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

September 13, 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 Reissuing the City of San Mateo's NPDES Permit (CA0037541)

Dear Mr. Wolfe:

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to comment on the Tentative Order (TO) for the City of San Mateo's Wastewater Treatment Plant (City), as well as make comments on policy issues related to the NPDES permit. BACWA members own and operate publicly-owned treatment works (POTWs) that discharge to San Francisco Bay and its tributaries. Collectively, BACWA 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-term stewardship of the San Francisco Bay Estuary. BACWA member agencies are public agencies, governed by elected officials and managed by professionals who are dedicated to protecting our water environment and the public health.

BACWA hopes that the following comments will result in changes being made to the tentative order prior to issuance of the final NPDES permit for the City. Further, in order to avoid repetition, but to preserve these arguments, BACWA supports and incorporates by reference the comments made by the City in its comment letters.

1. **An enforceable schedule for blending should not be included in the permit.**

   A schedule with enforceable deadlines for the implementation of corrective measures to control blending is included in the TO. The Environmental Protection Agency (USEPA) and the Office of Management and Budget are still reviewing the current version of a national blending policy. We do not believe that it is national or state policy that a no feasible alternative analysis (NFAA) be followed up by an enforceable schedule which may carry penalties. The draft regulation cited to require the development of an NFAA does not require an enforceable schedule in the permit. The City is not the only BACWA member that is being asked to develop an NFAA nor the only BACWA member agency that uses blending

as a method to treat wet weather flows. We are opposed to having requirements in this region, which are being developed on a permit by permit basis, in advance of how these significant issues are settled nationally.

2. **BACWA objects to including numeric final limits for dioxin-TEQ.**

   BACWA requests that the dioxin-TEQ numeric final effluent limit be removed because there is no approved numeric water quality objective for dioxin-TEQ, it does not appear likely that the City will be able to meet this limit, and there are no analytical methods that can accurately detect dioxins at these levels. BACWA believes that the Regional Water Board has the discretion to maintain the narrative standard that exists in the San Francisco Bay Basin Plan. There is no value in developing a numerical standard at this time since dioxin at these levels cannot be measured. The dioxin sources are air emissions and combustion, neither of which the City or any BACWA member agency, can control or prevent.

3. **The compliance schedule action plan for dioxin-TEQ is neither realistic nor commensurate with actual water quality impacts, and overly burdensome.**

   The congeners detected in fish tissue samples which form the basis for the dioxin 303(d) listing are different than the congeners detected in publicly-owned treatment works. As a result, there is nothing a municipal wastewater treatment plant could do to its effluent to reduce the concentrations of dioxin congeners found in fish tissue, which is the basis for these requirements. In addition, it is highly unlikely that compliance schedule action plan activities will result in compliance with proposed final limits.

   Although an optional offset provision (as described in Task 7) may provide an alternative to compliance with a final effluent limit for dioxin-TEQ, such a program does not currently exist. Even though the Regional Water Board directed Regional Water Board staff to develop such a program, there do not appear to be any plans in place. Until such a program is developed with a feasible implementation strategy, the City believes this is not a realistic alternative and it is misleading to expect that such a program would lead to compliance.

4. **The City requests that the permit include alternative cyanide limits that would come into effect with the cyanide site-specific objective.**

   BACWA supports the method for calculating final limits for cyanide, which incorporates information from the City's recent dilution study and recognizes the rapid degradation of cyanide in receiving water. The City requests that the Regional Water Board add a footnote to Table 6c that would include alternative final limits for cyanide calculated based on the Proposed Site-Specific Water Quality Objectives for Cyanide for San Francisco Bay (SSO), scheduled to go into effect following adoption and approvals of the SSO.

5. **BACWA has concerns about including final effluent limits for mercury with which the City cannot comply.**

The TO includes final effluent limits for mercury. This pollutant is currently being addressed through alternative means in order to protect beneficial uses for the San Francisco Bay. Requiring final effluent limits that are unachievable by the City for a compound that is awaiting approval of a total maximum daily load (TMDL) is inappropriate. These final limits should be only provided for reference and should not be enforceable. BACWA requests removal of these final concentration limits.

The Regional Water Board has been in the process of developing a mercury TMDL for at least 10 years. The mercury TMDL approved by the Regional Water Board contains requirements that have been developed in a meaningful way throughout the process of its development and deliberation. Bay Area POTWs are ready to implement the mercury TMDL through activities that will address impairment in San Francisco Bay. This is in contrast to the requirements in the Cease and Desist Order that require extensive actions, including significant expenditures of public funds, within the next few months solely because the Office of Administrative Law and USEPA have not yet approved the TMDL. This timeline is completely unreasonable given the history of the TMDL process, and the insignificant contribution of mercury by municipal wastewater treatment plants in the San Francisco Bay Area.

USEPA Region 9 has provided an opinion that TMDLs cannot be used to delay the implementation of a final limit in a permit. This is an opinion of USEPA Region 9, this is not a regulation adopted by neither the State of California nor the USEPA. We strongly object to having final limits and a Cease and Desist Order for mercury when we have worked tirelessly with the Clean Estuary Partnership (CEP), the Regional Water Board and the State Water Board to have a final mercury TMDL adopted. Now BACWA members are being punished because a final TMDL has not been approved. We urge the Water Board to question USEPA Region 9.

6. **BACWA has legal concerns with the mercury mass limit.**

BACWA incorporates by reference earlier legal arguments it made in BACWA petitions regarding other San Francisco Bay Region permits adopted from 2000 through 2003 (e.g. Petition for Review of Central Contra Costa Sanitary District's Permit, Appeal No. OCC A-1399(a)), in order to preserve BACWA's legal rights to challenge the mercury mass limits should the mercury TMDL not be approved by USEPA in a timely fashion, or not be approved according to the Regional Water Board adoption in 2006 and State Water Board resolution of July, 2007. BACWA intends to withdraw this comment or any legal action taken once an acceptable mercury TMDL is adopted, approved, and implemented.

7. BACWA objects to the required procedure for the invalidation of data points.

BACWA objects to the required procedure and time limits for correcting errors in data reporting. Human errors occur occasionally in data reporting, and are not necessarily discovered immediately. Setting a time limit on the discovery and correction of these errors is not good science. Erroneously reported data points should be allowed to be corrected whenever they are discovered.

BACWA's member agency's lab staff are ELAP-certified professionals who are qualified to determine the validity of data points. Invalidation of data points should not require formal review and approval by the Regional Water Board. Also, because lab staff are already subject to a regulated certification process, the new requirements presented in the TO would be over-regulating.

BACWA appreciates the Regional Water Board's close attention to the comments made herein. I would be more than happy to meet with you to discuss our comments and concerns in more detail as you wish.

Respectfully submitted,

Michele Pla
BACWA Executive Director

cc: BACWA Executive Board
Robert Cole, BACWA Permits Committee Chair