

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

1515 Clay Street, Suite 1400, Oakland, California 94612
waterboards.ca.gov/sanfranciscobay

**TENTATIVE ORDER R2-2025-00XX
NPDES PERMIT CA0038466**

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

Discharger **City of Berkeley**
Name of Facility **Sewer Collection System**
Facility Address **2180 Milvia Street**
 Berkeley, CA 94704
 Alameda County

This Order was adopted on:

XXXXXX

This Order shall become effective on:

May 1, 2025

This Order shall expire on:

April 30, 2030

CIWQS regulatory measure number:

XXXXXXXX

The Discharger shall file a Report of Waste Discharge as an application for updated WDRs in accordance with title 23, California Code of Regulations, and an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than **November 1, 2029**. The U.S. Environmental Protection Agency (U.S. EPA) and the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) have classified this discharge as “**minor**.”

I hereby certify that this Order with all attachments is a full, true, and correct copy of the Order adopted by the Regional Water Board on the date indicated above.

Eileen White, Executive Officer

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1. FACILITY INFORMATION

Information describing the City of Berkeley's sewer collection system (Facility) is summarized on the cover page and in Fact Sheet (Attachment F) sections 1 and 2. Fact Sheet section 1 also includes information regarding the permit application.

2. FINDINGS

The Regional Water Board finds the following:

- 2.1. Legal Authorities.** This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370).
- 2.2. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information the Discharger submitted as part of its application, information obtained through monitoring and reporting programs, and other available information. The Fact Sheet contains background information and rationale for the requirements in this Order and is hereby incorporated into and constitutes findings for this Order. Attachments B and D are also incorporated into this Order.
- 2.3. Notification of Interested Parties.** The Regional Water Board notified the Discharger and interested agencies and persons of its intent to prescribe these WDRs and has provided an opportunity to submit written comments and recommendations. Fact Sheet section 8.1 provides details regarding the notification.
- 2.4. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Fact Sheet section 8.3 provides details regarding the public hearing.

THEREFORE, IT IS HEREBY ORDERED that Order R2-2020-0007 (previous order) is rescinded upon the effective date of this Order, except for enforcement purposes, and, in order to meet the provisions contained in Water Code division 7 (commencing with § 13000) and regulations adopted thereunder and the provisions of the CWA and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order. This action in no way prevents the Regional Water Board from taking enforcement action for violations of the previous order.

3. DISCHARGE PROHIBITIONS

- 3.1.** Discharge of untreated or partially-treated wastewater to a water of the United States is prohibited.

- 3.2.** Discharge of untreated or partially-treated wastewater that creates a nuisance as defined in California Water Code section 13050(m) is prohibited.
- 3.3.** Discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills to any surface water body is prohibited.
- 3.4.** Discharge shall not cause or contribute to discharges from the East Bay Municipal Utility District's Wet Weather Facilities that occur during wet weather or that are associated with wet weather.

4. PROVISION

The Discharger shall comply with all "Standard Provisions" in Attachment D. The Discharger shall properly operate and maintain its collection system, including controlling inflow and infiltration (see Attachment D section 1.4); reporting any noncompliance (see Attachment D section 5.5.1), with the exception noted below; and mitigating any discharge from the collection system in violation of this Order (see Attachment D section 1.3).

State Water Board Order WQ 2022-0103-DWQ (Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems) (statewide WDRs) contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. The statewide WDRs clearly and specifically stipulate requirements for reporting sanitary sewer overflows. Following the notification and reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachment D.

The Discharger is not required to report noncompliance with Prohibition 3.4.

ATTACHMENT A – NOT USED

ATTACHMENT B – COLLECTION SYSTEM SERVICE AREA

Figure B-1. Sewer Map



ATTACHMENT C – NOT USED

ATTACHMENT D – STANDARD PROVISIONS

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ATTACHMENT D – STANDARD PROVISIONS

1. STANDARD PROVISIONS – PERMIT COMPLIANCE

1.1. Duty to Comply

- 1.1.1. The Discharger must comply with all of the terms, requirements, and 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; permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof. (40 C.F.R. § 122.41(a); Wat. Code, §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)
- 1.1.2. The Discharger shall comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants 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).)

1.2. 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).)

1.3. Duty to Mitigate. The Discharger shall take all reasonable steps to minimize or prevent any discharge 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).)

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

1.5. Property Rights

- 1.5.1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)
- 1.5.2. 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).)

1.6. Inspection and Entry. The Discharger shall allow the Regional Water Board, State Water Board, U.S. EPA, 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 (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); Wat. Code, §§ 13267, 13383):

- 1.6.1. 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 (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); Wat. Code, §§ 13267, 13383);
- 1.6.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); Wat. Code, §§ 13267, 13383);
- 1.6.3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); Wat. Code, §§ 13267, 13383); and
- 1.6.4. Sample or monitor, at reasonable times, for the purposes of ensuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); Wat. Code, §§ 13267, 13383.)

1.7. Bypass

1.7.1. Definitions

- 1.7.1.1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
- 1.7.1.2. "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).)
- 1.7.2. **Bypass not exceeding limitations.** The Discharger may allow any bypass to occur that does not cause exceedances of effluent limitations, but only if it is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance sections 1.7.3, 1.7.4, and 1.7.5 below. (40 C.F.R. § 122.41(m)(2).)

- 1.7.3. **Prohibition of bypass.** Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
- 1.7.3.1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
- 1.7.3.2. 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
- 1.7.3.3. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance section 1.7.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)
- 1.7.4. **Approval.** 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 section 1.7.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)
- 1.7.5. **Notice**
- 1.7.5.1. **Anticipated bypass.** If the Discharger knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass. The notice shall be sent to the Regional Water Board. As of December 21, 2025, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10 below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(i).)
- 1.7.5.2. **Unanticipated bypass.** The Discharger shall submit a notice of an unanticipated bypass as required in Standard Provisions – Reporting section 5.5 below (24-hour notice). The notice shall be sent to the Regional Water Board. As of December 21, 2025, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10 below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(ii).)
- 1.8. **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).)

- 1.8.1. **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 section 1.8.2 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).)
- 1.8.2. **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)):
 - 1.8.2.1. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
 - 1.8.2.2. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
 - 1.8.2.3. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting section 5.5.2.2 below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
 - 1.8.2.4. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance section 1.3 above. (40 C.F.R. § 122.41(n)(3)(iv).)
- 1.8.3. **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).)

2. STANDARD PROVISIONS – PERMIT ACTION

- 2.1. **General.** This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)
- 2.2. **Duty to Reapply.** If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

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

3. STANDARD PROVISIONS – MONITORING

- 3.1.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)
- 3.2.** Monitoring must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. chapter 1, subchapter N. Monitoring must be conducted according to sufficiently sensitive test methods approved under 40 C.F.R. part 136 for the analysis of pollutants or pollutant parameters or as required under 40 C.F.R. chapter 1, subchapter N. For the purposes of this paragraph, a method is sufficiently sensitive when:
- 3.2.1.** The method minimum level (ML) is at or below the level of the most stringent effluent limitation established in the permit for the measured pollutant or pollutant parameter, and either the method ML is at or below the level of the most stringent applicable water quality criterion for the measured pollutant or pollutant parameter or the method ML is above the applicable water quality criterion but the amount of the pollutant or pollutant parameter in the facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or
- 3.2.2.** The method has the lowest ML of the analytical methods approved under 40 C.F.R. part 136 or required under 40 C.F.R. chapter 1, subchapter N, for the measured pollutant or pollutant parameter.

In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. chapter 1, subchapter N, monitoring must be conducted according to a test procedure specified in this Order for such pollutants or pollutant parameters. (40 C.F.R. §§ 122.21(e)(3), 122.41(j)(4), 122.44(i)(1)(iv).)

4. STANDARD PROVISIONS – RECORDS

- 4.1.** 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).)

4.2. Records of monitoring information shall include:

- 4.2.1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
- 4.2.2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
- 4.2.3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
- 4.2.4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
- 4.2.5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
- 4.2.6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)

4.3. Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):

- 4.3.1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
- 4.3.2. Permit applications and attachments, permits, and effluent data. (40 C.F.R. § 122.7(b)(2).)

5. STANDARD PROVISIONS – REPORTING

5.1. Duty to Provide Information. The Discharger shall furnish to the Regional Water Board, State Water Board, or U.S. EPA within a reasonable time, any information that the Regional Water Board, State Water Board, or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Regional Water Board, State Water Board, or U.S. EPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, §§ 13267, 13383.)

5.2. Signatory and Certification Requirements

- 5.2.1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Standard Provisions – Reporting sections 5.2.2, 5.2.3, 5.2.4, 5.2.5, and 5.2.6 below. (40 C.F.R. § 122.41(k).)
- 5.2.2. For a corporation, all permit applications shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) 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 (2) the

manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that 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 ensure 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 a partnership or sole proprietorship, all permit applications shall be signed by a general partner or the proprietor, respectively. (40 C.F.R. § 122.22(a)(2).)

For a municipal, state, federal, or other public agency, 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 (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA). (40 C.F.R. § 122.22(a)(3).)

- 5.2.3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or U.S. EPA shall be signed by a person described in Standard Provisions – Reporting section 5.2.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- 5.2.3.1. The authorization is made in writing by a person described in Standard Provisions – Reporting section 5.2.2 above (40 C.F.R. § 122.22(b)(1));
 - 5.2.3.2. 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
 - 5.2.3.3. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
 - 5.2.4. If an authorization under Standard Provisions – Reporting section 5.2.3 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 section 5.2.3 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).)

- 5.2.5. Any person signing a document under Standard Provisions – Reporting section 5.2.2 or 5.2.3 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).)

- 5.2.6. Any person providing the electronic signature for documents described in Standard Provisions – Reporting sections 5.2.1, 5.2.2, or 5.2.3 that are submitted electronically shall meet all relevant requirements of Standard Provisions – Reporting section 5.2, and shall ensure that all relevant requirements of 40 C.F.R. part 3 (Cross-Media Electronic Reporting) and 40 C.F.R. part 127 (NPDES Electronic Reporting Requirements) are met for that submission. (40 C.F.R. § 122.22(e).)

5.3. Monitoring Reports

- 5.3.1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.41(l)(4).)
- 5.3.2. 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. All reports and forms must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10 and comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(l)(4)(i).)
- 5.3.3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. chapter 1, subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Regional Water Board or State Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)

- 5.3.4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

5.4. 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).)

5.5. Twenty-Four Hour Reporting

- 5.5.1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written report shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The report 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.

For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (i.e., combined sewer overflow, sanitary sewer overflow, or bypass event), type of overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volume untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the event, and whether the noncompliance was related to wet weather.

As of December 21, 2025, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events must be submitted to the Regional Water Board and must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10. The reports shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

- 5.5.2. The following shall be included as information that must be reported within 24 hours:
- 5.5.2.1. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
- 5.5.2.2. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)

5.5.3. The Regional Water Board may waive the above required written report on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(ii)(B).)

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

5.6.1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or

5.6.2. 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 unless the discharge is an existing manufacturing, commercial, mining, or silvicultural discharge as referenced in 40 C.F.R. section 122.42(a). (40 C.F.R. § 122.41(l)(1)(ii).) If the discharge is an existing manufacturing, commercial, mining, or silvicultural discharge as referenced in 40 C.F.R. section 122.42(a), this notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under 40 C.F.R. section 122.42(a)(1) (see Additional Provisions – Notification Levels section 7.1.1). (40 C.F.R. § 122.41(l)(1)(ii).)

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

5.8. Other Noncompliance. The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting sections 5.3, 5.4, and 5.5 above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting section 5.5 above. For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in Standard Provision – Reporting section 5.5 and the applicable required data in appendix A to 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(7).)

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

5.10. Initial Recipient for Electronic Reporting Data. The owner, operator, or duly authorized representative is required to electronically submit NPDES information specified in appendix A to 40 C.F.R. part 127 to the initial recipient defined in 40 C.F.R. § 7.2(b). U.S. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group (see 40 C.F.R. § 127.2(c)). U.S. EPA will update and maintain this list. (40 C.F.R. § 122.41(l)(9).)

6. STANDARD PROVISIONS – ENFORCEMENT

6.1. 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, Water Code sections 13268, 13385, 13386, and 13387.

7. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS

7.1. 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)):

7.1.1. 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)):

7.1.1.1. 100 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(1)(i));

7.1.1.2. 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));

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

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

7.1.2. 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)):

7.1.2.1. 500 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(2)(i));

7.1.2.2. 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(2)(ii));

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

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

7.2 Publicly Owned Treatment Works (POTWs)

- 7.2.1. All POTWs shall provide adequate notice to the Regional Water Board of any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA sections 301 or 306 if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)).
- 7.2.2. All POTWs shall provide adequate notice to the Regional Water Board of 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 this Order. (40 C.F.R. § 122.42(b)(2).)
- 7.2.3. 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 – NOT USED

ATTACHMENT F – FACT SHEET

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ATTACHMENT F – FACT SHEET

This Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order. As described in section 2.2 of the Order, the Regional Water Board incorporates this Fact Sheet as findings supporting the issuance of the Order.

1. PERMIT INFORMATION

The following table summarizes administrative information related to the facility.

Table F-1. Facility Information

WDID	2 019069001
CIWQS Place ID	209313
Discharger	City of Berkeley
Facility Name	Sewer Collection System
Facility Address	Berkeley City Limits, Alameda County
Facility Contact, Title, Phone, and Email	Ron Nevels, Manager of Engineering (510) 981-6439, rnevels@berkeleyca.gov
Authorized Person to Sign and Submit Reports	Terrance Davis, Public Works Director, (510) 981-6300, tdavis@cityofberkeley.info
Mailing Address	2180 Milvia Street, Berkeley, CA 94704
Billing Address	1947 Center Street, Berkeley, CA 94704
Facility Type	Sewer Collection System
Major or Minor Facility	Minor
Water Quality Threat	2
Complexity	B
Pretreatment Program	No
Reclamation Requirements	Not applicable
Facility Permitted Flow	0 gallons per day
Facility Design Flow	Not applicable
Watershed	San Francisco Bay
Receiving Water	Various
Receiving Water Type	Enclosed Bay
Date of Last Inspection	May 29, 2024

- 1.1.** The City of Berkeley (Discharger) owns and maintains a wastewater collection system that serves a population of about 125,000 people in the City of Berkeley.

The Discharger is one of seven East Bay Communities or “Satellite Agencies” that operate wastewater collection systems in the East Bay and route sewage to the East Bay Municipal Utility District’s (EBMUD’s) wastewater treatment facilities. The other six East Bay Communities are the cities of Alameda, Albany, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District. Wastewater collected from the East Bay Communities’ collection systems flows to interceptors owned

and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay under a separate National Pollutant Discharge Elimination System (NPDES) permit (Permit CA0037702).

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

- 1.2. The Discharger is regulated pursuant to NPDES Permit CA0038466. The Discharger was subject to Order R2-2020-0007 (previous order), which expired March 31, 2025. Pursuant to California Code of Regulations, title 23, section 2235.4, the terms and conditions of an expired permit are automatically continued pending reissuance of the permit if the Discharger complies with all requirements for continuation of expired permits. (See 40 C.F.R § 122.6(d).) The Discharger filed a Report of Waste Discharge and submitted an application for reissuance of its Waste Discharge Requirements (WDRs) and NPDES permit on January 3, 2024. The Discharger is also regulated under the State Water Board Order WQ 2022.0103-DWQ (Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems).
- 1.3. Clean Water Act section 402(b)(1)(B) limits the duration of NPDES permits to a fixed term not to exceed five years. Accordingly, this Order limits the effective period for the discharge authorization. Pursuant to California Code of Regulations, title 23, section 2235.4, the terms and conditions of an expired permit are automatically continued pending reissuance of the permit if the Discharger complies with all requirements for continuation of expired permits (40 C.F.R. § 122.6(d)).

2. FACILITY DESCRIPTION

2.1. Description of Sewer Collection System

The Discharger owns and operates about 255 miles of gravity sanitary sewer mains, 0.7 miles of force mains, and 7 pump stations in the City of Berkeley in Alameda County. In addition to serving the City of Berkeley, the Discharger’s wastewater collection system carries wastewater flows originating from sewer mains owned and operated by the University of California, Berkeley; the Lawrence Berkeley National Laboratory; the Stege Sanitary District; and the cities of Albany and Oakland. The wastewater collection system transports wastewater from industrial, commercial, and residential sources to EBMUD’s main wastewater treatment plant, where EBMUD treats the wastewater and discharges it to San Francisco Bay. During wet weather, because of increased flows caused by excessive inflow and infiltration (I/I) from the Discharger’s and others’ collection systems tributary to EBMUD facilities, the wastewater also flows to EBMUD’s Wet Weather Facilities (WWFs), where EBMUD stores the wastewater or partially

treats it prior to discharge to San Francisco Bay in violation of NPDES Permit CA0038440, which prohibits discharges from EBMUD's WWFs.

2.2. Discharge Point and Receiving Waters

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

2.3. Compliance Summary

The previous order included the following discharge prohibitions:

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

The Discharger violated the first of these prohibitions 12 times over the past five years. Table F-2 summarizes the Discharger's sanitary sewer overflows (SSOs) resulting in discharges to waters of the United States (Category 1 SSOs) from 2019 through 2023 and the primary causes of these discharges.

Table F-2. Category 1 SSOs and Primary Causes

Year	No. of SSOs	Cause: Pipe Failure (%)	Cause: Grease (%)	Cause: Debris (%)	Cause: Capacity (%)	Cause: Roots (%)
2019	3	2	1	-	-	-
2020	3	-	2	1	-	-
2021	1	-	1	-	-	-
2022	2	-	-	-	1	1
2023	3	1	-	-	-	2

U.S. EPA and the Regional Water Board issued a demand letter, dated May 6, 2022, for \$800 in stipulated penalties for SSOs between July 1, 2019, and June 30, 2021. U.S. EPA and the Regional Water Board also issued a demand letter, dated April 10, 2024, for \$600 in stipulated penalties for SSOs between July 1, 2021, and June 30, 2023.

The Discharger also violated the fourth prohibition by causing or contributing to discharges from the EBMUD WWFs. WWF discharges occurred and will continue

to occur during wet weather due to excessive I/I into the Discharger's wastewater collection system. The excessive I/I increases peak wastewater flows to EBMUD's system that the WWFs cannot fully store and thus must discharge.

To eliminate WWF discharges, the Regional Water Board, the State Water Resources Control Board (State Water Board), and U.S. EPA sued the Discharger, the other East Bay Communities, and EBMUD in 2009 for their permit violations, and a Consent Decree was lodged and entered by the court on September 22, 2014 (*United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region (Plaintiffs), San Francisco Baykeeper and Our Children's Earth (Intervenor-Plaintiffs) v. East Bay Municipal Utility District, and United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region, San Francisco Baykeeper and Our Children's Earth v. Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont and Stege Sanitary District, U.S. District Court, Northern District of California (Consolidated Case Nos. C 09-00186-RS and C 09-05684-RS)*). The Consent Decree requires the Discharger to achieve specified sewer cleaning rates, to rehabilitate its sewer mains and manholes, to eliminate I/I sources, and to assist in implementing a regional private sewer lateral rehabilitation program, among other requirements. It also requires the elimination of WWF discharges by 2035 and describes treatment levels to be met during the period of the Consent Decree.

2.4. Background and Regulatory History

- 2.4.1. **History.** The wastewater collection systems for the East Bay Communities were originally constructed in the early twentieth century. These systems included cross-connections to storm drain systems, and, while not uncommon at the time of construction, some of the sewers were later characterized as having inferior materials, poor joints, and inadequate beddings for sewer pipes. The poor construction coupled with landscaping, particularly trees, damaged sewers and caused leaks. Poor construction techniques and aging sewer pipes resulted in excessive I/I during wet weather. By the early 1980s, the collection systems could sometimes receive up to 20 times more flow during storms than during dry weather. As a result, the East Bay Communities' collection systems risked overflows to streets, local watercourses, and San Francisco Bay, creating public health risks and threatening water quality.
- 2.4.2. **Effect on EBMUD's Interceptor System.** The East Bay Communities' collection systems are connected to EBMUD's interceptors. By the early 1980s, excessive I/I from the East Bay Communities' collection systems could sometimes force EBMUD's interceptors to overflow untreated wastewater at seven designed overflow structures along the San Francisco Bay shoreline.

- 2.4.3. **EBMUD Wet Weather Permits.** The Regional Water Board first issued an NPDES permit to EBMUD in 1976 for the wet weather discharges from EBMUD's interceptors. The permit required EBMUD to eliminate the discharge of untreated overflows from its interceptors and to protect water quality in San Francisco Bay. The Regional Water Board reissued the permit in 1984, 1987, 1992, 1998, 2005, 2009, 2014, and 2020. The Regional Water Board incorporated additional requirements following WWF construction.
- 2.4.4. **Collection System Permits for East Bay Communities.** Following the issuance of the wet weather permit to EBMUD in 1976, the Regional Water Board issued similar permits to all the East Bay Communities, except the City of Emeryville. The Regional Water Board reissued those permits in 1984, 1989, 1994, 2004, 2009, 2014, and 2020. Originally, the Regional Water Board did not issue the City of Emeryville a permit because it believed no wet weather overflows occurred in the City of Emeryville's service area. However, the Regional Water Board subsequently identified wet weather overflows in the City of Emeryville and issued a permit in 2004 (reissued in 2009, 2014, and 2020).
- 2.4.5. **East Bay I/I Study and I/I Correction Program.** In response to the requirements in the NPDES permits regarding the control of untreated overflows from EBMUD's interceptors and the East Bay Communities' collection systems, EBMUD and the East Bay Communities coordinated efforts to develop a program to achieve compliance. In 1980, EBMUD and the East Bay Communities, including the Discharger, initiated a six-year \$16.5 million East Bay I/I Study, primarily funded by the Clean Water Grant Program. The study outlined recommendations for a long-range sewer improvement program called the East Bay I/I Correction Program. The East Bay I/I Study also set forth compliance plans for each of the East Bay Communities to complete specific sewer rehabilitation projects identified by the I/I Correction Program. The compliance plans proposed to implement the I/I Correction Program over 20 years to eliminate wet weather overflows from the East Bay Communities' collection systems up to the five-year storm event. The total program cost was estimated to be about \$300 million in 1985 dollars. These compliance plans were later incorporated into Cease and Desist Order (CDO) 86-17 (discussed below).
- 2.4.6. **Joint Powers Agreement (JPA).** To address I/I problems in the East Bay Communities' wastewater collection systems, on February 13, 1979, the East Bay Communities and EBMUD entered into a JPA under which EBMUD served as administrative lead agency to conduct the East Bay I/I Study. The JPA was amended on January 17, 1986, to designate EBMUD as the lead agency during the initial five-year implementation phase of the East Bay I/I Study recommendations. The amended JPA also delegated authority to EBMUD to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather programs, and to perform other related tasks. Programs developed under the JPA were directed by a Technical Advisory Board

composed of one voting representative from each of the East Bay Communities and EBMUD. In addition, one non-voting staff member of the Regional Water Board, the State Water Board, and U.S. EPA were invited to participate.

- 2.4.7. **Cease and Desist Order.** In 1986, the Regional Water Board issued CDO 86-17 to the East Bay Communities, including the City of Emeryville (reissued as CDO 93-134). The CDO required the East Bay Communities to cease and desist discharging from their wastewater collection systems. It directed the I/I Correction Program to focus on conducting activities that reduce public health impacts. In 2009, the Regional Water Board amended the CDO for the City of Oakland (CDO R2-2009-0087) to require rehabilitation of sewer mains instead of construction of relief sewers because relief sewers would not reduce I/I, and because a long-term solution that significantly reduced excessive I/I was needed since EBMUD was no longer allowed to discharge from its WWFs. In 2011, the Regional Water Board rescinded the CDO for the Stege Sanitary District, and the cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont because these East Bay Communities had completed all the work the CDO required.
- 2.4.8. **EBMUD's Wet Weather Program.** From 1975 to 1987, EBMUD underwent its own wet weather program planning and developed a comprehensive Wet Weather Program. The objective of the program was that EBMUD's WWFs would have the capacity to accommodate peak flows from the East Bay Communities' trunk sewers at the end of the I/I Correction Program implementation period. In 1987, EBMUD started implementing the program, which involved constructing three WWFs, two wet weather interceptors, and new storage basins and pumping facilities; expanding the main wastewater treatment plant; and eliminating two out of the seven then existing wet weather overflow structures.
- 2.4.9. **Updates to I/I Correction Program.** In 1993, after the Regional Water Board notified the East Bay Communities that it was considering a new CDO, the East Bay Communities requested the opportunity to revise their Compliance Plans due to increased costs. New technological developments and the inadequacy of methods previously thought viable for sewer rehabilitation and relief line installation had significantly increased the cost of the original I/I Correction Program. The revised Compliance Plans incorporated the experience gained from the implementation of the I/I Correction Program to better address the remaining I/I Correction Program projects.
- 2.4.10. **Extensions to Compliance Plans.** The increase in project costs necessitated extensions of the schedules in the original Compliance Plans to minimize impacts on ratepayers. As a result, all the East Bay Communities, except the Stege Sanitary District and the City of Emeryville, submitted revised Compliance Plans and schedules in October 1993. The Regional Water Board

granted the cities of Albany, Alameda, Berkeley, Oakland, and Piedmont five- to ten-year extensions to the original compliance schedules in CDO 93-134.

- 2.4.11. **2009 Permit and Lawsuits.** In November 2009, the Regional Water Board reissued the Discharger's permit, which included a new prohibition against the Discharger operating its collection system in a manner that caused or contributed to discharges from EBMUD's WWFs. The change reflected State Water Board Order WQ 2007-0004, which held that EBMUD's WWFs are subject to secondary treatment requirements. Thereafter, after confirming with EBMUD that secondary treatment is impossible at the WWFs, the Regional Water Board prohibited discharges from the WWFs through Order R2-2009-0004. Shortly afterward, in January 2009, U.S. EPA and the Regional and State Water Boards sued EBMUD for discharges in violation of this prohibition based on EBMUD's inability to comply. U.S. EPA also filed a separate lawsuit in December 2009 against the East Bay Communities for violations of their permits for sewer overflows and failure to properly operate and maintain their sewer systems in a manner that does not cause or contribute to discharges from the WWFs. The Regional and State Water Boards joined that lawsuit as plaintiffs. San Francisco Baykeeper and Our Children's Earth intervened. The result was partial remedies in the form of Stipulated Orders for Preliminary Relief.

The EBMUD Stipulated Order required EBMUD to, among other things, conduct flow monitoring on the East Bay Communities collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private sewer laterals, and develop an asset management template for managing wastewater collection systems. EBMUD conducted several studies to provide the basis for developing many of the technical provisions of the EBMUD Stipulated Order. One conclusion of these studies was that, while the East Bay Communities had made significant progress in reducing I/I through the I/I Correction Program and subsequent sewer pipe rehabilitation, it was unlikely that these projects would be sufficient to reduce flows from the East Bay Communities to the extent that WWF discharges would be eliminated or significantly reduced. The cooperation of each community in the development and implementation of the programs specified above, along with repairing and rehabilitating their own wastewater collection systems, would be critical to achieving the wet weather flow reductions within each system necessary to eliminate WWF discharges.

The East Bay Communities Stipulated Order required the communities to take interim steps to address excessive I/I from their collection systems that contribute to WWF discharges.

- 2.4.12. **2014 Consent Decree.** The EBMUD and East Bay Communities lawsuits were consolidated, and on September 22, 2014, the court entered a single Consent Decree that included the final remedy to eliminate discharges by 2028 at the

San Antonio Creek WWF, by 2034 at the Point Isabel WWF, and by 2036 at the Oakport WWF.

- 2.4.13. **2022 Mid-Course Check-In.** To ensure that EBMUD and the East Bay Communities make sufficient progress toward complying with the Consent Decree's requirement to eliminate WWF discharges, the Consent Decree required a Mid-Course Check-In Output Test in 2022. This output test used a hydraulic model EBMUD developed to evaluate WWF performance under template storm conditions, calibrated to incorporate the improvements made since Consent Decree adoption. The modeled volume of water discharged from the WWFs during the template storm using the newly calibrated model is compared to the baseline modeled volume discharged before any rehabilitation work was performed. The ratio of these flows is called the Output Ratio. The Consent Decree specifies output ratio benchmarks to be met at each WWF by the date of the Mid-Course Check-In. As described in EBMUD's report *2021/2022 Flow Model Calibration, WWF Output Ratios, and Output Test Results*, dated September 30, 2022, EBMUD and the East Bay Communities met the Consent Decree's target output ratios for the 2022 Mid-Course Check-In and are on track to meet the Consent Decree's deadlines for eliminating WWF discharges. The specific output ratios and Consent Decree-specified targets are provided in the table below.

Table F-3. Output Ratios and Consent Decree Targets

Wet Weather Facility	Output Ratios	Consent Decree Targets		
	Three-Year Average (FY20-22)	Three-Year Average (FY20-22)	Three-Year Average (FY28-30)	Final Compliance
San Antonio Creek	36%	43%	0%	0% by 2028
Point Isabel	50%	53%	18%	0% by 2034
Oakport	59%	65%	31%	0% by 2036

- 2.4.14. **Rehabilitation Progress.** The Consent Decree requires the Discharger to complete specified work, including, but not limited to, the following:
- Rehabilitate 1.6 percent of total feet of sewer mains per fiscal year (22,120 feet) on a rolling three-fiscal year average, where the fiscal year is defined as July 1 through June 30;
 - Perform condition assessments at a rate of 10 percent per year of total feet of sewer mains that are more than ten years old and are not scheduled for rehabilitation in the next ten years (79,200 feet per fiscal year) on a three-fiscal year rolling average, to be completed by June 30, 2020, and thereafter not allow more than 20 years to elapse between inspections of any given sewer main;

- Implement the Discharger's approved local ordinance for the inspection and repair or rehabilitation of private (upper) sewer laterals;
- Rehabilitate lower laterals whenever the Discharger rehabilitates an associated sewer main, among other triggering events;
- Eliminate or require elimination of high priority sources identified by EBMUD's Regional Technical Support Program within 24 months of identification;
- Repair acute defects in sewer pipes as soon as possible, but no later than within 12 months of identification, to prevent sanitary sewer overflows; and
- Clean at least 269,280 unique and hot spot feet of sewer main per fiscal year on a three-fiscal year rolling average.

From July 1, 2018, through June 30, 2023, the Discharger met the requirements of the Consent Decree.

The Discharger has rehabilitated 93,266 feet of sewer lines during this timeframe. However, compliance with the Consent Decree rehabilitation requirements is evaluated against a three-year rolling average of 22,120 feet. This requirement was met each fiscal year, with two exceptions. In FY20/21, the Discharger rehabilitated 23,277 feet of sewer, but only reached a three-year average of 20,607 feet due to a low rehabilitation rate in FY18/19. The Discharger continued their planned rehabilitation projects and met the Consent Decree requirement by September 15, 2021. In FY22/23, the Discharger rehabilitated 11,008 feet, which brought the three-year average to 18,240 feet. The Discharger continued their planned rehabilitation projects and completed an additional 12,332 feet to meet the Consent Decree requirement by January 22, 2024.

The Discharger completed its efforts to inspect its entire collection system in FY19/20, meeting the Consent Decree requirement to inspect the entire system by June 30, 2020. The Discharger is in the process of incorporating inspection return frequencies on sewer lines into its maintenance management system which will, at a minimum, meet the Consent Decree requirement of a maximum 20-year return frequency.

The Discharger met the sewer lateral program implementation requirements of the Consent Decree by managing and continuing to implement its local PSL program that is no less stringent than EBMUD's regional PSL program.

The Discharger eliminated two high priority I/I sources within 24 months of EBMUD's notification, as required by the Consent Decree, along with 12 non-high priority I/I sources.

The Discharger repaired 104 acute defects within one year of identification, as required by the Consent Decree, and 4 shortly after the 12-month timeframe expired. The Discharger did not note any SSOs as a result of not repairing Acute Defects in time.

Since FY18/19, the City has met the Consent Decree requirement to clean 269,280 feet of sewer on a three-year rolling average, including unique sewer line cleanings and hot spot cleanings.

3. APPLICABLE PLANS, POLICIES, AND REGULATIONS

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

3.1. Legal Authorities. This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by the U.S. EPA, and Water Code chapter 5.5, division 7 (commencing with § 13370). It serves as an NPDES permit authorizing the Discharger to discharge into waters of the United States at the discharge location described in Table 1 subject to the WDRs in this Order.

3.2. California Environmental Quality Act (CEQA). Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code division 13, chapter 3 (commencing with § 21100).

3.3. State and Federal Laws, Regulations, Policies, and Plans

3.3.1. Water Quality Control Plan. The Regional Water Board adopted the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan), which designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Requirements in this Order implement the Basin Plan. In addition, this Order implements State Water Board Resolution 88-63, which established State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Because of the marine influence on Central and Lower San Francisco Bay, total dissolved solids levels exceed 3,000 mg/L; therefore, Central and Lower San Francisco Bay meets an exception to State Water Board Resolution 88-63. Therefore, the beneficial uses applicable to Central and Lower San Francisco Bay and its tributaries are as follows:

Table F-4. Beneficial Uses

Receiving Water	Beneficial Uses
Central and Lower San Francisco Bay and its Tributaries	Industrial Service Supply (IND) Industrial Process Supply (PROC) Commercial and Sport Fishing (COMM) Estuarine Habitat (EST) Marine Habitat (MAR) Fish Migration (MIGR) Preservation of Rare and Endangered Species (RARE) Shellfish Harvesting (SHELL) Fish Spawning (SPWN) Wildlife Habitat (WILD) Water Contact Recreation (REC1) Non-Contact Water Recreation (REC2) Navigation (NAV)

- 3.3.2. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** The NTR and CTR contain federal water quality criteria for priority pollutants. U.S. EPA adopted the NTR on December 22, 1992, and amended it on May 4, 1995, and November 9, 1999. About 40 NTR criteria apply in California. U.S. EPA adopted the CTR on May 18, 2000. The CTR promulgated new toxics criteria for California and incorporated the NTR criteria that applied in the State. U.S. EPA amended the CTR on February 13, 2001.
- 3.3.3. **State Implementation Policy.** The State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP) on March 2, 2000. The SIP establishes implementation provisions for priority pollutant criteria and objectives, and provisions for chronic toxicity control. The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria U.S. EPA promulgated for California through the NTR and the priority pollutant objectives the Regional Water Board established through the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria U.S. EPA promulgated through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. Requirements of this Order implement the SIP.
- 3.3.4. **Bacteria Objectives.** The State Water Board adopted the *Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Part 3, Bacteria Provisions and a Water Quality Standards Variance Policy* on August 7, 2018, and it became effective on March 22, 2019. This plan establishes enterococcus bacteria water quality objectives and related implementation provisions for discharges to marine and estuarine waters that support the water contact recreation (REC1) beneficial use.
- 3.3.5. **Sediment Quality.** The State Water Board adopted the *Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality* on

September 16, 2008, and it became effective on August 25, 2009. The State Water Board adopted amendments to the plan on June 5, 2018, that became effective on March 11, 2019. This plan establishes sediment quality objectives and related implementation provisions for specifically defined sediments in most bays and estuaries.

- 3.3.6. **Antidegradation Policy.** Federal regulations at 40 C.F.R. section 131.12 require that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy through State Water Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing water quality be maintained unless degradation is justified based on specific findings. The Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Permitted discharges must be consistent with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution 68-16.
- 3.3.7. **Anti-Backsliding Requirements.** CWA sections 402(o) and 303(d)(4) and 40 C.F.R. section 122.44(l) restrict backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations, standards, and conditions in a reissued permit be as stringent as those in the previous permit, with some exceptions in which requirements may be relaxed.
- 3.3.8. **Endangered Species Act Requirements.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050 to 2097) or Federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect the beneficial uses of waters of the State, including protecting rare, threatened, or endangered species. The Discharger is responsible for meeting all applicable Endangered Species Act requirements.
- 3.3.9. **Sewage Sludge and Biosolids.** U.S. EPA administers 40 C.F.R. part 503, Standards for the Use or Disposal of Sewage Sludge, which regulates the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a municipal wastewater treatment facility. This Order does not authorize any act that violates those requirements. The Discharger is responsible for meeting applicable requirements of 40 C.F.R. part 503.
- 3.3.10. **Toxicity Provisions.** The State Water Board adopted the *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions) on October 5, 2021. U.S. EPA approved the Toxicity Provisions on May 1, 2023. Toxicity Provisions sections II.C.1 and II.C.2 establish numeric chronic and acute

toxicity objectives that apply to all inland surface waters, enclosed bays, and estuaries in the State with aquatic life beneficial uses. The Toxicity Provisions include related implementation provisions and require that compliance with the chronic toxicity water quality objectives be assessed using U.S. EPA's Test of Significant Toxicity (TST) (U.S. EPA, *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* (EPA/833-R-10-003), June 2010).

- 3.4. Impaired Water Bodies on CWA section 303(d) List.** On May 11, 2022, U.S. EPA approved a revised list of impaired waters pursuant to CWA section 303(d), which requires identification of specific water bodies where it is expected that water quality standards will not be met after implementation of technology-based effluent limitations on point sources. Where it has not done so already, the Regional Water Board plans to adopt Total Maximum Daily Loads (TMDLs) for pollutants on the 303(d) list. TMDLs establish wasteload allocations for point sources and load allocations for nonpoint sources and are established to achieve water quality standards. Central and Lower San Francisco Bay and its tributaries are listed as impaired by a number of pollutants; however, this Order does not contribute to those impairments because it prohibits discharge.

4. RATIONALE FOR DISCHARGE PROHIBITIONS AND REQUIREMENTS

4.1. Discharge Prohibitions

- 4.1.1. Discharge Prohibition 3.1 (No untreated or partially treated wastewater discharges to Waters of the United States):** This prohibition is based on the Clean Water Act, which prohibits discharges of wastewater that does not meet secondary treatment standards as specified in 40 C.F.R. Part 133. Additionally, the Basin Plan Table 4-1, Discharge Prohibition 15, prohibits discharge of raw sewage or any waste failing to meet WDRs to any waters of the basin.
- 4.1.2. Discharge Prohibition 3.2 (No untreated or partially treated wastewater that creates a nuisance):** This prohibition is based on California Water Code section 13263, which requires the Regional Water Board to prescribe WDRs that prevent nuisance conditions.
- 4.1.3. Discharge Prohibition 3.3 (No discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spills):** Basin Plan section 3.3.18 states, "All waters shall be maintained free of toxic substances in concentrations that are lethal to or produce other detrimental responses to aquatic organisms." Thus, discharge of chlorine or other substances that can be toxic to aquatic life is prohibited.
- 4.1.4. Discharge Prohibition 3.4 (No causing or contributing to discharges from EBMUD's WWFs):** Because excessive I/I has contributed to discharges of partially treated wastewater at EBMUD's WWFs, in violation of NPDES permit CA0038440 and the Clean Water Act, this prohibition is necessary to ensure

that the Discharger properly operates and maintains its wastewater collection system so as to not cause or contribute to WWF discharges and violations of the Clean Water Act.

This prohibition is based on 40 C.F.R. section 122.41(e), which requires permittees to properly operate and maintain all facilities. The need for this prohibition results from a 2009 change to the permit requirements for EBMUD's WWFs that prohibited WWF discharges because the discharge of partially treated wastewater violates the Clean Water Act. Attachment D section 1.4 sets forth a general requirement for proper operation and maintenance; however, this prohibition is necessary to specifically address the Discharger's excessive I/I into its collection system leading to discharges that violate the Clean Water Act. During wet weather, excessive I/I causes peak wastewater flows to EBMUD's system that EBMUD cannot fully store or treat. This in turn results in the Discharger's and other East Bay Communities' partially treated wastewater being discharged from the WWFs in violation of the Clean Water Act. Therefore, this prohibition is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I/I and, by doing so, not cause or contribute to violations of the Clean Water Act. The Consent Decree sets forth a time schedule and work obligations for the Discharger so that it may come into compliance with this prohibition. The Consent Decree also contains stipulated penalties for failure to conduct the required work.

4.2. Discharge Requirement Considerations

- 4.2.1. **Anti-Backsliding.** This Order complies with the anti-backsliding provisions of CWA sections 402(o) and 303(d)(4), and 40 C.F.R. section 122.44(l), which generally require effluent limitations, standards, and conditions in a reissued permit to be as stringent as those in the previous order. The requirements of this Order are at least as stringent as those in the previous order.
- 4.2.2. **Antidegradation.** This Order complies with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution 68-16. The Order does not authorize lowering water quality as compared to the level of discharge authorized in the previous order, which is the baseline by which to measure whether degradation will occur. This Order does not allow for an increased flow or a reduced level of treatment.

5. RATIONALE FOR RECEIVING WATER LIMITATIONS

Because this Order prohibits discharge, it does not allow for any impact on receiving waters. As such, the Order does not include receiving water limitations.

6. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

Federal regulations at 40 C.F.R. section 122.48 require that all NPDES permits specify requirements for recording and reporting monitoring results relating to

compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system, there are no effluent limitations. However, consistent with the Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems (Order WQ 2022-0103-DWQ), the Discharger must still notify the Regional Water Board and submit a written report if discharges occur in violation of Prohibition 3.1, 3.2, or 3.3.

The Discharger need not report WWF discharges because EBMUD is responsible for such reporting.

7. RATIONALE FOR PROVISION

Attachment D contains standard provisions that apply to all NPDES permits in accordance with 40 C.F.R. section 122.41 and additional conditions applicable to specific categories of permits in accordance with 40 C.F.R. section 122.42. The Discharger must comply with these provisions. The conditions set forth in 40 C.F.R. sections 122.41(a)(1) and (b) through (n) apply to all state-issued NPDES permits and must be incorporated into permits either expressly or by reference.

In accordance with 40 C.F.R. section 123.25(a)(12), states may omit or modify conditions to impose more stringent requirements. This Order omits the federal conditions that address enforcement authority specified in 40 C.F.R. sections 122.41(j)(5) and (k)(2) because the State's enforcement authority under the Water Code is more stringent. In lieu of these conditions, this Order incorporates Water Code section 13387(e) by reference.

Attachment D requires proper sewer system management and reporting. These requirements may be satisfied by separately complying with State Water Board Order WQ 2022-0103-DWQ (Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems) (statewide WDRs) and any subsequent order updating these requirements. These statewide WDRs require public agencies that own or operate sanitary sewer systems with one or more miles of sewer lines to enroll for coverage and comply with requirements to develop sanitary sewer management plans and report sanitary sewer overflows, among other provisions and prohibitions. The statewide WDRs contain requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. The Discharger must comply with the statewide WDRs and this Order. Compliance with the statewide WDRs will satisfy the corresponding reporting requirements for sanitary sewer overflows in Attachment D.

8. PUBLIC PARTICIPATION

The Regional Water Board considered the issuance of WDRs that will serve as an NPDES permit for the Facility. As a step in the WDR adoption process, Regional Water Board staff developed tentative WDRs and encouraged public participation in the WDR adoption process.

8.1. Notification of Interested Parties. The Regional Water Board notified the Discharger and interested agencies and persons of its intent to prescribe WDRs for the discharge, and provided an opportunity to submit written comments and recommendations. The public had access to the agenda and any changes in dates and locations through the [Regional Water Board's website](https://waterboards.ca.gov/sanfranciscobay) (waterboards.ca.gov/sanfranciscobay).

8.2. Written Comments. Interested persons were invited to submit written comments concerning the tentative WDRs as explained through the notification process. Comments were to be submitted either in person, by e-mail, or by mail to the Executive Officer at the Regional Water Board at 1515 Clay Street, Suite 1400, Oakland, California 94612, to the attention of Samuel Plummer.

Written comments were due at the Regional Water Board office by 5:00 p.m. on February 10, 2025.

8.3. Public Hearing. The Regional Water Board held a public hearing on the tentative Order during its meeting at the following date and time:

Date: March 12, 2025
Time: 9:00 a.m.

Contact: Samuel Plummer, (510) 622-2485,
Sam.Plummer@waterboards.ca.gov

Interested persons were provided notice of the hearing and information on how to participate. At the public hearing, the Regional Water Board heard testimony pertinent to the discharge and Order.

Dates and venues can change. The [Regional Water Board's website](https://waterboards.ca.gov/sanfranciscobay) is (waterboards.ca.gov/sanfranciscobay), where one can access the current agenda for changes.

8.4. Reconsideration of Waste Discharge Requirements. Any person aggrieved by this Regional Water Board action may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050. The State Water Board must receive the petition at the following address within 30 calendar days of the date of Regional Water Board action:

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

A petition may also be filed by email at waterqualitypetitions@waterboards.ca.gov.

For instructions on how to file a water quality petition for review, see the [Water Board's petition instructions](https://waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml) (waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml).

- 8.5. Information and Copying.** Supporting documents and comments received are on file. To review these documents, please contact Melinda Wong, the Regional Water Board's custodian of records, by calling (510) 622-2300 or emailing Melinda.Wong@waterboards.ca.gov. Document copying may be arranged.
- 8.6. Register of Interested Persons.** Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference the Facility, and provide a name, address, and phone number.
- 8.7. Additional Information.** Requests for additional information or questions regarding this Order should be directed to Samuel Plummer, (510) 622-2485, Sam.Plummer@waterboards.ca.gov.