be the group reporting mechanism only for the refineries if they were to choose that option. However, we would not be willing to do so for any non-refinery industrials. Thanks.

MRP.1

Kevin Buchan

Western States Petroleum Association

1415 L Street, Suite 600

Sacramento, CA 95814

(916) 498-7755

-----Original Message-----
From: Lila Tang [mailto:LTang@waterboards.ca.gov]
Sent: Friday, April 13, 2007 12:51 PM
To: Kevin Buchan
Subject: RE: Hg Watershed Permit & WSPA: cmts due 5pm, 4/16

All the industries have the option of reporting to WSPA, not just the refineries. If you are not comfortable with that, please comment. I might be able to work out something else with BACWA.

>>> "Kevin Buchan" <kbuchan@wspa.org> 4/13/2007 12:18:14 PM >>>

I left you a voicemail. If I read it correctly, the refineries would

have the option of reporting as a group under WSPA, or report

individually. I'm ok with that and if our Legal Counsel says we can't

go there, then I'll just inform the refineries that they need to report

individually.