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BEFORE THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

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

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

1 available and any other material has been submitted, BACWA reserves the right to file a more  
2 detailed memorandum in support of the Petition and/or in reply to the Regional Board's response.<sup>1</sup>

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

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

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

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27 <sup>1</sup> The State Board's regulations require submission of a statement of points and authorities in support of a petition (23  
28 C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary memorandum. However, it is impossible  
to prepare a thorough statement or a memorandum that is entirely useful to the reviewer in the absence of the complete  
administrative record, which is not yet available.

1 In addition, all materials in connection with this Petition for Review should also be provided  
2 to BACWA's special counsel at the following address:

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

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

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

16 The State Board is also requested to review the Regional Board's actions in adopting the  
17 Permit for compliance with due process and the California Administrative Procedures Act (Cal.  
18 Gov't Code §§11340, *et seq.*); the California Environmental Quality Act ("CEQA," Cal. Pub. Res.  
19 Code §21000, *et seq.*);<sup>2</sup> the Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000,  
20 *et seq.*); the Clean Water Act ("CWA") (33 U.S.C. §§1251, *et seq.*) and its implementing  
21 regulations (40 C.F.R. Parts 122, 123, 130 and 131); the Water Quality Control Plan, San Francisco  
22 Bay Region (the "Basin Plan"); and the Policy for Implementation of Toxics Standards for Inland  
23 Surface Waters, Enclosed Bays, and Estuaries of California ("SIP").  
24

25  
26 <sup>2</sup> Although the Permit at I.I.E. discusses an exemption from CEQA under Water Code §13389, that exemption is narrow,  
27 and only exempts Chapter 3. The remaining non-exempted parts of CEQA require all Regional Boards to consider the  
28 environmental consequences of their permitting actions, and to explore feasible alternatives and mitigation measures  
prior to the adoption of waste discharge requirements. *See e.g.*, Cal. Pub. Res. Code §21002; 23 C.C.R. §3733 (which  
states that the exemption in §13389 "does not apply to the policy provisions of Chapter 1 of CEQA"). Because this  
issue is currently pending before the California Supreme Court by way of a petition for review, BACWA includes this  
issue to preserve its rights pending resolution by that Court.

1     **3.     THE DATE ON WHICH THE REGIONAL BOARD ACTED:**

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

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

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

7             BACWA has been concerned about the imposition of numeric effluent limitations for dioxin  
8     since the California Toxics Rule (“CTR”) was promulgated, notwithstanding that regulations’  
9     promise that the “rule would not impose undue or inappropriate burden on the State of California or  
10    its dischargers.” 65 Fed. Reg. 31687 (May 18, 2000). BACWA was initially hopeful that the  
11    United States Environmental Protection Agency’s (“USEPA”) prediction that costs to meet the CTR  
12    criteria would be “unlikely to reach the high-end of the [cost] range because State authorities are  
13    likely to choose implementation options that provide some degree of flexibility or relief to the point  
14    source dischargers” was accurate; unfortunately, in practice, this has not been the case. *Id.* at  
15    31706. The purpose of this petition is to request that the State use its presumed flexibility when  
16    issuing discharge permits where compliance with water quality criteria (whether these criteria are  
17    CTR criteria or narrative objectives) has been demonstrated to be infeasible.

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

27            BACWA believes that the Regional Board included final numeric water quality-based  
28    effluent limitations (“WQBELS”) for dioxin-TEQ in the Permit that are contrary to the requirements

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

12 1) Numeric Effluent Limitations are Not Required.

13 The Regional Board has imposed numeric water quality-based effluent limitations  
14 (“WQBELs”) for various constituents in the Permit based on 40 C.F.R. §122.44(d). *See* Permit at  
15 pgs. 12. However, as explained below, section 122.44(d) does not require the imposition of  
16 *numeric* WQBELs.

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18 <sup>3</sup> The Regional Board must ensure its actions to implement the CWA are consistent with any applicable provisions of  
19 the CWA and its implementing regulations. Cal. Water Code §13372.

20 <sup>4</sup> As defined by SWRCB Policy, “infeasible” means “not capable of being accomplished in a successful manner within  
21 a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” *See*  
22 SIP at Appendix 1-3.

23 <sup>5</sup> Courts have recognized a step-wise process in pollutant control. In *San Francisco BayKeeper v. Whitman*, 287 F.3d  
24 764,766-767 (April 15, 2002), the Ninth Circuit Court of Appeals determined that:

25 “[w]hen the NPDES system fails to adequately clean up certain rivers, streams or smaller water segments, the Act  
26 requires the use of a water-quality based approach. States are required to identify such waters, which are to be  
27 designated as ‘water quality limited segments’ (‘WQLSs’). The states must then rank these waters in order of  
28 priority, and based on that ranking, institute more stringent pollution limits called ‘total maximum daily loads’ or  
‘TMDLs.’ 33 U.S.C. §§1313(d)(1)(A), (C). TMDLs are the maximum quantity of a pollutant the water body can  
receive on a daily basis without violating the water quality standard. The TMDL calculations are to ensure that the  
cumulative impacts of multiple point source discharges are accounted for, and are evaluated in conjunction with  
pollution from non-point sources. States must then institute whatever additional cleanup actions are necessary,  
which can include further controls on both point and nonpoint pollution sources.” (emphasis added).

Thus, the Court reasoned that the TMDL program is the tool for correcting water quality impairments when they are  
deemed to exist, not continued ratcheting down under the NPDES permitting program. Any other determination would  
render the TMDL program superfluous.

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

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

23 By including final numeric effluent limitations in lieu of non-numeric or narrative  
24 requirements where numeric limits have been demonstrated to be infeasible, the Regional Board  
25 exceeded federal law requirements. If the Regional Board chooses to exceed federal law  
26 requirements, then it must comply with state law requirements. *City of Burbank, et al v. SWRCB, et*  
27 *al.*, 35 Cal. 4th 613, 627-628 (2005). However, the Regional Board failed to comply with the  
28 requirements of Water Code §13263(a), which requires consideration of several factors including

1 those contained in Water Code §13241 when adopting numeric effluent limitations more stringent  
2 than required by federal law into this Permit.

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

8 2) Dioxin-TEQ Limits

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

10 <u>AMEL (µg/L)</u>	<u>MDEL (µg/L)</u>	<u>Effective Date</u>
11 1.4 x 10 <sup>-8</sup>	2.8 x 10 <sup>-8</sup>	6/01/2018

12 The CTR did not promulgate numeric water quality criteria for dioxin-TEQ, only for  
13 2,3,7,8-tetrachlorodibenzo-p-dioxin (“2,3,7,8-TCDD”). In addition, no aquatic life criteria were  
14 promulgated in the CTR or the Basin Plan for dioxin-TEQ. Only a human-health criteria for  
15 municipal (“Water & Organisms”), and non-municipal drinking water supply waters (*e.g.*,  
16 “Organisms Only”) were set at 0.000000013 and 0.000000014 µg/L, respectively, based on a  
17 carcinogenicity risk of 1x10<sup>-6</sup>. 40 C.F.R. §131.38(b)(1)(#16). These figures are based on an  
18 assumed exposure pathway of consumption of 6.5 grams per day of organisms from the Bay that  
19 are contaminated at a level equal to the criteria concentration, but multiplied by a  
20 “bioconcentration factor.” 65 Fed. Reg. 31693 (May 18, 2000). This amount can be consumed  
21 over a lifetime (70 years) without expecting an adverse effect. *Id.* However, current detection  
22 technologies cannot measure to these levels.

23 Neither the Permit nor the accompanying Fact Sheet demonstrated reasonable potential for  
24 2,3,7,8-TCDD. *See* Permit at pg. F-20. However, the same table containing the reasonable  
25 potential analysis (“RPA”) shows reasonable potential (“RP”) for dioxin-TEQ, even though no  
26 adopted water quality criteria or objective exists for dioxin-TEQ upon which a RPA could be

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28 <sup>6</sup> Such an action would negate the need for compliance schedules as well since the District would presumably be able to immediately comply with narrative requirements for the constituents at issue.

1 performed.<sup>7</sup> The Regional Board's action in finding reasonable potential in the absence of  
2 applicable numeric water quality criteria was unreasonable, in violation of Water Code §13000,  
3 and 40 C.F.R. §122.44(d).

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

6 "To determine if the discharge of dioxin or dioxin-like compounds from the Treatment  
7 Plant has reasonable potential to cause or contribute to a violation of the Basin Plan's  
8 narrative bioaccumulation WQO, Regional Water Board staff used TEFs [Toxic  
9 Equivalent Factors] to express the measured concentrations of 16 dioxin congeners in  
10 effluent and background samples as 2,3,7,8-TCDD equivalents. These "equivalent"  
11 concentrations were then summed and compared to the CTR numeric criterion for 2,3,7,8-  
12 TCDD ( $1.4 \times 10^{-8}$  µg/L). Although the 1998 WHO scheme includes TEFs for dioxin-like  
13 PCBs, they are not included in this Order's version of the TEF procedure. The CTR has  
14 established a specific water quality standard for dioxin-like PCBs, and they are included in  
15 the analysis of total PCBs.<sup>8</sup>"

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

24 Moreover, the Permit mixes criteria in order to create a finding of RP. The Permit states  
25 that "because the maximum ambient background concentration ( $7.1 \times 10^{-8}$  µg/L) exceeds the CTR  
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27 <sup>7</sup> It should be noted that this is contrary to the RPA for other constituents where the Permit states "No Criteria" in the  
28 table instead of inserting a non-promulgated criteria. *See* Permit at pg. F-20-22.

<sup>8</sup> The "translated" dioxin-TEQ objective of 0.014 pg/L mirrors the dioxin-TEQ objective in the State Board's 1991  
Enclosed Bays and Estuaries Plan ("EBEP"), which was invalidated in 1994 by the Sacramento County Superior Court  
due to the State Board's failure to consider economics and other factors under Cal. Water Code Section 13241, failure to  
comply with CEQA, and failure to comply with the Administrative Procedures Act ("APA"). *See Water Quality Control  
Cases*, Judicial Council Coordination Proceeding No. JC2610, Statement of Decision (Sacramento County Superior  
Court, Mar. 23, 1994). Following the Court decision, the State Board rescinded the plan, including the dioxin-TEQ  
objective of 0.014 pg/L. Thus, this invalidated and later rescinded dioxin-TEQ objective should not be used.



1 numeric water quality criterion for 2,3,7,8-TCDD ( $1.4 \times 10^{-8}$   $\mu\text{g/L}$ ), and dioxin-TEQ was detected  
2 in the effluent ( $\text{MEC} = 3.2 \times 10^{-9}$   $\mu\text{g/L}$ ),” this somehow demonstrates RP. *See* Permit at pg. F-31  
3 para. 4.b. The Regional Board should not be allowed to mix and match 2,3,7,8-TCDD and  
4 dioxin-TEQ in order to find RP, they must use each independently in order to properly determine  
5 RP. This was not done, and should be overturned.

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

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

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

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28 <sup>9</sup> The insertion of limits without reasonable potential is contrary to permit findings that state “WQBELs are not included in this Order for constituents that do not demonstrate reasonable potential;” *See* Permit at pg. F-22, para. C.3.e(2).

1 A review of the Bioaccumulation objective demonstrates that this objective does not provide  
2 authorization for the numeric limits imposed in this instance. The Bioaccumulation objective found  
3 on page 3-2 of the Basin Plan provides:

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

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

21 Additionally, a numeric effluent limitation can only be imposed through a narrative water  
22 quality objective if the narrative objective contains an appropriate mechanism to "translate" the  
23 narrative requirement (*i.e.*, to translate a narrative objective into a concentration or mass effluent  
24 limitation).<sup>10</sup> In order for a numeric limit derived from a narrative objective to be appropriate, the

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26 <sup>10</sup> Federal regulations mandate that "[w]here a State adopts narrative criteria for toxic pollutants to protect designated  
27 uses, the State must provide information identifying the method by which the State intends to regulate point source  
28 dischargers of toxic pollutants on water quality limited segments based on such narrative criteria. Such information  
may be included as part of the standards . . ." 40 C.F.R. §131.11(a)(2). Since the Basin Plan's narrative objective for  
Bioaccumulation does not contain an appropriate translation mechanism, the only conclusion can be that subjective,  
arbitrary, or wholly inapplicable WQBELs for dioxin-TEQ have been imposed in the Permit. The rationale in the  
*EBMUD* Order, SWRCB Order No. WQ 2002-0012 at pgs. 6-7 does not apply in this case, since the dioxin-TEQ limits

1 derivation of the numeric limit must be transparent. A clear explanation of the translation from the  
2 narrative water quality objective must be set forth in the NPDES permit.<sup>11</sup> See 40 C.F.R.  
3 §124.8(b)(4); *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515  
4 (1974); *California Edison v. SWRCB*, 116 Cal. App. 3d 751, 761 (1981); see also *In re Petition of*  
5 *the Pinole-Hercules Water Pollution Control Plant and County of San Francisco*, State Board  
6 Order No. WQ-95-4 at 10 (Sept. 21, 1995). The failure by the Regional Board to clearly enunciate  
7 the translation from a narrative objective to a numeric limit in the Findings or Fact Sheet of the  
8 Permit was an abuse of discretion.

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

12 b) Meeting the Dioxin Concentration Limit is Not Feasible

13 As stated above, dioxins enter the environment from a variety of sources, primarily  
14 combustion sources. See *Communities for a Better Environment*, 109 Cal. App. 4<sup>th</sup> at 1096  
15 (“automobile exhaust is a common source of dioxins.”) Further, the Regional Board has concurred  
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20 are final WQBELs and were not adopted in conformance with federal regulations as there are no 304(a) guidance  
criteria for dioxin-TEQ. See <http://www.epa.gov/waterscience/criteria/wqcriteria.html>.

21 <sup>11</sup> In EPA’s official guidance documents, EPA explains at length the process the State must go through to implement an  
adequate translator mechanism. See EPA Water Quality Standards Handbook at 3-13 to 3-26 (1994). Among other  
22 things, EPA provides that a State’s translator procedure for narrative criteria should specifically describe:

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

*Id.* at 3-25; see also EPA, TSD for Water Quality-Based Toxics Control at 30-31(1991).

1 with the District that compliance with the dioxin-TEQ limits is infeasible. See Permit at pg. F-31.  
2 For these reasons, numeric effluent limitations were not required.<sup>12</sup>

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

11 **B. The Regional Board Improperly Included Daily Maximum Effluent**  
12 **Limitations.**

13 Where effluent limitations are authorized, federal regulations provide that for discharges  
14 from POTWs, all permit effluent limits shall, unless impracticable, be stated as average weekly and  
15 average monthly discharge limitations.<sup>14</sup> 40 C.F.R. § 122.45(d)(2). The Permit contains several  
16

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17  
18 <sup>12</sup> The Regional Board should have done what it did in the Vallejo permit, Order No. R2-2006-0056, which was to  
19 state: "Due to the limited monitoring data, no dioxin limits (final or interim) are established. The final limits for dioxin  
20 TEQ will be based on the WLA assigned to the Discharger in the TMDL. This Order requires additional dioxin  
21 monitoring to complement the Clean Estuary Partnership's special dioxin project, consisting of impairment, assessment,  
22 and a conceptual model for dioxin loading into the Bay. The permit will be reopened, as appropriate, to include interim  
23 dioxin limitations when additional data become available." Order No. R2-2006-0056 at pg. F-24.

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

<sup>14</sup> Federal regulations also provide that discharges from all dischargers other than POTWs, effluent limitations shall be  
stated as maximum daily and average monthly discharge limitations. 40 C.F.R. §122.45(d)(1).

1 unsupported daily maximum limits, including, among others, the limit for dioxin-TEQ. *See* Permit  
2 at pg. 12.

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

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

25 Further, the State Board did not include in the SIP the same language purportedly allowing  
26 for the inclusion of daily maximum limitations in POTW permits for effluent limitations based upon  
27 technological requirements (for conventional pollutants) or upon human health criteria. Therefore,  
28 even if the SIP provisions pertaining to maximum daily limits for aquatic life criteria were valid, 40

1 C.F.R. §122.45(d) requires the Regional Board to remove all daily maximum interim and final  
2 effluent limitations based on human health criteria or technological requirements. The criteria for  
3 2,3,7,8-TCDD is human health-based. *See* 40 CFR §131.38(b)(1)(16).

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

9 Furthermore, at most, these justifications would address only limits based on acute aquatic  
10 life criteria. However, the Regional Board did not include limits based on acute aquatic life  
11 protection, rather, the limits for dioxin-TEQ are based on long-term chronic human exposure. *See*  
12 *In the Matter of the Own Motion Review of the City of Woodland*, SWRCB Order No. WQ 2004-  
13 0010 (holding that “implementing the limits as instantaneous maximums appears to be incorrect  
14 because the criteria guidance value . . . is intended to protect against chronic effects.”)

15 Therefore, the Regional Board’s inclusion of daily maximum effluent limitations in the  
16 Permit, without a specific, pollutant-by-pollutant impracticability analysis, violated 40 C.F.R.  
17 §122.45(d)(2) and Water Code Chapter 5.5. By violating federal and state law, the Regional Board  
18 proceeded without, or in excess of, its jurisdiction and has committed a prejudicial abuse of  
19 discretion by not proceeding in a manner required by law. For these reasons, the State Board should  
20 direct the Regional Board to remove the daily maximum effluent limitations not properly analyzed  
21 for impracticability. *See accord* SWRCB Order No. 2002-0012 at pg. 20-21 (July 18, 2002)(“the  
22 Regional Board must include a finding in the permit on remand explaining the impracticability of  
23 weekly average limits.”); SWRCB Order No. 2002-0015 at pg. 56; *City of Woodland v. Regional*  
24 *Water Quality Control Board for the Central Valley Region, and SWRCB*, Case No. RG04-188200,  
25 Statement of Decision at pg. 20.

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

28 BACWA is concerned that having stringent schedules contained in the Permit and CDO  
will eventually require the construction of capital facilities when BACWA has repeatedly been told

1 that building additional treatment is not the expected direction of the Bay Area water quality  
2 program. BACWA was under the impression that the direction was to pursue regulatory  
3 alternatives, such as TMDLs, site specific objectives, and pollution prevention (as described in the  
4 implementation plan for the mercury TMDL). The Permit and CDO veers way off of this intended  
5 direction.

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

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

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

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

27 Currently, the District's exercise of the well established practice of blending during  
28 peak wet weather flows ensures compliance with the CWA. This practice has never resulted in a  
violation of the stringent effluent limitations contained in previous NPDES permits, and nothing

1 suggests that future violations may occur. In order to comply with the compliance schedule  
2 imposed by the Regional Board to minimize blending, the District is required to complete  
3 improvements to the facility pursuant to deadlines in a workplan to be submitted to the Regional  
4 Board for approval by October 1, 2008. *See* Permit at pgs. 24-25. By including a compliance  
5 schedule with enforceable deadlines to minimize blending, the Regional Board violated federal and  
6 state law.

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

9 The inclusion of a compliance schedule to minimize blending is contrary to federal and  
10 state law and not based on evidence in the record. The Regional Board incorrectly determined that  
11 the District's blending practice constituted an illegal "bypass" in violation of 40 C.F.R.  
12 §122.41(m). *See* Permit at pg. F-10, para. A.4. The requirements of 40 C.F.R. §122.41(m) do not  
13 apply where the bypass does not cause effluent limitations to be exceeded as long as a POTW  
14 could show that such bypass is "for essential maintenance to assure efficient operation." *See* 40  
15 C.F.R. §122.41(m)(2). This regulation does not prohibit operation of treatment facilities in a  
16 manner consistent with the design of a facility and does not prohibit blending which is consistent  
17 with the design of a facility. *See* 40 C.F.R. §122.41(m)(2).

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

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

28 Water Code section 13360 prohibits the State from dictating the design of treatment  
facilities or the particular manner in which compliance is achieved. Water Code §13360 ("No



1 waste discharge requirement or other order of a regional board or the state board or decree of a  
2 court ... shall specify the design, location, type of construction, or particular manner in which  
3 compliance may be had with that requirement, order, or decree.”)

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

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

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

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

25 Also, the EPA and the Office of Management and Budget are still reviewing the current  
26 version of a national blending policy. Notably, the EPA has not yet issued a final draft due to the  
27 controversy surrounding the prohibition on blending. Furthermore, BACWA does not believe that  
28 it is national or state policy that a No Feasible Alternatives Analysis (NFAA) be followed up by an  
enforcement schedule which may carry penalties. First, the regulation cited, 40 C.F.R.

1 §122.41(m), to require the development of a NFAA, does not require that an enforceable schedule  
2 be then placed in the Permit. Second, requirements in this region should not be developed on a  
3 permit by permit bases, in advance of how these significant issues are settled nationally.

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

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

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

21 BACWA is aggrieved by unreasonable permit prohibitions that may put the District in non-  
22 compliance with the Permit. BACWA's membership will be aggrieved by any permit provisions  
23 that cannot now or in the future be met as federal and state law provide harsh sanctions for non-  
24 compliance with effluent limitations in a wastewater discharge permit. For example, California  
25 Water Code §13385 prescribes mandatory minimum penalties of \$3,000 per day per violation, with  
26 narrow exceptions. With this statute, the State has no latitude to excuse noncompliance with the  
27 Permit.

28

1 Other statutory provisions, while not setting mandatory minimum penalties, create even  
2 greater exposure for BACWA's members. The CWA authorizes civil penalties of up to \$32,500 per  
3 day per violation, 33 U.S.C. § 1319(d), and also authorizes criminal penalties, including the  
4 incarceration of public officials, for knowing or negligent permit violations. 33 U.S.C §1319(c); *see*  
5 *U.S. v. Weitzenhoff*, 35 F.3d 1275 (9<sup>th</sup> Cir. 1994) (managers of treatment plant convicted of permit  
6 violations). In addition to enforcement by administrative agencies, private parties can seek civil  
7 penalties pursuant to the "citizen suit" provisions of the CWA. *See* 33 U.S.C. §1365.

8 Likewise, California's Porter-Cologne Water Quality Act contains stiff penalties for  
9 violation of effluent limitations in a wastewater discharge permit. *See* Cal. Water Code §§ 13385  
10 and 13387. This act authorizes a penalty of up to \$25,000 per day per violation, with additional  
11 liability not to exceed \$25 per gallon if the discharge is to navigable waters of the United States and  
12 either is "not susceptible to cleanup or is not cleaned up." Cal. Water Code §13385(b)(1)-(2), (d).  
13 The act also establishes criminal liability for intentional or negligent violation of effluent limitations  
14 contained within a permit. Cal. Water Code §13387(a)-(d).

15 Furthermore, the application of illegal or unreasonable effluent limitations in violation of  
16 federal and state law causes substantial harm to BACWA and its members that have a vested  
17 interest in complying with the law. This appeal furthers one of BACWA's express purposes, which  
18 is "to represent the interests of the Agency or one or more Member Agencies, including, without  
19 limiting the generality of the foregoing, by participating in the appeal of or court challenge of the  
20 issuance or denial of issuance of NPDES permits or the adoption or amendment of water quality  
21 orders, regulations or decisions."

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

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

- 26 A. Remove the numeric effluent limits for dioxin-TEQ;
- 27 B. Remove daily maximum effluent limitations where the Regional Board failed to  
28 conduct an impracticability analysis;

- 1 C. Revise the compliance schedule action plan for dioxin-TEQ to (1) remove all  
2 activities related to installation of capital improvements and (2) ensure that any  
3 pollution prevention activities are identical to resolutions or orders already adopted  
4 by the Regional Water Board; and  
5 D. Remove the compliance schedule for minimizing blending.

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

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

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

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

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

25 Bruce Wolfe, Executive Officer  
26 California Regional Water Quality Control Board,  
27 San Francisco Region  
28 1515 Clay Street, Suite 1400  
Oakland, California 94612

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**9. A STATEMENT THAT THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN EXPLANATION WHY NOT:**

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

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

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

DATED: August 6, 2008

Respectfully submitted,



Adam Friedman  
DOWNEY BRAND LLP  
BACWA Special Counsel

**EXHIBIT A**



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

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



Arnold Schwarzenegger  
Governor

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

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

**Table 1. Discharger Information**

<b>Discharger</b>	Sanitary District No.5 of Marin County
<b>Name of Facility</b>	Sanitary District No.5 Wastewater Treatment Plant and wastewater collection system
<b>Facility Address</b>	2001 Paradise Drive
	Tiburon, CA 94920
	Marin County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board (Regional Water Board) have classified this discharge as a major discharge.	

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

**Table 2. Discharge Location**

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	POTW Effluent	37 °, 52', 12" N	122 °, 27', 5" W	Raccoon Strait, Central San Francisco Bay

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Board on:	July 9, 2008
This Order shall become effective on:	September 1, 2008
This Order shall expire on:	August 31, 2013
CIWQS Regulatory Measure	340891
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	<b><u>180 days prior to the Order expiration date</u></b>

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

Digitally signed by  
Bruce Wolfe  
Date: 2008.07.11  
16:32:42 -07'00'

Bruce H. Wolfe, Executive Officer

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### Attachments

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Attachment D – Federal Standard Provisions.....	D-1
Attachment E – Monitoring and Reporting Program (MRP).....	E-1
Attachment F – Fact Sheet.....	F-1
Attachment G – The following documents are part of this Permit, but are not physically attached due to volume. They are available on the internet at <a href="http://www.waterboards.ca.gov/sanfranciscobay/">www.waterboards.ca.gov/sanfranciscobay/</a>	
- Self-Monitoring Program, Part A, adopted August 1993	
- Standard Provisions and Reporting Requirements, August 1993	
- August 6, 2001 Staff Letter: <i>Requirement for Priority Pollutant Monitoring in Receiving Water and Wastewater Discharges</i>	

## I. FACILITY INFORMATION

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

**Table 4. Facility Information**

<b>Discharger</b>	Sanitary District No. 5 of Marin County
<b>Name of Facility</b>	Sanitary District No. 5 Wastewater Treatment Plant and wastewater collection system
<b>Facility Address</b>	2001 Paradise Drive
	Tiburon, CA 94920
	Marin County
<b>Facility Contact, Title, and Phone</b>	Robert Lynch, District Manager, Phone: 415-435-1501, Fax: 415-435-0221; Email: <a href="mailto:rlynch@sani5.org">rlynch@sani5.org</a>
<b>CIWQS Place Number</b>	239497
<b>CIWQS Party ID Number</b>	27783
<b>Mailing Address</b>	P.O. Box 227 Tiburon, CA 94920
<b>Type of Facility</b>	Publicly Owned Treatment Works (POTW)
<b>Facility Design Flow</b>	0.98 million gallons per day (MGD) (dry weather treatment capacity), 2.3 MGD (peak wet weather treatment capacity)

## II. FINDINGS

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

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

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

**B. Facility Description.** The Discharger owns and operates the Treatment Plant, which provides secondary treatment of domestic and commercial wastewater collected from the Town of Tiburon, the City of Belvedere, and surrounding, unincorporated areas, serving a current population of approximately 8,400. The Discharger's collection system consists of 33 miles of gravity sewer line, 5 miles of force main and 22 pump stations within its service area. The Treatment Plant has an average dry weather design treatment capacity of 0.98 MGD and can treat up to 2.3 MGD during wet weather flow periods. A map of the facility and surrounding area is provided in Attachment B.

The treatment processes at the facility include primary sedimentation, biological activated sludge treatment, secondary sedimentation, chlorine disinfection with sodium hypochlorite, and dechlorination with sodium bisulfite. A treatment process schematic diagram is included as Attachment C.

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

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

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

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

- C. Legal Authorities.** This Order is issued pursuant to CWA section 402 and implementing regulations adopted by the USEPA and Chapters 5.5, Division 7 of the California Water Code (commencing with section 13370). It shall serve as an NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to Article 4, Chapter 4, Division 7 of the Water Code (commencing with section 13260).
- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order