

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

**RESPONSE TO WRITTEN COMMENTS**  
ON THE REISSUANCE OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(NPDES) PERMITS FOR

**Cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and Stege Sanitary  
District**

NPDES Nos. CA0038474, CA0038471, CA0038466, CA0038792, CA0038512, CA0038504 and  
CA0038482.

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*Note: The format of this response begins with comments quoted verbatim, and some less controversial  
comments paraphrased for brevity. Responses follow each comment. The comment letters are attached  
to this Response to Comments.*

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**RESPONSE TO TECHNICAL ADVISORY BOARD (TAB) FOR EAST BAY COMMUNITIES  
SANITARY SEWER COLLECTION SYSTEMS' COMMENTS**

**Attachment 1**

**TAB Comment 1:** "Language should be changed in Finding 22 to be consistent with Provision 2.

*Under the program for reporting of SSOs currently being developed jointly by BACWA and the Regional  
Board, SSOs will be reported according to the "SSO Monitoring and Reporting Program" currently  
being developed. This change would be consistent with the language proposed by the Board in the  
provisions portion of the Permit (D. Provisions, Section 2). Language should be changed as follows:*

22. *In October 2003, the Board adopted a Resolution in support of collaboration between the Board  
and the Bay Area Clean Water Agencies (BACWA) to report and manage SSOs in this Region. The Board  
staff and BACWA will develop a web-based region-wide SSO reporting system, and an outline for  
the necessary elements for a Sewer System Management Plan (SSMP). The Board will require all  
wastewater collection system owners and operators to report all SSOs through the web-based SSO  
reporting system and develop site-specific SSMPs for wastewater collection systems. This Order is  
consistent with the SSO Resolution No. 2003-R2-0095."*

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**Response 1:** The 3<sup>rd</sup> paragraph of the Board SSO Resolution stated that "it is the Board's expectation and  
requirement that sewage collection system owners or operators report all SSOs to Board staff..."

However, the Resolution did not require all sewage collection agencies to report SSOs. The Board staff is  
currently discussing with the Bay Area Clean Water Agencies (BACWA) to determine if federal and  
private collection system owners are subject to the SSO Monitoring and Reporting Program. Therefore,  
the subject sentence in Finding 22 is revised as stated below to be consistent with the SSO Resolution,

"The Board will require all wastewater collection system owners and operators to report all SSOs through  
the web-based SSO reporting system and develop site-specific SSMPs for wastewater collection systems.

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**TAB Comment 2: “The sentences that refer to secondary treatment requirements should be removed from the Tentative Order (Finding 23).**

The definition of “treatment works” in Clean Water Act (CWA) § 212 does not apply to the secondary treatment requirement in CWA § 301. In particular, CWA § 212 explicitly states that the definitions it contains are “as used in this subchapter.” CWA Subchapter II deals with “Grants for the Construction of Treatment Works,” and the definition of “treatment works” in that chapter was intentionally broad so that the federal grants program could provide financing for collection systems as well as for treatment plants. This broad definition does not apply to Subchapter III or to the secondary treatment requirement in § 301. The court in *Montgomery* explicitly held that the definition of treatment works in CWA § 212 was inapplicable to CWA § 301, noting that:

*The legislative history also indicates that the broad definition of treatment works in section 212 was viewed as an expansion beyond the common meaning of the word, an expansion justified by the context of the federal grant authorization. . . . Approval of this new definition in the narrow context of construction grants was not a determination that attaching a sewer system to a treatment facility would require secondary treatment at formerly independent overflow points.<sup>1</sup>*

Therefore, the language in Finding 23 should be revised as follows:

23. ~~The Clean Water Act (CWA) Section 212(2)(A) includes wastewater collection systems as part of treatment works. Section 301(a) of the CWA prohibits discharge to waters of the United States except in compliance with best practicable control technology currently available. For separate sewer systems (non-CSOs, or non-Combined Sewer Overflows), this means that all discharges must meet effluent limitations based upon secondary treatment requirements. The secondary treatment standards are specified in 40CFR Part 133. Therefore, discharges of wastewater that do not meet secondary effluent standards constitute a violation of the CWA. The CWA Section 308 provides the basis for SSO reporting requirements. This section requires establishing, maintaining, and reporting records for determining whether there has been a violation of the CWA.~~

**Response 2:** To address your comment, we deleted the first sentence in Finding 23, and revised the rest of Finding 23 as state below:

“23. The Clean Water Act (CWA) ~~Section 212(2)(A) includes wastewater collection systems as part of treatment works.~~ Section 301(a) ~~of the CWA~~ prohibits discharge to waters of the United States except in compliance with other provisions of the CWA, best practicable control technology currently available. For publicly owned treatment works, ~~separate sewer systems (non-CSOs, or non-Combined Sewer Overflows), this means that~~ all discharges must meet effluent limitations based upon secondary treatment requirements. The secondary treatment standards are specified in 40CFR Part 133. ~~Therefore, discharges of wastewater that do not meet secondary effluent standards constitute a violation of the CWA.~~ The CWA Section 308 provides the basis for SSO reporting requirements. This section requires establishing, maintaining, and reporting records for determining whether there has been a violation of the CWA.”

**TAB Comment 3: “The Regional Board must recognize that in some cases reduction of inflow and infiltration is not feasible.**

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<sup>1</sup> 646 F.2d at 591.

Section B.2.b. of the Tentative Order appears to be an excerpt from the draft EPA federal SSO regulations. However, the phrase “reduction of inflow and infiltration” was removed from the excerpt. The East Bay communities would like the Regional Board to recognize that in some cases it will be infeasible to reduce inflow and infiltration and in any event the Regional Board would have the discretion to make the determination of whether I/I reduction was in fact infeasible or not.

We present two options for the Board to consider regarding a possible correction, as follows:

OPTION 1 – This option includes an insertion of the omitted phrase:

“ b. There were no feasible alternatives for the discharge, such as retention of untreated Wastewater, reduction of inflow and infiltration, and use of adequate backup equipment;

OPTION 2 – This option includes an additional descriptor to make the intent more clear:

“ b. There were no feasible alternatives for preventing the discharge, such as retention of untreated wastewater, reduction of inflow and infiltration, and use of adequate backup equipment; ”

**Response 3:** The tentative order has been revised in accordance with your option 1:

“b. There were no feasible alternatives for the discharge, such as retention of untreated wastewater, reduction of inflow and infiltration, and use of adequate backup equipment;”

**TAB Comment 4:** “The method of reporting SSOs should be further clarified in Section B.1.”

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To further clarify the method that SSOs should be report, the language of the last sentence under Section B.1 should be adjusted as follows:

b. If the Discharger contains the SSO within the storm drain system pipes, and fully recovers and cleans up the spilled wastewater.

However these incidents of SSOs shall be reported to the Board as SSOs as stipulated in Section D.2.”

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**Response 4:** Section B.1.b. has been revised according to your comment.

**TAB Comment 5:** “If additional information is needed by the Regional Board during an enforcement hearing, the information needs to be requested.”

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During our meeting of January 14, 2004, Regional Board staff agreed to specify that if additional information, beyond what is reported, is needed in an enforcement hearing, then the Regional Board would request the additional information. The language in Section B.4. should be revised as follows:

4. Burden of proof. In any enforcement proceeding, the Discharger has the burden of proof to establish that the criteria in this section have been met. The Discharger shall provide additional available information pertaining to the SSO ~~as~~ upon requested by the Board’s staff. The information may include:

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- a. Relevant sewer maintenance/repair logs including the associated costs of sewer rehabilitation, cleaning/flushing, inspection, and replacement for the pipe section where the SSO occurred; and
- b. Information relating to storm event, such as size of the storm, length of such storm during the SSO.”

**Response 5:** Section B.4 has been revised according to your comment,

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**TAB Comment 6:** “Section D.2 should be clarified to indicate that an approved method of submitting a claim would include providing language in the web-based reporting system currently being developed under the Board’s SSO Resolution, Order No. 2003-R2-0095.

Language should be revised as follows:

4. Burden of proof. In any enforcement proceeding, the Discharger has the burden of proof to establish that the criteria in this section have been met. A claim to be submitted under Sections B.2.c. and B.3.d. above may also be provided in the space allocated for claims in the web-based SSO reporting system (when available), which is currently being developed pursuant to Board Order No. 2003-R2-0095. The Discharger shall provide additional available information pertaining to the SSO upon request by the Board’s staff. The information may include:
- a. Relevant sewer maintenance/repair logs including the associated costs of sewer rehabilitation, cleaning/flushing, inspection, and replacement for the pipe section where the SSO occurred; and
  - b. Information relating to storm event, such as size of the storm, length of such storm during the SSO.”

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**Response 6:** Section B.4 has been revised as follow:

- “4. Burden of proof. In any enforcement proceeding, the Discharger has the burden of proof to establish that the criteria in this section have been met. A claim to be submitted under Sections B.2.c. and B.3.d. above may also be provided in the space allocated for claims in the web-based SSO reporting system (when the system becomes available), which is currently being developed pursuant to the Board SSO Resolution No. 2003-R2-0095. The Discharger shall provide additional available information pertaining to the SSO upon request by the Board’s staff. The information may include:
- a. Relevant sewer maintenance/repair logs including the associated costs of sewer rehabilitation, cleaning/flushing, inspection, and replacement for the pipe section where the SSO occurred; and
  - b. Information relating to storm event, such as size of the storm, length of such storm during the SSO.”

**TAB Comment 7:** The several apparent omissions, minor clarifications, extraneous text, and typographical errors should be corrected in the final NPDES permit as indicated in TAB comments.

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**Response 7:** All four (4) typographical errors in Findings 4, 7, 10 and 12 as pointed out in the comments were corrected

**Attachment 2**

**TAB Comment 1:** *“Emeryville: Language should be changed in Finding 16 to address the fact that Emeryville has not been granted an extension of the CDO.*

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16. 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 the Discharger submitted a revised Compliance Plan and Schedule in October 1993. In light of the increased costs, the Board granted ~~the Discharger and~~ the Cities of Alameda, Berkeley, Oakland, and Piedmont a five (5) to ten (10) year extension to the original compliance schedules in the CDO reissuance in October 1993. “

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**Response 1:** Finding 16 has been revised according to your comment.

**TAB Comment 2&3:** *The title page for Stege Sanitary District incorrectly spelled Contro Costa County:*

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*CONTRAO COSTA COUNTY*

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**Response 2&3:** The spelling errors have been corrected according to your comment.

**Attachment 3**

**TAB Comment 1:** *“The estimated length of wastewater collection system owned and maintained by a community is approximate. Therefore, we request that the following clarification be made for each community (note that the City of Albany’s Fact Sheet is used for illustration purposes):*

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**I. INTRODUCTION**

The Discharger owns and maintains approximately 35 miles of wastewater collection system, which is connected to interceptors owned by East Bay Municipal Utility District, Special District 1, or EBMUD. The Discharger’s collection system serves a population of 17,000 in the City of Albany. The wastewater collected from the Discharger’s service area is treated by EBMUD’s wastewater treatment facilities. The collection system was originally constructed in the early twentieth century with cross connections to storm drain systems. In the 1970s and 1980s, overflows occurred frequently due to these storm drain cross connections as well as to infiltration into the Discharger’s collection system. These overflows resulted in untreated wastewater overflows (also called SSOs) to streams, creeks or the Bay during storm events. “

**Response 1:** We have made the changes indicated in your comment to all seven Fact Sheets.

**Attachment 4**

**TAB Comment 1:** *“STEGE SANITARY DISTRICT, Fact Sheet: The following error was made in the Fact Sheet title header regarding the County that the Stege S.D. lies within:*

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FACT SHEET  
FOR

*NPDES PERMIT and WASTE DISCHARGE REQUIREMENTS for  
Stege Sanitary District, ~~Alameda~~ Contra Costa County ”*

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**Response 1:** Fact Sheet for Stege Sanitary District has been changed according to your comment.