

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 86-17

CITY OF ALAMEDA
CITY OF ALBANY
CITY OF BERKELEY
CITY OF EMERYVILLE
CITY OF OAKLAND
CITY OF PIEDMONT
STEGE SANITARY DISTRICT
ALAMEDA AND CONTRA COSTA COUNTIES

AN ORDER REQUIRING THE ABOVE CITIES AND SANITARY DISTRICT
TO CEASE AND DESIST DISCHARGING WASTE FROM THEIR SEWERAGE
SYSTEMS CONTRARY TO REQUIREMENTS PRESCRIBED IN ORDER NOS.
84-64, 84-65, 84-66, 84-67, 84-68, AND 84-62,
ALL NPDES PERMITS, AND CONTRARY TO THE REQUIREMENTS
OF THE SAN FRANCISCO BAY BASIN PLAN AND
THE PORTER-COLOGNE WATER QUALITY CONTROL ACT.

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

1. On September 19, 1984, the Board adopted Order Nos. 84-64, 84-65, 84-66, 84-67, 84-68, and 84-62, (NPDES Permits Nos. CA0038474, CA0038491, CA0038466, CA0038512, CA0038504, and CA0038482, respectively), prescribing requirements for the discharge of sewer system overflows of untreated sanitary wastes by the cities of Alameda, Albany, Berkeley, Oakland, Piedmont, and the Stege Sanitary District. Waste Discharge Requirements were not issued to the City of Emeryville because it was believed that no overflows of untreated sewage took place in that community. It was subsequently determined that inflow and infiltration within the boundaries of the City of Emeryville contribute to overflows at locations outside Emeryville. (The six cities and one sanitary district are hereinafter referred to collectively as 'the communities'.) The cited orders superseded and rescinded previously prescribed requirements for these wet weather discharges.

2. Overflows occur when sewer capacity is exceeded as a result of inflow or infiltration of rainfall. Overflow discharges consist of untreated domestic and industrial wastewater, and associated pollutants, and occur at a minimum of 175 locations within the sanitary sewer system tributary to the East Bay Municipal Utility District Special District No. 1 (hereinafter referred to as the District) interceptor sewers. Some overflows are conveyed underground into the storm drainage system by means of existing relief sewers, or by flow directly through soil between deteriorated sanitary sewers and storm sewers. Most of the overflows, however, pass through manhole covers into streets or other public places and eventually reach Central San Francisco Bay and many of its tributaries, all waters of the United States, via the storm drainage system. The lower floors of buildings and residences located in topographically low parts of the service area also may be subject to overflows as a result of surcharging in the sewer lines and subsequent backward flow through restroom facilities and floor drains.
3. After overflow to the surface, but prior to drainage into the storm drain system, untreated sewage and constituent pollutants may come into contact with humans, or animals which could serve as carriers of disease. When such contact does not take place, overflows create a condition of pollution of waters of the state. When such contact does take place, overflows create a condition of contamination as well; that is, an impairment of the quality of the waters of the state to a degree which creates a hazard to the public health. This cease and desist order is directed at addressing in a reasonable manner the public health aspects of direct contact with overflows from the community collection systems.

Public exposure to untreated sanitary wastes, containing pathogens, has been documented to occur in the zones identified on Attachment A, which is incorporated herein and made a part of this order. This documentation is contained in a submittal dated February 3, 1986 made by the District on the behalf of the communities. Further definition of those overflow zones in which contamination takes place, as distinct from pollution, is required in order to set priorities for implementation of corrective actions. It is the intention of the Board in issuing this order to prohibit both contamination of waters of the State and conditions of nuisance, but to address the issues surrounding pollution of waters of the State at a later time, after public health hazards have been brought satisfactorily under control.

4. Inflow and infiltration of rainfall also contribute to overflows from the existing District sewer interceptor system, and bypassing of the secondary treatment units located at the District's main treatment plant. These overflows discharge into San Leandro Creek and Elmhurst Creek, which are tributary to San Leandro Bay, and into the Alameda channel, Temescal Creek and Cerrito Creek, which are directly tributary to Central San Francisco Bay. Overflows receiving primary treatment and disinfection also take place nearshore at the old Stege Sanitary District treatment plant located on Point Isabel. This plant is currently operated by the East Bay Municipal Utility District during wet weather only. Discharges which bypass secondary treatment take place through the District's deepwater outfall located in Central San Francisco Bay. All of the above are waters of the United States.
5. The District administers a pretreatment program which regulates discharges into the sanitary system by industrial and commercial facilities located within the communities. This program has been approved by the United States Environmental Protection Agency, and is regulated under NPDES Permit No. CA037702.
6. The communities are currently participating in the East Bay Infiltration/Inflow Study to develop and implement solutions for their, and the District's, overflow and bypass discharge problems. The communities have submitted final municipal compliance plans, as required by the Board in the orders cited above. They have also submitted a list of projects (dated February 3, 1986) proposed for implementation in fiscal year 1986. These projects were selected to reduce the overflow frequency in the zones identified on Attachment A, and are approximately equivalent to two years of work in the 20 year scope of work. All of these projects cannot be implemented in the first year if grant funds do not become available. The District has submitted a municipal compliance plan for its interceptor and treatment plant which will be addressed under a separate order.
7. The communities' municipal compliance plans propose a staged solution to the overflow problem which will take approximately 20 years to implement. The design goal of the 20 year program is to eliminate overflows unless the following combination of circumstances occur: (1) soils become fully saturated, (2) rainfall exceeds 0.64 inches per hour, and (3) surcharge pressure in a sewer exceeds the height from the sewer to the nearest outlet. The likelihood of overflow will decrease further in the 30 years following the initial 20 year period, as cyclic replacement or repair of the entire collection system takes place. This staged approach has been proposed because the capital costs to achieve compliance are high, grant funding of all projects

is improbable, and management of the construction activities involved is politically and administratively complex. If residents of the East Bay could afford higher sewer user fees, or grant funding were available, an implementation period shorter than 20 years would provide substantial public benefit.

8. The communities and the District entered into a Joint Powers Agreement (JPA) dated February 13, 1979 under which the District served as administrative lead agency for the conduct of the infiltration/inflow study described above, and applied for and received federal and state grant funds for the study. The JPA was amended on January 17, 1986 to designate the District as the 'Lead Agency' during the initial five year implementation phase of the infiltration/inflow study recommendations. The amended JPA delegates authority to the Lead Agency to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather implementation programs, and to perform various other related tasks. Programs developed under the JPA will be directed by a Technical Advisory Board composed of one voting representative from each of the communities and the District, and one non-voting representative from each of the following: the Regional Board, the State Water Resources Control Board, and the United States Environmental Protection Agency.
9. The Clean Water Act establishes July 1, 1988 as the statutory deadline for all publicly owned treatment works (POTWs) to be in compliance with the limitations contained in their NPDES permits, unless a court order establishes a time schedule for compliance which extends beyond this date. The Board may need to enter into a consent decree with the communities concerning the wet weather discharges described above prior to July 1, 1988, and anticipates that it will do so, if necessary.
10. The communities (with the exception of Emeryville) are currently in violation of Provision B.1. of their respective permits, cited above, which states that "discharge of pollutants shall not create a nuisance as defined in the California Water Code." The Water Code definition of nuisance (Section 13050 (m)) includes any condition which is injurious to health.
11. All of the communities are subject to this Cease and Desist Order pursuant to Water Code section 13301, which establishes jurisdiction over any person who discharges waste in violation of any order or prohibition prescribed by a regional board. In this instance the communities (including Emeryville) are in violation of the following Basin Plan Prohibitions: (a) discharges which do not receive a minimum initial dilution of at least 10:1, (b) discharges into dead-end sloughs or confined waters, and (c) discharges of raw sewage to any waters of the Basin. (See Basin Plan pages 4-4 and 4-7.)

12. Measures to control sewer system overflows take two forms: (1) comprehensive rehabilitation to reduce infiltration and inflow of water, and (2) construction of relief sewers parallel to, or as replacements of, existing trunk sewers. These relief sewers make it possible to convey peak flows to treatment facilities. Some of the relief sewers proposed for the 20 year staged solution, if constructed prior to completion of implementation of the District's wet weather facilities plan (approximately five years), would need to temporarily discharge untreated sewer overflows directly to the Central San Francisco Bay or its tributaries due to the limited hydraulic capacity of the District's current interceptor. Such discharges might require issuance of NPDES permits, but are prohibited by this order on the grounds that they could create an unnecessary threat to public health and water quality. The Board will consider temporary exceptions to this prohibition if it can be shown that a net public health or environmental benefit would result from such an exemption. To discourage the need to grant such temporary exceptions the Board will require the District to make reasonable and satisfactory progress in implementation of its wet weather facilities plan. .
13. This action is an order to enforce waste discharge requirements and Basin Plan prohibitions previously adopted by the Board and is therefore categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
14. A Draft Environmental Impact Report (DEIR) dated January 22, 1986 addresses the impacts of the projects which will be implemented in response to this order. Hearings to consider public comments on the DEIR were held in the communities between February 12 and February 25, 1986. The financial burden of increased sewer use fees, and the inequity of requiring private lateral replacement or rehabilitation at the property owners expense in some neighborhoods, but not in others, have been identified as potentially significant economic impacts for homeowners and renters. A number of measures to mitigate these impacts are discussed in the DEIR, and can be implemented if needed, and funds are available to support their implementation. A hearing by the East Bay Municipal Utility District Board of Directors to consider certification of the final EIR is tentatively scheduled for April 8, 1986.
15. On March 19, 1986, at a meeting starting at 9:30 a.m. in the Assembly Room, State Building, 1111 Jackson Street, Oakland, after due notice to the discharger and all other affected persons, the Regional Board conducted a public hearing at which the communities appeared and evidence was received concerning the discharges.

IT IS HEREBY ORDERED THAT:

- A. The Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District, cease and desist from discharging wastes in a manner that injures or creates a hazard to public health, or a nuisance, in accordance with the time schedule contained in this order.

- B.
 - 1. The Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District shall not discharge wastewater at any time from a relief sewer completed after the effective date of this order into any location other than the sewage collection system, unless the Board specifically permits this discharge in a separate action at some future time, as stated in Finding 12, above.

 - 2. The Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District shall not discharge wastewater at any time into any location other than the sewage collection system. Compliance with this prohibition shall be specified in a future Board action which may include a compliance time schedule and any exceptions to the prohibition.

- C. The Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the Stege Sanitary District, shall increase sewer user fees, or implement equivalent financial measures, such that measures to control sewer system overflows can be implemented as proposed, without delay.

- D. Compliance with Order A. shall be achieved according to the following time schedule:

<u>Task</u>	<u>Completion Date</u>
1. Submit a status report on implementation of measures to reduce overflows in the zones identified on Attachment A.	September 1, 1986 and every six months thereafter.
2. Submit a proposal for overflow reduction in specific zones in which overflows create a hazard to public health, giving priority to those zones in which high public contact occurs.	September 1, 1986, and every 12 months thereafter.

Additional overflow reduction zones should be proposed for inclusion in Attachment A, pursuant to Order E., below. The following information shall be provided for all zones:

- (1) the estimated frequency and duration of overflow, currently,
- (2) the approximate number of persons affected, (3) the presence of specially vulnerable groups, such as children or the elderly,
- (4) a list of measures proposed for implementation in the next year to reduce the overflow frequency, and a proposed date of completion of implementation of the listed projects, and,
- (5) the estimated frequency and duration of overflow, both within the overflow reduction zone and 'downstream', after completion of implementation of the measures proposed.

3. Completion of implementation of the list of projects submitted February 3, 1986, with the exception of two projects proposed for deletion from the list by letter dated March 6, 1986. All projects subsequently proposed, pursuant to D.2., above, shall be completed by a compliance date specified at the time the additional project list is approved. July 1, 1988

- E. The Executive Officer is directed to review, and approve if appropriate, the annual project list proposal, and to alter Attachment A to include those additional zones in which a public health hazard has been demonstrated to exist, based upon either a satisfactory information submittal, as required in D.2., or upon such documentation as is gathered by Regional Board staff. Any other proposed changes in Attachment A must be brought to the Board for approval.

- F. If the Executive Officer finds that any community has proposed, pursuant to D.2., above, a package of overflow reduction measures for any year which is less effective than the measures recommended for that year by the final SSES for that community, or that any community has failed to comply with any other provision or time schedule contained in this order, he is instructed to request the Attorney General to take appropriate enforcement action against the community, including injunction and civil remedies, if appropriate.
- G. If the Executive Officer finds that any community has proposed, pursuant to D.2., above, a package of overflow reduction measures for any year which is less effective than the measures recommended for that year by the final SSES for that community, or that any community has failed to comply with any other provision or time schedule contained in this order, but does not request the Attorney General to take appropriate enforcement action against the community, he is instructed to report to the Board the reason for not making such a request of the Attorney General.

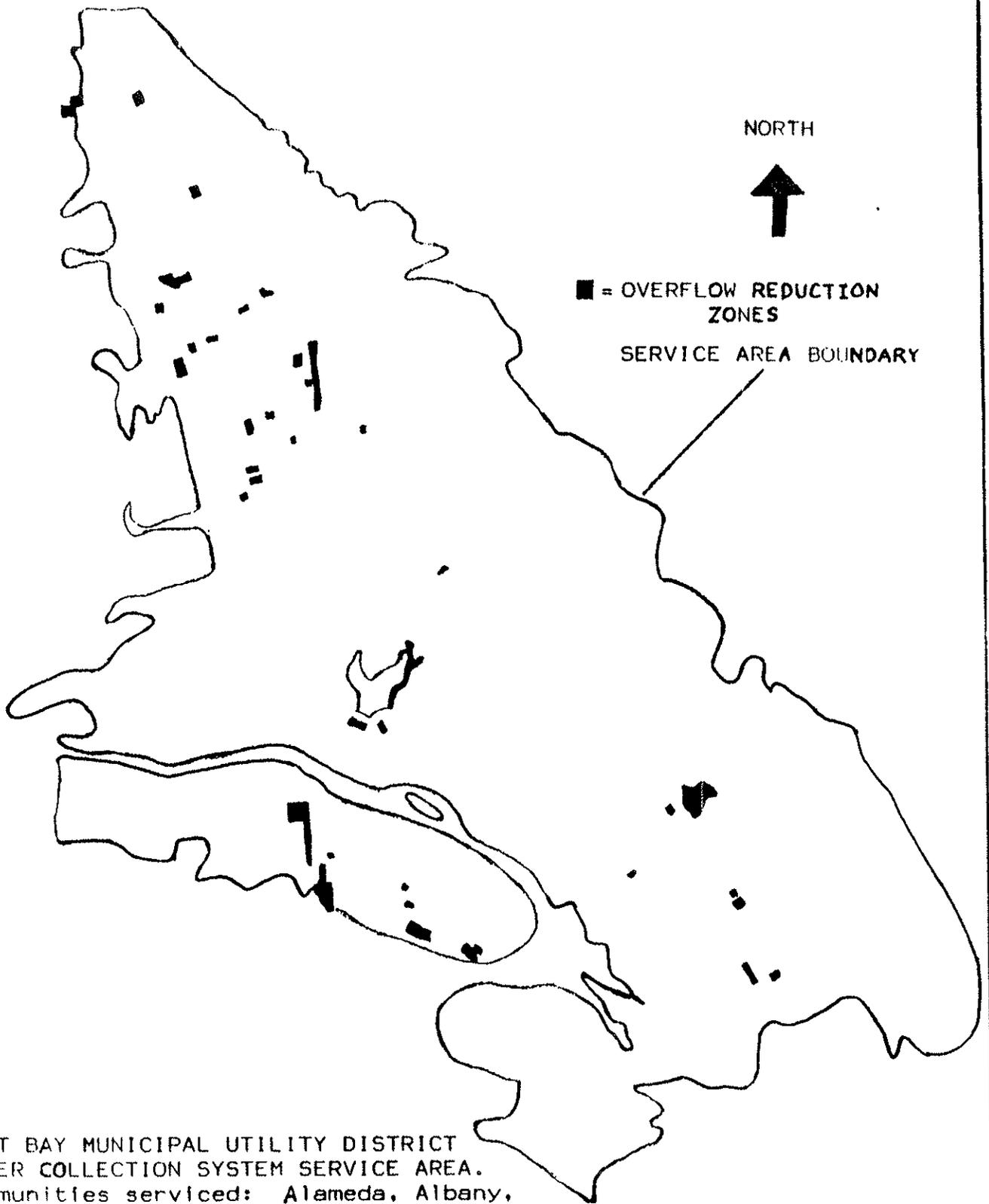
I, Roger B. James, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 19, 1986.



Roger B. James
Executive Officer

Attachments:

- A. Targeted overflow reduction zones in which a public health hazard exists.



EAST BAY MUNICIPAL UTILITY DISTRICT
SEWER COLLECTION SYSTEM SERVICE AREA.
Communities serviced: Alameda, Albany,
Berkeley, Emeryville, Oakland, Piedmont,
and the Stege Sanitary District.

Targeted overflow reduction
zones in which a public health
hazard exists. See Maps 1-8
attached to the submittal of
February 3, 1986 for details.

STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION
ATTACHMENT A OVERFLOW REDUCTION ZONES
DRAWN BY: G.W. DATE: 2/21/86 DRWG. NO. 1