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9. BAY AREA CLEAN WATER AGENCIES



10. BEFORE THE
11. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12. In the Matter of the Bay Area Clean Water
13. Agencies' Petition for Review of Action and
14. Failure to Act by the California Regional Water
15. Quality Control Board, San Francisco Bay
16. Region, in Adopting Order No. R2-2008-0071,
17. NPDES Permit No. CA0037532 and Waste
18. Discharge Requirements for the City of Millbrae
and North Bayside System Unit.

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

19. Petitioner Bay Area Clean Water Agencies ("BACWA"), in accordance with section 13320
20. of the Water Code, hereby petitions the State Water Resources Control Board ("SWRCB" or "State
21. Board") to review Order No. R2-2008-0071 of the California Regional Water Quality Control
22. Board, San Francisco Bay Region, ("RWQCB" or "Regional Board") reissuing National Pollution
23. Discharge Elimination System ("NPDES") Permit No. CA0037532 and Waste Discharge
24. Requirements for the City of Millbrae and North Bayside System Unit (the "City"). A copy of
25. Order No. R2-2008-0071, adopted on August 13, 2008, is attached to this Petition as **Exhibit A**.
26. The issues and a summary of the bases for the Petition follow. At such time as the full
27. administrative record is available and any other material has been submitted, BACWA reserves the
28. right to file a more detailed memorandum in support of the Petition and/or in reply to the Regional

1 Board's response.¹ In addition, many of these issues are carried over from the previous permit
2 appeal filed by BACWA on the City's previous permit in December of 2001 (SWRCB/OCC File
3 No. A-1438), which is hereby consolidated with this appeal and incorporated by reference herein
4 since it is currently being held in abeyance until December 28, 2008.

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

15 On July 14, 2008, BACWA submitted written comments on the tentative versions of
16 NPDES Permit No. CA0037532 ("Permit"). For the reasons contained herein, and incorporated by
17 reference as stated above, BACWA asserts that provisions contained in the recently issued Permit
18 for the City are improper and inappropriate. BACWA hopes that the State Board will choose to
19 take up this petition and review the issues being raised that are vitally important to Bay Area
20 POTWs.

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

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

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

11 BACWA seeks review of Order No. R2-2008-0071, reissuing NPDES Permit No.
12 CA0037532 for the City. The specific requirements of the Permit that BACWA requests the State
13 Board to review relate to the following:

- 14 A. Numeric-based effluent limits for dioxin-TEQ;
15 B. Daily maximum effluent limitations; and
16 C. Compliance schedule action plans for dioxin-TEQ.

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

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26
27 ² Although the Permit at II.E. discusses an exemption from CEQA under Water Code §13389, that exemption is narrow,
28 and only exempts Chapter 3. The remaining non-exempted parts of CEQA require all Regional Boards to consider the
environmental consequences of their permitting actions, and to explore feasible alternatives and mitigation measures
prior to the adoption of waste discharge requirements. *See e.g.*, Cal. Pub. Res. Code §21002; 23 C.C.R. §3733 (which
states that the exemption in §13389 "does not apply to the policy provisions of Chapter 1 of CEQA").

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

2 The Regional Board adopted the Permit on August 13, 2008.

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

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

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

19 The Permit being appealed by BACWA contains concentration limits for dioxin-TEQ. *See*
20 Permit at pg. 10. Similar limits were challenged by BACWA in previous administrative and court
21 appeals. Unfortunately, some of the holdings of those previous appeals are not being upheld by the
22 Regional Board. BACWA tried for several years to settle the outstanding petitions on Bay Area
23 POTW permits filed since 2000 by BACWA and others, but disagreement as to legal requirements
24 prevented consummation of a global settlement. Because these issues remain as important today as
25 they did eight years ago, or perhaps more important since the time for final compliance with CTR
26 criteria becomes shorter every day, BACWA continues to press for a final ruling to re-incorporate
27 the "flexibility or relief" promised over the years.

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

1 of the CWA and state law.³ In most cases, these numeric limitations have been demonstrated to be
2 infeasible to meet,⁴ 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.⁵ 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. 10. However, as explained below, section 122.44(d) does not require the imposition of
16 *numeric* WQBELs.

17
18 ³ 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 ⁴ 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 ⁵ 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.⁶

8 2) Dioxin-TEQ Limits

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

10 <u>AMEL (µg/L)</u>	11 <u>MDEL (µg/L)</u>	12 <u>Effective Date</u>
13 1.4 x 10 ⁻⁸	14 2.8 x 10 ⁻⁸	15 10/01/2018

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

27 Neither the Permit nor the accompanying Fact Sheet demonstrated reasonable potential for
28 2,3,7,8-TCDD. *See* Permit at pg. F-19. However, the same table containing the reasonable
potential analysis (“RPA”) shows reasonable potential (“RP”) for dioxin-TEQ, even though no
adopted water quality criteria or objective exists for dioxin-TEQ upon which a RPA could be

⁶ Such an action would negate the need for compliance schedules as well since the City would presumably be able to immediately comply with narrative requirements for the constituents at issue.

1 performed.⁷ 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 Millbrae
7 WPCP 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 compared to the CTR numeric criterion for 2,3,7,8-TCDD
12 (1.4×10^{-8} µg/L). Although the 1998 WHO scheme includes TEFs for dioxin-like PCBs,
13 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.⁸"

16 *See* Permit at pg. F-27. 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 MEC (8.3×10^{-8} µg/L) exceeds the CTR numeric water quality criteria for
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27 ⁷ 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-19-21.

⁸ The "translated" dioxin-TEQ objective of 0.014 pg/L mirrors the dioxin-TEQ objective in the State Board's 1991
Enclosed Bays and Estuaries Plan ("EBEP"), which was 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 2,3,7,8-TCDD (1.4×10^{-8} $\mu\text{g/L}$),” and that “the maximum observed ambient background dioxin-
2 TEQ concentration in San Francisco Bay (7.1×10^{-8} $\mu\text{g/L}$) also exceeds the CTR numeric water
3 quality criterion for 2,3,7,8-TCDD,” this somehow demonstrates RP. *See* Permit at pg. F-27 para.
4 3.b. The Regional Board should not be allowed to mix and match 2,3,7,8-TCDD and dioxin-TEQ
5 in order to find RP, they must use each independently in order to properly determine RP. This
6 was not done, and should be overturned.

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

10 In adopting a numeric effluent limitation for dioxin-TEQ, the Regional Board attempted to
11 justify its actions by claiming that the applicable water quality objectives specified in the Basin Plan
12 require limits to protect against unsafe levels of dioxin in the fatty tissue of fish and other
13 organisms. *See* Permit at pg. F-26. The Basin Plan contains no numeric objectives specifically set
14 to define acceptable levels of these constituents in fish tissue or sediment, and the CTR only set
15 numeric criteria for 2,3,7,8-TCDD, not for all the congeners of dioxins. Thus, the Regional Board
16 improperly relied upon the Basin Plan’s narrative objective for Bioaccumulation to justify limits for
17 dioxin-TEQ.

18 In addition, the Regional Board improperly lumped together all of the congeners of dioxin
19 and furans. Had the RPA been done on each individual congener, most if not all would not show
20 reasonable potential because of the varying TEF for each. *See* Permit at pg. F-27. However,
21 pooling all of the congeners together creates an unnecessary finding of reasonable potential for all
22 congeners. The Regional Board’s inclusion of an effluent limit for dioxin-TEQ based on all of the
23 congeners of dioxins and furans improperly ignores that the congeners do not create reasonable
24 potential. Imposition of limits on congeners without reasonable potential violates the specific
25 mandates of the Basin Plan and federal regulations.⁹

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28 ⁹ The insertion of limits without reasonable potential is contrary to permit findings that state “WQBELs are not included in this Order for constituents that do not demonstrate reasonable potential;” *See* Permit at pg. F-21, 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 City'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 City.

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).¹⁰ In order for a numeric limit derived from a narrative objective to be appropriate, the

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26 ¹⁰ 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.¹¹ 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. 4th 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
21 criteria for dioxin-TEQ. See <http://www.epa.gov/waterscience/criteria/wqcriteria.html>.

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

- 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 City that compliance with the dioxin-TEQ limits is infeasible. See Permit at pg. F-27. For
2 these reasons, numeric effluent limitations were not required.¹²

3 The Regional Board's assertion that other strategies, including potential mass offsets (see
4 Permit at pg. 16), 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.¹³ 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
9 state policy for offsets exists, so the feasibility of such an approach has not been determined. For
10 these reasons, the numeric limits for dioxin-TEQ imposed in the Permit represent an abuse of
11 discretion.

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

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

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18 ¹² 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,
and a conceptual model for dioxin loading into the Bay. The permit will be reopened, as appropriate, to include interim
dioxin limitations when additional data become available." Order No. R2-2006-0056 at pg. F-24.

22 ¹³ See Letter and attachments from Loretta Barsamian, RWQCB to Alexis Strauss, EPA Region IX (Jul 14, 1998) ("we
23 believe the data do not support any other additions to the list at this time. This is particularly true in the case of
24 dioxin.") (incorporated herein by reference). The existing 303(d) listings for dioxins and furans in San Francisco Bay
25 were made by USEPA Region IX in a letter dated May 12, 1999. These listings were made as changes (additions) to
26 the 1998 303(d) list, which was originally adopted by the SWRCB, based on a 1994 study (San Francisco Regional
27 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
28 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.

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

1 unsupported daily maximum limits, including, among others, the limit for dioxin-TEQ. *See* Permit
2 at pg. 10.

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 pg. 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

1 even if the SIP provisions pertaining to maximum daily limits for aquatic life criteria were valid, 40
2 C.F.R. §122.45(d) requires the Regional Board to remove all daily maximum interim and final
3 effluent limitations based on human health criteria or technological requirements. The criteria for
4 2,3,7,8-TCDD is human health-based. *See* 40 CFR §131.38(b)(1)(16).

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

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

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

27 ///

28 ///

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

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

9 Also, this Permit contains a compliance schedule for dioxin-TEQ, which cannot be source
10 controlled, or for which wastewater treatment plant effluents have been identified as non-
11 significant sources. See Permit at pg. 22. Additionally, dioxin-TEQ is already being addressed
12 through an alternative regulatory strategy that will appropriately resolve beneficial use concerns
13 for the San Francisco Bay. The compliance schedule in the Permit is overly burdensome for
14 dioxin-TEQ, as specified below:

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

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

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

28 The Permit includes requirements, challenged herein, which are unreasonable, contrary to
legal requirements, and not supported by the findings and evidence in the administrative record.

1 The limits for dioxin-TEQ are unreasonable because the City has extremely limited control over
2 influent sources. Further, these requirements could ultimately impose considerable costs on the
3 agency's ratepayers for potential mandatory and discretionary penalties imposed for non-
4 compliance with the challenged requirements, or for construction of additional treatment units to
5 meet limits imposed without a demonstration that such requirements would result in material
6 improvements in the water quality of the Bay. In fact, such expenditures could have a negative
7 impact on water quality, by diverting limited public funds away from other projects that might have
8 a higher potential for improvements in water quality.

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

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

23 Likewise, California's Porter-Cologne Water Quality Act contains stiff penalties for
24 violation of effluent limitations in a wastewater discharge permit. *See* Cal. Water Code §§ 13385
25 and 13387. This act authorizes a penalty of up to \$25,000 per day per violation, with additional
26 liability not to exceed \$25 per gallon if the discharge is to navigable waters of the United States and
27 either is "not susceptible to cleanup or is not cleaned up." Cal. Water Code §13385(b)(1)-(2), (d).

28

1 The act also establishes criminal liability for intentional or negligent violation of effluent limitations
2 contained within a permit. Cal. Water Code §13387(a)-(d).

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

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

12 Petitioner seeks an Order by the State Board that will remand Order No. R2-2008-0071 to
13 the Regional Board for revisions and will direct the Regional Board to:

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

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

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

26 In Section 4, BACWA asserts that provisions of the Permit are inconsistent with the law and
27 otherwise inappropriate for various reasons, including: failure to comply with the Porter-Cologne
28 Water Quality Control Act (Cal. Water Code, §§ 13000 *et seq.*); failure to comply with the CEQA

1 (Cal. Public Resources Code, §§ 21000 *et seq.*, and 23 C.C.R. § 3733); failure to comply with the
2 APA (Cal. Gov't Code, §§ 11340 *et seq.*); inconsistency with the Water Quality Control Plan, San
3 Francisco Bay Region (Basin Plan); inconsistency with the Clean Water Act (33 U.S.C. §§ 1251 *et*
4 *seq.*) and its implementing regulations (40 C.F.R. Parts 122, 123, 130, and 131); inconsistency with
5 EPA guidance (EPA's Water Quality Standards Handbook (1994, 3^d edition)); absence of findings
6 supporting the provisions of the Order; Regional Board findings that are not supported by the
7 evidence; and other grounds that may be or have been asserted by Petitioner.

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

10 A true and correct copy of this Petition was mailed by First Class mail on September 13,
11 2008, to the Discharger, and to the Regional Board at the following address:

12 Bruce Wolfe, Executive Officer
13 California Regional Water Quality Control Board,
14 San Francisco Region
15 1515 Clay Street, Suite 1400
16 Oakland, California 94612

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

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

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

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

26 DATED: September 9, 2008

Respectfully submitted,

27 

28 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

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Arnold Schwarzenegger
Governor

ORDER NO. R2-2008-0071
NPDES NO. CA0037532

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

Table 1. Discharger Information

Discharger	City of Millbrae and North Bayside System Unit (NBSU)
Name of Facility	City of Millbrae Water Pollution Control Plant and collection system
Facility Address	400 East Millbrae Avenue
	Millbrae, CA 94030
	San Mateo County
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.	

The discharge by the City of Millbrae Water Pollution Control Plant and the North Bayside System Unit 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
E-002	POTW Effluent	37 °, 39', 55" N	122 °, 21', 41" W	Lower San Francisco Bay

Table 3. Administrative Information

This Order was adopted by the Regional Water Board on:	August 13, 2008
This Order shall become effective on:	October 1, 2008
This Order shall expire on:	September 30, 2013
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:	<u>180 days prior to the Order expiration date</u>

IT IS HEREBY ORDERED, that this Order supersedes Order No. 01-143 except for enforcement purposes, and, in order to meet the provisions contained in Division 7 of the California Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

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 **August 13, 2008**.

Digitally signed by Bruce Wolfe
Date: 2008.08.19 13:50:31
-07'00'

Bruce H. Wolfe, Executive Officer

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Attachments

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Attachment G – The following documents are part of this Permit, but are not physically attached due to volume. They are available on the internet at

www.waterboards.ca.gov/sanfranciscobay/

- Self-Monitoring Program, Part A, adopted August 1993
- Standard Provisions and Reporting Requirements, August 1993
- August 6, 2001 Staff Letter: *Requirement for Priority Pollutant Monitoring in Receiving Water and Wastewater Discharges*

Attachment H – Pretreatment Requirements H-1

I. FACILITY INFORMATION

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

Table 4. Facility Information

Discharger	City of Millbrae and North Bayside System Unit
Name of Facility	City of Millbrae Water Pollution Control Plant
Facility Address	400 East Millbrae Avenue
	Millbrae, CA 94030
	San Mateo County
Facility Contact, Title, and Phone	Joseph Magner, Superintendent, (650) 259-2388
Mailing Address	621 Magnolia Avenue Millbrae, CA 94030
Type of Facility	Publicly Owned Treatment Works (POTW)
Facility Design Flow	3.0 million gallons per day (MGD) (average daily dry weather design flow), 9.0 MGD (peak daily wet weather design flow)

II. FINDINGS

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

- A. Background.** The City of Millbrae Water Pollution Control Plant (Millbrae WPCP) and the North Bayside System Unit (NBSU) (hereinafter the Discharger) is currently discharging under Order No. 01-143 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0037532. The Discharger submitted a Report of Waste Discharge dated March 24, 2006, and applied to renew its NPDES permit to discharge up to 3.0 million gallons per day (MGD) of treated wastewater from the Millbrae WPCP.

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 Millbrae WPCP, which provides secondary treatment of domestic and commercial wastewater collected from the City of Millbrae (population 22,000). The Millbrae WPCP has an average dry weather design treatment capacity of 3.0 MGD and can treat up to 9 MGD during wet weather.

Wastewater treatment processes at the Millbrae WPCP include grinding, primary sedimentation in rectangular clarifiers, biological activated sludge treatment, secondary clarification, disinfection with sodium hypochlorite, and final effluent skimming. Electricity is generated for on-site use from methane gas produced by sludge digesters. Standby generators supply power to Millbrae WPCP systems during power outages. Recycled water is produced for restricted use applications.

Chlorinated secondary effluent is discharged through Outfall E-001 to the North Bayside System Unit (NBSU) force main. The effluent is dechlorinated at the City of South San Francisco Water Quality Control Plant prior to discharge into Lower San Francisco Bay, a water of the State and the United States, through the NBSU outfall (Outfall E-002). Outfall E-002 is a submerged diffuser

located northeast of Point San Bruno about 5,300 feet offshore at a depth of 20 feet below mean lower low water (37 degrees, 39 minutes, 55 seconds N latitude and 122 degrees, 21 minutes, 41 seconds W longitude). The NBSU is a joint powers authority and includes the Cities of Burlingame, Millbrae, South San Francisco and San Bruno, and San Francisco International Airport (both industrial and domestic waste treatment plants).

Biosolids collected from the wastewater treatment process are thickened in a gravity thickener, anaerobically digested, and dewatered by a belt filter press. On average, the Millbrae WPCP generates 186 dry metric tons of Class B biosolids per year. Approximately 90 dry metric tons of dewatered biosolids are beneficially reused at various land application sites. The remaining biosolids are disposed of at the Potrero Hills and Altamont landfills.

Attachment B provides a map of the area around the Millbrae WPCP. Attachment C provides a flow schematic of the Millbrae WPCP.

- C. Legal Authorities.** This Order is issued pursuant to Clean Water Act (CWA) section 402 and implements regulations adopted by the United States Environmental Protection Agency (USEPA) and Chapters 5.5, Division 7 of the California Water Code (CWC) (commencing with section 13370). It shall serve as an NPDES permit for point source discharges from the Millbrae WPCP to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to Article 4, Chapter 4, Division 7 of the CWC (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) containing background information and rationales for Order requirements is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through E and G through H are also incorporated into this Order.
- E. California Environmental Quality Act (CEQA).** Under CWC section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA.
- F. Technology-Based Effluent Limitations.** CWA Section 301(b) and NPDES regulations at 40 CFR 122.44 require that permits include conditions meeting applicable technology-based requirements at minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Secondary Treatment Standards at 40 CFR 133. A detailed discussion of technology-based effluent limitation development is included in the Fact Sheet.
- G. Water Quality-Based Effluent Limitations.** CWA section 301(b) and NPDES regulations at 40 CFR 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards.

NPDES regulations at 40 CFR 122.44(d)(1)(i) mandate that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant that has no numeric criterion or objective, water quality-based effluent limitations (WQBELs) must be

established using (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 40 CFR 122.44(d)(1)(vi).

H. Water Quality Control Plans. *The Water Quality Control Plan for the San Francisco Bay Basin* (the Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), USEPA, and the Office of Administrative Law, as required. Requirements of this Order implement the Basin Plan.

The Basin Plan implements State Water Board Resolution No. 88-63, which establishes State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply (MUN). Because of the marine influence on receiving waters of San Francisco Bay, total dissolved solids levels in San Francisco Bay usually (and often significantly) exceed 3,000 milligrams per liter (mg/L) and thereby meet an exception to State Water Board Resolution No. 88-63. Therefore, the MUN designation is not applicable to Lower San Francisco Bay.

Beneficial uses applicable to Lower San Francisco Bay are as follows.

Table 5. Basin Plan Beneficial Uses of Lower San Francisco Bay

Discharge Point	Receiving Water Name	Beneficial Uses
E-002	Lower San Francisco Bay	Industrial Service Supply (IND) Navigation (NAV) Water Contact Recreation (REC1) Non-Contact Water Recreation (REC2) Ocean, Commercial and Sport Fishing (COMM) Wildlife Habitat (WILD) Preservation of Rare and Endangered Species (RARE) Fish Migration (MIGR) Shellfish Harvesting (SHELL) Estuarine Habitat (EST)

- I. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995, and November 9, 1999. About forty criteria in the NTR apply in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the State. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants.
- J. State Implementation Policy.** On March 2, 2000, 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). The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR.

and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order implement the SIP.

- K. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on an existing Discharger's request and demonstration that it is infeasible for it to achieve immediate compliance with an effluent limitation derived from a CTR criterion, a compliance schedule may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or May 18, 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order includes compliance schedules and discharge specifications. A detailed discussion of the basis for the compliance schedules and discharge specifications is included in the Fact Sheet.
- L. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards become effective for CWA purposes. [65 Fed. Reg. 24641 (April 27, 2000) (codified at 40 CFR 131.21)]. Under the revised regulation (also known as the Alaska Rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000, may be used for CWA purposes, whether or not approved by USEPA.
- M. Stringency of Requirements for Individual Pollutants.** This Order contains both technology-based and WQBELs for individual pollutants. The technology-based effluent limitations consist of restrictions on oil and grease, pH, total suspended solids (TSS), and carbonaceous biochemical oxygen demand (CBOD). Derivation of these technology-based limitations is discussed in the Fact Sheet (Attachment F). This Order's technology-based pollutant restrictions implement the minimum applicable federal technology-based requirements. In addition, this Order contains effluent limitations more stringent than the minimum federal technology-based requirements as necessary to meet water quality standards.
- N. Antidegradation Policy.** NPDES regulations at 40 CFR 131.12 require that the State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law and 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. As discussed in detail in the Fact Sheet, the permitted discharge is consistent with the antidegradation provisions of 40 CFR 131.12 and State Water Board Resolution No. 68-16.

- O. Anti-Backsliding Requirements.** CWA Sections 402(o)(2) and 303(d)(4) and NPDES regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Some effluent limitations in this Order are less stringent than those in Order No. 01-143. As discussed in detail in the Fact Sheet, this relaxation of effluent limitations is consistent with the anti-backsliding requirements of the CWA and federal regulations.
- P. Monitoring and Reporting.** NPDES regulations at 40 CFR 122.48 require that all NPDES permits specify requirements for recording and reporting monitoring results. CWC sections 13267 and 13383 authorize the Regional Water Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.
- Q. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions and with those additional conditions that are applicable under 40 CFR 122.42. The Regional Water Board has also included in this Order special provisions applicable to the Discharger. A rationale for the special provisions contained in this Order is provided in the attached Fact Sheet.
- R. Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet.
- S. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet.

III. DISCHARGE PROHIBITIONS

- A. Discharge of wastewater at a location or in a manner different from that described in this Order is prohibited.
- B. The average dry weather flow, as measured at station E-001 described in the attached Monitoring and Reporting Plan (MRP) (Attachment E), shall not exceed 3.0 MGD. The average dry weather flow shall be determined for compliance with this prohibition over three consecutive dry weather months each year.
- C. Discharge of wastewater into Lower San Francisco Bay at any point where it does not receive an initial dilution of at least 10:1 is prohibited.
- D. The bypass of untreated or partially treated wastewater to waters of the United States is prohibited, except as provided for in the conditions stated in 40 CFR 122.41(m)(4) and in section A.13 of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Attachment G).
- E. Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations – Discharge Point E-001

1. Effluent Limitations for Specific Pollutants

- a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point E-001 with compliance measured at Monitoring Location E-001 as described in the attached MRP (Attachment E).

Table 6. Effluent Limitations – Discharge Point E-001

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Oil and Grease	mg/L	10	---	20	---	---
pH ⁽¹⁾	standard units	---	---	---	6.0	9.0
Total Suspended Solids (TSS)	mg/L	30	45	---	---	---
Carbonaceous Biochemical Oxygen Demand (CBOD)	mg/L	25	40	---	---	---
Ammonia (as Nitrogen)	mg/L N	110	---	160	---	---
Chlorine, Total Residual	mg/L	---	---	---	---	0.0 ⁽²⁾
Copper ^{(3), (4), (5)}	µg/L	71	---	100	---	---
Cyanide ^{(3), (5)}	µg/L	20	---	44	---	---
Dioxin-TEQ ^{(3), (5), (6)}	µg/L	1.4 x 10 ⁻⁸	---	2.8 x 10 ⁻⁸	---	---

(1) If the Discharger monitors pH continuously, pursuant to 40 CFR 401.17, the Discharger shall be in compliance with the pH limitation specified herein, provided that both of the following conditions are satisfied: (i) the total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and (ii) no individual excursion from the range of pH values shall exceed 60 minutes.

(2) This requirement is defined as below the limit of detection in standard test methods as defined in the latest edition of *Standard Methods for the Examination of Water and Wastewater*. The Discharger may elect to use a continuous on-line monitoring system(s) for measuring flows, sodium hypochlorite, and sodium bisulfite dosage (including a safety factor) and concentration to prove that chlorine residual exceedances are false positives. If convincing evidence is provided, Regional Water Board staff will conclude that these chlorine residual exceedances are false positives and are not violations of the Order's Total Residual Chlorine limit. Chlorine residual compliance may be demonstrated by monitoring at the NBSU common outfall (E-002).

(3) a. Limitations for toxic pollutants apply to the average concentration of all samples collected during the averaging period (daily = 24-hour period; monthly = calendar month).

b. All metals limitations are expressed as total recoverable metal.

(4) Alternate Effluent Limits for Copper:

a. If copper Site Specific Objectives (SSOs) for the receiving water become legally effective, resulting in an adjusted saltwater Criterion Continuous Concentration (CCC) of 2.5 micrograms per liter (µg/L) and a Criterion Maximum Concentration (CMC) of 3.9 µg/L, as documented in the Basin Plan Amendment Resolution R2-2007-0042 and in *Copper Site-Specific Objectives in San Francisco Bay: Proposed Basin Plan Amendment and Draft Staff Report* (dated June 6, 2007), then upon their effective date, the following limitations shall supersede those copper limitations listed in Table 7 (the rationale for these effluent limitations can be found in the Fact Sheet [Attachment F]).

Maximum Daily Effluent Limitation (MDEL) = 77 µg/L, and Average Monthly Effluent Limitation (AMEL) = 53 µg/L.

b. If a different copper SSO for the receiving water is adopted, alternate WQBELs based on the SSO will be determined after the SSO effective date.

(5) A daily maximum or average monthly value for a given constituent shall be considered noncompliant with the effluent limitations only if it exceeds the effluent limitation and the Reporting Level for that constituent. As outlined in Section 2.4.5 of the SIP, Table 7, below, indicates the Minimum Level (ML) for compliance determination purposes. An ML is the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is

equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

- (6) Final effluent limitations for dioxin toxic equivalents (dioxin-TEQ) shall become effective in accordance with the compliance schedule established by Section VI.C.7 of this Order.

b. **CBOD and TSS 85 Percent Removal:** The concentration-based average monthly percent removal of CBOD and TSS shall not be less than 85 percent.

c. **Fecal Coliform Bacteria:** The treated wastewater shall meet the following bacteriological limits:

(1) The geometric mean value for all samples analyzed for fecal coliform bacteria within each calendar month shall not exceed a Most Probable Number (MPN) of 200 organisms per 100 milliliters (MPN/100 mL); and

(2) No more than ten percent (10%) of all samples collected within each calendar month shall exceed a fecal coliform bacteria level of 400 MPN/100 mL.

d. **Enterococci Bacteria:** The monthly geometric mean enterococci bacteria concentration shall not exceed 35 MPN/100 mL.

Table 7. Minimum Levels for Pollutants with Effluent Limitations

Parameter	Minimum Level	Units
Copper	2	µg/L
Cyanide	5	µg/L
2,3,7,8-TCDD	5	pg/L
1,2,3,7,8-PeCDD	25	pg/L
1,2,3,4,7,8-HxCDD	25	pg/L
1,2,3,6,7,8-HxCDD	25	pg/L
1,2,3,7,8,9-HxCDD	25	pg/L
1,2,3,4,6,7,8-HpCDD	25	pg/L
OCDD	50	pg/L
2,3,7,8-TCDF	5	pg/L
1,2,3,7,8-PeCDF	25	pg/L
2,3,4,7,8-PeCDF	25	pg/L
1,2,3,4,7,8-HxCDF	25	pg/L
1,2,3,6,7,8-HxCDF	25	pg/L
1,2,3,7,8,9-HxCDF	25	pg/L
2,3,4,6,7,8-HxCDF	25	pg/L
1,2,3,4,6,7,8-HpCDF	25	pg/L
1,2,3,4,7,8,9-HpCDF	25	pg/L
OCDF	50	pg/L

3. Acute Toxicity:

- a. Representative samples of the effluent at Discharge Point E-001 shall meet the following limits for acute toxicity: Bioassays shall be conducted in compliance with Section V.A of the MRP (Attachment E).

The survival of organisms in undiluted combined effluent shall be:

- an eleven (11) sample median value of not less than 90 percent survival, and
- an eleven (11) sample 90 percentile value of not less than 70 percent survival.

- b. These acute toxicity limitations are further defined as follows:

11 sample median: A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit, if five or more of the past ten or less bioassay tests show less than 90 percent survival.

90th percentile: A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit, if one or more of the past ten or less bioassay tests show less than 70 percent survival.

- c. Bioassays shall be performed using the most up-to-date USEPA protocol and the most sensitive species based on the most recent screening test results. Bioassays shall be conducted in compliance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms*, currently 5th Edition (EPA-821-R-02-012).
- d. If the Discharger can demonstrate to the satisfaction of the Executive Officer that toxicity exceeding the levels cited above is caused by ammonia and that the ammonia in the discharge is in compliance with effluent limits, then such toxicity does not constitute a violation of this effluent limitation.

4. Chronic Toxicity

- a. Compliance with the Basin Plan narrative chronic toxicity objective shall be demonstrated according to the following tiered requirements based on results from representative samples of the treated final effluent at Discharge Point E-001 meeting test acceptability criteria and Section V.B of the MRP (Attachment E). Failure to conduct the required toxicity tests or a TRE within a designated period shall result in the establishment of effluent limitations for chronic toxicity.

(1) Conduct routine monitoring.

(2) Accelerate monitoring after exceeding a single-sample maximum of 10 chronic toxicity units (TUc), consistent with Table 4-5 of the Basin Plan for dischargers monitoring chronic toxicity annually. Accelerated monitoring shall consist of monthly monitoring.

- (3) Return to routine monitoring if accelerated monitoring does not exceed the "trigger" in (2), above.
- (4) If accelerated monitoring confirms consistent toxicity above the "trigger" in (2), above, initiate toxicity identification evaluation/toxicity reduction evaluation (TIE/TRE) in accordance with a workplan submitted in accordance with Section V.B.3 of the MRP (Attachment E) that incorporates any and all comments from the Executive Officer.
- (5) Return to routine monitoring after appropriate elements of the TRE workplan are implemented and either the toxicity drops below the "trigger" level in (2), above, or, based on the results of the TRE, the Executive Officer authorizes a return to routine monitoring.

b. Test Species and Methods

The Discharger shall conduct routine monitoring with the test species and protocols specified in Section V.B of the MRP (Attachment E). The Discharger shall also perform Chronic Toxicity Screening Phase monitoring as described in the Appendix E-1 of the MRP (Attachment E). Chronic Toxicity Monitoring Screening Phase Requirements, Critical Life Stage Toxicity Tests and definitions of terms used in the chronic toxicity monitoring are identified in Appendices E-1 and E-2 of the MRP (Attachment E).

V. RECEIVING WATER LIMITATIONS

A. Surface Water Limitations

1. Receiving water limitations are based on water quality objectives contained in the Basin Plan and are a required part of this Order. The discharges shall not cause the following in Lower San Francisco Bay:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foams;
 - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil and other products of petroleum origin; or
 - e. Toxic or other deleterious substances to be present in concentrations or quantities that will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or that render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharge of waste shall not cause the following limits to be exceeded in waters of the State within one foot of the water surface:

- a. Dissolved Oxygen 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, the discharge shall not cause further reduction in ambient dissolved oxygen concentrations.

- b. Dissolved Sulfide Natural background levels
- c. pH Within a range from 6.5 to 8.5

VI. PROVISIONS

A. Standard Provisions

1. The Discharger shall comply with Federal Standard Provisions included in Attachment D of this Order.
2. The Discharger shall comply with all applicable items of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Standard Provisions, Attachment G). Where provisions or reporting requirements specified in this Order and Attachment G are different from equivalent or related provisions or reporting requirements given in the Standard Provisions in Attachment D, the specifications of this Order and/or Attachment G shall apply in areas where those provisions are more stringent. Duplicative requirements in the federal Standard Provisions in VI.A.1.2, above (Attachment D), and the regional Standard Provisions (Attachment G) are not separate requirements. A violation of a duplicative requirement does not constitute two separate violations.

B. Monitoring and Reporting Program Requirements

The Discharger shall comply with the MRP (Attachment E) and future revisions thereto. The Discharger shall also comply with the requirements contained in *Self Monitoring Programs, Part A*, August 1993 (Attachment G).

C. Special Provisions

1. Reopener Provisions

The Regional Water Board may modify or reopen this Order prior to its expiration date in any of the following circumstances as allowed by law:

- a. If present or future investigations demonstrate that the discharges governed by this Order will have, or will cease to have, a reasonable potential to cause or contribute to adverse impacts on water quality and/or beneficial uses of the receiving waters.
- b. If new or revised WQOs or Total Maximum Daily Loads (TMDLs) come into effect for the San Francisco Bay estuary and contiguous water bodies (whether statewide, regional, or site-specific). In such cases, effluent limitations in this Order will be modified as necessary to reflect updated WQOs and waste load allocations in TMDLs. Adoption of

effluent limitations contained in this Order is not intended to restrict in any way future modifications based on legally adopted WQOs, TMDLs, or as otherwise permitted under Federal regulations governing NPDES permit modifications.

- c. If translator or other water quality studies provide a basis for determining that a permit condition(s) should be modified.
- d. If an administrative or judicial decision on a separate NPDES permit or WDR addresses requirements similar to this discharge.
- e. Or as otherwise authorized by law.

The Discharger may request permit modification based on the above. The Discharger shall include in any such request an antidegradation and antibacksliding analysis.

2. Special Studies, Technical Reports and Additional Monitoring Requirements

a. Effluent Characterization for Selected Constituents

The Discharger shall continue to monitor and evaluate the discharge from Discharge Point E-001 (measured at E-001) for the constituents listed in Enclosure A of the Regional Water Board's August 6, 2001, Letter entitled, *Requirement for Monitoring of Pollutants in Effluent and Receiving Water to Implement New Statewide Regulations and Policy (Attachment G)*, according to the sampling frequency specified in the attached MRP (Attachment E). Compliance with this requirement shall be achieved in accordance with the specifications stated in the Regional Water Board's August 6, 2001, Letter under Effluent Monitoring for Major Dischargers.

The Discharger shall evaluate on an annual basis if concentrations of any constituent increase over past performance. The Discharger shall investigate the cause of the increase. The investigation may include, but need not be limited to, an increase in the effluent monitoring frequency, monitoring of internal process streams, and monitoring of influent sources. This may be satisfied through identification of these constituents as "Pollutants of Concern" in the Discharger's Pollutant Minimization Program described in Provision C.3.b, below. A summary of the annual evaluation of data and source investigation activities shall also be reported in the annual self-monitoring report.

A final report that presents all the data shall be submitted to the Regional Water Board no later than 180 days prior to the Order expiration date. This final report shall be submitted with the application for permit reissuance.

b. Ambient Background Receiving Water Study

The Discharger shall collect or participate in collecting background ambient receiving water monitoring data for priority pollutants for which the Regional Water Board is required to perform reasonable potential analyses and calculate effluent limitations. The data on the conventional water quality parameters (pH, salinity, and hardness) shall be sufficient to characterize these parameters in the receiving water at a point after the discharge has mixed with the receiving waters. This provision may be met through

monitoring through a Collaborative Bay Area Clean Water Agencies (BACWA) Study or a similar ambient monitoring program for San Francisco Bay. This Order may be reopened, as appropriate, to incorporate effluent limits or other requirements based on Regional Water Board review of these data.

The Discharger shall submit a final report that presents all this data to the Regional Water Board 180 days prior to Order expiration, or cause one to be submitted on its behalf. This final report shall be submitted prior to or with the application for permit reissuance.

c. Optional Mass Offset

If the Discharger can demonstrate that further net reductions of the total mass loadings of 303(d)-listed pollutants to the receiving water cannot be achieved through economically feasible measures such as aggressive source control, wastewater reuse, and treatment plant optimization, but only through a mass offset program, the Discharger may submit to the Regional Water Board for approval a mass offset plan to reduce 303(d)-listed pollutants to the same watershed or drainage basin. The Regional Water Board may modify this Order to allow an approved mass offset program.

3. Best Management Practices and Pollution Minimization

a. Pollution Minimization Program

The Discharger shall continue to improve, in a manner acceptable to the Executive Officer, its existing Pollutant Minimization Program to promote minimization of pollutant loadings to the treatment plant and therefore to the receiving waters.

b. Annual Pollution Prevention Report

The Discharger shall submit an annual report, acceptable to the Executive Officer, no later than February 28th of each calendar year. The annual report shall cover January through December of the preceding year. Each annual report shall include at least the following information:

- (1) *A brief description of its treatment plant, treatment plant processes and service area.*
- (2) *A discussion of the current pollutants of concern.* Periodically, the Discharger shall determine which pollutants are currently a problem and/or which pollutants may be potential future problems. This discussion shall include the reasons why the pollutants were chosen.
- (3) *Identification of sources for the pollutants of concern.* This discussion shall include how the Discharger intends to estimate and identify pollutant sources. The Discharger should also identify sources or potential sources not directly within the ability or authority of the Discharger to control, such as pollutants in the potable water supply and air deposition.
- (4) *Identification of tasks to reduce the sources of the pollutants of concern.* This discussion shall identify and prioritize tasks to address the Discharger's pollutants of