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11 Attorneys for Petitioner
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12

13 STATE WATER RESOURCES CONTROL BOARD

14 STATE OF CALIFORNIA

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16 In the Matter of
17 CITY OF OAKLAND,
18 Petitioner,
19 For Review of Final Order No. R2-2009-0085
(NPDES No. CA0038512) of the California
20 Regional Water Quality Control Board, San
21 Francisco Bay Region.

PETITION NO. _____

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

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A/73237963.4

1 Pursuant to Section 13220(a) of the California Water Code and Section 2050 of Title 23
2 of the California Code of Regulations, Petitioner City of Oakland (“Oakland”) hereby petitions
3 the California State Water Resources Control Board (“State Board”) for review of Order No. R2-
4 2009-0085 adopted by the California Regional Water Quality Control Board, San Francisco Bay
5 Region’s (“Regional Board”) on November 18, 2009. The Order is also National Pollutant
6 Discharge Elimination System (“NPDES”) Permit No. CA0038512 for Oakland’s Sanitary
7 Sewer Collection System (“Permit”). A copy of the Permit is attached to this Petition as Exhibit
8 A. A copy of this Petition has been sent to the Regional Board. A copy of the Request to
9 Prepare Record of Proceeding is attached as Exhibit B. The issues and a summary of the bases
10 for the Petition follow. Oakland reserves the right to file a more detailed memorandum in
11 support of its Petition when the full administrative record is available and any other material has
12 been submitted.¹ Oakland requests a hearing in this matter.

13 Oakland has worked and will continue to work cooperatively with the Regional Board to
14 achieve the common goal of protecting water quality in San Francisco Bay. The Regional Board
15 in revising this Permit and other NPDES permits of satellite cities has grappled with numerous
16 complex technical and legal issues. On several issues, however, the Regional Board’s legal
17 analysis is incorrect and the Regional Board did not fully consider the facts surrounding both
18 Oakland and the satellite cities and the treatment entity. With great respect for the Regional
19 Board and its staff, Oakland must seek review of these issues from the State Board in order to
20 preserve Oakland’s rights.

21 This Petition is a protective filing, and Oakland requests that the State Board hold this
22 petition in abeyance pursuant to Title 23, California Code of Regulations, Section 2050.5,

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24 ¹ The State Water Resources Control Board’s regulations require submission of a statement of
25 points and authorities in support of a petition (23 C.C.R. §2050(a)(7)), and this document is
26 intended to serve as a preliminary memorandum. However, it is impossible to prepare a
27 complete statement and memorandum in the absence of the complete administrative record,
28 which is not yet available. In addition, Oakland will introduce further evidence before the State
Board as permitted by 23 CCR §2050.6 and Water Code §13320(b), regarding economics and
further impacts that was not available at the time of the Regional Board hearing.

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1 subdivision (d), until further notice. If this Petition is not held in abeyance for any reason,
2 Petition will file an amended petition and supporting declaration seeking a stay under Water
3 Code § 13321(a) and Title 23, California Code of Regulations, Section 2053.

4 **1. NAME AND ADDRESS OF PETITIONER**

5 City of Oakland
6 c/o Oakland City Attorney's Office
7 City Hall, 6th Floor
8 1 Frank Ogawa Plaza
9 Oakland, California 94612
10 Telephone: (510) 238-3601

11 Attn: Celso Ortiz, Esq.

12 Oakland can be contacted through its outside legal counsel:

13 James J. Dragna
14 Bryan Brown
15 Marilee J. Allan
16 355 South Grand Avenue, Suite 4400
17 Los Angeles, California 90017-3106
18 Telephone: (213) 680-6400

19 **2. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

20 Oakland seeks review of the Regional Board's Order No. R2-2009-0085, which was the
21 issuance of the Permit (NPDES Permit No. CA0038512).

22 **3. DATE OF THE REGIONAL BOARD ACTION**

23 The Regional Board issued its Order and adopted the Permit on November 18, 2009.

24 **4. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION**
25 **WAS INAPPROPRIATE OR IMPROPER**

26 As set forth below, the action of the Regional Board with respect to Oakland was not
27 supported by the record, and was arbitrary, vague, and in violation of law and policy.

28 **A. 40 C.F.R. § 122.41(e) does not Provide Authority for the Imposition of**
Discharge Prohibition III.D

The Regional Board improperly relied on Section 122.41, subdivision (e), of Title 40 of
the Code of Federal Regulations for the imposition of Discharge Prohibition III.D. Section IV

1 of the Permit Fact Sheet states that Discharge Prohibition III.D is based on the operations and
2 maintenance requirements in Section 122.41, subdivision (e), of Title 40 of the Code of Federal
3 Regulations and “is necessary to ensure that the Discharger properly operates and maintains its
4 facilities to reduce I&I.” Section 122.41, subdivision (e), provides in relevant part, “[t]he
5 permittee shall at all times properly operate and maintain all facilities and systems of treatment
6 and control (and related appurtenances) which are installed or used by the permittee to achieve
7 compliance with the conditions of the permit.”

8 Section 122.41, subdivision (e), does not authorize the Regional Board to impose
9 Discharge Prohibition III.D because Discharge Prohibition III.D is not an operation and
10 maintenance requirement. Instead, Discharge Prohibition III.D is a narrative wet weather flow
11 limit. The broad “cause or contribute” language in the discharge prohibition potentially makes a
12 Satellite liable for violations of Discharge Prohibition III.D if it contributes wet weather flows to
13 East Bay Municipal Utility District’s (“EBMUD”) interceptor system on a day in which
14 EBMUD discharges from its Wet Weather Facilities regardless of whether the Satellite has
15 properly maintained and operated its collection system to eliminate I&I. The Permit even
16 acknowledges that Discharge Prohibition III.D. is designed to control peak wet weather flows.
17 Section II.O of the Permit provides that “[t]he Regional Board intends to refine the narrative
18 Prohibition III.D with a numeric flow limit or other more detailed set of standards that achieves
19 the same result as the Prohibition when information necessary to develop the limit becomes
20 available.”² Similarly, Section IV.B.2 of the permit states, “[i]mplementation of the General
21 Collection System WDR requirements for proper operation and maintenance and mitigation of
22 spills will satisfy the corresponding federal NPDES requirements specified in this Order
23 *provided the Discharger reduces peak wet weather flows so that it does not cause or contribute*

24 _____
25 ² Oakland disagrees with this quoted language for two reasons. First, Oakland does not agree
26 with the Permit’s Finding II.O concept of “numeric flow limit” and similarly with IV.F-14 where
27 it is also suggested that “an appropriate numeric flow limit or other more detailed set of
28 standards” is the appropriate future Regional Board revision to the Permit. Second, to the extent
that this quoted language prejudices how Prohibition III.D will be refined in the future, Petitioner
contends that action is inappropriate and premature.

1 to discharges at EBMUD's Wet Weather Facilities." (Emphasis added.) Accordingly, because
2 Prohibition III.D is a wet weather flow limit rather than an operation and maintenance
3 requirement, it is not authorized by Section 122.41, subdivision (e).

4 Moreover, if the purpose of Discharge Prohibition III.D was merely to ensure that the
5 Satellites properly maintain and operate their collection systems to reduce I&I, Discharge
6 Prohibition III.D would be superfluous because Section IV.B.2 of the Permit requires a Satellite
7 to "properly operate and maintain its collection system, which includes but is not limited to
8 controlling inflow and infiltration." Similarly, the standard permit conditions set forth in Section
9 I.D of Attachment D require the Satellites to properly operate and maintain their facilities in
10 accordance with 40 C.F.R § 122.41(e).

11 **B. Discharge Prohibition III.D Violates Substantive Due Process**

12 Discharge Prohibition III.D violates substantive due process because it is a vague
13 narrative provision. A permit provision is unconstitutionally vague if it does not "sufficiently
14 convey the proscribed conduct when measured by common understanding and practices," (*U.S.*
15 *v. Christopher*, 700 F.2d 1253, 1258 (9th Cir. 1983)), or if it encourages arbitrary and
16 discriminatory enforcement. (*Kolender v. Lawson*, 461 U.S. 352 (1983); *People ex. rel. Gallo v.*
17 *Acuna*, 14 Cal.4th 1090 (1997).)

18 Discharge Prohibition III.D merely provides that Oakland must not "cause or contribute
19 to discharges from EBMUD's Wet Weather Facilities that occur during wet weather or are
20 associated with wet weather." The permit does not define "cause or contribute," nor does it
21 provide Oakland with any other means of knowing how to control the operation of its collection
22 systems during wet weather to comply with Discharge Prohibition III.D. Accordingly,
23 Discharge Prohibition III.D. does not sufficiently convey the proscribed conduct as required by
24 due process.

25 Moreover, the Permit does not contain any standards for determining compliance with
26 Discharge Prohibition III.D, and therefore encourages arbitrary enforcement in violation of due
27 process. (*Kolender v. Lawson*, 461 U.S. at 358-62 (holding that statute was unconstitutionally
28 vague because it contains no standard for determining what a person must do to comply with the

1 requirements of the statute and vests virtually complete discretion in the hands of the police to
2 determine compliance).)

3 Furthermore, Discharge Prohibition III.D violates due process because it potentially
4 makes the Oakland strictly liable for the actions of third parties over which it has no control,
5 such as EBMUD's operation of the Wet Weather Facilities and the amount of flow contributed
6 by other Satellites.

7 **C. Discharge Provision III.D Exceeds the Scope of the Clean Water Act**

8 The Permit's Discharge Provision III.D (the "cause or contribute" prohibition) does not
9 regulate discharges to navigable "waters of the United States," which is all that the Clean Water
10 Act regulates. Here, by its terms, which terms the regulating agencies have stated in testimony
11 that they will later be tightening, Prohibition III.D proscribes Oakland and other Satellites
12 collection systems' flows to a **treatment entity** only. This is not a regulation of a discharge to a
13 water of the United States. A permit term that does not regulate discharges to waters of the
14 United States is invalid because it is beyond Congress' authority under Article III of the
15 Constitution.

16 **D. The Regional Board Failed to Consider Factors in Water Code**
17 **Section 13241**

18 The Permit is invalid because it does not demonstrate that the Regional Board considered
19 the factors in Water Code Section 13241. When issuing waste discharge requirements to a
20 permittee under the Clean Water Act that impose requirements more stringent than those
21 required by the Clean Water Act, the Regional Board must consider all of the factors set forth in
22 Water Code Section 13241, including but not limited to economic considerations and housing
23 considerations. (Wat. Code § 13263, subd. (a); *City of Burbank v. State Water Resources*
24 *Control Board* 25 Cal.4th 613, 627 (2005).)

25 The Permit imposes requirements more stringent than those imposed by the Clean Water
26 Act. The Permit prohibits discharges to EBMUD's interceptor that cause or contribute to
27 discharges from EBMUD's Wet Weather Facilities, requires the control of I&I and requires the
28 preparation of a Sewer System Management Plan while the Clean Water Act does not. The

1 addition of these more stringent requirements to the Permit requires the Regional Board to
2 comply with Water Code Section 13241. The Regional Board did not do so.

3 **E. The Permit Impermissibly Specifies the Manner of Compliance in**
4 **Violation of Water Code Section 13360**

5 Water Code Section 13360 prohibits the Regional Board from specifying the manner in
6 which a permittee achieves compliance with waste discharge requirements and explicitly
7 authorizes a permittee to comply in any lawful manner. Section IV.B.2 of the Permit violates
8 Section 13360 by specifying that the Oakland must achieve compliance with Discharge
9 Prohibition III.D by controlling I&I. The Permit is therefore invalid because it does not permit
10 Oakland to comply with the discharge prohibitions in any lawful manner, including by
11 constructing additional capacity in its collection system, or by having EBMUD increase capacity
12 in its treatment and WWF.

13 **F. Oakland's Collection System Does Not Require an NPDES Permit**

14 Because Oakland does not discharge pollutants to a water of the United States from a
15 point source, the Regional Board does not have the authority to require an NPDES permit. In
16 response to the Satellites' comments on this issue, the Regional Board asserts that an NPDES
17 permit is appropriate because sanitary sewer overflows ("SSOs") occur in the Satellite's
18 collection system which discharge to surface waters and the Satellite's collection system falls
19 within the definition of a "publicly owned treatment works" ("POTW"). (Response to
20 Comments, p. 17.) Neither of these arguments provide the Regional Board with a sufficient legal
21 basis for regulating Oakland's collection system under an NPDES permit.

22 **1. Potential SSOs do not Justify Issuance of an NPDES Permit**

23 Potential discharges from the Oakland's collection system in the form of SSOs do not
24 provide the Regional Board with authority to regulate the Oakland's collection system under an
25 NPDES permit. The Clean Water Act authorizes the Regional Board to issue NPDES permits to
26 "regulate and control only *actual* discharges-not potential discharges, and certainly not point
27 sources themselves." (*Waterkeeper Alliance, Inc. v. U.S.* 399 F.3d 486, 505 (2d Cir. 2005).)
28 Accordingly, unless there is an actual addition of any pollutant to navigable waters from

1 Oakland's collection system, "there is no point source discharge, no statutory violation, no
2 statutory obligation...to comply with EPA regulations for point source discharges, and no
3 statutory obligation...to seek or obtain an NPDES permit in the first instance." (*Ibid.*)

4 Indeed, the State Board has recognized its inability to regulate collection systems under
5 an NPDES permit based on potential SSOs. In adopting Order No. 2006-003, Statewide General
6 Waste Discharge Requirements for Sanitary Sewer Systems, the State Board considered
7 comments from stakeholders suggesting that NPDES permits should be required for all
8 collection systems because they have the potential to overflow to surface waters. The State
9 Board rejected this approach, stating that *Waterkeeper Alliance* has "called into question the
10 states' and USEPA's ability to regulate discharges that are only 'potential' under an NPDES
11 permit." (Fact Sheet for Order No. 2006-003, p. 4.)

12 2. Oakland's Collection System does not Fall Within the Definition of a 13 POTW

14 While the definition of treatment works in Section 212 of the Clean Water Act is defined
15 broadly to include sewage collection systems, that definition only applies to the federal grant
16 program in Subchapter II of the Clean Water Act. For purposes of NPDES permitting
17 requirements under Subchapter III of the Clean Water Act, EPA's narrower definition of POTW
18 set forth in 40 C.F.R. § 122.2 applies. (*Montgomery Environmental Coalition v. Costle*, 646
19 F.2d 568, 590 (D.C. Cir. 1980). Under that section, a POTW is limited to a
20 "municipality...which has jurisdiction over the Indirect Discharges to and the discharges from
21 such a treatment works." (40 C.F.R. §§ 122.2, 403.3(q).) Thus, because Oakland does not have
22 jurisdiction over the indirect discharges to, or the discharges from, EBMUD's wastewater
23 treatment facility, Oakland's collection system does not constitute a POTW and is not subject to
24 NPDES permitting requirements.

25 In adopting Order No. 2006-003, Statewide General Waste Discharge Requirements for
26 Sanitary Sewer Systems, the State Board acknowledged that satellite collection systems fall
27 outside the scope of EPA's definition of POTW. The State Board had considered comments
28 from stakeholders suggesting that NPDES permits should be required for all collection systems

1 leading to an NPDES-permitted publicly owned treatment works based on EPA's definition of
2 POTW. However, the State Board rejected this approach noting that "this interpretation is not
3 widely accepted and US EPA has no official guidance to this [effect]." (Fact Sheet for Order
4 No. 2006-003, p. 4.) In addition, the State Board recognized that only the portion of the sanitary
5 sewer system that is owned by the same agency that owns the permitted wastewater treatment
6 facility is subject to NPDES permit requirements. (*Ibid.*)

7 **G. State Board Order No. WQ 2007-004 Was Erroneously Decided**

8 The Permit is invalid because it is based on Order No. WQ 2007-04, which was
9 erroneously decided by the State Board.³ The 2007 Order concluded that the permit and time
10 schedule order issued to EBMUD by the Regional Board in September 2005, which permitted
11 EBMUD to use its Wet Weather Facilities, were invalid because they failed to implement
12 secondary treatment requirements and to ensure compliance with applicable water quality
13 standards. As discussed in EBMUD's Petition for Review of Waste Discharge Requirements
14 Order No. R2-2009-0004 and Cease and Desist Order No. R2-2009-005, Petition A-1996
15 ("EBMUD Petition"), the State Board's conclusions in the 2007 Order were erroneous because
16 secondary treatment standards do not apply to facilities that discharge intermittently during wet
17 weather. In addition, the Wet Weather Facilities are not subject to secondary treatment standards
18 because they do not fall within the definition of a "publicly owned treatment works."

19 Oakland agrees with and incorporates by reference the arguments made in EBMUD's
20 Petition regarding the validity of the 2007 Order. Accordingly, to the extent that the State Board
21 erroneously determined that the Wet Weather Facilities are subject to secondary treatment
22 standards, the basis for Discharge Prohibition III.D is invalid.

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26 ³ The Petitioner understands that the Regional Board must comply with the State Board's Order
27 No. WQ-2007-004. Nevertheless, the Petitioner believes Order No. WQ 2007-004 was wrongly
28 decided and should be reconsidered by the State Board.

1 **H. The Regional Board is Barred from Requiring Further and Different**
2 **Actions than those Set Forth in Previous Orders under the Doctrines**
3 **of Res Judicata and Estoppel**

4 The Wet Weather Facilities and Oakland's improvements under the East Bay
5 Infiltration/Inflow Correction Program ("ICP") were constructed at the direction of, and with the
6 consent of, both the Regional Board and EPA. These projects were undertaken to comply with
7 injunctive provisions of Regional Board orders issued to resolve the agency's claims under the
8 Clean Water Act and Porter-Cologne regarding wet weather discharges from Oakland's
9 collection systems. These administrative orders are final, and the Regional Board is barred by
10 the doctrine of res judicata from seeking further relief on the basis of the same claims.

11 In addition, because Oakland relied on representations from the Regional Board and EPA
12 demanding construction of the Wet Weather Facilities and Oakland's improvements, and the
13 Regional Board and EPA knew of this reliance, the Regional Board is now estopped from
14 requiring further and different actions from Oakland and the other Satellites. (*In the Matter of the*
15 *Petition of William G. Kengel*, Order No. WQ 89-20 (Cal.St.Wat.Res.Bd. 1989) (stating that
16 estoppel applies in administrative proceedings where the party to be estopped is apprised of the
17 facts and intends that its conduct be acted on while the party seeking to assert estoppel is
18 ignorant of the true state of facts and relies on the conduct to his injury.)

19 In response to Oakland and the Satellites' comments, the Regional Board asserts that it is
20 not barred from seeking further relief because the prior orders "were primarily established to
21 address untreated sanitary sewer overflows" from Oakland's collection system and EBMUD's
22 interceptor system while the Permit addresses "discharges of partially treated wastewater in
23 violation of the Clean Water Act from EBMUD's Wet Weather Facilities." (Response to
24 Comments, p. 18.) The Regional Board's response mischaracterizes the purpose of the prior
25 orders. The prior orders were designed to address all SSOs from Oakland's and the other
26 Satellite's collection systems, not just untreated SSOs (Regional Board Order No. 86-17 "This
27 cease and desist order is directed at addressing in a reasonable manner the public health aspects
28 of direct contact with overflows from the community collection systems"). Moreover, the

1 solution developed by Oakland and the other Satellites to comply with the orders, which was
2 approved by the Regional Board, was designed to eliminate all SSOs. (Regional Board Order
3 No. 93-134, p. 3. (“The compliance plans dated October 8, 1985, proposed a 20-year plan to
4 implement the East Bay Infiltration/Inflow Correction Program (ICP) to eliminate wet weather
5 overflows from the communities’ sanitary sewer system.”)) Accordingly, because the prior
6 orders were designed to address all wet weather SSOs from Oakland’s collection system, and
7 Oakland constructed significant improvements to comply with the prior orders, the Regional
8 Board is now barred from seeking further relief to address wet weather SSOs.

9 **I. The Permit Does not Implement the Basin Plan in Violation of Water**
10 **Code Section 13263**

11 Water Code Section 13263 requires, among other things, that permits issued by the
12 Regional Board implement the water quality control plans adopted by the State Board. The
13 Water Quality Control Plan for the San Francisco Bay Basin (“Basin Plan”) permits varying
14 treatment levels for wet weather flows depending on the beneficial uses to be protected and the
15 recurrence interval of the wet weather event. For areas, such as Oakland’s service area, where
16 water quality or aquatic productivity may be limited due to the pollution effects of urbanization,
17 the Basin Plan requires secondary treatment for flows up to a half-year recurrence interval,
18 requires primary treatment for flows up to a 5-year recurrence interval, and permits overflows for
19 above five-year intervals. (Basin Plan, Table 4-6.) The Permit, on the other hand, prohibits all
20 wet weather discharges from EBMUD’s Wet Weather Facilities regardless of the magnitude of
21 the wet weather event. The Permit is therefore inconsistent with the regulatory strategy for wet
22 weather overflows set forth in the Basin Plan in violation of Section 13263.

23 The Basin Plan, including its wet weather strategy, has been approved by EPA and is
24 therefore the “applicable water quality standard” under Clean Water Act Section 1313(c)(3). (33
25 U.S.C. § 1313(c)(3).) EPA’s approval of these Basin Plan provisions in a formal rulemaking by
26 “determin[ing] that such standard meets the requirements of this chapter [the Clean Water Act],”
27 (*ibid.*), forecloses any contention that use of the Wet Weather Facilities violates federal law and
28 forecloses any contention that Discharge Prohibition III.D is required by federal law. Unless and

1 until a Basin Plan amendment is approved by the State Board, the Office of Administrative Law,
2 and EPA, the Basin Plan must be implemented.

3 The Regional Board cannot impose limitations more stringent than required by the Basin
4 Plan, even on a case-by-case basis, without considering the factors listed in Water Code Section
5 13241 and making sufficient findings. (*In the Matter of the Petition of the City and County of*
6 *San Francisco, et al.*, Order No. WQ 95-4 (Sept. 21, 1995), p. 13.) As stated in Section 4.D
7 above, the Regional Board did neither in this case.

8 **5. THE MANNER IN WHICH OAKLAND IS AGGRIEVED**

9 Oakland is aggrieved as a permit holder subject to the conditions and limitations in the
10 Permit which may be more stringent or onerous than required or provided for under current law.
11 The Permit and Order also are unsupported by evidence in the record and evidence to be adduced
12 at a hearing before the State Board. Moreover, Discharge Prohibition III.D is vague, subject to
13 the actions of third parties over whom Oakland has no control, and impossible to comply with by
14 its terms. These inappropriate, improper and unlawful conditions and limitations will require
15 Oakland to expend more money and resources to comply with the Permit than would have been
16 required if the Permit was comprised of appropriate, proper and lawful conditions. Because of
17 the severe economic circumstances confronting Oakland and the rest of the state and country, the
18 unnecessary expenditure of money and resources is particularly harmful.

19 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD**
20 **REQUESTED**

21 As discussed above, Oakland requests that this Petition be held in abeyance. If it
22 becomes necessary for Oakland to pursue its appeal, Oakland requests that the State Board issue
23 an Order:

- 24 • Remanding the Permit to the Regional Board;
- 25 • Requiring the Regional Board regulate Petitioner's collection system under State
26 Board Order No. 2006-0003, Statewide General Waste Discharge Requirements
for Sanitary Sewer Systems, or under individual Waste Discharge Requirements
under state law, rather than as an NPDES permit under federal law; and
- 27 • Providing for such other and further relief as is just and proper and as may be
28 requested by Oakland and the other Satellites.

1 Alternatively, Oakland requests that the State Board issue an Order:

- 2 • Remanding the Permit to the Regional Board;
- 3 • Requiring the Regional Board to remove or revise Section IV.B.2 of the Permit so
4 that it no longer impermissibly specifies the manner of compliance;
- 5 • Requiring the Regional Board to remove or revise Discharge Prohibition III.D;
- 6 • Requiring the Regional Board to analyze the cost of compliance in accordance
7 with Water Code Section 13241;
- 8 • Requiring the Regional Board to make sufficient findings; and,
- 9 • Providing for such other and further relief as is just and proper and as may be
10 requested by Oakland and the other Satellites.

11 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
12 LEGAL ISSUES RAISED IN THIS PETITION**

13 Oakland's preliminary statement of points and authorities is set forth in Section 4 above.
14 Oakland reserves the right to supplement this statement upon receipt and review of the
15 administrative record. Oakland also requests that it be permitted to submit supplemental
16 evidence not considered by the Regional Board, including evidence of economic considerations
17 and weather considerations regarding the Wet Weather Facilities which was not available at the
18 time of the Regional Board hearing, pursuant to Title 23, California Code of Regulations,
19 Section 2050.6 and Water Code Section 13320(b).

20 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE
21 APPROPRIATE REGIONAL BOARD**

22 A true and correct copy of the Petition was mailed by First Class mail on December 21,
23 2009, to the Regional Board at the following address:

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

1 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**
2 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**
3 **BOARD**

4 Because Oakland requests that this Petition be held in abeyance by the State Board, in the
5 event this Petition is made active, Oakland will submit as an amendment to this Petition a
6 statement that the substantive issues and objections raised in this Petition were either raised
7 before the Regional Board or an explanation of why Oakland was not required or was unable to
8 raise the substantive issues and objections before the Regional Board.

9 **10. REQUEST TO HOLD PETITION IN ABEYANCE**

10 Oakland requests that the State Board hold this petition in abeyance pursuant to Title 23,
11 California Code of Regulations, Section 2050.5, subdivision (d).

12 **11. REQUEST FOR HEARING**

13 Oakland requests that the State Board hold a hearing at which Oakland can present
14 additional evidence to the State Board. Because Oakland requests that this Petition be held in
15 abeyance by the State Board, in the event this Petition is made active, Oakland will submit as an
16 amendment to this Petition a statement regarding that additional evidence and a summary of
17 contentions to be addressed or evidence to be introduced and a showing of why the contentions
18 or evidence have not been previously or adequately presented, as required under Title 23,
19 California Code of Regulations, Section 2050.6(a), (b).

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1 DATED: December 21, 2009

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Bingham McCutchen LLP

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City of Oakland

Oakland City Attorney's Office

By: Celso Ortiz by Marilee J. Allan
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Attorneys for Petitioner
City of Oakland

EXHIBIT A

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>

ORDER NO. R2-2009-0085
NPDES NO. CA0038512

**WASTE DISCHARGE REQUIREMENTS
FOR THE CITY OF OAKLAND
SANITARY SEWER COLLECTION SYSTEM
ALAMEDA COUNTY**

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

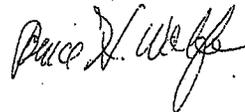
Table 1. Discharger Information

Discharger	City of Oakland
Name of Facility	Sanitary Sewer Collection System
Facility Mailing Address	250 Frank H Ogawa Plaza, Oakland, CA 94612
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this Discharger as a minor discharger.	

Table 2. Administrative Information

This Order was adopted by the Regional Water Quality Control Board on:	November 18, 2009
This Order shall become effective on:	November 18, 2009
This Order shall expire on:	November 17, 2014
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:	180 days prior to the Order expiration date

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 shown above.



Digitally signed by
Bruce Wolfe
Date: 2009.11.18
17:42:49 -08'00'

Bruce H. Wolfe, Executive Officer

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I. FACILITY INFORMATION

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

Table 3. Facility Information

Discharger	City of Oakland
Name of Facility	Sewer Collection System
Facility Address	Oakland city limits
	Oakland, CA
	Alameda County
Facility Contact, Title, and Phone	Dan Lindheim, City Administrator (510) 238-6840
Mailing Address	250 Frank H Ogawa Plaza, Oakland, CA 94612
Type of Facility	Sanitary Sewer Collection System
Facility Design Flow	Not Applicable

II. FINDINGS

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

A. Background. The City of Oakland (hereinafter Discharger) was regulated by Order No. R2-2004-0012 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038512. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

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 maintains approximately 1,000 miles of mains and seven pump stations in its sanitary sewer (or wastewater) collection system, which serves a population of about 400,000 people in the City of Oakland. Under the ownership of the City of Oakland, the Port of Oakland operates and maintains a wastewater collection system that consists of about 9 miles of gravity sewer and about 12 miles of laterals.

The Discharger is one of seven “Satellite Agencies” that operates wastewater collection systems in the East Bay that route sewage to the East Bay Municipal Utility District’s (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the Cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont. Wastewaters collected from these East Bay collection systems flow to

interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under separate NPDES permits (CA0037702 and CA0038440) and Cease and Desist Order No. R2-2009-0005.

Cease and Desist Orders, EBMUD 2009 NPDES Permit, and Stipulated Order for Preliminary Relief. In 1986, the Regional Water Board issued a Cease and Desist Order ("CDO") No. 86-17 (reissued in 1993 as CDO No. 93-134) to the Discharger and each of the Satellite Agencies requiring them to cease and desist discharging from their wastewater collection systems. In response, EBMUD and the Satellite Agencies developed a comprehensive Infiltration/Inflow Correction Program ("I/ICP") that contains schedules, called Compliance Plans, for each Satellite Agency to complete various sewer rehabilitation projects specified in the I/ICP. The Compliance Plans were incorporated into CDO No. 93-134 for each Satellite Agency as a compliance schedule.

In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the U. S. Environmental Protection Agency (USEPA), and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

- C. Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges 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,

and reports required by Order No. R2-2004-0012. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order.

- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations¹, require that permits allowing discharges include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. Because this Order does not allow any discharges, no such conditions are required.
- G. Water Quality-Based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits allowing discharges include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. Because this Order does not allow any discharges, no such limitations are required.
- H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay Region (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Because this Order does not allow any discharges, effluent limitations based on the Basin Plan are not required.
- The State Water Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for surface waters. Because this Order does not allow any discharges, effluent limitations based on the Thermal Plan are not required.
- 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 applied 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. Because this Order does not allow any discharges, effluent limitations based on the NTR and CTR are not required.
- 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

¹ All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

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. Because this Order does not allow any discharges, effluent limitations based on the SIP are not required.

- K. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on a discharger's request and demonstration that it is infeasible for an existing discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules 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 does not include compliance schedules, interim effluent limitations or discharge specifications.
- L. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 C.F.R. § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) 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.** Because this Order does not allow any discharges, it is the most stringent possible order for all individual pollutants.
- N. Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and State Water Board Resolution No. 68-16.

- O. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and section 122.44(l), title 40 of the Code of Federal Regulations, prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Because this Order prohibits all discharges from the wastewater collection system, there are no effluent limitations in this Order, and this Order is as stringent as the previous permit. The Regional Water Board intends to refine the narrative Prohibition III.D with a numeric flow limit or other more detailed set of standards that achieves the same result as the Prohibition when information necessary to develop the limit becomes available. Accordingly, such future refinement of the effluent limitation is an equivalent effluent limitation and will not be considered to be less stringent than the existing Prohibition III.D.
- P. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). By prohibiting all discharges from the wastewater collection system, this Order protects the beneficial uses of waters of the State. The Discharger is responsible for meeting all requirements of the applicable Endangered Species Act.
- Q. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below), the Discharger must still notify the Regional Water Board and submit a written report if discharges occur.
- R. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account that discharges from its wastewater collection system are prohibited.
- S. 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 it with an opportunity to submit its written comments and recommendations. Details of the notification are provided in the Fact Sheet of this Order.
- T. 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 of this Order.

THEREFORE, IT IS HEREBY ORDERED, that Order No. R2-2004-0012 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the

provisions contained in division 7 of the 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.

III. DISCHARGE PROHIBITIONS

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

IV. PROVISIONS

A. Standard Provisions

- 1. **Federal Standard Provisions.** The Discharger shall comply with all Standard Provisions included in Attachment D of this Order that are applicable.

B. Special Provisions

- 1. **Enforcement of Prohibition III.A.** The Regional Water Board may take enforcement action against the Discharger for any sanitary sewer system discharge, unless the Discharger documents that an upset, defined in Attachment D, Standard Provisions I.H, occurred.
- 2. **Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements.** The Discharger shall properly operate and maintain its collection system, which includes but is not limited to controlling inflow and infiltration, (Attachment D, Standard Provisions – Permit Compliance, subsection I.D), report any noncompliance with the exception noted below, and mitigate any discharge from the collection system in violation of this Order (Attachment D, Standard Provisions – Permit Compliance, subsection I.C).

The General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) Order No. 2006-0003-DWQ has requirements for operation and maintenance of wastewater collection systems and for reporting and mitigating sanitary sewer overflows. While the Discharger must comply with both the General Collection System WDR and this Order, the General Collection System WDR specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDR requirements for proper operation and maintenance and

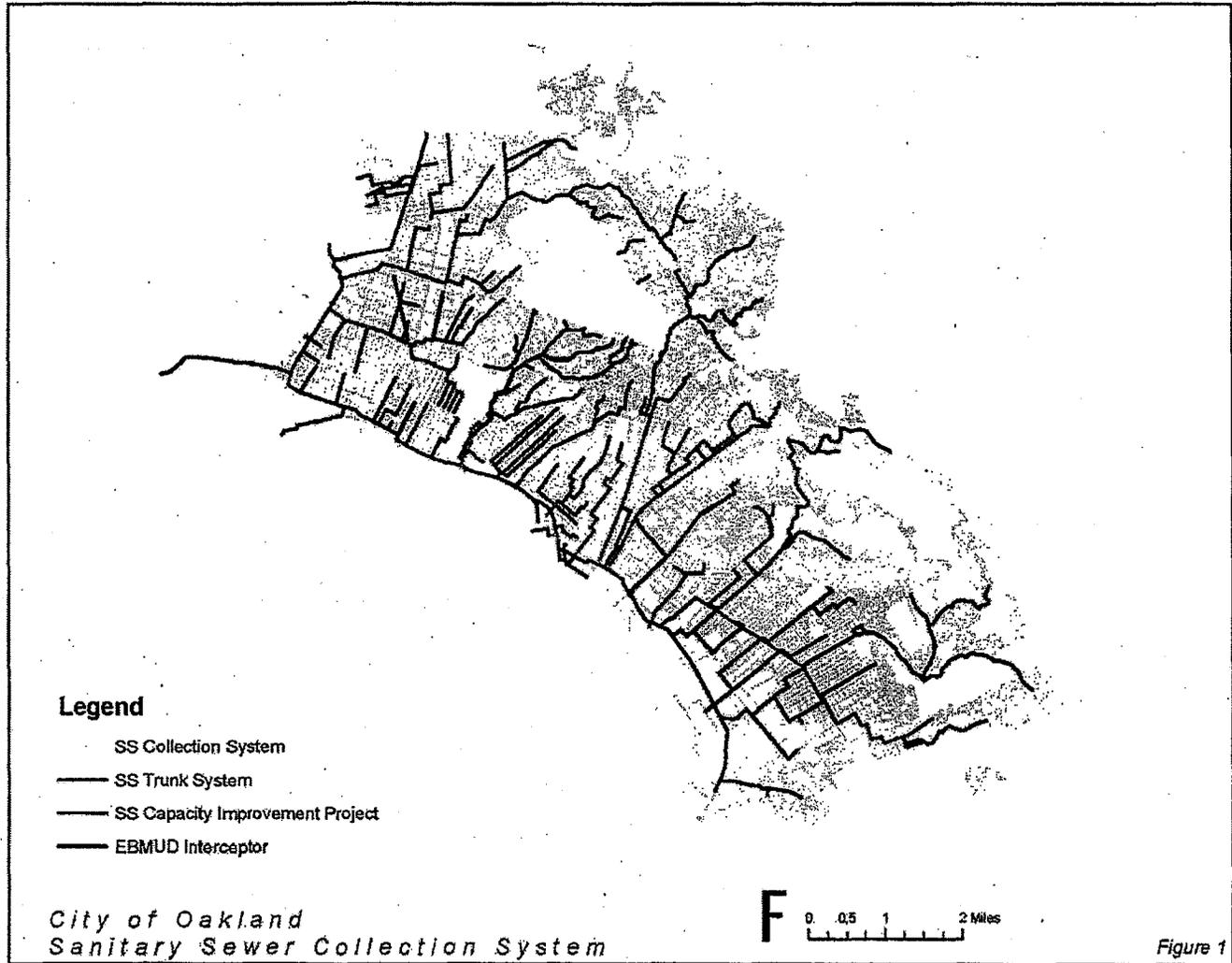
mitigation of spills will satisfy the corresponding federal NPDES requirements specified in this Order provided the Discharger reduces peak wet weather flows so that it does not cause or contribute to discharges at EBMUD's Wet Weather Facilities.

Following reporting requirements in the General Collection System WDR will satisfy NPDES reporting requirements for discharges of untreated or partially treated wastewater from the Discharger's wastewater collection system. Furthermore, Regional Water Board staff issued notification and certification requirements in its letter on May 1, 2008. While not a part of this NPDES permit, the requirements in the May 1, 2008, letter continue to be in effect, and the letter is included in Attachment G for reference.

Exception to noncompliance reporting. This Order does not require that the Discharger report noncompliance with Prohibition III.D. EBMUD's NPDES Permit CA0038440 requires EBMUD to report such discharges from its Wet Weather Facilities so reporting by the Discharger is not necessary.

ATTACHMENT A – NOT USED

ATTACHMENT B – COLLECTION SYSTEM SERVICE AREA



ATTACHMENT C – NOT USED

ATTACHMENT D – STANDARD PROVISIONS (FEDERAL)

I. STANDARD PROVISIONS – PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 C.F.R. § 122.41(a).)
2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

C. Duty to Mitigate

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

D. Proper Operation and Maintenance

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

E. Property Rights

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

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

F. Inspection and Entry

The Discharger shall allow the Regional Water Board, State Water Board, United States Environmental Protection Agency (USEPA), and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 C.F.R. § 122.41(i); Wat. Code, § 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (40 C.F.R. § 122.41(i)(1));
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (40 C.F.R. § 122.41(i)(2));
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (40 C.F.R. § 122.41(i)(3)); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (40 C.F.R. § 122.41(i)(4).)

G. Bypass

1. Definitions

- a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
 - b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)
2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)

3. Prohibition of bypass. Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
 - c. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)
4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)
5. Notice
 - a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 C.F.R. § 122.41(m)(3)(i).)
 - b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). (40 C.F.R. § 122.41(m)(3)(ii).)

H. Upset

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was

caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).)

2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):
 - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
 - b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
 - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
 - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

II. STANDARD PROVISIONS – PERMIT ACTION

A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

C. Transfers

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

III. STANDARD PROVISIONS – MONITORING

- A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)
- B. Monitoring results must be conducted according to test procedures under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503 unless other test procedures have been specified in this Order. (40 C.F.R. § 122.41(j)(4); § 122.44(i)(1)(iv).)

IV. STANDARD PROVISIONS – RECORDS

- A. Except for records of monitoring information required by this Order related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part 503), the Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)
- B. **Records of monitoring information shall include:**
 - 1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
 - 2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
 - 3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
 - 4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
 - 5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
 - 6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)
- C. **Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):**
 - 1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
 - 2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information

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

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA). (40 C.F.R. § 122.22(a)(3).)
3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (470 C.F.R. § 122.22(b)(1));
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and
 - c. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard

Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.” (40 C.F.R. § 122.22(d).)

C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.22(l)(4).)
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. (40 C.F.R. § 122.41(l)(4)(i).)
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

D. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

E. Twenty-Four Hour Reporting

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time

the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):
 - a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
 - b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)
3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

F. Planned Changes

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

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under section 122.42(a)(1) (see Additional Provisions—Notification Levels VII.A.1). (40 C.F.R. § 122.41(l)(1)(ii).)

G. Anticipated Noncompliance

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

H. Other Noncompliance

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 C.F.R. § 122.41(l)(7).)

I. Other Information

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

VI. STANDARD PROVISIONS – ENFORCEMENT

- A.** The Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13385, 13386, and 13387.

VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS

A. Publicly-Owned Treatment Works (POTWs)

All POTWs shall provide adequate notice to the Regional Water Board of the following (40 C.F.R. § 122.42(b)):

1. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to sections 301 or 306 of the CWA if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)); and
2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order. (40 C.F.R. § 122.42(b)(2).)
3. Adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 C.F.R. § 122.42(b)(3).)

ATTACHMENT F – FACT SHEET

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ATTACHMENT F– FACT SHEET

As described in section II of this Order, this Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order.

This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California. Only those sections or subsections of this Order that are specifically identified as “not applicable” have been determined not to apply to this Discharger. Sections or subsections of this Order not specifically identified as “not applicable” are fully applicable to this Discharger.

I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility.

Table F-1. Facility Information

WDID	2 019183001
Discharger	City of Oakland
Name of Facility	Sewer Collection System
Facility Address	Oakland city limits
	Oakland, CA
	Alameda County
Facility Contact, Title, and Phone	Dan Lindheim, City Administrator (510) 238-6840
Authorized Person to Sign and Submit Reports	Same
Mailing Address	250 Frank H Ogawa Plaza, Oakland, CA 94612
Billing Address	Same
Type of Facility	Sewer Collection System
Major or Minor Facility	Minor
Threat to Water Quality	2
Complexity	B
Pretreatment Program	N
Reclamation Requirements	Not Applicable
Facility Permitted Flow	0 gallons per day
Facility Design Flow	Not Applicable
Watershed	San Francisco Bay
Receiving Water	Various
Receiving Water Type	enclosed bay

A. The City of Oakland (hereinafter Discharger) owns and maintains approximately 1,000 miles of wastewater collection systems and seven pump stations that serve a population of about 400,000 people in the City of Oakland. Under the ownership of the

City of Oakland, the Port of Oakland operates and maintains a wastewater collection system that consists of about 9 miles of gravity sewer and about 12 miles of laterals.

The Discharger is one of seven East Bay Communities or "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the Cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont. Wastewaters collected from the East Bay Communities' collection systems flow to interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under a separate NPDES permit (CA0037702).

- B. The Discharger's sewer collection system has been regulated by Order No. R2-2004-0012, which was adopted on March 17, 2004, and expired on March 16, 2009. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

II. FACILITY DESCRIPTION

A. Description of Sewer Collection System

The Discharger owns and operates about 1,000 miles of wastewater collection systems in the City of Oakland in Alameda County. Additionally, the Port of Oakland operates about 20 miles of wastewater collection system. The sewer collection system transports wastewater from industrial, commercial, and residential sources to EBMUD's main Wastewater Treatment Plant where EBMUD treats the wastewater and discharges it to San Francisco Bay. During wet weather, because of increased flows caused by inflow and infiltration (I&I) from collection systems tributary to EBMUD facilities, the wastewater also flows to EBMUD's Wet Weather Facilities where EBMUD stores the wastewater or partially treats it prior to discharge to San Francisco Bay.

B. Discharge Points and Receiving Waters

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

C. Summary of Existing Requirements

The previous permit prohibited discharge with the following requirements:

1. The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited.
2. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.

At B.1 (Implementation and Enforcement of Prohibition A.1), the previous permit noted that prohibition 1 is not violated (a) if the sewer system discharge does not enter a storm drain or surface water body, or (b) if the Discharger contains the sewer system discharge within the storm drain system pipes, and fully recovers and cleans up the spilled wastewater.

D. Compliance Summary

For 2007 and 2008, Table F-2 below summarizes the estimated sewer system discharges from the Discharger's collection system and the primary causes of these discharges. This information is not necessarily indicative of ongoing causes, in part because there are often multiple causes for any one particular sewer system discharge.

Table F-2. Sewer System Discharges and Primary Causes

	2007	2008
Number of Discharges	221	205
% Caused by Roots	48.9	49.3
% Caused by Grease	10.5	26.8
% Caused by Debris	0.5	12.7

Sewer system discharges from root intrusion tend to occur in the Oakland hills, while discharges due to fats, oils, and grease (FOG) tend to occur in flat areas close to commercial food establishments. To address sewer system discharges from root intrusion, the Discharger indicates that it has contracted with Dukes Root Control, Inc. to treat sewer lines with diquat dibromide. To minimize discharges related to FOG, the Discharger points out that it created a joint FOG program with EBMUD. At this time, the FOG program only targets commercial establishment; however, the Discharger is working with EBMUD to also establish a residential program.

E. Planned Changes

As required by Cease & Desist Order (CDO) No. 93-134, the Discharger will continue to rehabilitate and replace portions of its collection system. This CDO includes a compliance plan with projects that the Discharger must implement each year. The purpose of these projects is to prevent discharges of untreated or partially treated wastewater from its wastewater collection system. At this time, CDO No. 93-134 requires the Discharger to construct a number of relief sewers by June 30, 2014. The background and history for these requirements are detailed in the subsections below. However, because relief sewers convey much higher quantities of I&I than rehabilitation projects, and this NPDES permit includes a new prohibition on the Discharger from causing or contributing to wet weather discharges from EBMUD's WWFs, the Discharger plans to shift its focus to rehabilitation of the sewer system. To allow this shift in focus, the Regional Water Board plans to amend the requirements of CDO Order No. 93-134 concurrent with reissuance of this NPDES permit.

Background and Regulatory History

- a. *History.* The wastewater collection systems in the East Bay Communities were originally constructed in the early twentieth century. These systems originally included cross-connections to storm drain systems and, while not uncommon at the time of construction, some of the sewers were later characterized as having inferior materials, poor joints, and inadequate beddings for sewer pipes. The construction of improvements and the growth of landscaping, particularly trees, have damaged sewers and caused leaks. Poor construction techniques and aging sewer pipes resulted in significant I&I during the wet weather season. In the early 1980s, it was

noted that during storms, the collection systems might receive up to 20 times more flow than in dry weather. As a result, the East Bay Communities' collection systems might overflow to streets, local watercourses, and the Bay, creating a risk to public health and impairing water quality.

- b. *I&I Effect on EBMUD's Interceptor System.* The East Bay Communities' collection systems are connected to EBMUD's interceptors. In the early 1980s, excessive I&I from the East Bay Communities' collection systems could force EBMUD's interceptors to overflow untreated wastewater at seven designed overflow structures in EBMUD's interceptors along the shoreline of central San Francisco Bay.
- c. *EBMUD wet weather permits.* The Regional Water Board first issued an NPDES permit to EBMUD in 1976 for the wet weather discharges from EBMUD's interceptors. This permit required EBMUD to eliminate the discharge of untreated overflows from its interceptors and to protect water quality in San Francisco Bay. This permit was reissued in 1984, 1987, 1992 and 1998. Additional requirements were incorporated into the reissued permits following construction of wet weather treatment facilities.
- d. *Collection system permits to East Bay Communities.* Following issuance of the wet weather permit to EBMUD in 1976, the Regional Water Board issued similar permits in 1976 to all members of the East Bay Communities except the City of Emeryville. The Regional Water Board reissued these permits in 1984, 1989 and 1994. Emeryville was not originally issued a permit because it was believed that no wet weather overflows occurred in Emeryville's service area. However, wet weather overflows were identified in the City of Emeryville after completion of the East Bay I&I Study and issuance of the Cease and Desist Orders (CDO) in 1986.
- e. *East Bay I&I Study and I/ICP.* In response to the requirements in the Regional Water Board permits and CDOs regarding the control of untreated overflows from EBMUD's interceptors and the East Bay Communities' collection systems, EBMUD and the East Bay Communities coordinated their efforts to develop a comprehensive program to comply with these permit requirements. In 1980, the East Bay Communities, including the Discharger, and EBMUD initiated a 6-year East Bay I&I Study. The I&I Study outlined recommendations for a long-range sewer improvement program called the East Bay Infiltration/Inflow Correction Program (I/ICP). The I&I Study also specified schedules, which are called Compliance Plans, for each member of the East Bay Communities to complete various sewer rehabilitation projects specified in the I/ICP. These Compliance Plans were later incorporated into the CDO for East Bay Communities as compliance schedules.

The \$16.5 million I&I Study was funded under the Clean Water Grant Program with State and federal support paying about 87.5% of the costs. The original Compliance Plans dated October 8, 1985, proposed a 20-year plan to implement the I/ICP to eliminate wet weather overflows from the East Bay Communities' collection systems

up to the 5-year storm event. The total program cost was estimated at \$304 million in 1985 dollars.

- f. *Joint Powers Agreement (JPA)*. In order to address I&I problems in the East Bay Communities' wastewater collection systems, on February 13, 1979, the East Bay Communities and EBMUD entered into a JPA under which EBMUD serves as administrative lead agency to conduct the East Bay I&I Study. The JPA was amended on January 17, 1986, to designate EBMUD as the lead agency during the initial five-year implementation phase of the East Bay I&I Study recommendations. The amended JPA also delegated authority to EBMUD to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather programs, and to perform other related tasks. Programs developed under the JPA are directed by a Technical Advisory Board (TAB) composed of one voting representative from each of the East Bay Communities and EBMUD. In addition, one non-voting staff member of the Regional Water Board, State Water Board, and USEPA may participate in the TAB.
- g. *Cease and Desist Order (CDO)*. In 1986, the Regional Water Board issued a CDO to the East Bay Communities including the City of Emeryville (Order No. 86-17, reissued with Order No. 93-134). This CDO requires the East Bay Communities to cease and desist discharging from their wastewater collection systems. In CDO No. 86-17, the Regional Water Board accepted the proposed approach in the I/ICP and directed the I/ICP to focus on conducting activities that reduce impacts to public health.
- h. *EBMUD's Wet Weather Program*. From 1975 to 1987, EBMUD underwent its own wet weather program planning, and developed a comprehensive Wet Weather Program. The objective of the Wet Weather Program was that EBMUD's wet weather facilities have the capacity to convey peak flows to EBMUD's system by the East Bay Communities' trunk sewers at the end of the I/ICP implementing period. EBMUD started implementing its Wet Weather Program in 1987. Since then, EBMUD has spent about \$310 million on the wet weather program. This includes construction of three wet weather treatment facilities, and two wet weather interceptors, new storage basins and pumping facilities, expansion of the main wastewater treatment plant, and elimination of two out of the seven designed wet weather overflow structures.
- i. *Updates to original I/ICP*. After receiving a notice from the Regional Water Board for issuing a new CDO in 1993, the East Bay Communities requested the opportunity to revise their Compliance Plans. The impetus of this revision stemmed from increased costs for implementing the original Compliance Plans. New technological developments and the inadequacy of other methods previously thought viable for sewer rehabilitation and relief line installation have increased the cost of the I/ICP from original cost estimates. The revised Compliance Plans incorporated the experience gained from the implementation of I/ICP for the six years from 1987 to 1993 in order to better address the remaining I/ICP projects.

- j. *Extension to Original Compliance Plans.* The increase in project costs necessitated extensions of the schedules in the original Compliance Plans in order to minimize the impact on rate-payers. As a result, all members of the East Bay Communities except the Stege Sanitary District and Emeryville submitted a revised Compliance Plan and Schedule in October 1993. In light of the increased costs, the Regional Water Board granted the Discharger and the Cities of Alameda, Albany, Berkeley, and Piedmont a five (5) to ten (10) year extension to the original compliance schedules in the CDO reissuance in October 1993.
- k. *Cost analysis of sewer rehabilitation program.* It is cost prohibitive to eliminate all I&I into a sewer system. The East Bay Communities performed a cost analysis during the I&I Study to determine the cost-effective level of rehabilitation. The cost-effective level of rehabilitation involved balancing the cost of rehabilitation of the East Bay Communities' sewer systems and the cost for increasing the capacity of EBMUD's interceptors and wastewater treatment facilities. A sensitivity analysis was performed to study cost effects of various levels of rehabilitation on various wet weather alternatives. Cost-Effective Ratios¹ (C-E-Ratio) for various drainage basins were calculated. A C-E Ratio greater than one (1) indicated that I&I rehabilitation is cost effective. The analysis was performed by using a computer program supported by the Corps of Engineers Hydrologic Engineering Center, called STORM. This analysis derived a regional least-cost solution, which involved both East Bay Communities' sewer rehabilitation cost and transportation/treatment cost by EBMUD. The study results were described in the Wet Weather Facilities Update. It was concluded that the most cost effective solution was to rehabilitate the cost effective collection systems and provide relief sewers, interceptor hydraulic capacity, and storage basins to handle wet weather flows up to a 5-year storm event.
- l. *Design goal of I/ICP.* The design goal of East Bay I/ICP was to eliminate overflows from the East Bay Communities' collection systems and EBMUD's interceptor unless the rainfall exceeds a 5-year design storm event. Overflows could continue to occur for events less than the 5-year design storm until the Discharger completed its I/ICP. However, the occurrence of overflows decreased as more of the East Bay I/ICP projects was completed.

¹ C-E Ratio = (East Bay Communities Cost Savings + EBMUD Cost Savings)/(Rehabilitation Cost)

- m. *5-year Design Storm Event Definition.* The 5-year design storm event is a storm event that meets the following criteria: a 6-hour duration, and a maximum 1-hour rainfall intensity of a storm with return period of five (5) years. The storm is assumed to occur during saturated soil conditions, and to coincide with the peak 3-hour ultimate Base Wastewater Flow (BWF) condition. BWF consists of domestic wastewater flow from residential, commercial, and institutional sources plus industrial wastewater. BWF specifically excludes I&I from groundwater or storm water. Due to these conservative assumptions, the Wet Weather Facilities Pre-design Report concluded that the estimated peak flow produced by this event had a return period of approximately 13 years. The peak I&I flow from a 5-year storm was selected as the basis of design for the treatment level intended to protect beneficial uses as defined by the San Francisco Bay Basin Plan (Basin Plan), Maintenance Level C. Maintenance Level C requires secondary treatment to the half-year recurrence interval, primary treatment to the 5-year recurrence interval, and above the 5-year interval, overflows are allowed. It should be noted that the State Water Board in 2007 remanded this portion of the Basin Plan in its Order WQ 2007-0004 with direction that the Regional Water Board initiate a Basin Plan amendment to ensure that its regulation of wet weather overflows is consistent with the Clean Water Act.
- n. In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the USEPA, and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.
- o. EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

Progress in Reducing Inflow & Infiltration and Eliminating Overflows

The East Bay Communities most recent update, dated December 31, 2008, indicates that sewer rehabilitation is 81.1 percent complete. The Communities have completed all of the I&I projects that were designed to eliminate overflow locations identified as high threats to human health and removed all sanitary sewer system bypasses identified in the CDO that diverted wet weather overflows to storm drains. At this time, Stege Sanitary District and the Cities of Alameda, Emeryville, and Piedmont have completed their respective requirements under CDO No. 93-134. The Cities of Albany, Berkeley, and Oakland still have additional rehabilitation work and relief lines to complete. Finally, to date, the work under the CDO has also reduced peak wet weather flows from the East Bay Communities to EBMUD's interceptor from about 20 times dry weather flows to just above 10.

III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

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

A. Legal Authorities

This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as an NPDES permit for point source discharges 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).

B. California Environmental Quality Act (CEQA)

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100 through 21177.

C. State and Federal Regulations, Policies, and Plans

- 1. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Basin Plan. In addition, the Basin Plan implements State Water Board No. 88-63, which established State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

Common beneficial uses for central and lower San Francisco Bay, as identified in the Basin Plan, are:

- a. Commercial and sport fishing

- b. Estuarine habitat
- c. Industrial service and process supply
- d. Fish migration
- e. Navigation
- f. Preservation of rare and endangered species
- g. Water contact and non-contact recreation
- h. Shellfish harvesting
- i. Fish spawning
- j. Wildlife habitat

Requirements of this Order implement the Basin Plan.

2. **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 applied 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. Requirements of this Order are consistent with the NTR and CTR because discharges from the wastewater collection system are prohibited.
3. **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 are consistent with the SIP because discharges from the wastewater collection facility are prohibited.
4. **Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes (40 C.F.R. § 131.21, 65 Fed. Reg. 24641 (April 27, 2000)). 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.

5. **Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing water quality be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. The permitted discharge must be consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16. Because this Order prohibits discharge, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.
6. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations² section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit must be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.

D. Impaired Water Bodies on CWA 303(d) List

On June 28, 2007, the USEPA approved a revised list of impaired water bodies prepared by the State [hereinafter referred to as the 303(d) list], pursuant to provisions of CWA section 303(d) requiring identification of specific water bodies where it is expected that water quality standards will not be met after implementation of technology-based effluent limitations on point sources. Lower and Central San Francisco Bay are listed as impaired water bodies. The pollutants impairing these water bodies include chlordane, DDT, dieldrin, dioxin compounds, exotic species, furan compounds, mercury, PCBs, dioxin-like PCBs, and selenium. The SIP requires final effluent limitations for all 303(d)-listed pollutants to be based on total maximum daily loads (TMDLs) and associated waste load allocations (WLAs). Because this Order prohibits discharge, a detailed discussion of the Regional Water Board's process of developing TMDLs, WLAs and resulting effluent limitations is, therefore, unnecessary.

E. Other Plans, Policies and Regulations

This Order is not based on any other plans, policies or regulations.

² All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

IV. RATIONALE FOR DISCHARGE PROHIBITIONS

- 1. Discharge Prohibition III.A (no sewer system discharges to Waters of the United States):** This prohibition is based on the federal Clean Water Act, which prohibits discharges of wastewater that does not meet secondary treatment standards as specified in 40 CFR Part 133. Additionally, the Basin Plan prohibits discharge of raw sewage or any waste failing to meet waste discharge requirements to any waters of the basin.
- 2. Discharge Prohibition III.B (no sewer system discharges shall create a nuisance as defined in California Water Code Section 13050(m)):** This prohibition is based on California Water Code Section 13263, which requires the Regional Water Board to prescribe waste discharge requirements that prevent nuisance conditions from developing.
- 3. Discharge Prohibition III.C (no discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spill to any surface water body):** The Basin Plan contains a toxicity objective stating, "All waters shall be maintained free of toxic substances in concentrations that are lethal to or produce other detrimental responses to aquatic organisms." Chlorine is lethal to aquatic life.
- 4. Discharge Prohibition III.D (shall not cause or contribute to discharges from EBMUD's three wet weather facilities):** Because excessive I&I has contributed to discharges of partially treated wastewater at EBMUD's Wet Weather Facilities, in violation of Order No. R2-2009-0004, this prohibition is necessary to ensure that the Discharger properly operates and maintains its wastewater collection system (40 CFR Part 122.41(e)) so as to not cause or contribute to violations of the Clean Water Act.

This prohibition is based on 40 CFR 122.41(e) that requires permittees to properly operate and maintain all facilities, and the need for this specific prohibition results from recent changes in permit requirements for EBMUD's wet weather facilities. The requirement for proper operation and maintenance (O&M) is already specified generically in Attachment D of this permit. However, to properly operate and maintain for I&I control is necessary because of the recent changes in permit requirements for EBMUD's WWFs.

The changes in permit requirements for EBMUD's WWFs came about as a result of a 2007 State Water Board remand (Order WQ 2007-0004) that required the Regional Water Board revise the permit for EBMUD's WWFs to require compliance with secondary treatment effluent limitations and effluent limitations that would assure compliance with the Basin Plan or cease discharge. In January 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit. This permit prohibited discharge from the WWFs because the WWFs were not designed to meet secondary treatment standards and compliance with effluent limitations needed to comply with the Basin Plan limitations could not be assured.

Shortly afterwards, USEPA and the Regional and State Water Boards filed suit against EBMUD for discharges in violation of the Clean Water Act-mandated requirements of Order No. R2-2009-0004, and entered into a Stipulated Order. The Stipulated Order requires EBMUD to conduct flow monitoring on satellite collection systems, adopt a regional private

sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

The Discharger's entire wastewater collection system connects to EBMUD's interceptor system and contributes to discharges from the WWFs. During wet weather, I&I into the Discharger's wastewater collection system causes peak wastewater flows to EBMUD's system that the WWFs cannot fully store. This in turn causes EBMUD to discharge from the WWFs in violation of Order No. R2-2009-0004. In essence, a portion of the Discharger's wastewater is discharged by EBMUD in violation of the Clean Water Act.

Therefore, the prohibition is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I&I, and by doing so not cause or contribute to violations of Clean Water Act-mandated requirements.

At this time, the Discharger is in violation of this prohibition because excessive I&I into its collection system causes or contributes to discharges from EBMUD's WWFs. Prohibition III.D provides a narrative prohibition because information is not currently available to sufficiently specify an appropriate numeric flow limit or other more detailed set of standards necessary to eliminate the Discharger's contribution to discharges from EBMUD's WWFs. Implementation of the Stipulated Order and the development of a final remedy in the Federal Action are expected to provide the technical information necessary for the Discharger to achieve compliance with Prohibition III.D. The Regional Water Board intends to modify the Discharger's NPDES permit in the future so that compliance can be measured by a specific numeric criterion or other more detailed set of standards rather than the current narrative criterion.

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

Because this Order prohibits discharge, receiving water limits are unnecessary because no impacts on receiving water are allowed. Therefore, a discussion of the rationale for such limits is unnecessary.

VI. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below) and Provision IV.B.2, the Discharger must still notify the Regional Water Board and submit a written report if discharges occur in violation of Prohibitions III.A-C.

VII. RATIONALE FOR PROVISIONS

A. Standard Provisions

Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in

accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account the discharge prohibitions in this Order.

B. Special Provisions

1. Enforcement of Prohibition III.A

This provision is based on 40 CFR 122.41 (n) regarding treatment facility upset and affirmative defense.

2. Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements

This provision is to explain the Order's requirements as they relate to the Discharger's collection system, and to promote consistency with the State Water Resources Control Board adopted Statewide General Waste Discharge Requirements for Sanitary Sewer Systems and a related Monitoring and Reporting Program (Order No. 2006-0003-DWQ).

The General Order requires public agencies that own or operate sanitary sewer systems with greater than one mile of pipes or sewer lines to enroll for coverage under the General Order. The General Order requires agencies to develop sanitary sewer management plans (SSMPs) and report all sanitary sewer system discharges, among other requirements and prohibitions. Furthermore, the General Order contains requirements for operation and maintenance of collection systems and for reporting and mitigating sewer system discharges. The Discharger must comply with both the General Order and this Order. The Discharger and public agencies that are discharging wastewater into the facility were required to obtain enrollment for regulation under the General Order by December 1, 2006.

VIII. PUBLIC PARTICIPATION

The Regional Water Board is considering the issuance of waste discharge requirements (WDRs) that will serve as a National Pollutant Discharge Elimination System (NPDES) permit for the Discharger's sewer collection system. As a step in the WDR adoption process, the Regional Water Board staff has developed tentative WDRs. The Regional Water Board encourages public participation in the WDR adoption process.

A. 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. Notification was provided through the following: (a) an electronic copy of this Order was relayed to the Discharger, and (b) the Oakland Tribune published a notice that this item would appear before the Regional Water Board on September 9, 2009. Subsequent to this notification, additional notification was provided

electronically to interested parties on August 10, 2009, that this item would appear before the Regional Water Board on November 18, 2009.

B. Written Comments

The staff determinations are tentative. Interested persons are invited to submit written comments concerning these tentative WDRs. Comments must be submitted either in person or by mail to the Executive Officer at the Regional Water Board at the address above on the cover page of this Order.

To be fully responded to by staff and considered by the Regional Water Board, written comments were originally requested to be received at the Regional Water Board offices by 5:00 p.m. on August 17, 2009. This written comment deadline was later extended to October 20, 2009, by the notification above. This deadline was further extended until October 23, 2009, by an email dated October 20, 2009.

C. Public Hearing

The Regional Water Board will hold a public hearing on the tentative WDRs during its regular Board meeting on the following date and time and at the following location:

Date: November 18, 2009
Time: 9:00 a.m.
Location: Elihu Harris State Office Building
1515 Clay Street, 1st Floor Auditorium
Oakland, CA 94612

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDRs, and permit. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our Web address is www.waterboards.ca.gov/sanfranciscobay/ where you can access the current agenda for changes in dates and locations.

D. Waste Discharge Requirements Petitions

Any aggrieved person may petition the State Water Resources Control Board to review the decision of the Regional Water Board regarding the final WDRs. The petition must be submitted within 30 days of the Regional Water Board's action to the following address:

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

E. Information and Copying

The Report of Waste Discharge (RWD), related documents, and special provisions, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Regional Water Board by calling (510) 622-2300.

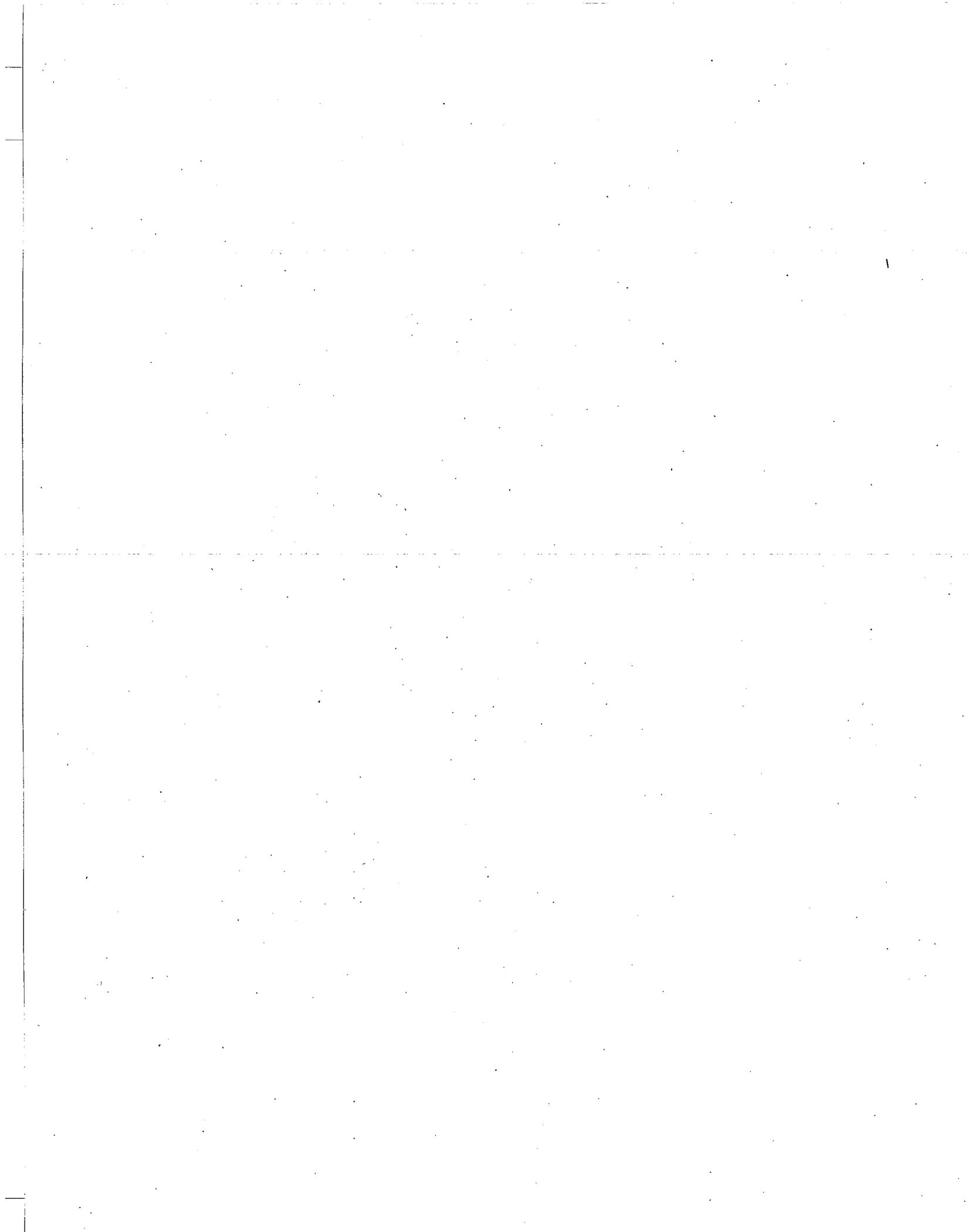
F. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference this facility, and provide a name, address, and phone number.

G. Additional Information

Requests for additional information or questions regarding this order should be directed to Robert Schlipf at (510) 622-2478 or RSchlipf@waterboards.ca.gov.

ATTACHMENT G – Regional Water Board May 1, 2008, letter





California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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

Arnold Schwarzenegger
Governor

May 1, 2008
File No. 1210.57 (RS and MC)

To: Attached Mailing List

Subject: 1) New Sanitary Sewer Overflow Notification Procedures for Sanitary Sewer Collection Systems, and 2) New Unauthorized Discharge Notification and Reporting Requirements for Municipal Wastewater Treatment Plants

This letter includes new procedures and requirements for addressing spills from sanitary sewer collection systems and unauthorized discharges from municipal wastewater treatment plants. Part 1 of this letter imposes new procedures for sanitary sewer collection systems (upstream of the plant headworks) to document compliance with the State Water Board's new 2-hour notification and 24-hour certification requirements for sanitary sewer overflows (SSOs). Part 2 of this letter imposes new notification and reporting requirements for municipal wastewater treatment plants that experience an unauthorized discharge at their treatment facilities. The treatment plants covered by this requirement are shown in Attachment A. The requirements of this letter are effective starting June 1, 2008.

Part 1: Requirements that Apply to Sanitary Sewer Collection Systems

To satisfy the notification requirements for SSOs established by the State Water Board's Order No. WQ 2008-0002-EXEC, dischargers must complete the SSO notification form at the following link: https://www.r2esmr.net/sso_login2.asp. The requirement to notify the Regional Water Board, via our online reporting system, is effective starting on June 1, 2008. Additional details on the reporting procedures are posted at that link.

You may recall that this was the web-based SSO reporting system that this Regional Water Board used prior to the State Water Board's statewide SSO reporting system under the California Integrated Water Quality System (CIWQS). In response to the State Water Board's Order No. 2008-0002-EXEC, we have modified and relaunched our regional system. This is to provide a consistent and reliable method for the collection system agencies to notify us as they are required by the State Water Board's Order.

Please note that this system only serves to document that dischargers have notified the Office of Emergency Services, the local health officer/environmental health office, and the Regional Water Board (as directed by the State Water Board's new notification requirements). Dischargers are still required to report sanitary sewer spills through the State Water Board's CIWQS web-database.

In order to clarify the multiple levels of notification, certification, and reporting, the communication requirements for SSOs are summarized in Table 1 below:

Table 1: Summary of Communication Requirements for Sanitary Sewer Overflows

Communication Type (all are required)	Agency Being Contacted	Timeframe Requirements	Method for Contact
1. Notification	Office of Emergency Services	As soon as possible, but not later than 2 hours after becoming aware of the SSO.	Telephone – (800) 852-7550 (obtain a control number from OES)
	Local health department	As soon as possible, but not later than 2 hours after becoming aware of the SSO.	Depends on local health dept.
	Regional Water Board	As soon as possible, but not later than 2 hours after becoming aware of the SSO.	Electronic ¹ www.r2esmr.net/ sso_login2.asp
2. Certification	Regional Water Board	As soon as possible, but not later than 24 hours after becoming aware of the SSO.	Electronic ² www.r2esmr.net/ sso_login2.asp
3. Reporting	State Water Board (CIWQS)	Category 1 SSO: initial report within 3 business days , final report within 15 calendar days after response activities have been completed.	Electronic (only) to CIWQS
		Category 2 SSO: within 30 calendar days after the end of the calendar month in which the SSO occurs.	Electronic (only) to CIWQS

Part 2: Requirements that Apply to Municipal Wastewater Treatment Plants

¹ In the event a discharger is unable to provide online notification within 2 hours of becoming aware of an SSO, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the notification form. In cases where the discharger satisfies 2-hour notification requirements via phone, it must still provide online notification to the Regional Water Board within 3 business days of becoming aware of a SSO.

² In most instances, the 2-hour notification will also satisfy 24-hour certification requirements. This is because the notification form includes fields for documenting that OES and the local health department have been contacted. In other words, if a discharger is able to complete all the fields in the notification form within 2 hours, certification requirements are also satisfied. In the event a discharger is unable to provide online certification within 24 hours of becoming aware of an SSO, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the certification form. In addition, within 3 business days of becoming aware of an SSO, the certification information must also be entered into the Regional Water Board's online system in electronic format.

As mentioned above, this letter includes new notification and reporting requirements for unauthorized discharges that occur at municipal wastewater treatment plants. Unauthorized discharges can include such discharges as untreated wastewater, partially treated wastewater, fully treated wastewater to an unauthorized location, oil spills, and spills of hazardous waste. The reason for this modification is because the time prescribed in Self-Monitoring Programs for the filing of the initial report of an unauthorized discharge is too long to adequately protect public health or the beneficial uses of waters of the State when such incidences occur. Therefore, the facilities shown in Attachment A shall comply with the following:

“Notification and Certification

For any unauthorized discharges³ that result in a discharge to a drainage channel or a surface water, the discharger shall, as soon as possible, but not later than two (2) hours after becoming aware of the discharge, notify the State Office of Emergency Services, the local health officer or directors of environmental health with jurisdiction over affected water bodies, and the Regional Water Board. At that time, the discharger must submit to the Regional Water Board, via our online reporting system, the following:

- (a) A description of what happened (i.e., the cause),
- (b) The location of threatened or involved waterway(s) or storm drains,
- (c) The date and time the unauthorized discharge is known to have started,
- (d) The estimated quantity and duration of the unauthorized discharge so far, and the estimated amount recovered,
- (e) The level of treatment (e.g., raw wastewater, primary treated, undisinfected secondary treated, and so on), and
- (f) The identity of the person reporting the unauthorized discharge, and
- (g) A certification (within 24 hours) that the State Office of Emergency Services and the local health officer or directors of environmental health with jurisdiction over the affected water bodies have been notified of the discharge.

Reporting

³ Title 23 California Code of Regulations Section 2250 (b) states that an unauthorized discharge is defined to be a discharge, not regulated by waste discharge requirements, of treated, partially treated, or untreated wastewater resulting from the intentional or unintentional diversion of wastewater from a collection, treatment or disposal system.

Within five (5) business days, the discharger shall submit a written report, via the Regional Water Board's online reporting system, that includes, in addition to the information required above, the following:

- (a) The methods used to delineate the geographical extent of the unauthorized discharge on receiving waters,
- (b) The efforts implemented to minimize public exposure to the unauthorized discharge,
- (c) A visual observation of the impacts (if any) that were noted in the receiving water (e.g., fish kill, discoloration of water), and the extent of sampling if any was conducted,
- (d) The corrective measures taken to minimize the impact of the unauthorized discharge,
- (e) The measures to be taken to minimize the chances of a similar unauthorized discharge occurring in the future,
- (f) How (if necessary) its Spill Prevention and Contingency Plan or Operation & Maintenance Manual will be modified to minimize the chances of future unauthorized discharges, and
- (g) The quantity and duration of the unauthorized discharge, and the amount recovered.

Communication Protocol

In order to clarify the multiple levels of notification, certification, and reporting, the current communication requirements for unauthorized discharges from municipal wastewater treatment plants are summarized in Table 2 on the following page.

Table 2: Summary of Communication Requirements for Unauthorized Discharges from Municipal Wastewater Treatment Plants

Communication Type (all are required)	Agency Being Contacted	Timeframe Requirements	Method for Contact
1. Notification	Office of Emergency Services	As soon as possible, but not later than 2 hours after becoming aware of the unauthorized discharge.	Telephone – (800) 852-7550 (obtain a control number from OES)
	Local health department	As soon as possible, but not later than 2 hours after becoming aware of the unauthorized discharge.	Depends on local health dept.
	Regional Water Board	As soon as possible, but not later than 2 hours after becoming aware of the unauthorized discharge.	Electronic ⁴ www.r2esmr.net/ sso_login2.asp
2. Certification	Regional Water Board	As soon as possible, but not later than 24 hours after becoming aware of the unauthorized discharge.	Electronic ⁵ www.r2esmr.net/ sso_login2.asp
3. Reporting	Regional Water Board	Within 5 business days , submit written report.	Electronic ⁶ www.r2esmr.net/ sso_login2.asp

The 2-hour notification/certification and 5-day reporting requirements to the Regional Water Board shall be accomplished through our online reporting system, starting June 1, 2008. The procedures and instructions for online reporting are provided at the following link:
https://www.r2esmr.net/sso_login2.asp.

⁴ In the event a discharger is unable to provide online notification within 2 hours of becoming aware of an unauthorized discharge, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the notification form. In addition, within 3 business days of becoming aware of the unauthorized discharge, the notification information must also be entered into the Regional Water Board's online system in electronic format.

⁵ In most instances, the 2-hour notification will also satisfy 24-hour certification requirements. This is because the notification form includes fields for documenting that OES and the local health department have been contacted. In other words, if a discharger is able to complete all the fields in the notification form within 2 hours, certification requirements are also satisfied. In the event a discharger is unable to provide online certification within 24 hours of becoming aware of an unauthorized discharge, it shall phone the Regional Water Board's spill hotline at (510) 622-2369 and convey the same information contained in the certification form. In addition, within 3 business days of becoming aware of the unauthorized discharge, the certification information must also be entered into the Regional Water Board's online system in electronic format.

⁶ If a discharger cannot satisfy the 5-day reporting requirements via our online reporting system, it must submit a written report (preferably electronically in pdf), to the appropriate case manager. In cases where the discharger cannot satisfy 5-day reporting requirements via our online reporting system, it must still complete the Regional Water Board's online reporting requirements within 15 calendar days of becoming aware of the unauthorized discharge.

Unauthorized Discharge vs. Bypass

The above notification and reporting requirements for municipal wastewater treatment plants shall satisfy the unauthorized discharge notification and reporting requirements under Self-Monitoring Program Part A, Sections F.1 and F.2. Please note that dischargers must still comply with the bypass provisions (e.g., submitting prior notice for an anticipated bypass) under 40 CFR Part 122.41(m). Additionally, in the event of a bypass, dischargers must also continue to comply with Self Monitoring Program Part A, Section C.2.h, and accelerate monitoring to daily for all constituents with effluent limits, unless this condition is modified in its existing permit.”

Please be aware that the requirements of this letter are made pursuant to section 13383 of the California Water Code. Failure to respond, late response, or incomplete response may subject you to civil liability imposed by the Regional Water Board to a maximum of \$10,000 per day. If you have any questions regarding this letter, please contact Robert Schlipf at (510) 622-2478 or Michael Chee at (510) 622-2333.

Sincerely,



Bruce H. Wolfe
Executive Officer

Digitally signed by Bruce
Wolfe
Date: 2008.05.01 11:18:20
-07'00'

Enclosures: Attachment A - Municipal Wastewater Treatment Plants

Attachment A – Municipal Wastewater Treatment Plants

Discharger	NPDES Permit No.	Existing Order No. ¹
American Canyon, City of	CA0038768	R2-2006-0036
Benicia, City of	CA0038091	01-096
Burlingame, City of	CA0037788	R2-2008-0008
C&H Sugar Company Inc., and Crockett Community Services District ²	CA0005240	R2-2007-0032
Calistoga, City of	CA0037966	R2-2006-0066
Central Contra Costa Sanitary District	CA0037648	R2-2007-008
Central Marin Sanitation Agency	CA0038628	R2-2007-007
Contra Costa County Sanitation District No. 5, Port Costa to be transferred to Crockett Community Services District	CA0037885	R2-2008-0005
Delta Diablo Sanitation District	CA0038547	R2-2003-0114
East Bay Dischargers Authority, City of Hayward, City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, Union Sanitary District, and LAVWMA	CA0037869	R2-2006-0053
Union S.D. Wet Weather Outfall	CA0038733	R2-2004-0002
Union S.D. Hayward Marsh	CA0038636	R2-2006-0031
Dublin San Ramon Services District	CA0037613	R2-2006-0054
City of Livermore	CA0038008	R2-2006-0055
LAVWMA Wet Weather Outfall	CA0038679	R2-2006-0026
East Bay Municipal Utilities Dist. WWTP	CA0037702	01-072
EBMUD Wet Weather Facilities	CA0038440	R2-2005-0047
East Brother Light Station, Inc.	CA0038806	R2-2004-0079
Fairfield-Suisun Sewer District	CA0038024	R2-2003-0072
Las Gallinas Valley Sanitary District	CA0037851	R2-2003-0108
Marin County (Paradise Cove), Sanitary District No. 5 of	CA0037427	R2-2006-0037
Marin County (Tiburon), Sanitary District No. 5 of	CA0037753	R2-2002-0097
Millbrae, City of	CA0037532	01-143
Mt. View Sanitary District	CA0037770	R2-2006-0063
Napa Sanitation District	CA0037575	R2-2005-0008
Novato Sanitary District	CA0037958	R2-2004-0093
Palo Alto, City of	CA0037834	R2-2003-0078
Petaluma, City of	CA0037810	R2-2005-0058
Pinole, City of	CA0037796	R2-2007-0024
Rodeo Sanitary District	CA0037826	R2-2006-0062
Saint Helena, City of	CA0038016	R2-2005-0025
San Francisco, City and County of, San Francisco International Airport, Sanitary	CA0038318	R2-2007-0058
San Francisco (Southeast Plant), City and County of	CA0037664	R2-2008-0007
San Jose/Santa Clara, Cities of	CA0037842	R2-2003-0085
San Mateo, City of	CA0037541	R2-2007-0075
Sausalito-Marin City Sanitary District	CA0038067	R2-2007-0054
Seafirth Estates Company and Property Owners with the Seafirth Estates Subdivision	CA0038893	R2-2006-0082
Sewerage Agency of Southern Marin	CA0037711	R2-2007-0057
Sonoma Valley County Sanitary District	CA0037800	R2-2002-0046
South Bayside System Authority	CA0038369	R2-2007-0006
South San Francisco and San Bruno, Cities of	CA0038130	R2-2003-0010
Sunnyvale, City of	CA0037621	R2-2003-0079
US Naval Support Activity, Treasure Island	CA0110116	R2-2004-0036
Vallejo Sanitation and Flood Control District	CA0037699	R2-2006-0056
West County Agency (West County Wastewater District and City of Richmond Municipal Sewer District)	CA0038539	R2-2008-0003
Yountville, Town of	CA0038121	R2-2004-0017

Discharger	NPDES Permit No.	Existing Order No.¹
East Bay Regional Parks District, Del Valle Regional Park	Not applicable	90-157
East Bay Regional Parks District, Arroyo Del Valle Environmental Education Center and Youth Camp	Not applicable	01-143
Contra Costa Sanitation District #6, Stonehurst Subdivision	Not applicable	91-096
Bolinas Community P.U.D., Bolinas Sewage Pond System	Not applicable	88-100
California Dept. of Parks & Recreation, Samuel P. Taylor Park – WW System	Not applicable	91-181
Tomales Village CSD, Tomales Sewage Pond System	Not applicable	86-086
California State Parks Foundation, Marconi Conference Center WWTP	Not applicable	02-067
French Ranch LLC, French Ranch Community WWTP	Not applicable	97-10DWQ
City & County of San Francisco, Log Cabin Ranch School	Not applicable	91-054
California Dept of Parks & Recreation, Portola Redwoods State Park WWTP	Not applicable	86-087
San Mateo County, Memorial Park	Not applicable	86-046
San Mateo County, Glenwood Boys Ranch	Not applicable	88-140
San Mateo County, San Mateo County Honor Camp #1	Not applicable	88-141
University of California, Elkus 4-H Ranch	Not applicable	92-124
County of Santa Clara, Mariposa Lodge – Alcohol Rehab	Not applicable	78-053
Lake Canyon Community Services District, Lake Canyon Community WW System	Not applicable	94-143

¹ The orders shown are for the primary permit reissuance and do not include permit amendments.

² This industrial facility also treats municipal wastewater from the Crockett Community Services District.

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/ of Burlingame
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City of Richmond & Richmond Municipal Sewer
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5072 Benson Road
Union City, CA 94587

Kenneth Burger
East Bay Regional Parks District
100 Peralta Oaks Court
Oakland, CA 94605

California Dept. of Parks & Recreation
Samuel P Taylor St Parkway – WW System
845 Casa Grande Road
Petaluma, CA 94954

Eugene Burger
French Ranch Homeowners Association
6600 Hunter Drive
Rohnert Park, CA 94928

Norman Cole
City and County of San Francisco
Log Cabin Ranch School
375 Woodside Avenue
San Francisco, CA 94127

California Dept. of Parks & Recreation
Portola Redwoods St. Park WWTP
303 Big Trees Park Road
Marion, CA 95018

Wayne Zion
California Dept. Of Parks & Recreation
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P.O. Box 789
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EXHIBIT B

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December 21, 2009

Bruce H. Wolfe, Executive Officer
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San Francisco Region
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RE: Request for Preparation of the Administrative Record Concerning Adoption of Order No. R2-2009-0085 (NPDES Permit for City of Oakland No. CA0038512)

Dear Mr. Wolfe:

On November 18, 2009, the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") adopted Order No. R2-2009-0085, Waste Discharge Requirements for the City of Oakland ("Permittee") Sanitary Sewer Collection System. The Order is also National Pollutant Discharge Elimination System Permit No. CA0038512 ("Permit"). The Permittee intends to file a Petition for Review of the Order and the Permit.

With this letter, the Permittee is respectfully requesting that the Regional Board prepare and deliver to the undersigned the full administrative record and proceedings related to the Permit ("Administrative Record"). The Permittee requests that the Administrative Record for the Permit include, but not be limited to, the following documents:

- (1) a copy of the tape recordings, transcripts and/or notes regularly made during each and every public meeting at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, approved or included on the public agenda;
- (2) the agendas and minutes of any public meeting or hearing at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, or approved;
- (3) a copy of all draft and tentative versions of the Permit;
- (4) a copy of the Permit as adopted;
- (5) any and all documents or other evidence, regardless of authorship, relied upon, relating to, or used to formulate the requirements contained in any draft, tentative, or adopted version of the Permit;
- (6) any and all documents received by the Regional Board from the Permittee or its employees, agencies, consultants, or attorneys pertaining to the draft, tentative, or adopted versions of the Permit;

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Hong Kong
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Los Angeles
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December 21, 2009

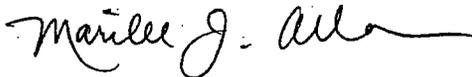
Page 2

- (7) any and all documents received by the Regional Board from any individual, company, partnership, corporation, agency, trade organization, and/or government entity (other than the Permittee), pertaining to the draft, tentative or adopted versions of the Permit;
- (8) any document or material incorporated by reference by the Permittee, an individual, company, partnership, corporation, agency, trade organization, and/or government entity in any document submitted to the Regional Board pertaining to the draft, tentative or adopted version of the Permit;
- (9) any record of any type of communication among members or staff of the Regional Board, or between or among the Regional Board or its staff and other persons or agencies pertaining to the draft, tentative or adopted versions of the Permit.

It should be noted that the Petition to be filed on behalf of the Permittee does request that the matter be held in abeyance until further notice. Therefore, provided that the State Board agrees to hold the Permittee's petition in abeyance, preparation of the Administrative Record need not commence unless and until the Permittee's petition is taken out of abeyance.

Thank you for your cooperation in this matter.

Sincerely yours,



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12

13 STATE WATER RESOURCES CONTROL BOARD

14 STATE OF CALIFORNIA

15
16 In the Matter of
17 CITY OF OAKLAND,
18 Petitioner,
19 For Review of Cease & Desist Order
20 No. R2-2009-0087 of the California Regional
Water Quality Control Board, San Francisco Bay
21 Region.
22

PETITION NO. _____

PETITION FOR REVIEW

(CDO NO. R2-2009-0087)

23 Pursuant to Section 13220(a) of the California Water Code and Section 2050 of Title 23
24 of the California Code of Regulations, Petitioner City of Oakland ("Oakland") hereby petitions
25 the California State Water Resources Control Board ("State Board") for review of Order No. R2-
26 2009-0087 ("Order") adopted by the California Regional Water Quality Control Board, San
27 Francisco Bay Region's ("Regional Board") on November 18, 2009. The Order is a Cease &
28

A/73238124.4

1 Desist Order amending prior Cease & Desist Order No. 93-134 (“prior CDO”) which included
2 compliance plans with projects to be implemented each year, to address threatened potential
3 waste discharge. The Order states that the purpose of the amendment is to revise Oakland’s
4 Compliance Plan “to only require rehabilitation projects” and thus to no longer require
5 construction of particular designated feet of relief sewer. In the preliminary findings section, the
6 Regional Board noted it was concurrently adopting and coordinating with a re-issued National
7 Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0038512 for Oakland’s
8 Sanitary Sewer Collection System (“Permit”), also adopted on November 18, 2009. (Oakland
9 has concurrently submitted a petition for review of the Permit and a request to hold that petition
10 in abeyance.)

11 A copy of the Order is attached to this Petition as Exhibit A. A copy of this Petition has
12 been sent to the Regional Board. A copy of the Request to Prepare Record of Proceeding is
13 attached as Exhibit B. The issues and a summary of the bases for the Petition follow. Oakland
14 reserves the right to file a more detailed memorandum in support of its Petition when the full
15 administrative record is available and any other material has been submitted.¹ Oakland requests
16 a hearing in this matter.

17 Oakland has worked and will continue to work cooperatively with the Regional Board
18 to achieve the common goal of protecting water quality in San Francisco Bay. The Regional
19 Board in amending the prior CDO as well as revising Oakland’s Permit and other NPDES
20 permits of Satellite cities has grappled with numerous complex technical and legal issues. On
21 several issues, however, Oakland and the Satellite cities contend that the Regional Board’s legal
22 analysis is incorrect and that the Regional Board did not fully consider the facts. Oakland
23 contends in this Petition that it is beyond the scope of the Regional Board’s authority to order a

24

25 ¹ The State Water Resources Control Board’s regulations require submission of a statement of points and authorities
26 in support of a petition (23 C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary
27 memorandum. However, it is impossible to prepare a complete statement and memorandum in the absence of the
28 complete administrative record, which is not yet available. In addition, Oakland will introduce further evidence
before the State Board as permitted by 23 CCR §2050.6 and Water Code §13320(b), regarding economics and
further impacts that was not available at the time of the Regional Board hearing.

28

1 city to spend "a commensurate" level of funding beginning within 180 days. Oakland must seek
2 review of these issues from the State Board in order to preserve Oakland's rights.

3 This Petition is a protective filing, and Oakland requests that the State Board hold this
4 petition in abeyance pursuant to Title 23, California Code of Regulations, Section 2050.5,
5 subdivision (d), until further notice. If this Petition is not held in abeyance for any reason,
6 Oakland will file an amended petition and supporting declaration seeking a stay under Water
7 Code § 13321(a) and Title 23, California Code of Regulations, Section 2053.

8 **1. NAME AND ADDRESS OF PETITIONER**

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15 Attn: Celso Ortiz, Esq.

16 Oakland can be contacted through its outside legal counsel:

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23 **2. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

24 Oakland seeks review of the Regional Board's Order No. R2-2009-0087, which amended
25 prior CDO No. 93-134, with respect to Oakland only.

26 **3. DATE OF THE REGIONAL BOARD ACTION**

27 The Regional Board issued its Order on November 18, 2009.

28 **4. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION
WAS INAPPROPRIATE OR IMPROPER**

As set forth below, the action of the Regional Board with respect to amending the prior
CDO regarding Oakland was not supported by the record, and was arbitrary, capricious, vague,

1 and in violation of law and policy.

2 Oakland specifically directs this Board to Order, Section 2, Rehabilitation Work, that
3 requires “within 90 days of this Order, the Discharger shall propose rehabilitation work *at a*
4 *funding level commensurate with the relief line work*” (emphasis added) previously but no
5 longer required, and within 180 days shall begin implementation of such proposed work.

6 Oakland maintains that it is improper for a regulatory agency to dictate the future spending of a
7 certain amount of money by any municipality.

8 **A. California Law and Constitutional Due Process Principles Prohibit**
9 **A Regulatory Agency from Mandating that Certain Monies Be Spent.**

10 The Regional Board improperly mandates in Section 2 of the Order that rehabilitation
11 work at “*a level of funding commensurate with the relief line work*” previously specified and
12 no longer required, be proposed within 90 days, and begin being implemented within 180 days.
13 In other words, the Regional Board is mandating in this enforcement order that the City spend a
14 certain amount of money beginning within the next 180 days. That is contrary to law and
15 policy.² It also is economically unfeasible, in these difficult fiscal times.

16 Regional Boards properly set levels of discharge into rivers or waterways, limits on water
17 quality, increases in flow, time lines for the building of treatment plants, and extensions of time
18 to come into compliance, but Oakland has been unable to find even one case or State Board
19 Order authorizing or approving a Regional Board’s demand or requirement that a City or
20 municipality spend a certain level of funding, or propose work to a “level of funding

21

22 ² The provision of sewage disposal generally is a “municipal affair” as distinguished from a state affair, (*e.g., City of*
23 *Oakland v. Williams*, 15 C.2d 542, 550 (1940)), and it is a proper exercise of the police power of a city to enforce
24 sewerage connections, the collection of charges therefor even if a citizen has other water supplies or sewerage
25 options (*City of Glendale v. Trondsen*, 48 C.2d 93, 101 (1957)). A city such as Oakland is also bound by the
26 California Constitution not to incur any indebtedness or liability exceeding in any year the income and revenue
27 provided for such year, without two-thirds vote of its voters and even then only under certain conditions. Cal.
28 Const. Art. XVI, §18(a). Cities are thus bound to follow “pay as you go” principles in municipal finance. A state
agency cannot overlay a requirement of a vague and unspecified level of funding to begin in 180 days, without
running afoul of these restrictions on a city and without essentially dictating what are clearly “municipal affairs.”
The burden is on the State Board and Regional Board to show authorities otherwise; they are not empowered to
command funding.

28

1 commensurate” with something previously proposed and now no longer required.

2 **B. The Order Amends the Prior CDO to Dovetail with a New Permit**
3 **that Has Discharge Prohibition III.D Which Violates Law and Policy**
4 **Including Substantive Due Process**

5 The Order describes in detail in its fact-finding section how the prior CDO is being
6 amended to dovetail with the concurrently-issued NPDES Permits and the desire of the Regional
7 Board to reduce wet weather flows to East Bay Municipal Utility District’s (“EBMUD”) .
8 treatment facility and EBMUD’s three newer Wet Weather Facilities (WWFs). Oakland and
9 other Satellite cities have filed concurrent Petitions for Review of their NPDES permits,
10 including Oakland’s Permit, because each has a Discharge Prohibition III.D prohibiting the
11 entity from a flow from its collection system that “causes or contributes to” EBMUD discharges
12 from EBMUD treatment facility.

13 Specifically, the broad “cause or contribute” language in the discharge prohibition
14 potentially makes a Satellite liable for violations of Discharge Prohibition III.D if it contributes
15 wet weather flows to EBMUD’s interceptor system on a day in which EBMUD discharges from
16 its WWFs regardless of whether the Satellite has properly maintained and operated its collection
17 system to eliminate I&I.

18 Oakland will not repeat all of its arguments here that are in its other Petition for Review.
19 In that petition, Oakland details that Prohibition III.D is a wet weather flow limit rather than an
20 operation and maintenance requirement, it is not authorized by 40 CFR Section 122.41.
21 Oakland’s other Petition for Review also discusses how Discharge Prohibition III.D violates
22 substantive due process because it is a vague narrative provision, and it is beyond the scope of
23 Article III powers to the extent it proscribes conduct that is not a discharge to the waters of the
24 United States. Moreover, the Permit does not contain any standards for determining compliance
25 with Discharge Prohibition III.D, and therefore encourages arbitrary enforcement in violation of
26 due process. Further, that Permit is invalid because it does not demonstrate that the Regional
27 Board considered the factors in Water Code Section 13241.

28 Because the Regional Board amends the prior CDO as it relates to Oakland relying on the

1 Regional Board's changes to the NPDES Permits, the Order here is also invalid and contrary to
2 law.

3 **5. THE MANNER IN WHICH OAKLAND IS AGGRIEVED**

4 Oakland is aggrieved by the Regional Board's actions because Oakland will be subjected
5 to provisions of an arbitrary and capricious Order, unsupported by evidence in the record and
6 contrary to law. As a result of this Order, Oakland is forced to propose projects, in a short period
7 of time, that are economically "commensurate" with what it might have had to spend in the
8 replacement of relief pipes previously required under the prior CDO. The Order essentially
9 mandates the spending of a level of money, but it is not clear how the Regional Board will
10 "enforce" a city to spend undetermined money on undetermined projects. Because of the severe
11 economic circumstances confronting Oakland and the rest of the state and country, the
12 unnecessary expenditure of money and resources in a short period of time is particularly harmful.

13 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD**
14 **REQUESTED**

15 As discussed above, Oakland requests that this Petition be held in abeyance. If it
16 becomes necessary for Oakland to pursue its appeal, Oakland requests that the State Board issue
17 an Order:

- 18 • Remanding the Order to the Regional Board;
- 19 • Requiring the Regional Board to remove or revise Discharge Section 2 on the
20 amount of funding to be used for rehabilitation work, and setting a period of not
21 less than 180 days to propose any work to be done;
- 22 • Providing for such other and further relief as is just and proper and as may be
23 requested by Oakland.

24 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF**
25 **LEGAL ISSUES RAISED IN THIS PETITION**

26 Oakland's preliminary statement of points and authorities is set forth in Section 4 above.
27 Oakland reserves the right to supplement this statement upon receipt and review of the
28 administrative record. Oakland also requests that it be permitted to submit supplemental
evidence not considered by the Regional Board, including evidence of economic considerations

1 which was not available at the time of the Regional Board hearing, pursuant to Title 23,
2 California Code of Regulations, Section 2050.6 and Water Code Section 13320(b), and other
3 argument.

4 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
5 **APPROPRIATE REGIONAL BOARD**

6 A true and correct copy of the Petition was mailed by First Class mail on December 21,
7 2009, to the Regional Board at the following address:

8
9 Bruce Wolfe, Executive Officer
10 California Regional Water Quality Control Board,
11 San Francisco Region
12 1515 Clay Street, Suite 1400
13 Oakland, California 94612

12 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**
13 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**
14 **BOARD**

15 Because Oakland requests that this Petition be held in abeyance by the State Board, in the
16 event this Petition is made active, Oakland will submit as an amendment to this Petition a
17 statement that the substantive issues and objections raised in this Petition were either raised
18 before the Regional Board or an explanation of why Oakland was not required or was unable to
19 raise the substantive issues and objections before the Regional Board.

20 **10. REQUEST TO HOLD PETITION IN ABEYANCE**

21 Oakland requests that the State Board hold this petition in abeyance pursuant to Title 23,
22 California Code of Regulations, Section 2050.5, subdivision (d).

23 **11. REQUEST FOR HEARING**

24 Oakland requests that the State Board hold a hearing at which Oakland can present
25 additional evidence to the State Board. Because Oakland requests that this Petition be held in
26 abeyance by the State Board, in the event this Petition is made active, Oakland will submit as an
27 amendment to this Petition a statement regarding that additional evidence and a summary of
28

1 contentions to be addressed or evidence to be introduced and a showing of why the contentions
2 or evidence have not been previously or adequately presented, as required under Title 23,
3 California Code of Regulations, Section 2050.6(a), (b).

4

5 DATED: December 21, 2009

6

Bingham McCutchen LLP

7

8

9 By: James J. Dragna by Marilee J. Alla
James J. Dragna
Attorneys for Petitioner
City of Oakland

10

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Oakland City Attorney's Office

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17 By: Celso Ortiz by Marilee J. Alla
Celso Ortiz
Attorneys for Petitioner
City of Oakland

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EXHIBIT A

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

CEASE AND DESIST ORDER NO. R2-2009-0087

**AMENDMENT OF CEASE & DESIST ORDER NO. 93-134
FOR:**

**CITY OF OAKLAND
SANITARY SEWER COLLECTION SYSTEM
ALAMEDA COUNTY**

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

1. The City of Oakland (hereinafter "Discharger") owns and maintains approximately 1,000 miles of mains and seven pump stations in its sanitary sewer (or wastewater) collection system, which serves a population of about 400,000 people in the City of Oakland. The Discharger is one of seven "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to the East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies are Stege Sanitary District and the cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont. The Discharger's wastewater collection system transports wastewater from industrial, commercial, and residential sources to EBMUD's main wastewater treatment plant where EBMUD treats the wastewater and discharges it to San Francisco Bay. During wet weather, because of increased wastewater flows caused by inflow and infiltration (I&I) from the collection systems tributary to EBMUD's facilities, the Discharger's wastewater also flows to EBMUD's Wet Weather Facilities (WWFs) where EBMUD stores the wastewater or partially treats it prior to discharge to San Francisco Bay.
2. Under Order No. R2-2005-0047, EBMUD was permitted to discharge partially treated wastewater from its WWFs to San Francisco Bay. This is because EBMUD's effluent limits for treating wet weather flows were technology-based. These effluent limits were developed because of U.S. EPA's determination in its June 18, 1986, letter that EBMUD's WWFs are not Publicly Owned Treatment Works, and therefore are not subject to secondary treatment requirements pursuant to 40 CFR Part 122.2. Since adoption of Order No. R2-2005-0047, the regulatory landscape has changed. In May 2007, as a result of its own motion review, the State Water Board adopted Order No. WQ 2007-0004 (the "Remand Order"), requiring the Regional Water Board to revise EBMUD's WWFs permit so that it complies with Section 301(b) of the federal Clean Water Act. This effectively required that EBMUD comply with secondary treatment or cease discharge at the WWFs. Secondary treatment is not a reasonable alternative for the WWFs. This is because wet weather discharges are intermittent in nature and not conducive to the biological treatment methods used to

achieve secondary standards. The costs of implementing alternative treatment technologies to achieve secondary standards are well above any sort of infrastructure renewal and upgrade program that would help eliminate discharges from the WWFs. As such, the Regional Water Board prohibited discharges from the WWFs when it adopted Order No. R2-2009-0004 for EBMUD's WWFs on January 14, 2009.

3. Concurrent with the adoption of this Cease and Desist Order (CDO), the Regional Water Board adopted Order No. R2-2009-0085 (hereinafter "Permit"), reissuing NPDES permit No. CA0038512 and waste discharge requirements for the Discharger. The Permit prohibits the Discharger from causing or contributing to discharges from EBMUD's WWFs. This prohibition is necessary because the Discharger's entire wastewater collection system connects to EBMUD's interceptor system and causes or contributes to discharges from at least one of the WWFs. During wet weather, I&I into the Discharger's wastewater collection system causes peak wastewater flows to EBMUD's system that the WWFs cannot fully store. This in turn causes EBMUD to discharge from the WWFs in violation of Order No. R2-2009-0004. In essence, a portion of the Discharger's wastewater is discharged by EBMUD in violation of the Clean Water Act.
4. CDO No. 93-134 includes compliance plans with projects that the Discharger and the six other Satellite Agencies must implement each year to reduce and eliminate wastewater discharges in violation of waste discharge requirements from each of the Satellite Agencies' seven collection systems. At this time, the Stege Sanitary District and the cities of Alameda, Emeryville, and Piedmont have completed their respective requirements under CDO No. 93-134. The cities of Albany and Berkeley still have additional rehabilitation work to complete, while the Discharger has additional rehabilitation work and relief lines to complete. Despite completing much of the work required by CDO No. 93-134, the Discharger continues to experience wastewater discharges from its collection system to Waters of the State. These discharges may be addressed through a future enforcement action by the Regional Water Board or U.S. EPA.
5. **Purpose of Amendment.** This amendment revises the Discharger's Compliance Plan to only require rehabilitation projects. This is because relief sewers convey much higher quantities of I&I than rehabilitation projects, and therefore, would not help to eliminate discharges from EBMUD's WWFs. As indicated above, the other six Satellite Agencies have already installed relief lines as required by CDO No. 93-134. Therefore, an amendment of CDO No. 93-134 for those dischargers is unnecessary.
6. Water Code §13301 authorizes the Regional Water Board to issue a CDO when it finds that a waste discharge is taking place, or threatening to take place, in violation of Regional Water Board requirements.
7. This CDO is an enforcement action and, as such, is exempt from the provisions of

the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with 14 CCR § 15321.

8. The Regional Water Board notified the Discharger and interested persons of its intent to consider adoption of this CDO, and provided an opportunity to submit written comments and appear at a public hearing. The Regional Water Board, in a public hearing, heard and considered all comments.

IT IS HEREBY ORDERED, in accordance with Water Code §13301, the Discharger shall comply with CDO No. 93-134 as amended.

1. Amendment to Compliance Plan. The Discharger is no longer required to construct the relief sewers shown in Table 1. These relief sewers were required by the Discharger's Compliance Plan under CDO No. 93-134.

Table 1: Relief Sewers No Longer Required to be Constructed

Sewer System Designation	Feet of Relief Sewer
52-1.000	494
52-2.000	724
52-3.000	946
52-4.000	959
52-5.000	629
52-6.000	891
52-7.000	364
52-8.000	222
52-9.000	285
54-2.100	393
54-2.200	728
54-5.100	989
54-5.120	58
54-5.200	469
54-5.300	1700
54-8.400	711
54-8.500	1381
54-8.600	1575
54-8.610	1974
54-8.700	2175
54-8.900	235
56-3.100	1113
56-3.200	2955
56-6.120	998
61-2.000	721
6404-1.000	288
6405-2.000	24
6405-3.000	2482

Sewer System Designation	Feet of Relief Sewer
6405-4.000	2281
81-1	3858
81-2	2462
81-3A	720
81-3B	3800
81-4	3057
82-2	690
82-3	1889

2. Rehabilitation Work. Within 90 days of the effective date of this Order, the Discharger shall propose rehabilitation work at a funding level commensurate with the relief line work (shown in Table 1) that is no longer required. Within 180 days of the date of this Order, the Discharger shall commence implementation of the proposed rehabilitation work in accordance with any changes identified by the Executive Officer.
3. Consequences of Non-Compliance. If the Discharger fails to comply with the provisions of this Order, the Executive Officer is authorized to take further enforcement action or to request the Attorney General to take appropriate actions against the Discharger in accordance with Water Code §§ 13331 and 13350 or other applicable provisions of law.
4. Effective Date. This Order shall be effective on the effective date of the Permit.

I, Bruce H. Wolfe, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on November 18, 2009.



Digitally signed
by Bruce Wolfe
Date: 2009.11.18
17:46:17 -08'00'

BRUCE H. WOLFE
Executive Officer

EXHIBIT B

BINGHAM

Marilee J. Allan
Direct Phone: 415.393.2364
Direct Fax: 415.393.2286
marilee.allan@bingham.com

December 21, 2009

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

Re: Request for Preparation of the Administrative Record Concerning Adoption of Cease & Desist Order No. R2-2009-0087 (amending prior DCO 93-134 as to City of Oakland)

Dear Mr. Wolfe:

On November 18, 2009, the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") adopted Cease & Desist Order No. R2-2009-0087 ("CDO"), which amended prior CDO No. 93-134 as it pertained to the City of Oakland ("Oakland") Sanitary Sewer Collection System. Oakland intends to file a Petition for Review of the CDO (amended version).

By this letter, Oakland respectfully requests that the Regional Board prepare and deliver to the undersigned the full administrative record and proceedings related to the CDO ("Administrative Record"). The Permittee requests that the Administrative Record for the CDO include, but not be limited to, the following documents:

- (1) a copy of the tape recordings, transcripts and/or notes regularly made during each and every public meeting at which the CDO, or proposed related actions, were or should have been considered, discussed, acted upon, approved or included on the public agenda;
- (2) the agendas and minutes of any public meeting or hearing at which the CDO, or proposed related actions, were or should have been considered, discussed, acted upon, or approved;
- (3) a copy of all draft and tentative versions of the CDO;
- (4) a copy of the CDO as adopted;
- (5) any and all documents or other evidence, regardless of authorship, relied upon, relating to, or used to formulate the requirements contained in any draft, tentative, or adopted version of the CDO;
- (6) any and all documents received by the Regional Board from Oakland or its employees, agencies, consultants, or attorneys pertaining to the draft, tentative, or adopted versions of the CDO;

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

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Bruce H. Wolfe, Executive Officer
December 21, 2009
Page 2

- (7) any and all documents received by the Regional Board from any individual, company, partnership, corporation, agency, trade organization, and/or government entity (other than Oakland), pertaining to the draft, tentative or adopted versions of the CDO;
- (8) any document or material incorporated by reference by Oakland, an individual, company, partnership, corporation, agency, trade organization, and/or government entity in any document submitted to the Regional Board pertaining to the draft, tentative or adopted version of the CDO;
- (9) any record of any type of communication among members or staff of the Regional Board, or between or among the Regional Board or its staff and other persons or agencies pertaining to the draft, tentative or adopted versions of the CDO.

It should be noted that the Petition to be filed on behalf of Oakland does request that the matter be held in abeyance until further notice. Therefore, provided that the State Board agrees to hold Oakland's petition in abeyance, preparation of the Administrative Record need not commence unless and until Oakland's petition is taken out of abeyance.

Thank you for your cooperation in this matter.

Sincerely yours,



Marilee J. Allan