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Special Counsel for Petitioners
 ROSS VALLEY SANITARY DISTRICT,
 SAN RAFAEL SANITATION DISTRICT, and
 SOUTHERN CALIFORNIA ALLIANCE OF POTWs

BEFORE THE
 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Ross Valley) Sanitary District, San Rafael Sanitation) District, and Southern California Alliance of) POTWs for Review of Action and Failure to) Act by the California Regional Water) Quality Control Board, San Francisco Bay) Region, in Adopting Order No. R2-2018-) 0003 for the Central Marin Sanitation) Agency)	PETITION FOR REVIEW; PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR REVIEW; REQUEST FOR HEARING; REQUEST FOR STAY. [WATER CODE §§ 13320, 13321; 23 C.C.R. § 2050 <i>et seq.</i>]

In accordance with section 13320 of the Water Code, Petitioners Ross Valley Sanitary District (“RVSD”), San Rafael Sanitation District (“SRSD”),¹ and Southern California Alliance of POTWs (“SCAP”) (collectively “Petitioners”) hereby petition the State Water Resources Control Board (“State Board”) to review the action and failure to act by the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”), in including some of the satellite collection systems, namely RVSD and SRSD, as co-permittees on the National Pollutant Discharge Elimination System (“NPDES”) Permit (“Permit”), Order No. R2-2018-0003, for the Central Marin Sanitation Agency (“CMSA”) on January 10, 2018. A copy of the adopted Permit is attached as **Exhibit A**.

¹ Sometimes RVSD and SRSD are also referred to as the “Districts.”

1 A summary of the bases for this Petition and a preliminary statement of points and
2 authorities are set forth in this Petition for Review in accordance with Title 23, California Code of
3 Regulations (“C.C.R.”) section 2050(a). Petitioners reserve the right to file supplemental points
4 and authorities in support of this Petition for Review once the administrative record becomes
5 available.² Petitioners also reserve the right to submit additional arguments and evidence
6 responsive to the Regional Board’s or other interested parties’ responses to this Petition for
7 Review, to be filed in accordance with 23 C.C.R. section 2050.6.

8 **1. NAME, ADDRESS, PHONE NUMBER, AND EMAIL OF THE PETITIONERS:**

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21 All materials in connection with this Petition for Review should also be provided to the
22 Petitioners’ special counsel at the following address:

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27
28 ² It is not possible to prepare a thorough memorandum or a memorandum that is entirely useful to the reviewer in the
absence of the complete administrative record, which is not yet available.

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

The Petitioners seek review of the action and inaction of the Regional Board in connection with the adoption of the Permit. By adopting the Permit and listing RVSD, SRSD and one other satellite collection system as co-permittees, the Regional Board failed to comply with the Porter-Cologne Water Quality Control Act (Cal. Water Code §§ 13000 *et seq.*) and its implementing regulations; acted inconsistently with the Clean Water Act (“CWA” 33 U.S.C. §§ 1251 *et seq.*) and its implementing regulations (40 Code of Federal Regulations (“C.F.R.”) Parts 122, 123, 124, and 133); failed to comply with the Administrative Procedures Act (“APA”); acted beyond its statutory authority; abused its discretion for any discretionary actions; failed to support the provisions of the Permit with proper findings, and included findings and requirements in the Permit that are not supported by the evidence and/or violated Petitioners’ due process rights.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR FAILED TO ACT:

The Regional Board adopted the Permit on January 10, 2018 in Oakland, California, and failed to make changes in the Permit requested by the Petitioners.

4. STATEMENT OF THE REASONS THE ACTION OR INACTION WAS INAPPROPRIATE OR IMPROPER.

A. FACTUAL AND PROCEDURAL BACKGROUND:

1) Permitting History

CMSA is the only permitted discharger authorized as a point source to discharge pollutants to a water of the United States and, therefore, properly subject to an NPDES discharge requirements under section 402 of the Clean Water Act. (33 U.S.C. § 1342.) CMSA does not own any of the satellite sewer systems (including RVSD and SRSD) that feed into CMSA’s treatment plant.

The satellite sewer collection systems are owned by separate entities:

- RVSD (also known as Sanitary District No. 1 of Marin County) owns and operates about 200 miles of sewer lines serving Larkspur, Ross, San Anselmo and nearby unincorporated areas (Kentfield, Greenbrae).

- 1 • SRSD owns and operates about 150 miles of sewer lines serving the City of San Rafael.
- 2
- 3 • Sanitary District No. 2 of Marin County owns and operates about 45 miles of sewer lines serving the Town of Corte Madera.
- 4
- 5 • The California Department of Corrections and Rehabilitation owns and operates a sewer collection system serving the San Quentin Prison.
- 6
- 7 • The County of Marin owns and operates a sewer collection system serving San Quentin Village, which flows into the lines owned by the prison, and owns the Murray Park system, which feeds into RVSD's sewer system.
- 8

9 RVSD and SRSD were not included in the last two NPDES permits for CMSA (Order Nos. R2-2007-0007 and R2-2012-0051). Neither RVSD nor SRSD requested to be on and did not wish
 10 to be co-permittees on the Permit (Order No. R2-2018-0003). Both RVSD's and SRSD's
 11 collection systems are appropriately permitted by the statewide General Waste Discharge
 12 Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ ("SSS WDR"), as
 13 amended by Order No WQ 2008-0002-EXEC). Although the State Board had the option to adopt
 14 this statewide collection system order as an NPDES permit, it chose not to do so, opting instead for
 15 a Waste Discharge Requirements ("WDR") under State law, which was not subject to citizen
 16 enforcement. "WDRs under Porter-Cologne can address both protection of water quality as well as
 17 the prevention of public nuisance associated with waste disposal." (*See* Fact Sheet for SSS WDR
 18 at p. 3 *citing* Cal. Water Code § 13263.) The State Board expressed the "intent to have one
 19 statewide regulatory mechanism that lays out the foundation for consistent collection system
 20 management requirements...." (*Id.* at p. 8.)

21 Under the SSS WDR, spills into waters of the United States are prohibited and Enrollees
 22 are required to:

- 23 • Properly operate, manage, and maintain all parts of the sewer system.
- 24 • Ensure system operators are knowledgeable and adequately trained.
- 25 • Allocate adequate resources for operation, maintenance, and repair of the system.
- 26 • Provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events.
- 27
- 28

- Design capacity must meet or exceed design criteria in the Enrollee's System Evaluation and Capacity Assurance Plan ("SECAP").
- Develop and implement a Sewer System Management Plan ("SSMP").
- Must contain, control, and mitigate sanitary sewer overflows, including reduction, prevention, and control of infiltration and inflow ("I/I").³

Nevertheless, the Regional Board included some of the satellite collection agencies on the Permit as co-permittees even though the Permit does not authorize any discharges to waters of the United States directly from the collection systems, and in fact prohibits such discharges, that are already prohibited by the CWA and the SSS WDR. (See Exhibit A, Permit at Provision III.E.)

2) The 2018 Permit for CMSA

On August 11, 2017, RVSD and SRSD attended a meeting with Regional Board staff. The meeting was the first time that RVSD, SRSD, and one other related collection system agency were notified of potentially being included on the CMSA NPDES permit. Petitioners and the other collection system entities never filed a Report of Waste Discharge ("ROWD") or requested being added onto the NPDES permit. The justification for adding the collection systems was ostensibly to include blending reduction provisions applicable to the collection system agencies.

For the August 11, 2017 meeting, the three collection system agencies in attendance were instructed to bring a list of potential actions each could take to assist with reduction of influent flows to the CMSA plant. At the August 11, 2017 meeting, the Regional Board, RVSD, and SRSD did not discuss the significant change that becoming an NPDES co-permittee represented to the legal position of the collection systems, and the collection systems had not had an opportunity to speak with legal counsel or the individual collection system governing Boards about potential concerns with new and expanded regulatory requirements and substantial new federal legal

³ "Infiltration" means "[w]ater other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow." (40 C.F.R. § 35.2005(b)(20).) "Inflow" means "[w]ater other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration." (40 C.F.R. § 35.2005(b)(21).)

1 exposure from the proposed addition on the NPDES permit. Again, since 2006, when collection
2 systems were required to have SSS WDR permit coverage statewide, Petitioners' collection
3 systems have solely been regulated by WDRs.⁴

4 The Regional Board sent the Administrative Draft of the Permit to CMSA and the
5 collection systems for review on August 18, 2018, which was not enough time for RVSD and
6 SRSD to calendar a discussion with their Boards since 72 hours' notice is required to place items
7 on the agenda for discussion.

8 On September 5, 2017, which was an internal deadline the Regional Board staff set for the
9 submission of comments on the Administrative Draft, a consultant for CMSA sent comments
10 mostly related to CMSA and its concerns. RVSD and SRSD were unable to get Board direction in
11 this compressed time period. Although CMSA had had more than 6 months knowledge that the
12 permit was to be issued and would be regulating CMSA's discharges and activities, RVSD and
13 SRSD had less than one month to digest and understand the ramifications of this substantial
14 change.

15 In early September 2017, after consulting with legal counsel, RVSD and SRSD began to
16 wonder if other options were available to reach the Regional Board's desired end point of reducing
17 satellite flows. Hearing that the Regional Board planned to issue its draft Tentative Order for the
18 Permit on September 15th, RVSD requested a meeting with Regional Board staff to discuss other
19 potential regulatory options. That meeting was held on September 18th, and the collection systems
20 provided a list of concerns over expanded liability under the NPDES permit, and presented a list of
21 other options to consider in lieu of having the collection systems included as co-permittees on
22 CMSA's NPDES permit. Those options included:

- 23 1. Supplemental WDRs to add additional specified actions to be taken under the SSS
24 WDR;
- 25 2. A binding contract or other commitment of the Joint Powers Authority ("JPA")
26 agencies to take actions to reduce flows to the CMSA plant;

27 ⁴ See **Exhibit B**, Bay Area Clean Water Agencies ("BACWA"), California Association of Sanitation Agencies
28 ("CASA") and SCAP joint October 23, 2017 letter to the Regional Board observing that satellite collection systems are
already appropriately permitted under the SSS WDR.

- 1 3. A Time Schedule Order (“TSO”) adopted alongside the NPDES permit for those
- 2 entities not already under an enforcement order, which includes the tasks to be
- 3 undertaken by the collection systems to support reduced flows and presumably
- 4 reduced need for blending;
- 5 4. A Cease and Desist Order (“CDO”) for those entities not already under one.⁵
- 6 5. Individual NPDES permits.⁶

6 The collection systems offered to assist with the drafting of any of the needed orders since

7 the parties understood that resources are scarce at the Regional Board.

8 At the end of the meeting on September 18, 2017, Regional Board staff stated that, although

9 the deadline for releasing the Tentative Order was not until September 29th, Regional Board staff

10 anticipated releasing a draft by Friday, September 22, 2017 unless management gave instructions

11 otherwise. Regional Board staff also gave the collection systems until Wednesday, September 20,

12 2017, to provide any proposed changes to the NPDES permit.

13 On September 19, 2017, RVSD memorialized the above timeline with the Regional Board

14 and provided written comments requesting changes to the proposed NPDES permit to help reduce

15 liability to RVSD and the other satellite collection systems proposed to be included on the Permit.

16 RVSD also stated that its submission of comments were not to be construed by the Regional Board

17 as conceding to, or accepting an NPDES permit, even if RVSD’s proposed changes were made. A

18 copy of RVSD’s September 19, 2017 letter and comments to the Regional Board is attached as

19 **Exhibit E.**

21 ⁵ RVSD is already under a CDO (Order No. R2-2013-0020) requiring a comprehensive Infrastructure Asset

22 Management Plan (“IAMP”) with collection system rehabilitation, operation, and maintenance improvements

23 potentially through 2021, financial performance targets that have been met, and the adoption and implementation of a

24 Private Sewer Lateral Program, which is currently active and being well utilized. (See **Exhibit C**, RVSD CDO.) The

25 projects proposed for inclusion in the NPDES permit’s table for RVSD duplicate projects committed to be completed

26 under the CDO so there is no need for duplicative regulation. (See **Exhibit D**, Regional Board January 10, 2018 public

27 hearing transcript (“HT”) at 43:20-21, 44:5-7 (RVSD General Manager Norby testifying that RVSD has “met or

28 exceeded every aspect of that 2013 cease and desist order” and that the 2013 CDO “included virtually everything that

we’re now being asked to duplicate in this new, Federal Permit.”).) For example, the CDO requires replacement or

rehabilitation of 625 Grade 5 structural defects by June 30, 2018, and also requires prioritization of the replacement or

rehabilitation of additional pipes using a methodology that considers both condition assessment and risk factors.

(Exhibit C, RVSD CDO at pp. 7-8.)

⁶ This option was rejected by the Regional Board as too time consuming, requiring additional fees, and because there is

no discharge to waters of the United States that these permits would be permitting. However, these same concerns

attach to the CMSA Permit approach as well.

1 The Regional Board did not adopt or make any of the proposed changes identified in
 2 RVSD's September 19, 2017 letter. Instead, the Regional Board made the Permit even more
 3 stringent, subjecting the collection systems to even more liability than had they not met with
 4 Regional Board staff or commented at all. In result, on October 23, 2017, RVSD and SRSD
 5 submitted additional comments and another request to remove RVSD and SRSD from the Permit.
 6 A copy of RVSD and SRSD's October 23, 2017 letter and comments to the Regional Board is
 7 attached as **Exhibit F**.

8 The Regional Board did not respond to RVSD and SRSD's October 2017 comments until
 9 January 4, 2018, by e-mail, just 6 days before the public hearing was scheduled. A copy of the
 10 Regional Board's January 4, 2018 response is attached as **Exhibit G**.

11 Due to the impending hearing date, as soon as possible on January 8, 2018, RVSD and
 12 SRSD submitted rebuttal to the Regional Board's response to comments challenging the basis of
 13 those responses, and commenting on new changes to the draft permit. A copy of RVSD and
 14 SRSD's January 8, 2018 letter and rebuttal comments to the Regional Board is attached as **Exhibit**
 15 **H**.⁷

16 Finally, on January 10, 2018, the Regional Board held a public hearing and adopted the
 17 Permit. (*See generally* **Exhibit D**, Regional Board January 10, 2018 public hearing transcript
 18 ("HT").)

19 **B. LEGAL ARGUMENTS**

20 The justification for including satellite collection systems as co-permittees on the Permit is
 21 based on an outdated legal theory that blending constitutes a prohibited "bypass." In addition,
 22 inadequate legal justification has been provided as to why the Permit is the most reasonable,
 23 appropriate, or only option for encouraging and implementing additional Inflow and Infiltration
 24

25
 26
 27
 28 ⁷ For the reasons set forth below, Petitioners respectfully request the State Board include RVSD and SRSD's January 8, 2018 rebuttal letter into the Administrative Record.

1 (“I/T”) reduction activities by some of the collection systems tributary to the CMSA Plant.⁸ (See
 2 Cal. Water Code § 13263; 40 C.F.R. § 124.8(b)(4); § 123.25(a)(27).)

3 1) **Where Other Options Existed, The Satellite Collection Systems**
 4 **Should Not Have Been Added to the CMSA NPDES Permit Just for**
 5 **Administrative Ease.**

6 As a threshold matter, the Permit does not permit any discharges from the collection
 7 systems to waters of the United States. (See Exhibit A, Permit at Provision III.E.) In fact, even
 8 though sanitary sewer spills to waters of the United States are already prohibited by federal and
 9 state law and by the SSS WDR, the Permit adds new prohibitions, making the collection systems
 10 subject to potentially three separate legal claims for violations for each spill. (*Id.*) This increased
 11 liability incurred by placing the collection systems on the NPDES permit is not only unnecessary, it
 12 is also not authorized by federal law.

13 “[I]n the absence of an actual addition of any pollutant to navigable waters from any point,
 14 there is no point source discharge, no statutory violation, no statutory obligation of point sources to
 15 comply with EPA regulations for point source discharges, and no statutory obligation of point
 16 sources to seek or obtain an NPDES permit in the first instance.”⁹ The State Board expressly
 17 recognized this legal principle when adopting the SSS WDR as a state law only permit, instead of
 18 as an NPDES permit. (SSS WDR Fact Sheet at pp. 3-4.) The State Board also recognized that
 19 “Satellite sewer collection systems (i.e., systems not owned and operated by the [Publicly Owned
 20 Treatment Works] POTW) have not been typically regulated as part of the POTW and, therefore,
 21 have not generally been subject to NPDES permit requirements.” (*Id.* at p. 4.)¹⁰ Besides being

22 ⁸ As Regional Board Member Battey observed during the January 10, 2018 hearing, “it does strike me [as] a little
 23 strange, just in general, that it’s some of the collection agencies, but not all of them” as being included as co-permittees
 on the Permit. (See Exhibit D, HT at 94:18-20.)

24 ⁹ (*Waterkeeper Alliance, Inc. v. USEPA*, 399 F.3d 486, 505-06 (2nd Cir. 2005); see also *Envil. Prot. Info. Ctr. v. Pac.*
 25 *Lumber Co.*, 469 F.Supp.2d 803, 826-27 (N.D. Cal. 2007) (following *Waterkeeper*); *Cnty. Ass’n for Restoration of*
 26 *Env’t v. Nelson Faria Dairy, Inc.*, 2011 WL 61882, at *2-3 (E.D. Wash. Jan. 7, 2011) (defendant did not have a duty to
 27 obtain an NPDES permit); *Puget Soundkeeper All. v. Whitley Mfg. Co. Inc.*, 145 F.Supp.3d 1054, 1057 (W.D. Wash.
 2015) (Under the CWA, “the obligation to obtain an NPDES permit is triggered only where a pollutant is discharged
 from a point source.”); *Alt v. USEPA*, 2013 WL 4520030, at *6 (N.D. W. Va. Aug. 22, 2013) (“without an actual
 discharge the EPA has no authority and there can be no duty to apply for a NPDES permit.”).)

28 ¹⁰ (See Exhibit D, HT at 15:1-4 (Board Member Kissinger stated: “I don’t necessarily understand why the Clean Water
 Act requires that collection systems that are not point sources themselves have to be viewed as part of the treatment

beyond the legal authority of the Water Boards under the Clean Water Act, placing the collection systems as co-permittees on the Permit substantially increases the potential liability of the collection systems. RVSD has already suffered through two citizen suits in 2005 and 2009. (*Garrill Page v. Sanitary District No. 1 of Marin County*, Northern District Court Case No. C:05-4358 and a private settlement with California River Watch.) SRSD had a threatened citizen suit in 2009 from River Watch, which was settled. The Regional Board Members recognized the increased liability that the collection systems face under the Permit. Regional Board Member Kissinger stated: “So, eyes wide open, it’s not that we are not increasing liability. We are increasing exposure to liability, anyway.” (Exhibit D, HT at 13:1-3 (emphasis added).) Regional Board Member Kissinger also acknowledged that “so it is the case that if we adopt this order that it is a real scenario that citizen suits under the Clean Water Act could be brought against the Districts if they fail to complete on the timetable, specified in our order, the specific projects and by the deadlines that we’ve set forth? And that is not the case under the waste discharge requirements that they have today or any other order that’s in place. Is that right?” and Regional Board staff agreed. (Exhibit D, HT at 13:25-14:9 (Mr. Johnson – Regional Board staff: “That is correct.”) (emphasis added).) Notwithstanding the fact that the Regional Board agreed that additional liabilities would be placed on the Districts, the Regional Board still adopted the Permit at the end of the January 10, 2018 hearing, adding three collection systems to the CMSA NPDES Permit.

An NPDES permit is not needed to drive action by the Districts. RVSD and SRSD strive to have well-maintained and fully compliant sewer systems at all times, and have been working towards reducing spills out of and I/I into their systems. (*See, e.g.*, Exhibit D, HT at 46:14-24 (RVSD General Manager Norby testifying that RVSD “makes up about, roughly 40 to 45 percent of the system that is included in the Joint Powers Authority service area, who has shown over the past five years that they’re willing to make the investments, and they’re willing to raise rates, and they’re willing to institute best practices to reduce I&I, and to provide efficient and reliable service

facility.”); *see also* HT at 14:11-14 (“...the other point that I wanted to understand better is why, in this case, the collection system which is not a point source should be part of the NPDES permit.”); HT at 14:19-21 (“I assume our position is not that all collection systems are subject to an NPDES Permit, but in this case it is.”); HT at 33:20-24 (Vice

1 to the community, and to help protect, obviously, the bottom line goal of water quality discharge to
 2 the receiving waters.”); HT at 54:7-8 (Regional Board Member Ajami stating that “I always use
 3 Ross Valley as an example of what can be done”); *see also* HT at 41:5-15 (Jason Dow, CMSA
 4 Manager: “[The satellite collection agencies have] done a lot of just really positive work in terms
 5 of reaching out to the communities to inform them of the problems with, you know, repairing their
 6 laterals, with doing other things to support the Districts. They’ve increased their rates significantly
 7 over the last five years to invest in the rehabilitation, and replacement, and increased maintenance
 8 of the infrastructure to address some of the issues that you guys have been talking about.”).)

9 Although the collection systems may still have potential liability for any spills to waters of
 10 the United States, they do not currently have the *additional* liability that comes with being a co-
 11 permittee on an NPDES permit (e.g., additional duplicative prohibitions, additional liability for
 12 operation and maintenance under federal law, and increased exposure to citizen suits).¹¹ The
 13 Districts are already undertaking the same or similar tasks to those requirements in the Permit,
 14 which will continue to occur even without adding the collection systems to the Permit.

15 Other mechanisms to ensure projects continue at a high level, besides an NPDES permit,
 16 should have been more carefully considered and implemented. (See Exhibit D, HT at 17:15-18:5,
 17 20:19-23 (Regional Board Member Kissinger: “Which brings me back to the question that I asked
 18 which is, is there another way to accomplish what we’re trying to accomplish here?”); HT at 21:7-
 19 12 (Regional Board Member Kissinger: “Is it really that much more complex in parallel to this
 20 NPDES to issue a waste discharge requirement that specific to – and we do, you know, basically
 21 tier off of the State policy. Can we do that here?”); HT at 24:12-13 (Regional Board Member
 22 Battey: “I had a lot of the same questions as Board Member Kissinger, so thank you for asking
 23

24 Chair McGrath: “There’s two questions here. One is whether or not there’s authority to include collection systems and
 25 the other is whether or not it’s reasonable and the reasonableness of the conditions.”).)

26 ¹¹ (See Exhibit B, BACWA, CASA and SCAP October 2017 Letter (noting that “including satellite agencies in NPDES
 27 permits opens them up to the potential for third party lawsuits under the Clean Water Act as well as USEPA
 28 enforcement, without providing water quality benefit to balance this increased liability.”); *see also* Exhibit D, HT at
 20:13-18 (Board Member Kissinger: “There’s another world out there where someone can bring a citizen suit. And
 even if the suit doesn’t have any real legs because of the prosecutorial discretion that we may exercise to forebear
 doing something about it, the prospect of that litigation is out there.”).)

those.”).) The Districts even offered to prepare the needed documents to save staff resources. (See, e.g., Exhibit D, HT 59:11-18.)

Instead, the numerous reasonable options suggested were dismissed for the administrative ease of a single permitting action. (See, e.g., Exhibit D, HT at 102:6-11 (Mr. Bill Johnson, Chief of the Wastewater Control and Enforcement Division, acknowledging that administrative ease was the justification for including the collection systems: “permit is written with an approval for bypass and it’s based on there being no feasible alternatives to bypassing. And the basis for that conclusion is pointing to the conditions that are set forth right here in the permit, so it’s nice and tidy.”); see also HT at 18:8-19:1 (stating such options are possible, but “more burdensome.”).) Administrative ease is not a proper or reasonable justification for placing the collection systems on the NPDES permit, particularly when other equally enforceable options exist.¹²

2) **The Explicit List of Required Projects is Unreasonable and Violates Water Code Sections 13360(a) and 13000.**

The CMSA Permit includes several lists of “Tasks” that provide detailed requirements and compliance dates for each of the collection agencies now on that permit. (See Exhibit A, Permit at pp. 14-16.) The first 9 of 11 projects included in the NPDES permit’s table for RVSD (Exhibit A, Permit at pp. 15-16, Tasks 21-29) duplicate projects RVSD committed to complete under its current CDO, so there is no need for duplicative regulation. (See Exhibit D, HT at 43:20-21, 44:5-7 (RVSD General Manager Norby testifying that RVSD has “met or exceeded every aspect of that 2013 cease and desist order” and that the 2013 CDO “included virtually everything that we’re now being asked to duplicate in this new, Federal Permit.”); HT at 47:11-15 (Norby: “And again, I’ll remind you everything listed in those tables is work we’re already doing. It’s work already planned. It’s work that’s already in our capital program.”).)¹³

¹² The Districts stated on the record that they would “be willing to take a cease and desist order over the NPDES Permit to avoid the third party and federal liability.” (Exhibit D, HT at 70:16-18; 71:16-19; 72:13-14.) Regional Board Member Kissinger acknowledged that it is rare “that you have a party that comes in and says, you know, give us a cease and desist order.” (Exhibit D, HT at 101:1-3.)

¹³ Mr. Norby understood that these statements could be turned around on him: “well, then, what’s the big deal, we’re just asking you to do what you’re already doing?” (Exhibit D, HT at 47:16-18.) His response was “it’s not clear to us what public value, what public interest is being served by adding this new layer of, again, what we consider to be convoluted, duplicative [requirements]....” (Exhibit D, HT at 23-25.) “I can’t identify any benefit to any stakeholder other than the Regional Board staff’s preference for this permitting approach that is being served here, beyond what’s already being offered.” (HT at 48:10-14.) “We’re actually saying put us under a different, more efficient, more direct,

1 Similarly, twenty (20) very specific tasks are mandated to be completed by SRSD,
 2 including a requirement for a lateral ordinance.¹⁴ (Exhibit A, Permit at pp.14-15 (Tasks 1-20).)
 3 Doris Toy, the Manager of SRSD expressed concern that “even though all those projects listed is in
 4 my CIP, and we try to stick to it, things do come up.” (Exhibit D, HT at 56:13-15.) She further
 5 expressed concerns about possible violations and third party liability for missing deadlines. (HT at
 6 56:19-25; 57:2-16.)

7 Although the compliance dates were changed somewhat in the final permit, requiring
 8 specific dates to undertake and complete specific projects, with absolutely no evidence that these
 9 projects will have the desired outcome of reducing wet weather flows (and blending), is beyond the
 10 authority of the Regional Board, which is not allowed to micromanage public agencies in such a
 11 manner. (See Water Code §13360(a) (no regional board order shall specify the manner of
 12 compliance).)

13 Not only is this level of regulation not authorized, but this specificity creates additional
 14 liability. (See Exhibit D, HT at 80:4-6 (Regional Board Executive Officer Bruce Wolfe
 15 acknowledging that “by specifying compliance dates we expand the potential for third-party
 16 actions if those dates are not met.”); HT at 12:20-24 (Regional Board Member Kissinger
 17 understood “...there will be a new way by which citizen suit enforcement can be brought against
 18 them with regard to the specific construction projects and the timetable set forth....”).)

19 The California Legislature has found and declared that activities affecting water quality
 20 “shall be regulated to attain the highest water quality which is *reasonable*, considering all demands
 21 being made and to be made on those waters and the total values involved, beneficial and
 22 detrimental, economic and social, tangible and intangible.” (See Water Code § 13000 (italics
 23 added); see also Exhibit D, HT at 74:7-12.) This section sets State policy and imposes an

24
 25 regulatory approach and we will meet those obligations in good faith. And I think the track record of all three agencies
 26 speaks for itself. Again, I think you’re solving a problem that doesn’t exist right now.” (HT at 49:1-6.)

27 ¹⁴ Indeed, even Mr. Johnson admitted at the January 10, 2018 hearing: “I think we’re trying to be a little bit creative
 28 and pushing the envelope a little bit.” (See Exhibit D, HT at 29: 17-18; see also HT at 29:2-10 (Mr. Johnson: “are we
 going a little bit maybe further than – or trying to be a little bit creative here ... requiring private sewer lateral for two
 of the Districts that don’t have them now... it’s something we would certainly think everyone should have. But, you,
 know, you don’t have necessarily the authority to mandate that in every case.”).)

1 overriding requirement on the Regional Boards that all regulatory requirements be reasonable
 2 considering all circumstances. (*See accord* Exhibit D, HT at 33:22-24, 34:17-19, 36:3-7, 56:2-4,
 3 64:22-65:1 (Vice Chair McGrath discussing reasonableness requirement).)

4 For reasons set forth above, the requirements contained in the Permit related to the
 5 collection system requirements are not reasonable, considering all of the related circumstances.
 6 Indeed, during the January 10, 2018 hearing, Regional Board Vice Chair McGrath even
 7 acknowledged that these issues do not represent the highest priority.¹⁵ (*See* Exhibit D, HT at 96:1-
 8 12; *see also* HT at 47:19-25.) Therefore, the collection system requirements contained in the
 9 Permit violate Water Code section 13000.

10 For the foregoing reasons, the State Board should find that the Regional Board acted
 11 contrary to law and abused its discretion by including the collection system agencies on the
 12 NPDES permit for CMSA. The State Board should issue an order instructing the Regional Board
 13 that imposition of the objected to requirements was inappropriate. The State Board should issue an
 14 order directing the Regional Board to remove the collection systems as co-permittees from the
 15 Permit and adopt other requirements in a different regulatory vehicle that are reasonable and
 16 feasible, considering all of the related circumstances.

17 **3) The CMSA Permit Contains Numerous Duplicative Requirements That**
 18 **Create Unnecessary Duplicative Liability.**

19 In addition to the CMSA Permit's duplicative Provision III.E. prohibition on sewer spills to
 20 waters of the United States, which is not required since it is separately required by the SSS WDR
 21 and the Clean Water Act itself, the CMSA Permit mandates other duplicative requirements. The
 22 final CMSA Permit was modified after the close of the public comment period to include:
 23

24 ¹⁵ Vice Chair McGrath also claimed that one of the reasons they are focusing on the collection systems is "that progress
 25 hasn't been good enough." (Exhibit D, HT at 97:23-25.) However, this finding conflicts with evidence in the record.
 26 As Mr. Norby explained, RVSD "gained community support for a 50 percent increase in rates over five years," "have
 27 been moving between six and seven miles per year for gravity sewer rehabilitation," and is replacing "...between 600
 28 and 700 laterals per year under a voluntary program..." (Exhibit D, HT at 44:13-19; *see also* Exhibit H at Exhibit 2,
 which shows that for Category 1 sewer spills (the only ones relevant to discharges regulated by the CWA), SRSD is
 well below both the regional average rate (1.82/100 miles/year for SRSD v. 4.0/100 miles/year for the San Francisco
 Bay regional average) and net volume. This exhibit also shows that the spills for SRSD are primarily operational, not
 structural or based on pipe condition (which would implicate more I/I); *see also* Exhibit D, HT at 67:25-68:9.)

- 1) Provision VI.A (which requires compliance with Standard Provisions in Attachments D and G, including proper operation and maintenance),
- 2) Requirements to comply with Attachments D and G.

Thus, the CMSA Permit *separately and duplicatively* contains several requirements for compliance with Attachments D and G. (*See* Exhibit A, Permit at p. 1, footnote [1]; p. 5, prior to Provision III; p. 8, Provision VI.A.1 and 2; Attachment D, and Attachment G.) Each of these provisions could potentially be alleged as a permit violation for any provision in Attachment D or G. (*See* Exhibit D, HT at 73:19-74:6.) At \$53,484 per violation per day (*see* 83 Fed. Reg. 1193 (2018)), where this amount does not include attorneys' fees, costs to defend and resolve a federal enforcement action adds up quickly and is money that could go towards fixing additional pipes in the system.¹⁶

Further, since proper operation and maintenance is already required under the SSS WDR, and because I/I controls and SSO prohibitions are also included in the SSS WDR, it is unreasonable to impose duplicative regulation on the Districts that are trying hard to use their limited ratepayer monies to fix pipes and other conveyance infrastructure. (Exhibit D, HT at 89:24-90:4 (Regional Board staff, Mr. Johnson: "I think under the Statewide Waste Discharge requirements they're already required to do a planning effort to properly maintain their system. So, I think that, you know, one could argue that that's already a requirement.").) The State Board must remand this permit to eliminate all duplicative requirements that increase liability for no reason.

4) **Blending is Not Unlawful "Bypass."**

One stated reason for including the collection system agencies in the Permit is to address "blending" by CMSA at the Plant. (Exhibit D, HT at 86:19-22 (Executive Officer Wolfe: "This action here is driven by the need to justify that all appropriate measures are being taken so that the Board can accept the bypasses.").) Petitioners do not understand why the Regional Board took such a harsh approach on the blending issue in the Permit, especially since federal appellate courts interpreting federal regulations have ruled that blending is not an illegal bypass subject to the

¹⁶ Vice Chair McGrath stated at the hearing, "I don't want to have anybody suing these people. I want them doing their projects. I never want money spent on attorneys, if we could spend it on infrastructure." (Exhibit D, HT at 100:8-11.)

1 United States Environmental Protection Agency's ("EPA") bypass prohibitions and rules. (Exhibit
 2 D, HT at 75:12 ("blending is not defined in the federal regulations.")) Moreover, there are no
 3 water quality related issues as all water quality based effluent limitation have been met during
 4 blending.¹⁷

5 Since SCAP as an industry trade association is also a Petitioner, the issues related to
 6 bypass should also be addressed by the State Board even if the collection systems are removed as
 7 co-permittees from the Permit because the bypass requirements are of interest to the municipal
 8 wastewater industry as a whole due to the enormous cost and lack of demonstrated water quality
 9 benefit that would be associated with eliminating blending entirely.

10 a) History of Blending Regulation.

11 POTWs, like CMSA, typically move incoming flows (influent) through a primary treatment
 12 process and then through a secondary treatment process. Most secondary treatment processes are
 13 biological-based, but the secondary treatment regulations do not "specify the type of treatment
 14 process to be used to meet secondary treatment requirements nor do they preclude the use of non-
 15 biological facilities."¹⁸ (68 Fed.Reg. 63,042, 63,046 (Nov. 7, 2003).) At many POTWs, and at
 16 CMSA, primary treatment capacity exceeds secondary treatment capacity. Biological-based
 17 processes in particular are sensitive to deviations in volume of flow and pollutant levels.
 18 Correspondingly, during periods of heavy rain, large influxes of storm water can overwhelm a
 19 facility's standard biological secondary treatment processes, potentially rendering them inoperable.
 20 (*Id.*) Blending can prevent this, by channeling a portion of "peak wet weather flows" around
 21 biological secondary treatment units and through non-biological units, recombining that flow with
 22 its counterpart that traveled through the biological units, and then discharging the combined
 23 stream. (*Id.* at 63,045.) Just like non-blended streams, the combined output must still comply with
 24

25 ¹⁷ In the last 13 years, only one single effluent limit has been exceeded for the technology based 85% removal
 26 requirement for CBOD during an extreme wet weather event. (Exhibit A, Permit at F-7, Section II.D.1.) Modification
 of this requirement in such circumstances is authorized by federal regulations. (40 C.F.R. §133.103(d).)

27 ¹⁸ Biological-based systems use microorganisms to treat incoming flows. A facility can be designed to use non-
 28 biological treatment processes, such as chemical additives or physical filtration equipment, instead of or in conjunction
 with biological facilities. Washing out the microorganisms during high flows would cause severe property damage and
 cause the system to become inoperable.

1 all applicable effluent limitations, including the water quality levels specified in the secondary
 2 treatment regulations. (*Id.* at 63,047.) As previously stated, CMSA’s discharges comply with the
 3 permitted limits except for a single instance of non-compliance in the last 13 years (which is better
 4 than many POTWs that do not blend).

5 All NPDES permits must comply with federal regulations regarding “bypass,” which
 6 regulates the “intentional diversion of waste streams from any portion of a treatment facility.” (40
 7 C.F.R. § 122.41(m)(1).) Bypass is generally prohibited unless there are “no feasible alternatives.”
 8 (40 C.F.R. § 122.41(m)(4).) The bypass rule “is not itself an effluent standard,” but instead
 9 “merely ‘piggybacks’ existing requirements.” (53 Fed.Reg. 40,562, 40,609 (Oct. 17, 1988).) The
 10 rule’s purpose was to “ensure that users properly operate and maintain their treatment facilities . . .
 11 [pursuant to applicable] underlying technology-based standards,” by requiring incoming flows to
 12 move through the facility as it was designed to be operated. (*Id.*)

13 Like the more general secondary treatment regulations, the bypass rule does not require the
 14 use of any particular treatment method or technology. (*Id.*; *see also NRDC v. EPA*, 822 F.2d 104,
 15 123 (D.C.Cir.1987).) Thus, if the treatment plant was designed to blend, as was CMSA’s, then the
 16 bypass regulation does not apply to blending. Further, even if bypass did arguably apply, a “no
 17 feasible alternatives analysis” is complete once no feasible alternatives are identified by the
 18 POTW, as was the case here by CMSA.¹⁹ Going beyond the treatment plant to the collection
 19 system is not feasible or reasonable when the satellite systems are owned by different and distinct
 20 legal entities.

21 On January 19, 2001, EPA issued its *Current [Draft] Thinking on Peak Flows at POTWs*.
 22 EPA correspondence indicated that blending was permissible. EPA stated that “NPDES authorities
 23 have considerable flexibility through the permitting process to account for different peak flow
 24 scenarios that are consistent with generally accepted good engineering practices.” Permits can
 25 allow a POTW to discharge effluent routed around biological treatment units that are blended with
 26

27 ¹⁹ (See Exhibit A, Permit at p. F-30 (“CMSA submitted a No Feasible Alternatives Analysis with its permit reissuance
 28 application to determine whether any feasible alternatives are available to CMSA to reduce blending. The analysis
 indicated that there is very little that CMSA can do to reduce blending because it is infeasible to further expand its
 treatment plant capacity (CMSA recently completed a major treatment plant expansion)”).)

1 effluent from the units if all of the following principles are met:

2 (1) The final discharge meets effluent limits for secondary treatment and/or any more
3 stringent water quality-based effluent limits.

4 (2) The NPDES permit application for the POTW provides notice of, and the permit
5 specifically recognizes, the treatment scheme that will be used for peak flow management.
6 The treatment scheme, including designed capacity of various units, should be consistent
7 with generally accepted practices and design criteria and designed to meet applicable
8 effluent limits.

9 (3) Alternative flow routing scenarios are only used when flows exceed the capacity of
10 storage/equalization units and biological treatment units based on generally accepted good
11 engineering practices and criteria.

12 (4) During peak flow conditions, the treatment system chosen by the permittee is operated
13 as it is designed to be operated and in accordance with permit conditions.

14 (5) The permit contains appropriate requirements for the collection system, including, at a
15 minimum, that the permittee properly design, operate, and maintain *its* collection system.

16 In 2003, EPA offered “a proposed interpretation of the bypass provision” (40 CFR
17 § 122.41(m)) as applied to blending. (68 Fed.Reg. at 63,049.) Prior to this proposal, EPA stated
18 that it had “not established a national policy (either through rulemaking or through non-binding
19 guidance to assist in the interpretation of the bypass regulation) regarding whether and under what
20 circumstances wet weather blending at a POTW plant would not constitute a bypass.” (*Id.* at
21 63,052.) The 2003 proposed policy would have “provide[d] guidance to EPA Regional and State
22 permitting authorities . . . on how EPA intends to exercise its discretion in implementing the
23 statutory and regulatory provisions related to discharges from POTWs where peak wet weather
24 flow is routed around biological treatment units and then blended with the effluent from the
25 biological units prior to discharge.” (*Id.* at 63,051.) Going forward, blending “would not be a
26 prohibited bypass and could be authorized in an NPDES permit” so long as certain enumerated
27 conditions were met. (*Id.* at 63,049-50.) These conditions primarily focused on ensuring that the
28 discharge met all applicable effluent limitations and water quality standards, that it passed through
a primary treatment unit prior to discharge, and that a “portion of the flow [w]ould only be routed
around a biological or advanced treatment unit when the capacity of the treatment unit is being
fully utilized.” (*Id.*) EPA posted the proposed policy on its website and declared its consistency

1 with the CWA. Implicitly, the 2003 policy seemed to view the secondary treatment phase as
 2 encompassing both traditional biological secondary treatment units and auxiliary non-biological
 3 treatments for peak wet weather flows. The focus was on whether the water quality of the resulting
 4 combined discharge at the end of the secondary treatment phase met all applicable effluent
 5 limitations.

6 Two years later, EPA abandoned the previous policies and 2003 proposal. (70 Fed.Reg.
 7 76,013, 76,015 (Dec. 22, 2005).) EPA acknowledged recent “confusion regarding the regulatory
 8 status of peak wet weather flow diversions around secondary treatment units at POTW treatment
 9 plants” and observed that blending was treated only intermittently as a “bypass.” (*Id.* at 76,015.)
 10 The 2005 policy announced that this type of “diversion” was now to be considered a bypass and
 11 would be allowed only if there were “no feasible alternatives.” (*Id.* at 76,016.) The Permit
 12 references this 2005 *Draft* EPA rule, which was never finalized and cannot be relied upon as
 13 binding.²⁰ The 2005 draft policy has never been finalized or otherwise officially adopted. As late
 14 as June of 2010, the EPA continued to solicit input on the 2005 policy through notices in the
 15 Federal Register. (*See* 75 Fed.Reg. 30,395, 30,401 (June 1, 2010).) Reliance upon this policy
 16 constitutes underground rulemaking in violation of the California APA.

17 **b) Illegality of EPA’s 2005 Blending Policy Under Federal Law.**

18 Regulating blending as a “bypass” effectively dictates treatment design despite EPA’s
 19 acknowledgment that the bypass rule and secondary treatment regulations do not allow for such
 20 regulation inside the treatment plant, and effectively applies secondary treatment effluent
 21 limitations within a treatment facility (*e.g.*, to the individual streams exiting peak flow treatment
 22 units), instead of at the end of the pipe.

23 EPA contends that its 2005 draft policy simply reflects an interpretation of the bypass rule.
 24 (*See* 70 Fed.Reg. at 76,015 (describing the 2005 policy as “the Agency’s interpretation” of the
 25 bypass rule).) However, EPA’s blending policy represents a legislative rule because it is
 26 irreconcilable with both the secondary treatment rule and the bypass rule. (*See Nat’l Family*

27 _____
 28 ²⁰ This 2005 proposed policy is cited in the Permit as justifying the blending reduction requirements. (*See* Exhibit A,
 Permit at p. 17, Table 6, Task 7 (citing “U.S. EPA’s proposed peak wet weather policy”); p. F-30 at Section 5.c.)

1 *Planning & Reprod. Health Ass'n*, 979 F.2d 227, 235 (D.C.Cir. 1992) (“If a second rule repudiates
 2 or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the
 3 first; and, of course, an amendment to a legislative rule must itself be legislative.” (alteration in
 4 original) (*quoting* Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985
 5 Duke L.J. 381, 396 (1985)).)

6 Prior to 2005, EPA had not viewed the use of blending as an inevitable trigger of a no-
 7 feasible-alternatives requirement, which is why blending requirements first appeared in CMSA’s
 8 permit in 2007. (*See* Order No. R2-2007-0007 at 25, section 6 (“Corrective Measures to Minimize
 9 Blending Events”) and at F-15 to F-16 and F-43 (Section 6 “based on 40 CFR 122.41(m).) It
 10 requires that the Discharger [CMSA] implement feasible alternatives to reduce the need to blend
 11 during this permit cycle.” Section 5.c. (No Feasible Alternatives and Implementation Schedule) is
 12 also “based on 40 CFR 122.41(m). It requires that the Discharger [CMSA] reevaluate prior to the
 13 next permit issuance that it has explored every feasible alternative to eliminate blending.” (*See id.*)

14 The 2005 draft Policy characterized itself as “significantly different” from the EPA’s 2003
 15 proposal on blending. (70 Fed.Reg. at 76,014.) The 2003 proposal, in turn, corresponded to the
 16 reality on the ground: widespread use by POTWs nationwide of blending peak wet weather flows.
 17 The 2005 draft Policy acknowledged that blending previously had been “permitted at [POTWs]
 18 without consideration of the bypass regulation criteria.” (70 Fed.Reg. at 76,015.) In a response to
 19 a 2002 Freedom of Information Act (“FOIA”) request, EPA admitted to “the use of federal funds
 20 under the Construction Grants Program to build facilities that were designed to blend effluent from
 21 primary treatment processes with effluent from biological treatment processes during peak wet
 22 weather events.” In fact, CMSA’s plant was funded by federal CWA grants. In a 2004 report to
 23 Congress, EPA praised the use of blending processes to deal with peak wet weather flows with no
 24 reference to a no-feasible-alternatives requirement. California has also approved many POTW
 25 permits — with no objection from the EPA and no imposition of a no-feasible-alternatives
 26 requirement — allowing municipalities to blend utilizing non-biological peak flow secondary
 27 treatment processes.

28 Municipalities chose to use blending as an exercise of their discretion under the secondary

1 treatment rule (*see* 48 Fed.Reg. at 52,259), to select the particular technologies they deemed best
 2 suited to achieving the applicable secondary treatment requirements. (*See also* Cal. Water Code
 3 § 13360(a).)

4 After 2005, if a POTW utilizes a secondary treatment process that routes a portion of the
 5 incoming flow around secondary treatment to avoid washout of the microorganisms, then EPA
 6 viewed this as a prohibited bypass, regardless of whether the end of pipe output ultimately meets
 7 the secondary treatment regulations. However, this interpretation of the bypass provisions of
 8 federal law conflicts with the secondary treatment regulations. (*See* 40 C.F.R. § 133.100-102.)
 9 EPA does not receive deference when its interpretation of its own regulations is “plainly erroneous
 10 or inconsistent with the regulation.” (*See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142,
 11 155 (2012) (internal quotation marks omitted).) Further, EPA cannot adopt wildly inconsistent
 12 interpretations “under the guise of interpreting a regulation, to create *de facto* a new regulation”
 13 without notice and comment rulemaking procedures required under the Administrative Procedure
 14 Act (“APA”). (*See Christensen v. Harris County*, 529 U.S. 576, 588 (2000).)

15 The Eighth Circuit Court of Appeals has held that blending of flows around traditional
 16 biological secondary treatment processes “would not need to meet the restrictive no-feasible-
 17 alternatives requirement.” (*Iowa League of Cities v. EPA*, 711 F.3d 844, 876 (8th Cir. 2013).) In
 18 other words, if POTWs separate incoming flows into different streams during the secondary
 19 treatment phase, then EPA would apply the effluent limitations of the secondary treatment
 20 regulations to each individual stream, rather than at the end of the pipe where the streams are
 21 recombined and discharged. This new approach and rule related to blending, as set forth in the
 22 2005 draft policy, was vacated because EPA violated the APA’s procedural requirements by not
 23 using notice and comment procedures – “without observance of procedure required by law.” (*Id.*
 24 *citing* 5 U.S.C. § 706(2)(D).)

25 Since this 2013 decision was issued *after* the last CMSA permit was issued in 2012, the
 26 Permit should have removed the unlawful interpretation that blending represents a prohibited
 27 “bypass.” (*See e.g.*, Exhibit A, Permit at p. 5, Section III.C. (blending “approved under the bypass
 28 conditions stated in 40 C.F.R. section 122.41(m)(4)...”); p. 16, Table 5, Task 31 (“seeks to

continue bypassing peak wet weather flows around secondary treatment units”); p. F-30, Section VI.C.5.a. (“to eliminate wet weather bypasses”).)

c) Illegality of Regulating Blending Beyond Through Effluent Limitations.

Regulating the inner workings of a treatment plant, or upstream entities, is not sanctioned by state or federal law so long as effluent limitations are met end of pipe (or outside an allowed mixing zone). (See Water Code § 13360(a) (“No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.”) (emphasis added)). A California Court of Appeals decision in *Tahoe-Sierra Preservation Council v. State Water Resources Control Board, et al*, 210 Cal. App. 3d 1421 (1989), binding on the Water Boards, opined the purpose of Water Code § 13360(a) as follows:

“Section 13360 says that the Water Board may not prescribe the manner in which compliance may be achieved with a discharge standard. That is to say, the Water Board may identify the disease and command that it be cured but not dictate the cure...

Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to the waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.”

(*Id.* at 1438 (emphasis added).) Thus, the Regional Board can impose secondary treatment or water quality-based effluent limits, but may not prescribe the treatment methods or control strategies needed to meet those limits end of pipe, such as those set forth in Tables 5 and 6 of the Permit. (Exhibit A, Permit at pp. 14-17.)

A federal Court of Appeals in *American Iron and Steel Institute v. EPA*, 115 F.3d 979 (D.C. Cir. 1997) specifically determined that a permitting authority may not go beyond the imposition of effluent limits to regulating the internal processes of a plant, and held as follows:

“The statute is clear: The EPA [or a designated State] may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United States

1 through a ‘point source’; it is not authorized to regulate the pollutant levels in a facility’s
 2 internal waste stream.

3 We are apprised of nothing in the policy underlying the CWA that undercuts the plain
 4 meaning of the statutory text. To the contrary, by authorizing the EPA [or a designated
 5 State] to impose effluent limitations only at the point source, the Congress clearly intended
to allow the permittee to choose its own control strategy.... the statute does not permit this
sort of meddling inside a facility.”

6 (*Id.* at 996 (emphasis added); *see also* 33 U.S.C. § 1284(d) (requiring certification that the
 7 treatment works meet the design specifications for the plant and effluent limitations for the plant
 8 contained in the NPDES permit).)

9 “[E]ffluent limitations are restricted to regulations governing ‘discharges from point
 10 sources into navigable waters.’... The EPA would like to apply effluent limitations to the discharge
 11 of flows from one internal treatment unit to another. We cannot reasonably conclude that it has the
 12 statutory authority to do so . . . Therefore, insofar as the blending rule imposes secondary treatment
 13 regulations on flows within facilities, we vacate it as exceeding the EPA’s statutory authority.”
 14 (*Iowa League of Cities*, 711 F.3d at 877 (citing *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996
 15 (D.C. Cir. 1997)) (internal citations omitted).)

16 For these reasons, the Regional Board should not regulate the inner workings of the plant or
 17 collection systems to regulate blending. The Regional Board’s main focus is and should be on
 18 maintaining and improving water quality. If CMSA is meeting all of its effluent limitations, both
 19 technology-based and water quality-based, then water quality in the San Francisco Bay is
 20 maintained regardless of whether blending occurs or not. Moreover, CMSA has made great strides
 21 in reducing blending events. During the previous permit term, when blending was authorized for
 22 influent flows above 30 MGD, CMSA discharged blended effluent about 11 times per year, a 50
 23 percent reduction from the previous 24 times per year. (Exhibit A, Permit at F-8, Section II.F.)

24 By including the collection systems on the Permit in order to reduce I/I and also blending,
 25 the Regional Board is regulating upstream and internal waste streams and the inner workings of
 26 CMSA’s plant by essentially imposing secondary treatment requirements inside the plant *prior to*
 27 discharge. Nothing in the Clean Water Act or state law requires this. Secondary treatment
 28 requirements must only be met upon discharge into a navigable waters. (33 U.S.C. § 1311(a) and

(b)(1)(B).) The State Board must ensure that the Regional Board's actions are consistent with any applicable provisions of the CWA and its implementing regulations. (Cal. Water Code § 13372.)

CMSA has met all of the secondary treatment requirements for all blending events over the last 13 years, except for a single instance of not meeting 85% removal for CBOD₅ on February 28, 2017, "during extreme wet weather." (Exhibit A, Permit at p. F-7.)²¹ This rare instance of non-compliance with secondary treatment or other effluent limitation requirements should be subject to enforcement and mandatory minimum penalties ("MMPs"), not additional requirements on reducing blending or by pulling collection systems into the CMSA NPDES permit.

d) The Requirements for Reducing Blending Go Far Beyond Other Discharges.

Even if requirements to address blending were lawful, the requirements of the CMSA Permit are more than is required of other dischargers. The 2015 Permit for East Bay Municipal Utility District (Order No. R2-2015-0018) included a single task requirement, as follows:

6. Measures to Minimize Blending

The Discharger shall comply with the following tasks and deadlines to minimize blending:

Table 7. Requirements to Minimize Blending Events

Tasks	Compliance Deadline
1. <i>Report Annual Status of Storage Basin Standard Operation Procedure (SOP).</i> The Discharger shall provide a description of all blending events over the course of each calendar year and how they were managed. Specifically, this description shall include, for each blending event, the volume of wastewater that received secondary treatment, the volume that received primary treatment, and how the Discharger managed its storage basin to minimize the duration and magnitude of blending events (this evaluation shall also include blending events that were avoided because of the storage basin SOP). Finally, the Discharger shall evaluate and report on the progress of further enhancements to its operation of the storage basin SOP to maximize stored flow volume to reduce blending during wet weather.	February 1 of each year with the Annual Self-Monitoring Report required pursuant to Attachment E, Section XI.B.2

²¹ CMSA objected to and petitioned the 85% removal requirements in the 2007 permit. CMSA's petition for review to the State Board asked to modify Order No. R2-2007-0007 by adopting lower percent removal requirements for CBOD₅ and TSS. (SWRCB/OCC Appeal No. A-1828.)

1 CMSA's Permit includes 7 different tasks for CMSA *plus* 38 individual tasks for the three
 2 collection system agencies, all on set time schedules, which cannot be easily changed. These lists
 3 micromanage the activities of CMSA and the collection system agencies in a manner not
 4 authorized by law, including requirements for lateral ordinances to be adopted when the collection
 5 system does not own the sewer laterals. (Cal. Water Code § 13360(a); *Tahoe-Sierra Preservation*
 6 *Council*, 210 Cal. App. 3d at 1438.) In addition, new projects might arise within the 5 year term of
 7 the permit that could be more conducive to I/I reduction, but since an equivalent amount of sewer
 8 pipe is required (Exhibit A, Permit at 16, fn 1) and NPDES permit cannot be easily or quickly
 9 modified without a formal notice and comment period and a hearing by the Regional Board, better
 10 projects may not get done in order to meet the stated requirements of the permit.

11 Under the SSS WDR, collection systems are given the ability to create their own SSMPs
 12 and Capital Improvement Programs ("CIP"), which can be updated on a more rapid timeline. By
 13 mandating particular projects, particularly where resources are limited, the Permit restricts the
 14 ability to be nimble and address issues on the ground in a prioritized manner, and fails to allow for
 15 schedules to be modified in the case of strike, emergency, or other situation that could arise.

16 **3) The Regional Board Violated RVSD and SRSD's Due Process Rights.**

17 The Regional Board denied RVSD and SRSD adequate due process rights at the January
 18 10, 2018 hearing and when the Regional Board adopted the Permit for a number of reasons.

19 First, the Regional Board violated RVSD and SRSD's due process rights when it failed to
 20 accept the Districts' January 8, 2018 letter and rebuttal comments to the Regional Board (Exhibit
 21 H) into the Administrative Record because the Regional Board issued new changes to the Permit in
 22 the Regional Board's January 4, 2018 response (Exhibit G). (*See, e.g.,* Exhibit D, HT at 36:9-
 23 38:20 (Regional Board ruling that RVSD and SRSD's January 8, 2018 letter and rebuttal
 24 comments should not be accepted into the Administrative Record); *but see* HT at 49:11-16 (the 15-
 25 page letter "came when it did because we had --- we delivered that letter four days after we got the
 26 response to comments. So I don't know how we were supposed to get our information into the
 27 administrative record sooner.")) The Executive Officer even recognized that the letter "was a
 28 rebuttal to our response to comments and the request that that be added to the administrative record

1 because to cover all those topics here would take too long to cover all of that.” (*See* Exhibit D, HT
 2 at 36:15-19.) Nevertheless, the Executive Officer recommended not accepting the letter into the
 3 record and instead “have the parties raise the issues in verbal testimony.” (Exhibit D, HT at 37:3-
 4 4.) Since all of the points and authorities raised in the letter were not allowed in verbal testimony,
 5 the Regional Board’s failure to accept the letter into the record represented an abuse of discretion
 6 and violated the Districts’ due process rights. (*See* Exhibit D, HT at 58:16-59:3, 64:2-7 (Regional
 7 Board limiting the ability of Petitioners’ counsel to provide relevant testimony in relation to the
 8 Permit).)

9 Second, the Regional Board made additional changes to the Permit at the January 10, 2018
 10 hearing and Petitioners did not have a chance to adequately respond to those comments because the
 11 public comment period already ended. (*See, e.g.*, Exhibit D, HT at 109:13-15 (Regional Board
 12 Vice Chair McGrath stating that “I hesitate to ask the discharger for comments. It’s been a rather
 13 long hearing.”); HT at 111:21-112:23 (Regional Board adopting and incorporating new revisions
 14 for the Permit).)

15 Third, Petitioners did not have the ability to respond to EPA’s comments at the hearing,
 16 which provided new testimony with respect to the Permit. (*See* Exhibit D, HT at 77:17-79:15
 17 (Regional Board allowing new EPA comments on the Permit despite the fact that EPA had never
 18 submitted prior comments).) The Regional Board’s decision not to accept RVSD and SRSD’s
 19 January 8, 2018 letter and rebuttal comments, imposition of additional changes to the Permit at the
 20 hearing without allowing Petitioners an adequate opportunity to respond, and failure to allow
 21 Petitioners to respond to EPA’s new comments deprived RVSD and SRSD of due process.

22 Adequate due process requires a reasonable opportunity to be heard. (*Rosenblit v. Superior*
 23 *Court* (1991) 231 Cal.App.3d 1434, 1445; *see also Pinsker v. Pacific Coast Soc. of Orthodontists*
 24 (1974) 12 Cal.3d 541, 550 [providing that the procedures formulated to provide this notice and
 25 opportunity to be heard must ensure a fair opportunity for the party to present its position].)
 26 Whether a hearing was fundamentally fair is a question of law. (*Rosenblit*, 231 Cal.App.3d at
 27 1443.) Under the California Constitution, the factors that must be considered include a
 28 requirement that the government treat the individual with dignity and respect, but are otherwise

1 substantially identical to the federal test.²² (*Oberholzer v. Commission on Judicial Performance*
 2 (1999) 20 Cal.4th 371, 390-391 [listing four factors for determination of due process, including
 3 “the dignitary interest of informing individuals of the nature, grounds and consequences of the
 4 action and of enabling them to present their side of the story before a responsible governmental
 5 official”]; *Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1329-1330.)

6 Applying these factors to the Regional’s Board’s actions and the circumstances of the
 7 hearing demonstrate that the Regional Board’s conduct was fundamentally unfair and did not treat
 8 Petitioners and its representative witnesses and counsel with dignity and respect. By not accepting
 9 RVSD and SRSD’s January 8, 2018 letter and rebuttal comments (Exhibit D, HT at 36:9-38:20;
 10 HT at 58:16-59:3, 64:2-7), imposing additional changes to the Permit at the hearing without
 11 allowing Petitioners an adequate opportunity to respond (Exhibit D, HT at 109:13-15; HT at
 12 111:21-112:23), and failing to allow Petitioners to respond to EPA’s new comments regarding the
 13 Permit (Exhibit D, HT at 77:17-79:15), RVSD and SRSD were not afforded the dignity and respect
 14 required by the California Constitution and, therefore, the Petitioners’ opportunity to adequately
 15 present its side of the story was unfairly compromised. (*See Rosenblit v. Superior Court*, 231
 16 Cal.App.3d 1434, 1446-1447 (holding, in a medical license suspension proceeding, that the failure
 17 to provide the respondent with a copy of documentary evidence that formed the basis of charges
 18 against him violated due process: “Fair procedure would require disclosure of evidence forming the
 19 basis of the charges.”); *quoting Hackethal v. California Medical Assn.* (1982) 138 Cal.App.3d 435,
 20 444.) For this reason, RVSD and SRSD were denied adequate due process.

21 To remedy this objection, the State Board should order that RVSD and SRSD’s January 8,
 22 2018 letter and rebuttal comments be added to the Administrative Record. In addition, the State
 23 Board should allow Petitioners to introduce any additional evidence so that Petitioners may
 24 appropriately respond to the Regional Board’s additional Permit changes that it made at the
 25

26 ²² Under federal law, a determination as to whether administrative procedures are constitutionally sufficient in specific
 27 circumstances generally requires consideration of three distinct factors: 1) the private interest that will be affected by
 28 the official action; 2) the risk of an erroneous deprivation of such interest through the procedures used and the probable
 value, if any, of additional or substitute procedural safeguards; and 3) the Government’s interest, including the function
 involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.
 (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335.)

January 10, 2018 hearing and to EPA's comments. (*See* Section 10 below; Wat. Code § 13320(b); 23 C.C.R. § 2050.6.)

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED:

Petitioners are aggrieved because the challenged requirements contained in the Permit are unnecessary, inconsistent with law, infeasible to consistently comply with, and may place the Districts in enforcement jeopardy from civil and even criminal enforcement actions or from third party citizen suits under the CWA, especially since there is no rational legal basis to include RVSD and SRSD as co-permittees on the Permit to begin with. Petitioner SCAP is aggrieved because, if left to stand, the Permit may become models for future permit decisions affecting satellite sewer collection systems throughout the state. The Petitioners are further aggrieved because many of the requirements were imposed without adequate due process, justification, and legal authority and without any demonstrated water quality or other public benefit.

6. SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONERS REQUEST

Petitioners seek an Order by the State Board that will remove the collection systems as co-permittees on the Permit. The collection system agencies included in the CMSA Permit are appropriately permitted by the statewide General SSS WDR (as amended by Order No WQ 2008-0002-EXEC).

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

A preliminary statement of points and authorities are set forth in Section 4 above. In sum, by adopting the Permit and listing RVSD and SRSD as co-permittees, the Regional Board failed to comply with the Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000 *et seq.*) and its implementing regulations; acted inconsistently with the mandates of the CWA (33 U.S.C. §§ 1251 *et seq.*) and its implementing regulations (40 C.F.R. Parts 122, 123, 124, and 133); failed to comply with the APA; failed to support the provisions of the Permit with proper findings, and included findings and requirements in the Permit that are not supported by the evidence and/or violated their due process rights.

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

3 A true and correct copy of this Petition was mailed by First Class Mail on February 5, 2018
 4 to the Regional Board at the following address:

5 Mr. Bruce Wolfe, Executive Officer
 6 California Regional Water Quality Control Board
 7 San Francisco Bay Region
 8 1515 Clay Street, Suite 1400
 9 Oakland, CA 96412

10 A true and correct copy of this Petition was mailed by First Class Mail on February 5, 2018
 11 to CMSA, the Discharger under the Permit, at the following address:

12 Mr. Jason Dow, Manager
 13 Central Marin Sanitation Agency
 14 1301 Andersen Drive
 15 San Rafael, CA 94901

16 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED**
 17 **IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR**
 18 **WERE UNABLE TO BE RAISED:**

19 The primary substantive and legal issues raised in this Petition have been presented to the
 20 Regional Board before the Regional Board acted to adopt the Permit, or relate to issues raised at
 21 the adoption hearing. Petitioners submitted extensive written comments to the Regional Board,
 22 and RVSD and SRSD provided supplemental comments during in-person meetings with Regional
 23 Board staff. (See Exhibit I, Norby Decl. at ¶4; Exhibit J, Toy Decl. at ¶4.) Representatives of
 24 RVSD and SRSD also appeared and provided testimony at the adoption hearing on January 10,
 25 2018. (See Exhibit I, Norby Decl. at ¶4; Exhibit J, Toy Decl. at ¶4.)

26 **10. PETITIONERS' REQUEST FOR CONSIDERATION OF SUPPLEMENTAL**
 27 **EVIDENCE AND FOR A HEARING:**

28 For the reasons set forth above, the Petitioners request that the State Board conduct a
 hearing to consider this Petition in accordance with 23 C.C.R. sections 2052(c) and 2067. In
 addition, pursuant to 23 C.C.R. section 2050.6, Petitioners request that the State Board consider
 evidence not previously part of the Administrative Record, including but not limited to RVSD and
 SRSD's January 8, 2018 letter and rebuttal comments submitted to the Regional Board, to further

demonstrate the Regional Board's failure in adopting the Permit. The Regional Board improperly excluded this evidence because RVSD and SRSD's January 8, 2018 letter and rebuttal comments were in direct response to changes that the Regional Board made to the Permit without allowing Petitioners the previous opportunity to respond.

Alternatively, or in addition to the above, pursuant to 23 C.C.R. section 2050.6(b), Petitioners request that the State Board conduct a hearing on the issue of RVSD and SRSD's January 8, 2018 letter and rebuttal comments, and on the issues raised by EPA at the hearing that Petitioners could not rebut at the hearing. This information is vitally important if the State Board determines that the collection system agencies should not be removed as co-permittees on the CMSA Permit, notwithstanding the above arguments. To remedy some of the due process violations alleged, Petitioners suggest that they should be allowed to provide testimony on these issues.

11. PETITIONERS' REQUEST FOR STAY

Because of the very real possibility of harm from the imposition of increased liability from being co-permittees on the Permit, RVSD and SRSD include a request for an immediate stay of the provisions in the Permit that apply to the collection systems only, preferably before the effective date of the Permit on March 1, 2018. Petitioners specifically request that the State Board immediately provide notice in accordance with 23 C.C.R. section 2053(b) so that a stay may be granted on an expedited basis before the effective date of the Permit and so that Petitioners can avoid additional accelerated implementation requirements and costs and avoid potential new liability pending administrative review of the Petitioners' Petition for Review.

A. PROVISIONS PETITIONERS ARE REQUESTING BE STAYED PENDING A DECISION ON THE PETITION FOR REVIEW

Petitioners request the State Board, either on its own motion or in accordance with Water Code sections 13320 and 13321 and 23 C.C.R. section 2053(a), to issue a stay of the following contested provisions of the Permit as applied to the collection system agencies:

- The Discharge Prohibition set forth in Section III.E of the Permit. (*See Exhibit A, Permit at p. 5.*)

- 1 • The Standard Provisions set forth in Section VI.A of the Permit. (*See* Exhibit
- 2 A, Permit at p. 8.)
- 3 • The Special Provisions for Publicly-Owned Treatment Works (POTWs),
- 4 Collection System Management, set forth in Section VI.C.4.c of the Permit.
- 5 (*See* Exhibit A, Permit at p. 13.)
- 6 • The Other Special Provisions for the Collection System Agency Tasks to
- 7 Reduce Blending set forth in Section VI.C.5.a of the Permit. (*See* Exhibit A,
- 8 Permit at pp. 13-16.)
- 9 • Attachment D (Standard Provisions) to the Permit. (*See* Exhibit A, Permit at
- 10 pp. D-1 – D-11.)
- 11 • Attachment G to the Permit. (*See* Exhibit A, Permit at pp. i – ii, G-1 - G-18.)

12 **B. THE STATE BOARD HAS THE DUTY TO GRANT A STAY OF PROVISIONS IN THE**

13 **PERMIT UPON THE SHOWING OF HARM TO PETITIONERS, A LACK OF HARM TO**

14 **THE PUBLIC, AND SUBSTANTIAL QUESTIONS OF LAW OR FACT.**

15 Pursuant to State Board regulations, the State Board has the duty to issue a stay of

16 provisions contained in the Permit if Petitioners can “allege facts and produce proof of (1)

17 substantial harm to petitioner[s] or to the public interest if a stay is not granted; (2) a lack of

18 substantial harm to other interested persons and to the public interest if a stay is granted; and (3)

19 substantial questions of fact or law regarding the disputed action.”²³ (*See* 23 C.C.R. § 2053(a)(1)-

20 (3); *see accord* Water Code § 13321.)

21 As discussed herein, Petitioners’ stay request meets the regulatory criteria set forth in 23

22 C.C.R. § 2053(a), which mandates that the requested stay be granted by the State Board upon

23 Petitioners making the required showings. Petitioners therefore request that the State Board issue

24 the requisite public notice so that Petitioners’ stay request may be granted on an expedited basis,

25 preferably before the effective date of the Permit on March 1, 2018, so that Petitioners can avoid

26 detrimental discretionary civil and criminal federal enforcement of any alleged violations of the

27 Permit pending administrative review. (*See* 23 C.C.R. § 2053.)

28

²³ Importantly, had the EPA taken over and issued the Permit instead of the Regional Board, issuance of a stay would be mandatory. (*See* 40 C.F.R. § 124.16.) California law must be construed to assure consistency with the requirements of the CWA related to NPDES Permits, under which the above regulation was promulgated. (*See* Water Code § 13372; 23 C.C.R. § 2235.2.)

1) **Petitioners Satisfy the Regulatory Requirements Applicable To Stay Requests.**

a) **Substantial Harm to Petitioners or to the Public Interest Will Occur if a Stay Is Not Granted.**

Petitioners and the public interest will incur substantial harm if the requested stay is not granted by the State Board pending administrative review of Petitioners Petition for Review. In accordance with 23 C.C.R. section 2053(a), the following discussion alleges facts and provides evidence in support of Petitioners' stay request.

i) **Substantial Harm to Petitioners Will Occur If a Stay is Not Granted.**

As previously discussed herein, when the Regional Board adopted the Permit, the Regional Board issued requirements contained in the Permit applicable to separate satellite sewer collection systems that are unnecessary, inconsistent with law, infeasible to consistently comply with, and may place Petitioners in enforcement jeopardy from civil and even criminal federal enforcement actions or from third party citizen suits under the CWA, especially since there is no legal basis to include collection system agencies as co-permittees on the Permit to begin with. If left to stand, the Permit may become models for future permit decisions affecting satellite sewer collection systems throughout the state. Petitioners face additional harm because many of the requirements that the Regional Board imposed were without adequate justification and legal authority and without any demonstrated water quality or other public benefit. (*See, e.g.,* Exhibit D, HT at 47:19-25 (RVSD General Manager Norby testifying that "You have these regulations generally to push people to get to do the things they're not already doing. We're already doing all those things. So, it's not clear to us what public value, what public interest is being served by adding this new layer of, again, what we consider to be convoluted, duplicative . . .").) This failure by the Regional Board to follow applicable precedent and prior practice places RVSD and SRSD in immediate jeopardy of being in violation of the requirements set forth in the Permit on March 1, 2018, the effective date of the Permit. (*See* Exhibit I, Norby Decl. at ¶5; Exhibit J, Toy Decl. at ¶5.)

Notwithstanding Petitioners' objections in its comment letters and testimony regarding the imposition of bypass requirements, the Regional Board imposed the Permit requirements anyway.

1 It is unclear why Petitioners are being burdened with these newly imposed requirements, especially
 2 since Petitioners, as collection systems, are already appropriately permitted by the statewide
 3 General SSS WDR (as amended by Order No WQ 2008-0002-EXEC). (See Exhibit I, Norby Decl.
 4 at ¶¶6-7; Exhibit J, Toy Decl. at ¶¶6-7.) This is an unacceptable situation.

5 For the foregoing reasons, Petitioners request that the State Board stay the Permit
 6 conditions applicable to RVSD and SRSD under the Permit. During the period in which the
 7 requested stay is in effect, both RVSD and SRSD would continue to comply with the statewide
 8 General SSS WDR. (See Exhibit I, Norby Decl. at ¶9; Exhibit J, Toy Decl. at ¶9.)

9 ii) Substantial Harm Will be Incurred by the Public if a Stay is
 10 Not Granted.

11 The general public will also be substantially harmed if the State Board does not grant
 12 Petitioners' stay request. If the requirements contained in the Permit are not immediately stayed,
 13 residents and ratepayers in RVSD and SRSD's service areas, already under substantial strain from
 14 the recent recession and other rising utility costs, will be required to pay for unnecessary costs of
 15 additional accelerated monitoring requirements under the Permit. (See Exhibit I, Norby Decl. at
 16 ¶10; Exhibit J, Toy Decl. at ¶10.)

17 The forced implementation of costly new requirements that may ultimately prove
 18 unnecessary, or the commencement of enforcement actions based on such requirements, is a
 19 misdirection of scarce public resources, and should be avoided in order to prevent substantial harm
 20 to the public (as well as Petitioners). (*Id.*; see also *In the Matter of the Petition of IBM*, State
 21 Water Board Order No. WQ 88-15 at pg. 4; Exhibit D, HT at 96:1-12 (Regional Board Vice Chair
 22 McGrath acknowledging that "we have a very well-run sewage treatment plant . . . The increase in
 23 loadings due to bypass, while they're not trivial, they don't represent the highest priority . . .");
 24 HT at 100:8-11.) The adoption of permit requirements in violation of federal and state law also
 25 causes substantial harm to the public who have a vested interest in the government complying with
 26 its own laws and regulations. (See Exhibit I, Norby Decl. at ¶11; Exhibit J, Toy Decl. at ¶11.)

27 //

28 //

b) Other Interested Parties and the Public Will Not Incur Substantial Harm If A Stay is Granted.

Other interested persons and the public will not suffer substantial harm if a stay of the requested requirements is granted by the State Board. Granting a stay maintains the status quo where the collection systems are not under an NPDES permit. A stay of the requested provisions will not eliminate Petitioners' ongoing requirements and compliance obligations under the statewide General SSS WDR or the RVSD CDO. (*See* Exhibit I, Norby Decl. at ¶12; Exhibit J, Toy Decl. at ¶12.) In addition, the issuance of the stay will not eliminate or alter any other requirements set forth in the Permit besides those specifically stayed. (*See* Exhibit I, Norby Decl. at ¶12; Exhibit J, Toy Decl. at ¶12.) Instead, the issuance of a stay will simply prevent unwarranted compliance jeopardy and unnecessary costs associated with the current requirements while these requirements are being administratively reviewed. (*See* Exhibit I, Norby Decl. at ¶13; Exhibit J, Toy Decl. at ¶13.) The requested stay will also temporarily suspend administrative, and civil and potential criminal liability for non-compliance with requirements that Petitioners may not consistently meet, and which may ultimately be removed from the Permit or modified. (*See* Exhibit I, Norby Decl. at ¶13; Exhibit J, Toy Decl. at ¶13; *see also* Exhibit D, HT at 13:25-14:8 (Regional Board acknowledging that RVSD and SRSD face increased liability under the Permit).) Thus, issuance of a stay by the State Board simply suspends the possible unnecessary imposition of onerous fines and penalties that would be passed on to the public, and susceptibility to third-party lawsuits pending review of the requested provisions, which may ultimately be removed from the Permit. (*See* Exhibit I, Norby Decl. at ¶¶14-16; Exhibit J, Toy Decl. at ¶¶14-16.) Because the Permit does not authorize any discharge to waters of the United States directly from Petitioners and CMSA is the only permitted discharger authorized as a point source and subject to NPDES discharge requirements under section 402 of the Clean Water Act, there is little to no chance of harm in granting a stay of the appealed provisions. (*See* Exhibit I, Norby Decl. at ¶14; Exhibit J, Toy Decl. at ¶14.)

In addition, if a stay were issued, the Regional Board's regulatory oversight of the Petitioners' statewide General SSS WDR and RVSD's CDO will remain unchanged. (*See* Exhibit

I, Norby Decl. at ¶12; Exhibit J, Toy Decl. at ¶12.) All other effluent limitations, monitoring and reporting requirements, and substantive provisions contained in the Permit applicable to CMSA will remain in effect, and fully enforceable by the Regional Board. (See Exhibit I, Norby Decl. at ¶15; Exhibit J, Toy Decl. at ¶15.) Thus, during the period of the requested stay, Petitioners will continue their existing CIP programs and continue to operate and maintain their systems to reduce spills and I/I. (See Exhibit I, Norby Decl. at ¶16; Exhibit J, Toy Decl. at ¶16.) Finally, the issuance of a stay will benefit the public by providing orderly resolution of the issues raised by the Petitioners' Petition for Review. (See Exhibit I, Norby Decl. at ¶16; Exhibit J, Toy Decl. at ¶16.)

c) Substantial Questions of Fact or Law Exist.

In addition to the facts and laws discussed herein, Petitioners raised numerous substantial questions of fact and law regarding the additional bypass requirements contained in the Permit, including whether the additional requirements were legal and necessary. (See Exhibit I, Norby Decl. at ¶17; Exhibit J, Toy Decl. at ¶17.)

The fact that serious questions of fact and law exist weighs heavily in favor of granting a stay and maintaining the status quo until such disputes can be resolved. (See *Mason v. Superior Court*, 23 Cal.App.3d 913, 916 (1972) ("the purpose of the various stays which are set forth in the code is maintenance of the status quo").)

d) Conclusion

Because Petitioners alleged facts and provided evidence of the substantial harm to both the collection system agencies and the public interest while Petitioners await a final resolution of their administrative appeal, the lack of substantial harm to other interested persons and to the public interest if a stay is granted, and the substantial questions of fact and law that exist, the State Board should immediately act to stay the requested provisions of the Permit pending administrative review of the Petitioners' Petition for Review.

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Respectfully Submitted,
DATED: February 5, 2018

DOWNEY BRAND LLP

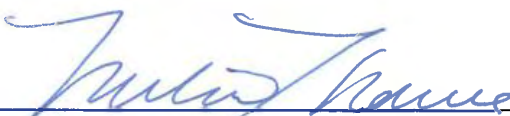
By: 
MELISSA A THORME
Attorneys for Petitioners

EXHIBIT A

San Francisco Bay Regional Water Quality Control Board

**ORDER No. R2-2018-0003
NPDES No. CA0038628**

The following Dischargers are subject to waste discharge requirements (WDRs) set forth in this Order:

Table 1. Discharger Information

Dischargers	Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County ^[1]
Facility Names	Central Marin Sanitation Agency Wastewater Treatment Plant, San Rafael Sanitation District wastewater collection system, Sanitary District No. 1 of Marin County wastewater collection system, and Sanitary District No. 2 of Marin County wastewater collection system
Treatment Plant Address	1301 Andersen Drive San Rafael, CA 94901 Marin County
CIWQS Place Number	213889

^[1] While this Order identifies the collection system management agencies as Dischargers (see Table F-1), these agencies are only responsible for complying with Discharge Prohibition III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order. Central Marin Sanitation Agency is responsible for complying with all requirements in this Order, except Provisions VI.C.4.c and VI.C.5.a.

Table 2. Discharge Location

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Secondary Treated Municipal Wastewater	37.948333°	-122.456389°	Central San Francisco Bay

Table 3. Administrative Information

This Order was adopted on:	January 10, 2018
This Order shall become effective on:	March 1, 2018
This Order shall expire on:	February 28, 2023
CIWQS Regulatory Measure Number	418731
The Dischargers shall file a Report of Waste Discharge for updated WDRs in accordance with California Code of Regulations, title 23, and as an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than:	May 1, 2022
The U.S. Environmental Protection Agency (U.S. EPA) and the California Regional Water Quality Control Board, San Francisco Bay Region, have classified this discharge as follows:	Major

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



Digitally signed by
Bruce H. Wolfe
Date: 2018.01.12
16:57:22 -08'00'

Bruce H. Wolfe, Executive Officer

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I. FACILITY INFORMATION

Table 1 and Fact Sheet (Attachment F) sections I and II summarize information describing the Central Marin Sanitation Agency (CMSA) Wastewater Treatment Plant and the collection systems operated by the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County.

II. FINDINGS

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

- A. Legal Authorities.** This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve as a National Pollutant Discharge Elimination System (NPDES) permit authorizing the Dischargers to discharge into waters of the United States as listed in Table 2 subject to the WDRs in this Order.
- B. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information the Dischargers submitted as part of their application, information obtained through monitoring and reporting programs, and other available information. The Fact Sheet contains background information and rationale for the requirements in this Order and is hereby incorporated into and constitutes findings for this Order. Attachments A through E, G, and H are also incorporated into this Order.
- C. Provisions and Requirements Implementing State Law.** Provision VI.C.6 of this Order implements State law only. It is not required or authorized under the federal CWA; consequently, a violation of this provision is subject to enforcement remedies available under the Porter-Cologne Water Quality Control Act.
- D. Notification of Interested Parties.** The Regional Water Board notified the Dischargers and interested agencies and persons of its intent to prescribe these WDRs and provided an opportunity to submit written comments and recommendations. The Fact Sheet provides details regarding the notification.
- E. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. The Fact Sheet provides details regarding the public hearing.

THEREFORE, IT IS HEREBY ORDERED that Order No. R2-2012-0051 (previous order) is rescinded upon the effective date of this Order, except for enforcement purposes, and, in order to meet the provisions of Water Code division 7 (commencing with § 13000) and regulations adopted thereunder and the provisions of the CWA and regulations and guidelines adopted thereunder, CMSA shall comply with the requirements in this Order, except Provisions VI.C.4.c and VI.C.5.a. This action in no way prevents the Regional Water Board from taking enforcement action for past violations of the previous order.

IT IS HEREBY FURTHER ORDERED that the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall comply with Discharge Prohibition III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order.

III.DISCHARGE PROHIBITIONS

- A.** Discharge of treated wastewater at a location or in a manner different than described in this Order is prohibited.
- B.** Discharge at Discharge Point No. 001 is prohibited when treated wastewater does not receive an initial dilution of at least 43:1. Compliance shall be achieved by proper operation and maintenance of the discharge outfall to ensure that it (or its replacement, in whole or part) is in good working order and is consistent with, or can achieve better mixing than, that described in the Fact Sheet section IV.C.4.a. CMSA shall address measures taken to ensure this in its application for permit reissuance.
- C.** Bypass of untreated or partially-treated wastewater to waters of the United States is prohibited, except as provided for in Attachment D section I.G.

Blended wastewater is biologically-treated wastewater blended with wastewater diverted around biological treatment units or advanced treatment units. Such discharges are approved under the bypass conditions stated in 40 C.F.R. section 122.41(m)(4) when (1) CMSA's peak wet weather influent flow exceeds the capacity of the secondary treatment units of 30 MGD, and (2) the discharge complies with the effluent and receiving water limitations contained in this Order. Furthermore, CMSA shall operate its facility as designed and in accordance with the Operation and Maintenance Manual for the facility. This means it shall optimize storage and use of equalization units and shall fully utilize the biological treatment units. This also means that CMSA must fully use the capacity of its facilities to maximize treatment. CMSA shall report incidents of blended effluent discharges in routine monitoring reports and shall monitor this discharge as specified in the attached Monitoring and Reporting Program (MRP) (Attachment E) and Attachment G.

- D.** Average dry weather effluent flow in excess of 10 MGD is prohibited. Average dry weather effluent flow shall be determined from three consecutive dry weather months each year, with compliance measured at Monitoring Location EFF-001 as described in the MRP.
- E.** Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

IV.EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

- A. Effluent Limitations.** CMSA shall comply with the following effluent limitations at Discharge Point No. 001, with compliance measured at Monitoring Locations EFF-001, EFF-002, or EFF-002b as described in the MRP:

Table 4. Effluent Limitations

Parameter	Units	Effluent Limitations					
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	Monthly Geometric Mean
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	25	40	---	---	---	---
Total Suspended Solids	mg/L	30	45	---	---	---	---
Oil and Grease	mg/L	10	---	20	---	---	---
pH ^[1]	standard units	---	---	---	6.0	9.0	---
Chlorine, Total Residual	mg/L	---	---	---	---	0.0	---
Enterococcus Bacteria	MPN/100 mL	---	---	---	---	---	35
Total Coliform Bacteria	MPN/100 mL	---	---	10,000	---	---	240
Copper	µg/L	49	---	84	---	---	---
Cyanide	µg/L	21	---	37	---	---	---
Dioxin TEQ	µg/L	1.4 x 10 ⁻⁸	---	2.8 x 10 ⁻⁸	---	---	---
Total Ammonia	mg/L as N	60	---	120	---	---	---

Unit Abbreviations:

mg/L = milligrams per liter
mg/L as N = milligrams per liter as nitrogen
µg/L = micrograms per liter
MPN/100 mL = most probable number per 100 milliliters

Footnote:

^[1] If CMSA monitors pH continuously, pursuant to 40 C.F.R. section 401.17 CMSA shall be in compliance with this pH limitation provided that both of the following conditions are satisfied: (i) the total time during which the pH is outside the required range shall not exceed 7 hours and 26 minutes in any calendar month; and (ii) no individual excursion from the required pH range shall exceed 60 minutes.

B. Percent Removal. The average monthly carbonaceous biochemical oxygen demand (5-day @ 20°C) (CBOD₅) and total suspended solids (TSS) percent removal at Discharge Point No. 001 shall not be less than 85 percent (i.e., in each calendar month, the arithmetic mean of CBOD₅ and TSS, by concentration, for effluent samples collected at Monitoring Location EFF-002 as described in the MRP, shall not exceed 15 percent of the arithmetic mean of CBOD₅ and TSS, by concentration, for influent samples collected at Monitoring Location INF-001 as described in the MRP at approximately the same times during the same period). For a calendar month in which CMSA discharges blended effluent at Discharge Point No. 001, the CBOD₅ and TSS monthly arithmetic mean and percent removal shall include results of blended effluent samples collected at Monitoring Location EFF-002b flow-weighted with effluent samples collected at Monitoring Location EFF-002.

C. Acute Toxicity. The discharge at Discharge Point No. 001 shall meet the following acute toxicity effluent limitations, with compliance measured at Monitoring Location EFF-002 as described in the MRP:

1. An 11-sample median of not less than 90 percent survival; and
2. An 11-sample 90th percentile of not less than 70 percent survival.

These acute toxicity limitations are defined as follows:

- **11-sample median.** A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit if five or more of the past ten or fewer bioassay tests also show less than 90 percent survival.
- **11-sample 90th percentile.** A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit if one or more of the past ten or fewer bioassay tests also show less than 70 percent survival.

If CMSA can demonstrate that toxicity exceeding the levels cited above is caused by ammonia and that the ammonia in the discharge complies with the ammonia effluent limits in Table 4 of this Order, then such toxicity shall not constitute a violation of this effluent limitation.

V. RECEIVING WATER LIMITATIONS

- A. The discharge shall not cause the following conditions to exist in receiving waters at any place:
1. Floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;
 2. Alteration of suspended sediment in such a manner as to cause nuisance or adversely affect beneficial uses or detrimental increase in the concentrations of toxic pollutants in sediments or aquatic life;
 3. Suspended material in concentrations that cause nuisance or adversely affect beneficial uses;
 4. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 5. Alteration of temperature beyond present natural background levels unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses;
 6. Changes in turbidity that cause nuisance or adversely affect beneficial uses or cause increases from normal background light penetration or turbidity greater than 10 percent in areas where natural turbidity is greater than 50 nephelometric turbidity units;
 7. Coloration that causes nuisance or adversely affects beneficial uses;
 8. Visible, floating, suspended, or deposited oil or other products of petroleum origin; or
 9. Toxic or other deleterious substances in concentrations or quantities that cause deleterious effects on wildlife, waterfowl, or other aquatic biota or render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
- B. The discharge shall not cause the following limits to be exceeded in receiving waters at any place within one foot of the water surface:
1. Dissolved Oxygen 5.0 mg/L, minimum

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

2. Dissolved Sulfide	Natural background levels
3. pH	The pH shall not be depressed below 6.5 or raised above 8.5. The discharge shall not cause changes greater than 0.5 pH units in normal ambient pH levels.
4. Nutrients	Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

- C. The discharge shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or State Water Resources Control Board (State Water Board) as required by the CWA and regulations adopted thereunder (outside any mixing zone established as described in Fact Sheet section IV.C). If more stringent water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board may revise or modify this Order in accordance with the more stringent standards.

VI. PROVISIONS

A. Standard Provisions

1. The Dischargers shall comply with all “Standard Provisions” in Attachment D.
2. The Dischargers shall comply with all applicable provisions of the “Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits” (Attachment G).

B. Monitoring and Reporting

CMSA shall comply with the MRP (Attachment E), and future revisions thereto, and applicable sampling and reporting requirements in Attachments D and G.

C. Special Provisions

1. Reopener Provisions

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

- a. If present or future investigations demonstrate that the discharges governed by this Order have or will have, or will cease to have, a reasonable potential to cause or contribute to adverse impacts on water quality or beneficial uses of the receiving waters.

- b. If new or revised water quality objectives or total maximum daily loads (TMDLs) come into effect for San Francisco Bay or contiguous water bodies (whether statewide, regional, or site-specific). In such cases, effluent limitations in this Order may be modified as necessary to reflect the updated water quality objectives and wasteload allocations in the TMDLs. Adoption of the effluent limitations in this Order is not intended to restrict in any way future modifications based on legally-adopted water quality objectives or TMDLs or as otherwise permitted under federal regulations governing NPDES permit modifications.
- c. If translator, dilution, or other water quality studies provide a basis for determining that a permit condition should be modified.
- d. If State Water Board precedential decisions, new policies, new laws, or new regulations are adopted.
- e. If an administrative or judicial decision on a separate NPDES permit or WDRs addresses requirements similar to this discharge.
- f. If any Discharger requests adjustments in effluent limits due to the implementation of stormwater diversion as a stormwater pollutant control strategy.
- g. Or as otherwise authorized by law.

A Discharger may request a permit modification based on any of the circumstances above. With any such request, the Discharger shall include antidegradation and anti-backsliding analyses as appropriate.

2. Effluent Characterization Study and Report

- a. **Study Elements.** CMSA shall continue to characterize and evaluate the discharge from the following discharge point to verify that the “no” or “unknown” reasonable potential analysis conclusions of this Order remain valid and to inform the next permit reissuance. CMSA shall collect representative samples at the monitoring station set forth below, as defined in the MRP, at no less than the frequency specified below:

<u>Discharge Point</u>	<u>Monitoring Location</u>	<u>Minimum Frequency</u>
001	EFF-001 or EFF-002	1/Year

CMSA shall analyze the samples for the priority pollutants listed in Attachment G, Table C, except for those pollutants with effluent limitations where the MRP already requires more frequent monitoring and except for those pollutants for which there are no water quality criteria (see Fact Sheet Table F-8). Compliance with this requirement shall be achieved in accordance with the specifications of Attachment G sections III.A.1 and III.A.2.

CMSA shall evaluate on an annual basis if concentrations of any of these pollutants significantly increase over past performance. CMSA shall investigate the cause of any such increase. The investigation may include, but need not be limited to, an increase in monitoring frequency, monitoring of internal process streams, and monitoring of influent sources. CMSA shall establish remedial measures addressing any increase resulting in

reasonable potential to cause or contribute to an excursion above applicable water quality objectives. This requirement may be satisfied through identification of the constituent as a “pollutant of concern” in CMSA’s Pollutant Minimization Program, described in Provision VI.C.3.

b. Reporting Requirements

- i. Routine Reporting.** CMSA shall report the following in the transmittal letter for the self-monitoring report associated with the month in which the samples were collected:
 - (a)** Indication that a sample for this characterization study was collected; and
 - (b)** Identity of pollutants detected at or above applicable water quality criteria (see Fact Sheet Table F-8 for the criteria) and the detected concentrations of those pollutants.
- ii. Annual Reporting.** CMSA shall summarize the annual data evaluation and source investigation in the annual self-monitoring report.
- iii. Final Report.** CMSA shall submit a final report that presents all these data with the application for permit reissuance.

3. Pollutant Minimization Program

- a.** CMSA shall continue to improve its existing Pollutant Minimization Program to promote minimization of pollutant loadings to its treatment plant and therefore to the receiving waters.
- b.** CMSA shall submit an annual report no later than February 28 each year. Each annual report shall include at least the following information:
 - i. Brief description of treatment plant.** The description shall include the service area and treatment plant processes.
 - ii. Discussion of current pollutants of concern.** Periodically, CMSA shall analyze its circumstances to determine which pollutants are currently a problem and which pollutants may be potential future problems. This discussion shall include the reasons for choosing the pollutants.
 - iii. Identification of sources for pollutants of concern.** This discussion shall include how CMSA intends to estimate and identify pollutant sources. CMSA shall include sources or potential sources not directly within the ability or authority of CMSA to control, such as pollutants in the potable water supply and air deposition.
 - iv. Identification of tasks to reduce the sources of pollutants of concern.** This discussion shall identify and prioritize tasks to address CMSA’s pollutants of concern. CMSA may implement the tasks by itself or participate in group, regional, or national tasks that address its pollutants of concern. CMSA is strongly encouraged to participate in group, regional, or national tasks that address its pollutants of

concern whenever it is efficient and appropriate to do so. An implementation timeline shall be included for each task.

- v. Outreach to employees.** CMSA shall inform employees about the pollutants of concern, potential sources, and how they might be able to help reduce the discharge of these pollutants of concern into the treatment facilities. CMSA may provide a forum for employees to provide input.
- vi. Continuation of Public Outreach Program.** CMSA shall prepare a pollution prevention public outreach program for its service area. Outreach may include participation in existing community events, such as county fairs; initiating new community events, such as displays and contests during Pollution Prevention Week; conducting school outreach programs; conducting treatment plant tours; and providing public information in newspaper articles or advertisements, radio or television stories or spots, newsletters, utility bill inserts, or web sites. Information shall be specific to target audiences. CMSA shall coordinate with other Dischargers and agencies as appropriate.
- vii. Discussion of criteria used to measure Pollutant Minimization Program and task effectiveness.** CMSA shall establish criteria to evaluate the effectiveness of its Pollutant Minimization Program. This discussion shall identify the specific criteria used to measure the effectiveness of each task in Provisions VI.C.3.b.iii, iv, v, and vi.
- viii. Documentation of efforts and progress.** This discussion shall detail all of CMSA's Pollutant Minimization Program activities during the reporting year.
- ix. Evaluation of Pollutant Minimization Program and task effectiveness.** CMSA shall use the criteria established in Provision VI.C.3.b.vii to evaluate the program and task effectiveness.
- x. Identification of specific tasks and timelines for future efforts.** Based on the evaluation, CMSA shall explain how it intends to continue or change its tasks to more effectively reduce the amount of pollutants flowing to its treatment plant and subsequently in its effluent.
- c.** CMSA shall develop and conduct a Pollutant Minimization Program as further described below when there is evidence that a priority pollutant is present in the effluent above an effluent limitation (e.g., sample results reported as detected but not quantified [DNQ] when the effluent limitation is less than the method detection limit [MDL], sample results from analytical methods more sensitive than those methods required by this Order, presence of whole effluent toxicity, health advisories for fish consumption, or results of benthic or aquatic organism tissue sampling) and either:

 - i.** A sample result is reported as DNQ and the effluent limitation is less than the Reporting Level (RL); or
 - ii.** A sample result is reported as not detected (ND) and the effluent limitation is less than the MDL, using definitions in Attachment A and reporting protocols described in the MRP.

- d. If triggered by the reasons set forth in Provision VI.C.3.c, above, CMSA's Pollutant Minimization Program shall include, but not be limited to, the following actions and submittals:
 - i. Annual review and semi-annual monitoring of potential sources of the reportable priority pollutants, which may include fish tissue monitoring and other bio-uptake sampling, or alternative measures when source monitoring is unlikely to produce useful analytical data;
 - ii. Quarterly monitoring for the reportable priority pollutants in the influent to the treatment plant. The Executive Officer may approve alternative measures when influent monitoring is unlikely to produce useful analytical data;
 - iii. Submittal of a control strategy designed to proceed toward the goal of maintaining concentrations of the reportable priority pollutants in the effluent at or below the effluent limitation;
 - iv. Implementation of appropriate cost-effective control measures for the reportable priority pollutants, consistent with the control strategy; and
 - v. Inclusion of the following specific items within the annual report required by Provision VI.C.3.b above:
 - (a) All Pollutant Minimization Program monitoring results for the previous year;
 - (b) List of potential sources of the reportable priority pollutants;
 - (c) Summary of all actions undertaken pursuant to the control strategy; and
 - (d) Description of actions to be taken in the following year.

4. Special Provisions for Publicly-Owned Treatment Works (POTWs)

- a. **Pretreatment Program.** CMSA shall implement and enforce its approved pretreatment program in accordance with federal pretreatment regulations (40 C.F.R. part 403); pretreatment standards promulgated under CWA sections 307(b), 307(c), and 307(d); pretreatment requirements specified at 40 C.F.R. section 122.44 (j); and the requirements in Attachment H, *Pretreatment Requirements*. CMSA's responsibilities include, but are not limited to, the following:
 - i. Enforcement of National Pretreatment Standards established at 40 C.F.R. sections 403.5 and 403.6;
 - ii. Implementation of its pretreatment program in accordance with legal authorities, policies, procedures, and financial provisions described in the National Pretreatment Standards (40 C.F.R. part 403);
 - iii. Submission of reports to the State Water Board and the Regional Water Board, as described in Attachment H; and

- iv. Evaluate the need to revise local limits pursuant to 40 C.F.R. section 403.5(c)(1) and, within 180 days following the effective date of this Order, submission of a report describing the changes, with a plan and schedule for implementation.
- b. Sludge and Biosolids Management**
- i. Sludge and biosolids treatment and storage shall not create a nuisance, such as objectionable odors or flies, or result in groundwater contamination.
 - ii. Sludge and biosolids treatment and storage facilities shall be adequate to divert surface runoff from adjacent areas, to protect site boundaries from erosion, and to prevent conditions that would cause drainage from stored materials. Adequate protection is defined as protection from at least a 100-year storm and the highest possible tidal state that may occur.
 - iii. This Order does not authorize permanent onsite sludge or biosolids storage or disposal. A Report of Waste Discharge shall be filed and the site brought into compliance with applicable regulations prior to commencement of any such activity.
- c. Collection System Management.** The San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall properly operate and maintain their respective collection systems (see Attachments D and G, section I.D), report any noncompliance with respect to their respective systems (see Attachments D and G, sections V.E.1 and V.E.2), and mitigate any discharges in violation of this Order associated with their respective systems (see Attachments D and G, section I.C).

State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply with both the statewide WDRs and this Order, the statewide WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.

5. Other Special Provisions

- a. Collection System Agency Tasks to Reduce Blending.** The San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall implement the following tasks to minimize wet weather bypasses in accordance with the following time schedule:

Table 5. Collection System Agency Tasks to Reduce Blending

Task ^[1]	Compliance Date
The San Rafael Sanitation District	
1. Conduct Planning for Woodland and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the planning phase of the Woodland and Octavia Project, which involves replacing sewer mains and lower laterals.	February 1, 2019
2. Construct 2017/18 Sewer Pipe Repair and Replacement San Rafael Sanitation District shall install spot pipe repairs and pipe replacement of about 880 feet at various locations in its sanitary sewer system.	
3. Construct La Crescenta Way, Loma Linda Road, and Marina Boulevard Sewer Improvement Project San Rafael Sanitation District shall replace about 955 feet of sewer mains and lower laterals in the La Crescenta Way, Loma Linda Road, and Marina Boulevard areas.	
4. Conduct Construction Phase of 2017 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising at least 10 miles of sewer mains.	
5. Complete Design for 2018 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the design to televise approximately 10 miles of sewer mains.	
6. Complete Design for Woodland and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the Woodland and Octavia Project, which involves replacing sewer mains and lower laterals.	February 1, 2020
7. Conduct Planning for Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the planning phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing sewer mains and lower laterals.	
8. Complete Design for El Cerrito and Forbes Ave Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the El Cerrito and Forbes Ave Sewer Improvement Project, which involves replacing sewer mains and lower laterals.	
9. Conduct Construction Phase of 2018 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising approximately 10 miles of sewer mains.	
10. Complete Design for 2019 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the design of televising approximately 10 miles of sewer mains.	February 1, 2021
11. Complete Design for Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the design phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing sewer mains and lower laterals.	
12. Construct Woodland Pl/Ave and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of the Woodland Pl/Ave and Octavia Sewer Improvement Project, which involves replacing about 3,300 feet of sewer mains and lower laterals.	
13. Construct El Cerrito and Forbes Ave Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of this project, which involves replacing about 3,900 feet of sewer mains and lower laterals.	
14. Complete Design for Miramar and Miraflores Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the Miramar and Miraflores Sewer Improvement Project, which involves replacing sewer mains and lower laterals.	

Task ^[1]	Compliance Date
15. Conduct Construction Phase of 2019 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising approximately 10 miles of sewer mains.	
16. Construct the Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the construction phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing about 1,000 feet of sewer mains and lower laterals.	February 1, 2022
17. Construct Miramar and Miraflores Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of the Miramar and Miraflores Sewer Improvement Project, which involves replacing about 1,600 feet of sewer mains and lower laterals.	
18. Propose Lateral Ordinances San Rafael Sanitation District shall review the ordinances of Bay Area communities that have successfully adopted measures requiring inspection of private sewer laterals (e.g., upon ownership change), shall develop a lateral inspection ordinance appropriate for its service area and present it to its governing board for consideration, and shall notify the Regional Water Board at least 30 days prior to presenting the proposal.	May 1, 2019
19. Submit Annual Progress Report San Rafael Sanitation District shall submit an annual report documenting the progress or completion of tasks 1 through 18. San Rafael Sanitation District shall also provide an update on its efforts to improve its rehabilitation rate to meet its long-term goal of replacing gravity sewers on an 80-year cycle as described in its <i>Sewer System Management Plan</i> , dated October 2015.	February 1 each year
20. Identify Feasible Actions for Next Permit Term San Rafael Sanitation District shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022
Sanitary District No. 1 of Marin County	
21. Construct FY2015-16 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the continuing construction to rehabilitate or replace approximately 6.7 miles of gravity sanitary sewers.	February 1, 2019
22. Construct Large Diameter Gravity Sewer Rehabilitation Project II-1 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 6,000 feet of 18- to 36-inch trunk lines.	
23. Construct Large Diameter Gravity Sewer Rehabilitation Project II-2 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 5,000 feet of 18- to 36-inch trunk lines.	
24. Conduct Smoke Testing for Selected I/I Sub-basins Sanitary District No. 1 of Marin County shall complete smoke testing of approximately 45 miles of gravity sewer lines with high inflow/infiltration rates, as identified by a 2013-14 Flow Study.	
25. Construct FY2016-17 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the rehabilitation or replacement of approximately 8.4 miles of gravity sanitary sewers.	
26. Construct Large Diameter Gravity Sewer Rehabilitation Project II-3 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 3,000 feet of 18- to 36-inch trunk lines.	February 1, 2020

Task ^[1]	Compliance Date
27. Conduct Manhole Rehabilitation Sanitary District No. 1 of Marin County shall complete a manhole condition assessment for approximately 3,000 manholes and shall rehabilitate manholes located in the 10-year flood zone by applying various manhole rehabilitation methods (e.g., epoxy lining, jet grouting).	February 1, 2020
28. Complete Design of FY2016-17 Gravity Sewer Improvement Projects Sanitary District No. 1 of Marin County shall complete the replacement of or capacity improvements for approximately 1.8 miles of gravity sanitary sewers.	February 1, 2021
29. Complete Planning for FY 2018-19 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the planning of projects intended to rehabilitate or replace approximately 4 miles of gravity sanitary sewers.	
30. Submit Annual Progress Report Sanitary District No. 1 of Marin County shall submit an annual report documenting the progress or completion of tasks 21 through 29.	February 1 each year
31. Identify Feasible Actions for Next Permit Term Sanitary District No. 1 of Marin County shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022
Sanitary District No. 2 of Marin County	
32. Design Harbor Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall design the replacement of about 5,000 feet of sanitary sewer system main lines and about 130 laterals.	February 1, 2020
33. Construct Harbor Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall construct the replacement of the sanitary sewer system main lines and laterals in Task 32.	February 1, 2021
34. Design El Camino Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall design the replacement of about 9,000 feet of sanitary sewer system main lines and about 200 laterals.	February 1, 2022
35. Construct El Camino Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall construct the replacement of the sanitary sewer system main lines and laterals in Task 34.	February 1, 2023
36. Propose Lateral Ordinances Sanitary District No. 2 of Marin County shall review the ordinances of Bay Area communities that have successfully adopted measures requiring inspection of private sewer laterals (e.g., upon ownership change), shall develop a lateral inspection ordinance appropriate for its service area and present it to its governing board for consideration, and shall notify the Regional Water Board at least 30 days prior to presenting the proposal.	May 1, 2019
37. Submit Annual Progress Report Sanitary District No. 2 of Marin County shall submit an annual report documenting the progress or completion of tasks 32 through 36.	February 1 each year
38. Identify Feasible Actions for Next Permit Term Sanitary District No. 2 of Marin County shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022

Footnote:

- ^[1] San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County may rehabilitate an equivalent amount of sewer pipe in a different location than that specified.

- b. CMSA Tasks to Reduce Blending.** CMSA shall implement the following tasks to minimize wet weather bypasses and reduce blending in accordance with the following time schedule:

Table 6. Central Marin Sanitation Agency Tasks to Reduce Blending

Task	Compliance Date
1. Replace Collection System Flow Meter at San Quentin Prison CMSA shall replace the 12-inch magnetic flow meter that measures flow from San Quentin Prison and the San Quentin Village Sewer Maintenance District to obtain more accurate inflow/infiltration flows from these tributary agencies.	June 30, 2018
2. Coordinate with Collection System Agencies in the Replacement of Flow Meter for Sanitary District No. 2 of Marin County CMSA shall purchase a new 12-inch flow meter and coordinate with Sanitary District No.1 of Marin County and Sanitary District No. 2 of Marin County in the installation of the new meter to more accurately measure inflow/infiltration flows from Sanitary District No.2 of Marin County.	December 1, 2019
3. Replace Collection System Flow Meter for the San Rafael Sanitation District CMSA shall replace the ultrasonic flow meter in the 45-inch interceptor that measures flow from the San Rafael Sanitation District collection system to obtain more accurate inflow/infiltration flows from this tributary agency.	June 30, 2018
4. Report Progress on Flow Meter Installations CMSA shall report on the progress of each of the flow meter installations described above in tasks 1, 2, and 3, and describe the status and schedule.	Annually, with Annual Self-Monitoring Report due February 1
5. Summarize Effect of New Flow Meters After data have been collected from the new meters to measure inflow/infiltration flows from the tributary agencies, CMSA shall analyze the data and describe how the new meters are improving CMSA's understanding of inflow/infiltration flows from the tributary agencies.	With Report of Waste Discharge due March 1, 2022
6. Implement Public Notification Protocol CMSA shall continue to implement its August 30, 2012, <i>Public Notification Protocol</i> , as updated, to alert the public of blending events.	January 1, 2018
7. Prepare Utility Analysis If seeking to continue bypassing peak wet weather flows around the secondary treatment units based on 40 C.F.R. 122.41(m)(4)(i)(A)-(C), CMSA shall complete a utility analysis that contains all elements described in part 1 of the No Feasible Alternatives Analysis Process in U.S. EPA's proposed peak wet weather policy (<i>National Pollutant Discharge Elimination System Permit Requirements for Peak Wet Weather Discharges from Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems</i> , Fed. Reg. Vol. 70, No. 245, pages 76013-76018, December 22, 2005) and demonstrate that CMSA has met the requirements for Regional Water Board approval pursuant to Attachment D section I.G.3. The submittal shall list and describe all feasible actions CMSA could implement during the next permit term. It shall also list and describe all feasible actions the collection system agencies could implement as determined and provided by the collection system agencies.	With Report of Waste Discharge due March 1, 2022

- c. Copper Action Plan.** CMSA shall implement pretreatment, source control, and pollution prevention for copper in accordance with the following tasks and time schedule:

Table 7. Copper Action Plan

Task	Compliance Date
1. Implement Copper Control Program Continue implementing the existing program described in CMSA's Pollution Prevention Report dated February 24, 2017, to reduce identified copper sources, including, as applicable, taking the following actions:	Implementation shall be ongoing

Task	Compliance Date
a. Providing education and outreach to the public (e.g., focusing on proper pool and spa maintenance and plumbers' roles in reducing corrosion); b. If corrosion is a significant copper source, working cooperatively with local water purveyors to reduce and control water corrosivity, as appropriate, and ensuring that local plumbing contractors implement best management practices to reduce corrosion in pipes; and c. Educating plumbers, designers, and maintenance contractors for pools and spas to encourage best management practices that minimize copper discharges.	
2. Implement Additional Actions If the Regional Water Board notifies CMSA that the three-year rolling mean dissolved copper concentration in the Central Bay exceeds 2.2 µg/L, then within 90 days of the notification, evaluate the effluent copper concentration trend and, if it is increasing, develop and begin implementation of additional measures to control copper discharges. Report the conclusion of the trend analysis and provide a schedule for any new actions to be taken within the next 12 months.	With next annual pollution prevention report due February 28 (at least 90 days following notification)
3. Report Status Submit an annual report documenting copper control program implementation that evaluates the effectiveness of the actions taken, including any additional actions required by Task 2 above, and provides a schedule for actions to be taken within the next 12 months.	With annual pollution prevention report due February 28 each year

- d. Cyanide Action Plan.** CMSA shall implement monitoring and surveillance, pretreatment, source control, and pollution prevention for cyanide in accordance with the following tasks and time schedule:

Table 8. Cyanide Action Plan

Task	Compliance Date
1. Review Potential Cyanide Sources Submit an up-to-date inventory of potential cyanide sources. If no cyanide source is identified, tasks 2 and 3, below, are not required unless CMSA receives a request to discharge detectable levels of cyanide to the sewer. In this case, notify the Executive Officer and implement tasks 2 and 3.	With annual pollution prevention report due February 28, 2018
2. Implement Cyanide Control Program Implement a control program to minimize cyanide discharges consisting, at a minimum, of the following elements: a. Inspect each potential source to assess the need to include that source in the control program. b. Inspect sources included in the control program annually. Inspection elements may be based on U.S. EPA guidance, such as <i>Industrial User Inspection and Sampling Manual for POTWs</i> (EPA 831-B-94-01). c. Develop and distribute educational materials regarding the need to prevent cyanide discharges to sources included in the control program. d. Prepare an emergency monitoring and response plan to be implemented if a significant cyanide discharge occurs. If the treatment plant's influent cyanide concentration exceeds 10 µg/L, CMSA shall collect a followup sample within 5 days of becoming aware of the laboratory results. If the results of the followup sample also exceed 10 µg/L, then a "significant cyanide discharge" is occurring.	Implementation shall be ongoing

Task	Compliance Date
3. Implement Additional Measures If the Regional Water Board notifies CMSA that ambient monitoring shows cyanide concentrations are 1.0 µg/L or higher in the main body of San Francisco Bay, then within 90 days of the notification, commence actions to identify and abate cyanide sources responsible for the elevated ambient concentrations, report on the progress and effectiveness of the actions taken, and provide a schedule for actions to be taken within the next 12 months.	With next annual pollution prevention report due February 28 (at least 90 days following notification)
4. Report Status of Cyanide Control Program Submit an annual report documenting cyanide control program implementation and addressing the effectiveness of actions taken, including any additional cyanide controls required by Task 3, above, and provide a schedule for actions to be taken within the next 12 months.	With annual pollution prevention report due February 28 each year

6. Anaerobically-Digestible Material

CMSA shall continue to implement its Standard Operating Procedures for processing anaerobically-digestible material that it collects from offsite sources. The Standard Operating Procedures shall be evaluated annually and updated as appropriate. Any updates shall be documented in CMSA's Annual Self-Monitoring Report. The Standard Operating Procedures shall address material handling, including unloading, screening, or other processing prior to anaerobic digestion; transportation; spill prevention; spill response; avoidance of the introduction of materials that could cause interference, pass through, or upset of the treatment processes; avoidance of prohibited material; vector control; odor control; operation and maintenance; and the disposition of any solid waste segregated from introduction to the digester. CMSA shall train its staff on the Standard Operating Procedures and maintain records for a minimum of three years for each load received, describing the hauler, waste type, and quantity received. In addition, CMSA shall maintain records for a minimum of three years for the disposition, location, and quantity of cumulative pre-digestion segregated solid waste hauled offsite.

ATTACHMENT A – DEFINITIONS

Arithmetic Mean (μ)

Also called the average, the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic mean is calculated as follows:

$$\text{Arithmetic mean} = \mu = \Sigma x / n \quad \text{where: } \Sigma x \text{ is the sum of the measured ambient water concentrations, and } n \text{ is the number of samples.}$$

Average Monthly Effluent Limitation (AMEL)

The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Effluent Limitation (AWEL)

The highest allowable average of daily discharges over a calendar week (Sunday through Saturday), calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Bioaccumulative

Taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

Carcinogenic

Known to cause cancer in living organisms.

Coefficient of Variation

Measure of data variability calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

Daily Discharge

Either: (1) the total mass of the constituent discharged over the calendar day (12:00 am through 11:59 pm) or any 24-hour period that reasonably represents a calendar day for purposes of sampling (as specified in the permit) for a constituent with limitations expressed in units of mass; or (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g., concentration).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period is considered the result for the calendar day in which the 24-hour period ends.

Detected, but Not Quantified (DNQ)

Sample result less than the RL, but greater than or equal to the laboratory's MDL. Sample results reported as DNQ are estimated concentrations.

Dilution Credit

Amount of dilution granted to a discharge in the calculation of a water quality-based effluent limitation, based on the allowance of a specified mixing zone. It is calculated from the dilution ratio or determined by conducting a mixing zone study or modeling the discharge and receiving water.

Effluent Concentration Allowance (ECA)

Value derived from the water quality criterion/objective, dilution credit, and ambient background concentration that is used, in conjunction with the CV for the effluent monitoring data, to calculate a long-term average (LTA) discharge concentration. The ECA has the same meaning as wasteload allocation (WLA) as used in U.S. EPA guidance (*Technical Support Document For Water Quality-based Toxics Control*, March 1991, second printing, EPA/505/2-90-001).

Enclosed Bay

Indentation along the coast that encloses an area of oceanic water within a distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

Estimated Chemical Concentration

Concentration that results from the confirmed detection of the substance below the ML value by the analytical method.

Estuaries

Waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars are considered estuaries. Estuarine waters are considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Water Code section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay rivers. Estuaries do not include inland surface waters or ocean waters.

Inland Surface Waters

All surface waters of the state that do not include the ocean, enclosed bays, or estuaries.

Instantaneous Maximum Effluent Limitation

Highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

Instantaneous Minimum Effluent Limitation

Lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

Maximum Daily Effluent Limitation (MDEL)

Highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Median

Middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements (n) is odd, then the median = $X_{(n+1)/2}$. If n is even, then the median = $(X_{n/2} + X_{(n/2)+1})/2$ (i.e., the midpoint between $n/2$ and $n/2+1$).

Method Detection Limit (MDL)

Minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 C.F.R. part 136, Attachment B, revised as of July 3, 1999.

Minimum Level (ML)

Concentration at which the entire analytical system gives a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

Mixing Zone

Limited volume of receiving water allocated for mixing with a wastewater discharge where water quality criteria can be exceeded without causing adverse effects to the overall water body.

Not Detected (ND)

Sample results less than the laboratory's MDL.

Persistent Pollutants

Substances for which degradation or decomposition in the environment is nonexistent or very slow.

Pollutant Minimization Program

Program of waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses. The goal of the Pollutant Minimization Program is to reduce all potential sources of a priority pollutant through pollutant minimization (control) strategies, including pollution prevention measures as appropriate, to maintain the effluent concentration at or below the water quality-based effluent limitation. Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. Cost effectiveness may be considered when establishing the requirements of a Pollutant Minimization Program. The completion and implementation of a Pollution Prevention Plan, if required pursuant to Water Code section 13263.3(d), is considered to fulfill Pollutant Minimization Program requirements.

Pollution Prevention

Any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product reformulation (as defined in Water Code section 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State Water Board or Regional Water Board.

Reporting Level (RL)

ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order, including an additional factor if applicable as discussed herein. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Regional Water Board either from SIP Appendix 4 in accordance with SIP section 2.4.2 or established in accordance with SIP section 2.4.3. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

Source of Drinking Water

Any water designated as having a municipal or domestic supply (MUN) beneficial use.

Standard Deviation (σ)

Measure of variability calculated as follows:

$$\sigma = (\sum[(x - \mu)^2]/(n - 1))^{0.5}$$

where:

x is the observed value;

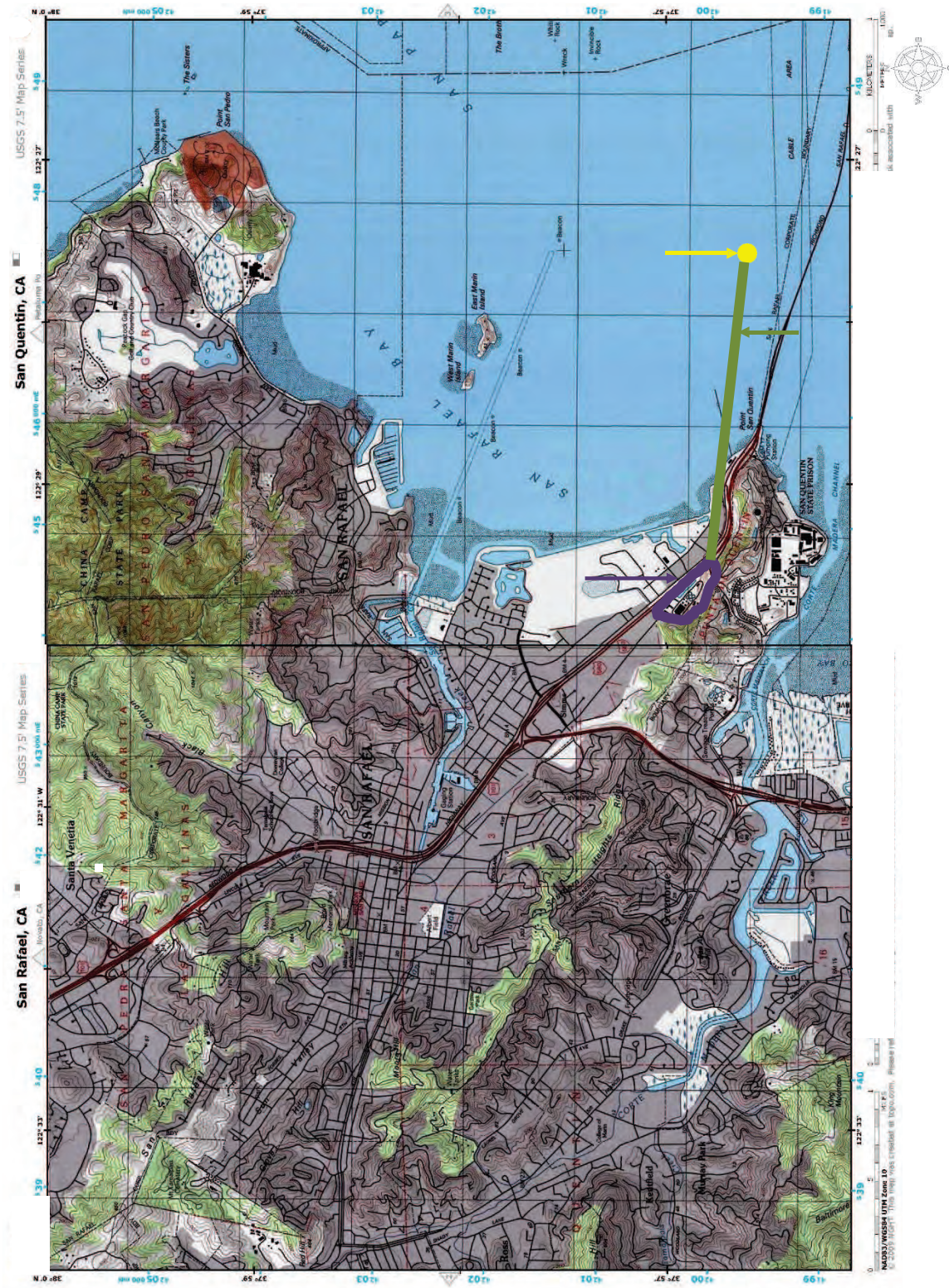
μ is the arithmetic mean of the observed values; and

n is the number of samples.

Toxicity Reduction Evaluation (TRE)

Study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate. A TIE is a set of procedures to identify the specific chemicals responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

ATTACHMENT B – FACILITY MAP



Central Marin Sanitation Agency Process Flow Diagram



Attachment C – Process Flow Diagram

ATTACHMENT D –STANDARD PROVISIONS

I. STANDARD PROVISIONS—PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the terms, requirements, and 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; or a combination thereof. (40 C.F.R. § 122.41(a); Wat. Code §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)
2. The Discharger shall comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants 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 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, U.S. EPA, 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 (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); Wat. Code, §§ 13267, 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 (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); Wat. Code, §§ 13267, 13383);
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); Wat. Code, §§ 13267, 13383);
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); Wat. Code, §§ 13267, 13383); 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. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); Wat. Code, 13267, 13383.)

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. **Approval.** 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 prior notice, if possible at least 10 days before the date of the bypass. The notice shall be sent to the Regional Water Board. As of December 21, 2020, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(i).)
- b. **Unanticipated bypass.** The Discharger shall submit a notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). The notice shall be sent to the Regional Water Board. As of December 21, 2020, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (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 must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. chapter 1, subchapter N. Monitoring must be conducted according to sufficiently sensitive test methods approved under 40 C.F.R. part 136 for the analysis of pollutants or pollutant parameters or required under 40 C.F.R. chapter 1, subchapter N. For the purposes of this paragraph, a method is sufficiently sensitive when:
 - 1.** The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter, and either (a) the method ML is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter, or (b) the method ML is above the applicable water quality criterion but the amount of the pollutant or pollutant parameter in a facility's discharge is

high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

2. The method has the lowest ML of the analytical methods approved under 40 C.F.R. part 136 or required under 40 C.F.R. chapter 1, subchapter N, for the measured pollutant or pollutant parameter.

In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. chapter 1, subchapter N, monitoring must be conducted according to a test procedure specified in this Order for such pollutants or pollutant parameters. (40 C.F.R. §§ 122.21(e)(3), 122.41(j)(4), 122.44(i)(1)(iv).)

IV. STANDARD PROVISIONS—RECORDS

- A. 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 the following:
 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) the 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 U.S. EPA within a reasonable time, any information which the Regional Water Board, State Water Board, or U.S. EPA 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 U.S. EPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, §§ 13267, 13383.)

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Standard Provisions—Reporting V.B.2, V.B.3, V.B.4, V.B.5, and V.B.6 below. (40 C.F.R. § 122.41(k).)
2. For a corporation, all permit applications shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (40 C.F.R. § 122.22(a)(1).)

For a partnership or sole proprietorship, all permit applications shall be signed by a general partner or the proprietor, respectively. (40 C.F.R. § 122.22(a)(2).)

For a municipality, State, federal, or other public agency, 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 U.S. EPA). (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 U.S. EPA 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 (40 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).)
6. Any person providing the electronic signature for documents described in Standard Provisions – V.B.1, V.B.2, or V.B.3 that are submitted electronically shall meet all relevant requirements of Standard Provisions – Reporting V.B, and shall ensure that all relevant requirements of 40 C.F.R. part 3 (Cross-Media Electronic Reporting) and 40 C.F.R. part 127 (NPDES Electronic Reporting Requirements) are met for that submission. (40 C.F.R § 122.22(e).)

C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program 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. As of December 21, 2016, all reports and forms must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J and comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (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 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. chapter 1, subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Regional Water Board or State 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 report shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The report 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.

For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (i.e., combined sewer overflow, sanitary sewer overflow, or bypass event), type of overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volume untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the event, and whether the noncompliance was related to wet weather.

As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events must be submitted to the Regional Water Board and must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J. The reports shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours:
 - 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 40 C.F.R. 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. (Alternatively, for an existing manufacturing, commercial, mining, or silvicultural discharge as referenced in 40 C.F.R. section 122.42(a), this notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under 40 C.F.R. 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 this Order's 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. For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in Standard Provision – Reporting V.E and the applicable required data in appendix A to 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (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 U.S. EPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

J. Initial Recipient for Electronic Reporting Data

The owner, operator, or duly authorized representative is required to electronically submit NPDES information specified in appendix A to 40 C.F.R. part 127 to the initial recipient defined in 40 C.F.R. section 127.2(b). U.S. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group [see 40 C.F.R. § 127.2(c)]. U.S. EPA will update and maintain this list. (40 C.F.R. § 122.41(l)(9).)

VI. STANDARD PROVISIONS—ENFORCEMENT

- A. The Regional Water Board is authorized to enforce the terms of this Order under several provisions of the Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.

VII. ADDITIONAL PROVISIONS—NOTIFICATION LEVELS

A. Non-Municipal Facilities

Existing manufacturing, commercial, mining, and silvicultural Dischargers shall notify the Regional Water Board as soon as they know or have reason to believe (40 C.F.R. § 122.42(a)):

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following “notification levels” (40 C.F.R. § 122.42(a)(1)):
 - a. 100 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(1)(i));
 - b. 200 µg/L for acrolein and acrylonitrile; 500 µg/L for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(1)(ii));
 - c. Five (5) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(1)(iii)); or
 - d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(1)(iv).)
2. That any activity has occurred or will occur that would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following “notification levels” (40 C.F.R. § 122.42(a)(2)):
 - a. 500 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(2)(i));
 - b. 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(2)(ii));
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(2)(iii)); or
 - d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(2)(iv).)

B. 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 CWA sections 301 or 306 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 this 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 E – MONITORING AND REPORTING PROGRAM (MRP)

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ATTACHMENT E – MONITORING AND REPORTING PROGRAM (MRP)

This MRP establishes monitoring, reporting, and recordkeeping requirements that implement federal and State laws and regulations.

I. GENERAL MONITORING PROVISIONS

- A.** CMSA shall comply with this MRP. The Executive Officer may amend this MRP pursuant to 40 C.F.R. sections 122.62, 122.63, and 124.5. If any discrepancies exist between this MRP and the “Regional Standard Provisions, and Monitoring and Reporting Requirements (Supplement to Attachment D) for NPDES Wastewater Discharge Permits” (Attachment G), this MRP shall prevail.
- B.** CMSA shall conduct all monitoring in accordance with Attachment D, section III, as supplemented by Attachment G. Equivalent test methods must be more sensitive than those specified in 40 C.F.R. part 136 and must be specified in this permit.
- C.** CMSA shall ensure that results of the Discharge Monitoring Report-Quality Assurance (DMR-QA) Study or most recent Water Pollution Performance Evaluation Study are submitted annually to the State Water Board at the following address:

State Water Resources Control Board
Quality Assurance Program Officer
Office of Information Management and Analysis
1001 I Street, Sacramento, CA 95814

II. MONITORING LOCATIONS

CMSA shall establish the following monitoring locations to demonstrate compliance with the effluent limitations, discharge specifications, and other requirements in this Order:

Table E-1. Monitoring Locations

Sampling Location Type	Monitoring Location Name	Monitoring Location Description ^[1]
Influent	INF-001	A point at the treatment plant headworks at which all waste tributary to the treatment system is present and preceding any phase of treatment. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-001	A point at the treatment plant between the point of discharge and the point at which all waste tributary to the outfall is present. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-002	A point at the treatment plant following dechlorination. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-002b	A point at the treatment plant at which all blended fully-treated and primary-treated waste tributary to the discharge outfall is present (may be the same location as Monitoring Location EFF-001 or EFF-002) <i>Latitude 37.950658 Longitude -122.496994</i>
Biosolids	BIO-001	Biosolids (treated sludge)

Footnote:

^[1] Latitude and longitude are approximate for administrative purposes.

III. INFLUENT MONITORING REQUIREMENTS

CMSA shall monitor treatment plant influent at Monitoring Location INF-001 as follows:

Table E-2. Influent Monitoring

Parameter	Units	Sample Type	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅) ^[2]	mg/L	C-24	1/Week
Total Suspended Solids (TSS) ^[2]	mg/L	C-24	1/Week
Cyanide, Total ^[3]	µg/L	Grab	1/Month

Unit Abbreviations:

MGD = million gallons per day
mg/L = milligrams per liter
µg/L = micrograms per liter

Sampling Types and Frequencies:

C-24 = 24-hour composite sample
Grab = grab sample
Continuous = measured continuously
Continuous/D = measured continuously, and recorded and reported daily
1/Week = once per week
1/Month = once per month

Footnote:

^[1] The following flow information shall be reported in monthly self-monitoring reports:

- daily average flow (MGD)
- total monthly flow (MG)

^[2] CBOD₅ and TSS samples shall be collected concurrently with effluent samples.

^[3] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

IV. EFFLUENT MONITORING REQUIREMENTS

A. Effluent Monitoring at Monitoring Location EFF-001

Except during blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-001 as follows:

Table E-3. Effluent Monitoring at Monitoring Location EFF-001

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Enterococcus Bacteria ^[3]	MPN/100mL ^[2]	Grab	1/Quarter
Total Coliform Bacteria ^[3]	MPN/100mL	Grab	3/Week

Unit Abbreviations:

MGD = million gallons per day
MPN/100 mL = most probable number per 100 milliliters

Sampling Types and Frequencies:

Continuous = measured continuously
Continuous/D = measured continuously, and recorded and reported daily
3/Week = three times per week
1/Quarter = once per quarter

Footnotes:

^[1] The following flow information shall be reported in monthly self-monitoring reports:

- daily average flow (MGD)
- total monthly flow (MG)

[2] Results may be reported as Colony Forming Units (CFU)/100 mL if the laboratory method used provides results in CFU/100 mL.

[3] Samples for enterococcus bacteria or total coliform bacteria must be dechlorinated immediately after collection.

B. Effluent Monitoring at Monitoring Location EFF-002

Except during blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-002 as follows:

Table E-4. Effluent Monitoring at Monitoring Location EFF-002

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
pH ^[1]	s.u.	Grab	1/Day or Continuous/D
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅)	mg/L	C-24	1/Week ^[2]
Total Suspended Solids (TSS)	mg/L	C-24	2/Week ^[2]
Total Residual Chlorine ^[3]	mg/L	Continuous	Continuous/D
Ammonia, Total	mg/L as N	C-24	1/Month
Copper, Total Recoverable	µg/L	C-24	1/Month
Cyanide, Total ^[4]	µg/L	Grab	1/Month
Acute Toxicity ^[5]	% survival	Continuous	1/Month
Chronic Toxicity ^[6]	TU _c	C-24	1/Quarter
Oil and Grease	mg/L	Grab	2/Year
Dioxin-TEQ	µg/L	Grab	2/Year

Unit Abbreviations:

MGD	=	million gallons per day
s.u.	=	standard units
mg/L	=	milligrams per liter
µg/L	=	micrograms per liter
TU _c	=	chronic toxicity units

Sampling Types and Frequencies:

C-24	=	24-hour Composite
Continuous	=	measured continuously
Continuous/D	=	measured continuously, and recorded and reported daily
1/Day	=	once per day
2/Week	=	two times per week
1/Month	=	once per month
1/Quarter	=	once per quarter
2/Year	=	twice per year

Footnotes:

[1] If pH is monitored continuously, the minimum and maximum for each day shall be reported in monthly self-monitoring reports.

[2] CBOD₅ and TSS samples shall be collected concurrently with influent samples at least once per week. Weekly CBOD₅ and TSS percent removal shall be reported for each month in accordance with section VIII of the Order.

[3] Effluent residual chlorine concentrations shall be monitored continuously or, at a minimum, every hour. CMSA shall describe all excursions of the chlorine limit in the transmittal letter of self-monitoring reports as required by Attachment G section V.C.1.a. If monitoring continuously, CMSA shall report through data upload to CIWQS, from discrete readings of the continuous monitoring every hour on the hour, the maximum for each day and any other discrete hourly reading that exceed the effluent limit, and, for the purpose of mandatory minimum penalties required by Water Code section 13385(i), compliance shall be based only on these discrete readings. CMSA shall retain continuous monitoring readings for at least three years. The Regional Water Board reserves the right to use all continuous monitoring data for discretionary enforcement.

CMSA may elect to use a continuous on-line monitoring system for measuring or determining that residual dechlorinating agent is present. This monitoring system may be used to prove that anomalous residual chlorine exceedances measured by on-line chlorine analyzers are false positives and are not valid total residual chlorine detections because it is chemically improbable to have chlorine

present in the presence of sodium bisulfite. If Regional Water Board staff finds convincing evidence that chlorine residual exceedances are false positives, the exceedances are not violations of this Order's total chlorine residual limit.

- [4] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.
- [5] Acute bioassay tests shall be performed in accordance with MRP section V.A.
- [6] Chronic toxicity tests shall be performed in accordance with MRP section V.B.

C. Effluent Monitoring at Monitoring Location EFF-002b

During blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-002b as follows:

Table E-5. Effluent Monitoring at Monitoring Location EFF-002b

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Volume of partially-treated wastewater	MG	Calculated	1/Blending Event
Duration of blending event ^[2]	hours	Calculated	1/Blending Event
pH ^[3]	s.u.	Grab or Continuous	1/Day or Continuous/D
Total Residual Chlorine ^[4]	mg/L	Grab or Continuous	Continuous/D
Total Suspended Solids (TSS)	mg/L	C-24	1/Day
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅)	mg/L	C-24	1/Year ^[5]
Enterococcus Bacteria	MPN/100mL ^[6]	Grab	1/Day
Total Coliform Bacteria	MPN/100mL	Grab	1/Day
Ammonia, Total	mg/L as N	C-24	1/Year ^[5]
Copper, Total Recoverable	µg/L	C-24	1/Year ^[5]
Cyanide, Total ^[7]	µg/L	Grab	1/Year ^[5]

Unit Abbreviations:

MGD = million gallons per day
 MG = million gallons
 s.u. = standard units
 mg/L = milligrams per liter
 µg/L = micrograms per liter
 MPN/100 mL = most probable number per 100 milliliters

Sampling Types and Frequencies:

1/Blending Event = once per blending event
 C-24 = 24-hour Composite
 Continuous = measured continuously
 Continuous/D = measured continuously, and recorded and reported daily
 1/Day = once per day
 1/Year = once per year

Footnotes:

- [1] The following flow information shall be reported in monthly self-monitoring reports:
- daily average flow (MGD)
 - maximum daily flow (MGD)
- [2] For each blending event, report the date and time each event starts and ends.
- [3] If pH is monitored continuously, the minimum and maximum for each day shall be reported in monthly self-monitoring reports.
- [4] Effluent residual chlorine concentrations shall be monitored continuously or, at a minimum, every hour. CMSA shall describe all excursions of the chlorine limit in the transmittal letter of self-monitoring reports as required by Attachment G section V.C.1.a. If monitoring continuously, CMSA shall report through data upload to CIWQS, from discrete readings of the continuous monitoring every hour on the hour, the maximum for each day and any other discrete hourly reading that exceed the effluent limit, and, for the purpose of mandatory minimum penalties required by Water Code section 13385(i), compliance shall be based only on these discrete

readings. CMSA shall retain continuous monitoring readings for at least three years. The Regional Water Board reserves the right to use all continuous monitoring data for discretionary enforcement.

CMSA may elect to use a continuous on-line monitoring system for measuring or determining that residual dechlorinating agent is present. This monitoring system may be used to prove that anomalous residual chlorine exceedances measured by on-line chlorine analyzers are false positives and are not valid total residual chlorine detections because it is chemically improbable to have chlorine present in the presence of sodium bisulfite. If Regional Water Board staff finds convincing evidence that chlorine residual exceedances are false positives, the exceedances are not violations of this Order's total chlorine residual limit.

- [5] If a TSS sample collected on the same day exceeds 45 mg/L, the frequency shall be once per day.
- [6] Results may be reported as Colony Forming Units (CFU)/100 mL if the laboratory method used provides results in CFU/100 mL.
- [7] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

V. TOXICITY TESTING REQUIREMENTS

A. Acute Toxicity

1. Compliance with the acute toxicity effluent limitations shall be evaluated at Monitoring Location EFF-002 by measuring survival of test organisms exposed to 96-hour continuous flow-through bioassays.
2. Test organisms shall be rainbow trout (*Oncorhynchus mykiss*). Alternatively, the Executive Officer may specify a more sensitive organism or, if testing a particular organism proves unworkable, the most sensitive organism available.
3. All bioassays shall be performed according to the most up-to-date protocols in 40 C.F.R. part 136, currently *Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms*, 5th Edition (EPA-821-R-02-012). If these protocols prove unworkable, the Executive Officer and the Environmental Laboratory Accreditation Program may grant exceptions in writing upon CMSA's request with justification.
4. If CMSA demonstrates that specific identifiable substances in the discharge are rapidly rendered harmless upon discharge to the receiving water, compliance with the acute toxicity limit may be determined after test samples are adjusted to remove the influence of those substances. Written acknowledgement that the Executive Officer concurs with CMSA's demonstration and that the adjustment will not remove the influence of other substances must be obtained prior to any such adjustment. CMSA may manually adjust the pH of acute toxicity samples prior to performing bioassays to minimize ammonia toxicity interference.
5. Bioassay water monitoring shall include, on a daily basis, pH, dissolved oxygen, ammonia (if toxicity is observed), temperature, hardness, and alkalinity. These results shall be reported. If final or intermediate results of an acute bioassay test indicate a violation or threatened violation (e.g., the percentage of surviving test organisms is less than 70 percent), CMSA shall initiate a new test as soon as practical and shall investigate the cause of the mortalities and report its findings in the next self-monitoring report. CMSA shall repeat the test until a test fish survival rate of 90 percent or greater is observed. If the control fish survival rate is less than 90 percent, the bioassay test shall be restarted with new fish and shall continue as soon as practical until an acceptable test is completed (i.e., control fish survival rate is 90 percent or greater).

B. Chronic Toxicity

1. Monitoring Requirements

- a. **Sampling.** CMSA shall collect 24-hour composite samples of the effluent at Monitoring Location EFF-002 for critical life stage toxicity testing as indicated below. For toxicity tests requiring renewals, 24-hour composite samples shall be collected on consecutive or alternating days.
- b. **Test Species.** The test species shall be mysid shrimp (*Americamysis bahia*) unless a more sensitive species is identified. If using this species proves unworkable, the Executive Officer may specify a different species in writing upon CMSA's request with justification. CMSA shall conduct a chronic toxicity screening test as described in Appendix E-1, or as described in applicable State Water Board plan provisions that become effective after adoption of this Order, following any significant change in the nature of the effluent. If there is no significant change in the nature of the effluent, CMSA shall conduct a screening test and submit the results with its application for permit reissuance. Upon completion of the chronic toxicity screening, CMSA shall use the most sensitive species to conduct subsequent monitoring.
- c. **Frequency.** Chronic toxicity monitoring shall be as specified below:
 - i. CMSA shall monitor routinely once per quarter.
 - ii. CMSA shall accelerate monitoring to monthly after exceeding a three-sample median of 10 TUC or a single-sample maximum of 20 TUC. Based on the TUC results, the Executive Officer may specify a different frequency for accelerated monitoring to ensure that accelerated monitoring provides useful information.
 - iii. CMSA shall return to routine monitoring if accelerated monitoring does not exceed the triggers in ii, above.
 - iv. If accelerated monitoring confirms consistent toxicity in excess of the triggers in ii, above, CMSA shall continue accelerated monitoring and initiate toxicity reduction evaluation (TRE) procedures in accordance with section V.B.3, below.
 - v. CMSA shall return to routine monitoring after implementing appropriate elements of the TRE and either the toxicity drops below the triggers in ii, above, or, based on the TRE results, the Executive Officer determines that accelerated monitoring would no longer provide useful information.

Monitoring conducted pursuant to a TRE shall satisfy the requirements for routine and accelerated monitoring while the TRE is underway.

- d. **Methodology.** Sample collection, handling, and preservation shall be in accordance with U.S. EPA protocols. In addition, bioassays shall be conducted in compliance with the most recently promulgated test methods, as shown in Appendix E-2. These are *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, currently third edition (EPA-821-R-02-014). If these

protocols prove unworkable, the Executive Officer and the Environmental Laboratory Accreditation Program may grant exceptions in writing upon CMSA's request with justification.

If CMSA demonstrates that specific identifiable substances in the discharge are rapidly rendered harmless upon discharge to the receiving water, compliance with the chronic toxicity trigger may be determined after test samples are adjusted to remove the influence of those substances. Written acknowledgement that the Executive Officer concurs with CMSA's demonstration and that the adjustment will not remove the influence of other substances must be obtained prior to any such adjustment.

- e. Dilution Series.** CMSA shall conduct tests at 40%, 20%, 10%, 5%, and 2.5%. The "%" represents percent effluent as discharged. Test sample pH may be controlled to the level of the effluent sample as received prior to being salted up.

2. Reporting Requirements

- a.** CMSA shall provide toxicity test results with self-monitoring reports and shall include the following, at a minimum, for each test:
 - i.** Sample date
 - ii.** Test initiation date
 - iii.** Test species
 - iv.** End point values for each dilution (e.g., number of young, growth rate, percent survival)
 - v.** No Observable Effect Level (NOEL) values in percent effluent. The NOEL shall equal the IC₂₅ or EC₂₅ (see MRP Appendix E-1). If the IC₂₅ or EC₂₅ cannot be statistically determined, the NOEL shall equal to the No Observable Effect Concentration (NOEC) derived using hypothesis testing. The NOEC is the maximum percent effluent concentration that causes no observable effect on test organisms based on a critical life stage toxicity test.
 - vi.** IC₁₅, IC₂₅, IC₄₀, and IC₅₀ values (or EC₁₅, EC₂₅ ... etc.) as percent effluent
 - vii.** TU_c values (100/NOEL) and upper and lower confidence intervals
 - viii.** Mean percent mortality (±s.d.) after 96 hours in 100% effluent (if applicable)
 - ix.** IC₅₀ or EC₅₀ values for reference toxicant tests
 - x.** Available water quality measurements for each test (pH, dissolved oxygen, temperature, conductivity, hardness, salinity, ammonia)
- b.** CMSA shall provide the results of the most recent three chronic toxicity tests and the three-sample median in self-monitoring reports at TU_c's.

3. Toxicity Reduction Evaluation (TRE)

- a.** CMSA shall prepare a generic TRE work plan within 90 days of the effective date of this Order to be ready to respond to toxicity events. CMSA shall review and update the work plan as necessary so that it remains current and applicable to the discharge and discharge facilities.
- b.** Within 30 days of exceeding a chronic toxicity trigger in section V.B.1.c.ii, CMSA shall submit a TRE work plan, which shall be the generic work plan revised as appropriate for this toxicity event after consideration of available discharge data.
- c.** Within 30 days of completing an accelerated monitoring test observed to exceed a trigger in section V.B.1.c.ii, CMSA shall initiate a TRE in accordance with a TRE work plan that incorporates any and all Executive Officer comments.
- d.** The TRE shall be specific to the discharge and be prepared in accordance with current technical guidance and reference materials, including U.S. EPA guidance materials. The TRE shall be conducted as a tiered evaluation process, as summarized below:
 - i.** Tier 1 shall consist of basic data collection (routine and accelerated monitoring).
 - ii.** Tier 2 shall consist of evaluation of optimization of the treatment process, including operation practices and in-plant process chemicals.
 - iii.** Tier 3 shall consist of a toxicity identification evaluation (TIE).
 - iv.** Tier 4 shall consist of a toxicity source evaluation.
 - v.** Tier 5 shall consist of a toxicity control evaluation, including options for modifications of in-plant treatment processes.
 - vi.** Tier 6 shall consist of implementation of selected toxicity control measures, and follow-up monitoring and confirmation of implementation success.
- e.** The TIE or TRE may be ended at any stage if monitoring finds there is no longer consistent toxicity (i.e., compliance with the triggers in section V.B.1.c.ii).
- f.** The objective of the TIE shall be to identify the substance or combination of substances causing the observed toxicity. CMSA shall employ all reasonable efforts using currently available TIE methodologies.
- g.** As toxic substances are identified or characterized, CMSA shall continue the TRE by determining the sources and evaluating alternative strategies for reducing or eliminating the toxic substances from the discharge. CMSA shall take all reasonable steps to reduce toxicity to levels below the chronic toxicity trigger.
- h.** Many recommended TRE elements parallel required or recommended efforts related to source control, pollution prevention, and stormwater control programs. TRE efforts should be coordinated with such efforts. To prevent duplication of efforts, evidence of

complying with requirements or recommended efforts of such programs may be acceptable to demonstrate compliance with TRE requirements.

VI. RECEIVING WATER MONITORING REQUIREMENTS

CMSA shall continue to participate in the Regional Monitoring Program, which collects data on pollutants and toxicity in San Francisco Bay water, sediment, and biota.

VII. PRETREATMENT AND BIOSOLIDS MONITORING REQUIREMENTS

CMSA shall comply with the pretreatment requirements for influent at Monitoring Location INF-001, effluent at Monitoring Location EFF-002, and biosolids at Monitoring Location BIO-001. CMSA shall report summaries of analytical results in annual and semi-annual pretreatment reports in accordance with Attachment H. If instructed to do so, CMSA shall report biosolids analytical results with its electronic self-monitoring reports by manual entry, by EDF/CDF, or as an attached file.

Table E-6. Pretreatment and Biosolids Monitoring

Constituents	Sampling Frequency			Sample Type	
	Influent INF-001 ^[6]	Effluent EFF-002 ^[6]	Biosolids BIO-001 ^[7]	Influent and Effluent	Biosolids ^[7]
VOC ^[1]	2/Year	2/Year	2/Year	Grab	Grab
BNA ^[2]	2/Year	2/Year	2/Year	Grab	Grab
Metals and Other Elements ^[3]	1/Month	1/Month	2/Year	C-24 ^[8]	Grab
Hexavalent Chromium ^[4]	1/Month	1/Month	2/Year	Grab	Grab
Mercury ^[5]	1/Month	1/Month	2/Year	Grab or C-24 ^[8]	Grab
Cyanide, Total ^[9]	1/Month	1/Month	2/Year	Grab	Grab

Sample Types:

C-24 = 24-hour composite

Grab = grab sample

Sampling Frequencies:

1/Month = once per month

2/Year = twice per year

Footnotes:

^[1] VOC: volatile organic compounds

^[2] BNA: base/neutrals and acid extractable organic compounds

^[3] Metals and other elements are arsenic, cadmium, copper, lead, nickel, selenium, silver, and zinc.

^[4] CMSA may choose to monitor and report total chromium instead of hexavalent chromium. Samples collected for total chromium measurements may be 24-hour composites.

^[5] CMSA shall use ultra-clean sampling (U.S. EPA Method 1669) and ultra-clean analytical methods (U.S. EPA Method 1631) for mercury monitoring, except when levels are expected to exceed 10 µg/L, in which case use of ultra-clean sampling and analysis shall be optional.

^[6] Influent and effluent monitoring conducted in accordance with MRP Tables E-2 and E-3 may be used to satisfy these pretreatment monitoring requirements.

^[7] The biosolids sample shall be a composite of the biosolids to be disposed. Biosolids collection and monitoring shall comply with the requirements specified in Attachment H, Appendix H-4.

^[8] If an automatic compositor is used, CMSA shall obtain 24-hour composite samples through flow-proportioned composite sampling. Alternatively, 24-hour composite samples may consist of discrete grab samples combined (volumetrically flow-weighted) prior to analysis or mathematically flow-weighted.

^[9] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

VIII. REPORTING REQUIREMENTS

A. General Monitoring and Reporting Requirements

CMSA shall comply with all Standard Provisions (Attachments D and G) related to monitoring, reporting, and recordkeeping, with modifications shown in MRP sections IX and X, below.

B. Self-Monitoring Reports (SMRs)

1. **SMR Format.** CMSA shall electronically submit SMRs using the State Water Board's California Integrated Water Quality System (CIWQS) website (http://www.waterboards.ca.gov/water_issues/programs/ciwqs). The CIWQS website will provide additional information for SMR submittal in the event of a planned service interruption for electronic submittal.
2. **SMR Due Dates and Contents.** CMSA shall submit SMRs by the due dates, and with the contents, specified below:
 - a. **Monthly SMRs.** Monthly SMRs shall be due 30 days after the end of each calendar month, covering that calendar month. The monthly SMR shall contain the applicable items described in sections V.B and V.C of both Attachments D and G of this Order. See Provision VI.C.2 (Effluent Characterization Study and Report) of this Order for information that must also be reported with monthly SMRs.

Monthly SMRs shall include all new monitoring results obtained since the last SMR was submitted. If CMSA monitors any pollutant more frequently than required by this Order, CMSA shall include the results of such monitoring in the calculations and reporting for the SMR.

- b. **Annual SMR.** Annual SMRs shall be due February 1 each year, covering the previous calendar year. The annual SMR shall contain the items described in sections V.C.1.f of Attachment G. See also Provision VI.C.2 (Effluent Characterization Study and Report), Provision VI.C.5.b (Blending Reduction Tasks), and Provision VI.C.6 (Anaerobically Digestible Material) of the Order for requirements to submit reports with the annual SMR.

3. **Specifications for Submitting SMRs to CIWQS.** CMSA shall submit analytical results and other information using one of the following methods:

Table E-7. CIWQS Reporting

Parameter	Method of Reporting	
	EDF/CDF data upload or manual entry	Attached File
All parameters identified in influent, effluent, and receiving water monitoring tables (except Dissolved Oxygen and Temperature)	Required for all results	
Dissolved Oxygen Temperature	Required for monthly maximum and minimum results only ^[1]	CMSA may use this method for all results or keep records

Parameter		Method of Reporting	
		EDF/CDF data upload or manual entry	Attached File
Antimony Arsenic Beryllium Cadmium Chromium Copper Cyanide Lead Mercury Nickel Selenium	Silver Thallium Zinc Dioxins & Furans (by U.S. EPA Method 1613) Other Pollutants (by U.S. EPA methods 601, 602, 608, 610, 614, 624, and 625)	Required for all results ^[2]	
Volume and Duration of Blended Discharge		Required for all blended effluent discharges	
Analytical Method		Not required (CMSA may select "data unavailable") ^[1]	
Collection Time Analysis Time		Not required (CMSA may select "0:00") ^[1]	

Footnotes:

- ^[1] CMSA shall continue to monitor at the minimum frequency specified in this MRP, keep records of the measurements, and make the records available upon request.
- ^[2] These parameters require EDF/CDF data upload or manual entry regardless of whether monitoring is required by this MRP or other provisions of this Order (except for biosolids, sludge, or ash provisions).

CMSA shall arrange all reported data in a tabular format and summarize the data to clearly illustrate whether the treatment plant is operating in compliance with the effluent limitations. CMSA is not required to duplicate the submittal of data entered in a tabular format within CIWQS. When electronic submittal of data is required and CIWQS does not provide for entry into a tabular format, CMSA shall electronically submit the data in a tabular format as an attachment.

4. Monitoring Periods. Monitoring periods for all required monitoring shall be as set forth below unless otherwise specified:

Table E-8. Monitoring Periods

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period
Continuous	Order effective date	All times
1/Day	Order effective date	Every 24-hour period, beginning at midnight and continuing through 11:59 p.m. (or any 24-hour period that reasonably represents a calendar day for purposes of sampling)
1/Week, or 2/Week	First Sunday following or on Order effective date	Sunday through Saturday
1/Month	First day of calendar month following or on permit effective date	First day of calendar month through last day of calendar month
1/Quarter	Closest January 1, April 1, July 1, October 1 before or after permit effective date ^[1]	January 1 through March 31 April 1 through June 30 July 1 through September 30 October 1 through December 31

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period
1/Year	Closest January 1 before or after permit effective date ^[1]	January 1 through December 31
2/Year	Closest of January 1 or July 1 before or after permit effective date ^[1]	January 1 through June 30 July 1 through December 31

Footnote:

^[1] Monitoring performed during the previous order term may be used to satisfy monitoring required by this Order.

5. RL and MDL Reporting. CMSA shall report with each sample result the Reporting Level (RL) and Method Detection Limit (MDL) as determined by the procedure in 40 C.F.R. part 136. CMSA shall report the results of analytical determinations for the presence of chemical constituents in a sample using the following reporting protocols:

- a. Sample results greater than or equal to the RL shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample).
- b. Sample results less than the RL, but greater than or equal to the laboratory's MDL, shall be reported as "Detected, but Not Quantified," or DNQ. The estimated chemical concentration of the sample shall also be reported.

For purposes of data collection, the laboratory shall write the estimated chemical concentration next to DNQ. The laboratory may, if such information is available, include numerical estimates of the data quality for the reported result. Numerical estimates of data quality may be percent accuracy (+/- a percentage of the reported value), numerical ranges (low to high), or any other means the laboratory considers appropriate.

- c. Sample results less than the laboratory's MDL shall be reported as "Not Detected", or ND.
- d. CMSA shall instruct laboratories to establish calibration standards so that the minimum level (ML) value (or its equivalent if there is differential treatment of samples relative to calibration standards) is the lowest calibration standard. At no time is CMSA to use analytical data derived from extrapolation beyond the lowest point of the calibration curve.

6. Compliance Determination. Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined above and in the Fact Sheet and Attachments A, D, and G. For purposes of reporting and administrative enforcement by the Regional Water Board and State Water Board, CMSA shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the RL.

C. Discharge Monitoring Reports (DMRs)

DMRs are U.S. EPA reporting requirements. CMSA shall electronically certify and submit DMRs together with SMRs using the Electronic Self-Monitoring Reports module eSMR 2.5 or the latest upgraded version. Electronic DMR submittal shall be in addition to electronic SMR submittal. Information about electronic DMR submittal is available at the DMR website at http://www.waterboards.ca.gov/water_issues/programs/discharge_monitoring.

**APPENDIX E-1
CHRONIC TOXICITY
DEFINITION OF TERMS AND SCREENING PHASE REQUIREMENTS**

I. Definition of Terms

- A. No observed effect level (NOEL) for compliance determination is equal to IC₂₅ or EC₂₅. If the IC₂₅ or EC₂₅ cannot be statistically determined, the NOEL shall be equal to the NOEC derived using hypothesis testing.
- B. Effective concentration (EC) is a point estimate of the toxicant concentration that would cause an adverse effect on a quantal, “all or nothing,” response (such as death, immobilization, or serious incapacitation) in a given percent of the test organisms. If the effect is death or immobility, the term lethal concentration (LC) may be used. EC values may be calculated using point estimation techniques such as probit, logit, and Spearman-Kärber. EC₂₅ is the concentration of toxicant (in percent effluent) that causes a response in 25 percent of the test organisms.
- C. Inhibition concentration (IC) is a point estimate of the toxicant concentration that would cause a given percent reduction in a nonlethal, nonquantal biological measurement, such as growth. For example, an IC₂₅ is the estimated concentration of toxicant that would cause a 25 percent reduction in average young per female or growth. IC values may be calculated using a linear interpolation method such as U.S. EPA's Bootstrap Procedure.
- D. No observed effect concentration (NOEC) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specific time of observation. It is determined using hypothesis testing.

II. Chronic Toxicity Screening Phase Requirements

- A. CMSA shall perform screening phase monitoring:
 - 1. Subsequent to any significant change in the nature of the effluent discharged through changes in sources or treatment, except those changes resulting from reductions in pollutant concentrations attributable to source control efforts, or
 - 2. Prior to permit reissuance. Screening phase monitoring data shall be included in the NPDES permit application for reissuance. The information shall be as recent as possible, but may be based on screening phase monitoring conducted within five years before the permit expiration date.
- B. Design of the screening phase shall, at a minimum, consist of the following elements:
 - 1. Use of test species specified in Appendix E-2, attached, and use of the protocols referenced in those tables.

2. Two stages:
 - a. Stage 1 shall consist of a minimum of one battery of tests conducted concurrently. Selection of the type of test species and minimum number of tests shall be based on Appendix E-2 (attached).
 - b. Stage 2 shall consist of a minimum of two test batteries conducted at a monthly frequency using the three most sensitive species based on the Stage 1 test results.
 3. Appropriate controls.
 4. Concurrent reference toxicant tests.
 5. Dilution series of 100%, 50%, 25%, 12.5%, 6.25%, and 0%, where “%” is percent effluent as discharged, or as otherwise approved by the Executive Officer if different dilution ratios are needed to reflect discharge conditions.
- C. CMSA shall submit a screening phase proposal. The proposal shall address each of the elements listed above. If within 30 days, the Executive Officer does not comment, CMSA shall commence with screening phase monitoring.

APPENDIX E-2 SUMMARY OF TOXICITY TEST SPECIES REQUIREMENTS

Table AE-1. Critical Life Stage Toxicity Tests for Estuarine Waters

Species	(Scientific Name)	Effect	Test Duration	Reference
Alga	<i>(Skeletonema costatum)</i> <i>(Thalassiosira pseudonana)</i>	Growth rate	4 days	1
Red alga	<i>(Champia parvula)</i>	Number of cystocarps	7–9 days	3
Giant kelp	<i>(Macrocystis pyrifera)</i>	Percent germination; germ tube length	48 hours	2
Abalone	<i>(Haliotis rufescens)</i>	Abnormal shell development	48 hours	2
Oyster Mussel	<i>(Crassostrea gigas)</i> <i>(Mytilus edulis)</i>	Abnormal shell development; percent survival	48 hours	2
Echinoderms - Urchins Sand dollar	<i>(Strongylocentrotus</i> <i>purpuratus, S. franciscanus)</i> <i>(Dendraster excentricus)</i>	Percent fertilization or larval development	1 hour or 72 hours	2
Shrimp	<i>(Americamysis bahia)</i>	Percent survival; growth	7 days	3
Shrimp	<i>(Holmesimysis costata)</i>	Percent survival; growth	7 days	2
Topsmelt	<i>(Atherinops affinis)</i>	Percent survival; growth	7 days	2
Silversides	<i>(Menidia beryllina)</i>	Larval growth rate; percent survival	7 days	3

Toxicity Test References:

1. American Society for Testing Materials (ASTM). 1990. Standard Guide for Conducting Static 96-Hour Toxicity Tests with Microalgae. Procedure E 1218-90. ASTM, Philadelphia, PA.
2. Short-term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine and Estuarine Organisms. EPA/600/R-95/136. August 1995.
3. Short-term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to Marine and Estuarine Organisms. EPA/821/R-02/014. October 2002.

Table AE-2. Critical Life Stage Toxicity Tests for Fresh Waters

Species	(Scientific Name)	Effect	Test Duration	Reference
Fathead minnow	<i>(Pimephales promelas)</i>	Survival; growth rate	7 days	4
Water flea	<i>(Ceriodaphnia dubia)</i>	Survival; number of young	7 days	4
Alga	<i>(Selenastrum capricornutum)</i>	Final cell density	4 days	4

Toxicity Test Reference:

4. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, fourth Edition Chronic manual (EPA-821-R-02-013, October 2002).

Table AE-3. Toxicity Test Requirements for Stage One Screening Phase

Requirements	Receiving Water Characteristics		
	Discharges to Coast	Discharges to San Francisco Bay ^[1]	
	Ocean	Marine/Estuarine	Freshwater
Taxonomic diversity	1 plant 1 invertebrate 1 fish	1 plant 1 invertebrate 1 fish	1 plant 1 invertebrate 1 fish
Number of tests of each salinity type: Freshwater ^[2]	0	1 or 2	3
Marine/Estuarine	4	3 or 4	0
Total number of tests	4	5	3

Footnotes:

- ^[1] (a) Marine refers to receiving water salinities greater than 10 part per thousand (ppt) at least 95 percent of the time during a normal water year.
 (b) Freshwater refers to receiving water with salinities less than 1 ppt at least 95 percent of the time during a normal water year.
 (c) Estuarine refers to receiving water salinities that fall between those of marine and freshwater, as described above.
- ^[2] The freshwater species may be substituted with marine species if:
 - (a) The salinity of the effluent is above 1 ppt greater than 95 percent of the time, or
 - (b) The ionic strength (TDS or conductivity) of the effluent at the test concentration used to determine compliance is documented to be toxic to the test species.

ATTACHMENT F - FACT SHEET

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ATTACHMENT F – FACT SHEET

This Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order. As described in section II.B of the Order, the Regional Water Board incorporates this Fact Sheet as findings supporting the issuance of the Order.

I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility:

Table F-1. Facility Information

WDID	2 215116001
CIWQS Place ID	213889
Dischargers	Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County
Facility Names	Central Marin Sanitation Agency Wastewater Treatment Plant, San Rafael Sanitation District wastewater collection system, Sanitary District No. 1 of Marin County wastewater collection system, and Sanitary District No. 2 of Marin County wastewater collection system
Treatment Plant Address	1301 Andersen Drive San Rafael, CA 94901 Marin County
Treatment Plant Contact, Title, Phone	Chris Finton, Treatment Plant Manager, 415-459-1455
Person Authorized to Sign and Submit Reports	Same as treatment plant contact
Mailing Address	1301 Andersen Drive, San Rafael, CA 94901
Billing Address	Same as mailing address
Facility Type	Publicly-owned treatment works (POTW)
Major or Minor Facility	Major
Threat to Water Quality	2
Complexity	A
Pretreatment Program	Yes
Reclamation Requirements	None
Mercury and PCBs Requirements	NPDES Permit No. CA0038849
Nutrients Requirements	NPDES Permit No. CA0038873
Facility Permitted Flow	10 million gallons per day (MGD) – average dry weather design flow
Facility Design Flow	30 MGD – secondary capacity
Watershed	San Francisco Bay
Receiving Water	Central San Francisco Bay
Receiving Water Type	Estuarine
Collection System Agency Addresses and Contacts	- San Rafael Sanitation District 111 Morphew Street, San Rafael 94901 Doris Toy, Doris.Toy@cityofsanrafael.org, 415-485-3484 - Sanitary District No. 1 of Marin County (a.k.a. Ross Valley Sanitary District) 2960 Kerner Boulevard, San Rafael 94901 Greg Norby, gnorby@rvsd.org, 415-259-2949 - Sanitary District No. 2 of Marin County (subsidiary of Town of Corte Madera) 300 Tamalpais Drive, Corte Madera 94925 David Bracken, dbracken@tcmmail.org, 415-971-5050

- A.** Central Marin Sanitation Agency (CMSA) owns and operates the Central Marin Sanitation Agency Wastewater Treatment Plant. CMSA was formed in 1979 by a Joint Exercise of Powers Agreement by three of the collection agencies that route waste to the treatment plant: the San Rafael Sanitation District, Sanitary District No. 1 of Marin County (also known as Ross Valley Sanitary District), and Sanitary District No. 2 of Marin County (a subsidiary of the Town of Corte Madera). The Joint Exercise of Powers Agreement also includes the City of Larkspur, but Larkspur does not own or operate its collection system. Its collection system is owned and operated by Sanitary District No.1 of Marin County. CMSA is governed by a board that includes the three satellite collection system agencies and the City of Larkspur. CMSA does not have authority over any of the collection system agencies in the Joint Exercise of Powers Agreement that governs CMSA.

CMSA owns and operates the treatment plant. Each collection system agency owns and operates a portion of the collection system, including the force mains. The treatment plant provides secondary treatment of wastewater collected from its service area and discharges to Central San Francisco Bay.

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 Dischargers herein.

- B.** CMSA, not the collection system agencies, has been regulated pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038628. CMSA was previously subject to Order No. R2-2012-0051 (previous order). Order No. R2-2016-0008 amended Order No. R2-2012-0051 to provide for an alternate monitoring program and remains in effect with this Order. CMSA filed a Report of Waste Discharge and submitted an application for reissuance of its Waste Discharge Requirements (WDRs) and NPDES permit on January 31, 2017. This Order adds the collection system agencies as dischargers under NPDES Permit No. CA0038628.

The Dischargers are authorized to discharge subject to WDRs in this Order at the discharge location described in Table 2 of this Order. Regulations at 40 C.F.R. section 122.46 limit the duration of NPDES permits to a fixed term not to exceed five years. Accordingly, Table 3 of this Order limits the effective period for the discharge authorization. Pursuant to California Code of Regulations, title 23, section 2235.4, the terms and conditions of an expired permit are automatically continued pending reissuance of the permit if the Dischargers comply with all federal NPDES regulations for continuation of expired permits.

- C.** The discharge is also regulated under NPDES Permit Nos. CA0038849 and CA0038873, which establish requirements on mercury, polychlorinated biphenyls (PCBs), and nutrients from wastewater discharges to San Francisco Bay. This Order does not affect those permits.
- D.** When applicable, State law requires dischargers to file a petition with the State Water Resources Control Board (State Water Board), Division of Water Rights, and receive approval for any change in the point of discharge, place of use, or purpose of use of treated wastewater that decreases the flow in any portion of a watercourse. The State Water Board retains separate jurisdictional authority to enforce such requirements under Water Code section 1211. This is not an NPDES permit requirement.

II. FACILITY DESCRIPTION

A. Wastewater and Biosolids Treatment

- 1. Location and Service Area.** The wastewater treatment plant is located at 1301 Andersen Drive in San Rafael. It provides secondary treatment of domestic, commercial, and industrial wastewater for the City of San Rafael and its surrounding communities, including San Quentin Prison. CMSA regulates two significant industrial users that discharge to the Facility through its pretreatment program. The Facility serves a population of about 105,000. Attachment B shows a map of the area around the Facility.
- 2. Wastewater Treatment.** CMSA treats and discharges about 6.4 MGD during dry weather. CMSA treats its wastewater by screening, grit removal, primary clarification, secondary biological treatment, secondary clarification, disinfection by chlorine, and dechlorination by sodium bisulfite. The treatment plant uses an onsite storage basin to store up to 6.2-million gallons of effluent during wet weather diversions of the secondary treatment units. When flows subside, the stored wastewater is either sent to the chlorine disinfection units for discharge or routed back to the headworks for re-treatment (if needed). During wet weather periods, primary-treated wastewater above 30 MGD is routed around the secondary treatment processes and blended with the secondary-treated wastewater prior to disinfection. The process flow diagram is shown in Attachment C.
- 3. Collection System.** CMSA does not own any portion of the collection system. It operates the force mains, pump stations for Sanitary District No. 2 of Marin County, and the wastewater collection system for the San Quentin Village Sewer Maintenance District. All other portions of the collection system are owned, operated, and maintained by the five collection system agencies that route sewage to the treatment plant.

The San Rafael Sanitation District owns and operates about 150 miles of sewer lines serving the central and southern portion of the City of San Rafael. Sanitary District No. 1 of Marin County owns and operates about 200 miles of sewer lines serving Larkspur and nearby unincorporated areas (Kentfield, Greenbrae, Fairfax, Ross, and San Anselmo). Sanitary District No. 2 of Marin County owns and operates about 45 miles of sewer lines serving the town of Corte Madera and unincorporated areas of the Tiburon peninsula. The California Department of Corrections and the San Quentin Village Sewer Maintenance District (County of Marin) own and operate about 1.8 miles of sewer lines that serve San Quentin Prison and San Quentin Village. The prison is less than one mile from the treatment plant. The California Department of Corrections and the San Quentin Village Sewer Maintenance District collection systems contribute less than five percent of the total flow to the treatment plant.

This Order requires the three largest collection system agencies (Marin Sanitary Districts 1 & 2 and the San Rafael Sanitation District) to implement tasks to reduce infiltration into their collection systems (Provisions VI.C.5.a) and CMSA to assist the collection system agencies (Provision VI.C.5.b). With the exception of the collection system serving San Quentin Prison and San Quentin Village, the collection systems are covered by the statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order Nos. 2006-0003-DWQ and WQ-2013-0058-EXEC).

4. **Recycled Water.** When requested by the City of Larkspur, CMSA provides about 1.5 million gallons of recycled water annually to Remillard Park Pond during dry weather to provide habitat for native Western Pond Turtles, a species of special concern. CMSA constructed a truck filling station in December 2015 and has also supplied about 16,000 gallons of recycled water to date to flush sewer lines.
5. **Sludge and Biosolids Management.** CMSA processes its sludge by thickening with rotary drums, digesting, conditioning with polymer and ferric chloride, and dewatering with high-speed centrifuges. The processed solids are applied to land at Synagro's ranch sites in Sonoma and Solano counties, used for cover at Redwood Landfill and Recycling Center in Marin County, composted, or developed into fertilizer for agricultural use.
6. **Stormwater Management.** CMSA is covered under the State Water Board's statewide NPDES permit for stormwater discharges associated with industrial activities (NPDES General Permit CAS000001) for all parts of the treatment plant where stormwater runoff is not directed to the plant headworks for treatment. All stormwater flows in contact with equipment or wastewater at the treatment plant and pump stations serving the treatment plant are collected and directed to the headworks.

B. Discharge Point and Receiving Waters

Treated wastewater is discharged to Central San Francisco Bay through a submerged, multi-port diffuser, located approximately 8,000 feet offshore (Discharge Point No. 001) at a depth of about 12 to 28 feet. The diffuser is oriented about 145 degrees clockwise from north and has 176 ports fitted with duckbill diffuser valves to induce turbulent mixing. The valves reduce the effective open area of the ports as flow is reduced. The effluent receives an initial dilution of at least 43:1. CMSA hires a commercial diver annually to inspect and maintain the diffuser and to check for sedimentation. In 2017, the diver did not find a significant amount of material inside the outfall.

C. Previous Requirements and Monitoring Data

The table below presents the previous order effluent limitations and representative monitoring data from the previous order term:

Table F-2. Previous Effluent Limitations and Monitoring Data

Parameter	Units	Effluent Limitations			Monitoring Data (8/2012 – 11/2016)		
		Monthly Average	Weekly Average	Daily Maximum	Number of samples	Average ± standard deviation	Range
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	25	40	---	546	5.8±1.9	2-14
Total Suspended Solids	mg/L	30	45	---	1860	5.1±2.1	0.8-26
Oil and Grease	mg/L	10	---	20	18	All samples were below the detection limit (5.5)	
pH	standard units	6.0 – 9.0			1583	7.5±0.2	6.7-8.0

Parameter	Units	Effluent Limitations			Monitoring Data (8/2012 – 11/2016)		
		Monthly Average	Weekly Average	Daily Maximum	Number of samples	Average ± standard deviation	Range
Enterococcus Bacteria	Colonies/100 mL	35 ^[1]	---	---	93	31±170	1-1600
Total Coliform	MPN/100 mL	240 ^[2]	---	10,000	705	13±47 ^[3]	2-900
Copper	µg/L	49	---	85	52	4.1±1.4	1.9-10
Cyanide	µg/L	21	---	41	52	All samples were below the detection limit (3.0)	
Dioxin-TEQ	µg/L	1.4 x 10 ⁻⁸	---	2.8 x 10 ⁻⁸	8	All samples were below the quantification limits	
Acute Toxicity	percent survival	Not less than 90% (11-sample median)			52	100±2.0	90-100
		Not less than 70% (11-sample 90 th percentile)					
Chronic Toxicity	TU _c	No chronic toxicity that would cause or contribute to toxicity in the receiving water			18	3.1±0.9 ^[4]	2.5-4.6
Ammonia, Total	mg/L as N	60	---	120	251	31±11	2.7-52

Unit Abbreviations:

mg/L = milligrams per liter
µg/L = micrograms per liter
Colonies/100 mL = colonies per 100 milliliters
MPN/100 mL = most probable number per 100 milliliters
TU_c = chronic toxicity units
mg/L as N = milligrams per liter as nitrogen

Footnotes:

- ^[1] The monthly geometric mean not to exceed 35 colonies per 100 mL.
^[2] The monthly geometric mean not to exceed 240 MPN per 100 mL.
^[3] 170 samples were below the detection limit (2.5 MPN/100 mL).
^[4] Nine samples were below the detection limit (2 TU_c).

D. Compliance Summary

- 1. Treatment Plant.** In February 2017, CMSA violated its requirement to remove at least 85 percent of the carbonaceous biochemical oxygen demand (CBOD). The CBOD removal was 82 percent that month. This was CMSA's first violation since December 2004. The violation happened during extreme wet weather when an excessive amount of stormwater infiltrated the collection system. Provisions VI.C.5.a and VI.C.5.b require the Dischargers to perform tasks that will reduce infiltration.
- 2. Collection Systems.** The table below shows the sanitary sewer overflow (SSO) rates (total SSOs per 100 miles of collection system) for the last five years for each of the collection system agencies, the length and age of the collection systems, and comparisons to systems in the San Francisco Bay Region. SSOs that reach waters of the United States violate Prohibition III.E of this Order.

Table F-3. Collection System and SSO Rates (SSO/100 miles)

(Values based on CIWQS data analysis completed in October 2016)^[1]

	Length (miles)	Average Age (years)	2012	2013	2014	2015	2016
San Rafael Sanitation District	143	69	20.3	27.3	21.7	11.9	16.1
Sanitary District No. 1 of Marin County	204	65	16.8	11.8	15.7	12.3	17.7
Sanitary District No. 2 of Marin County	50	38	2.0	14.3	4.1	2.0	10.0
San Quentin Prison	4	73	0	0	0	0	0
Marin County Systems (median)	11	43	7.2	4.4	4.8	5.4	6.5
San Francisco Bay Region Large Systems (Median) ^[2]	46	45	5.2	5.7	6.3	3.7	4.3
Annual Precipitation in San Rafael (inches)	---	---	36	6	39	10	41

Footnote:

^[1] The State Water Board's *Enrollee's Guide to the SSO Database* defines "Total number of SSOs per 100 miles of Sewer" as "...the number of SSOs, for which the reporting enrollee is responsible, for every 100 miles of pipe or sewer lines in an enrollee's sanitary sewer system. Due to the large variation in facility specific characteristics, this metric should only be viewed as a rough comparison of the operation and maintenance performance of enrollees and their sanitary sewer systems."

^[2] Large systems are greater than 100 miles.

The SSO rates are significantly higher for the San Rafael Sanitation District, Sanitary District No. 1, and Sanitary District No. 2 versus other Marin County and San Francisco Bay Region collection systems. Provision VI.C.5.a requires the collection system agencies to implement sewer improvement projects that will reduce infiltration into the collection systems. These projects are expected to reduce SSOs.

E. Planned Changes

In 2014, CMSA and the Marin Municipal Water District partnered to conduct a Recycled Water Feasibility Study. The study recommended a project to add tertiary treatment to the treatment plant to produce 168 acre-feet of recycled water for use at San Quentin Prison. CMSA and the Marin Municipal Water District are considering the project, but there are no current plans to build it.

F. Blending Summary

Subject to specific conditions (e.g., influent flows are above 30 MGD), the previous order approved CMSA bypasses of secondary treatment for the portion of the flow above 30 MGD. The bypassed flows were "blended" with secondary-treated effluent, disinfected, and discharged. During the previous order term, CMSA discharged blended effluent about 11 times per year, a greater than 50 percent reduction compared to the permit term before that, when CMSA blended about 24 times per year. This reduction can be attributed to significant treatment plant upgrades that allow CMSA to store and process more flow. This Order will further reduce blending by requiring the satellite collection systems to repair and replace their respective sewer lines (see Provision VI.C.5.a).

Table F-4. Historical Blending Summary

Year	Number of Blending Days	Annual Volume of Primary Portion of Blended Effluent (million gallons)	Annual Precipitation (inches)
2012	23	255	36

Year	Number of Blending Days	Annual Volume of Primary Portion of Blended Effluent (million gallons)	Annual Precipitation (inches)
2013	0	0	6
2014	17	141	39
2015	2	3.5	10
2016	14	145	41
Average	11	109	25

III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

A. Legal Authorities

This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260) for discharges to waters of the State. This Order is also issued pursuant to Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve as an NPDES permit authorizing the Dischargers to discharge into waters of the United States at the discharge location described in Table 2 subject to the WDRs in this Order.

B. California Environmental Quality Act

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code division 13, chapter 3 (commencing with § 21100). Provisions and requirements in this Order implementing State law only are further exempt from CEQA pursuant to the categorical exemption for existing facilities (Cal. Code Regs., tit. 40, § 15301)

C. State and Federal Regulations, Policies, and Plans

- 1. Water Quality Control Plan.** The Regional Water Board adopted the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan), which designates beneficial uses, establishes water quality objectives (WQOs), and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Requirements in this Order implement the Basin Plan. In addition, this Order implements State Water Board Resolution No. 88-63, which establishes State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Because of the marine influence on Central San Francisco Bay, total dissolved solids exceed 3,000 mg/L; therefore, Central San Francisco Bay meets an exception to State Water Board Resolution No. 88-63. Beneficial uses applicable to Central San Francisco Bay are as follows:

Table F-5. Beneficial Uses

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

2. **Sediment Quality.** The State Water Board adopted the *Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality* on September 16, 2008, and it became effective on August 25, 2009. This plan supersedes other narrative sediment quality objectives, and establishes new sediment quality objectives and related implementation provisions for specifically defined sediments in most bays and estuaries. This Order implements the sediment quality objectives of this plan.
3. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** U.S. EPA adopted the NTR on December 22, 1992, and amended it on May 4, 1995, and November 9, 1999. About 40 criteria in the NTR apply in California. On May 18, 2000, U.S. EPA adopted the CTR. The CTR promulgated new toxics criteria for California and incorporated the previously adopted NTR criteria that applied in the State. U.S. EPA amended the CTR on February 13, 2001. These rules contain federal water quality criteria for priority pollutants. (See Fact Sheet sections IV.C.2.b and IV.C.2.c.)
4. **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 U.S. EPA promulgated for California through the NTR and the priority pollutant objectives the Regional Water Board established in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria U.S. EPA promulgated through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives, and provisions for chronic toxicity control. Requirements of this Order implement the SIP.
5. **Antidegradation Policy.** Federal regulations at 40 C.F.R. section 131.12 require that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy through State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, which is deemed to incorporate 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 Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Permitted discharges must be consistent with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16. (See Fact Sheet section IV.D.2 Antidegradation.)

- 6. Anti-Backsliding Requirements.** CWA sections 402(o) and 303(d)(4) and 40 C.F.R. section 122.44(l) restrict backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. (See Fact Sheet section IV.D.1 Anti-Backsliding.)
- 7. Endangered Species Act Requirements.** 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 §§ 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect beneficial uses, including protecting rare, threatened, or endangered species. The Dischargers are responsible for meeting all Endangered Species Act requirements.
- 8. Sludge and Biosolids.** U.S. EPA administers 40 C.F.R. Part 503, Standards for the Use or Disposal of Sewage Sludge, which regulates the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a municipal wastewater treatment facility. This Order does not authorize any act that violates those requirements. CMSA is responsible for meeting all applicable requirements of 40 C.F.R. Part 503.
- 9. Recycled Water Policy.** The State Water Board adopted Resolution No. 2013-0003 on January 22, 2013, titled *Policy for Water Quality Control for Recycled Water*, which is intended to promote sustainable local water supplies by increasing the acceptance and promoting the use of recycled water. The policy sets a goal to increase the use of recycled water statewide by at least one million acre feet per year (afy) over the 2002 baseline-level by 2020 and by at least two million afy by 2030. Consistent with the policy, the Regional Water Board is to exercise its authority to the fullest extent possible to encourage the use of recycled water and to develop watershed-based salt and nutrient management plans to ensure use of recycled water does not degrade groundwater resources.

D. Impaired Waters on CWA 303(d) List

In July 2015, U.S. EPA approved a revised list of impaired waters prepared pursuant to CWA section 303(d), which requires 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. Where it has not done so already, the Regional Water Board plans to adopt total maximum daily loads (TMDLs) for pollutants on the 303(d) list. TMDLs establish wasteload allocations for point sources and load allocations for non-point sources and are established to achieve the water quality standards for the impaired waters.

Central San Francisco Bay is 303(d) listed as impaired by chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCBs, and

selenium. On February 12, 2008, U.S. EPA approved a TMDL for mercury in San Francisco Bay. On March 29, 2010, U.S. EPA approved a TMDL for PCBs in San Francisco Bay. The mercury and PCBs TMDLs apply to this discharge and are implemented through NPDES Permit No. CA0038849. On August 23, 2016, U.S. EPA approved a TMDL for selenium in North San Francisco Bay, which includes Central San Francisco Bay. The selenium TMDL does not require effluent limits for municipal wastewater dischargers because these discharges have an insignificant impact on North San Francisco Bay water quality.

As shown in Fact Sheet section IV.C.3, the discharge is not a significant source of chlordane, DDT, or dieldrin because these pollutants have not been detected in the discharge. The discharge is also not a source of invasive species because it is disinfected. It is an insignificant source of dioxins and furans; this Order contains dioxin-TEQ effluent limitations to ensure that dioxins and furans in effluent are kept below water quality objectives.

IV. RATIONALE FOR EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants discharged into waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in NPDES permits. There are two principal bases for effluent limitations: 40 C.F.R. section 122.44(a) requires that permits include applicable technology-based limitations and standards, and 40 C.F.R. section 122.44(d) requires that permits include water quality-based effluent limitations to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of receiving waters.

A. Discharge Prohibitions

- 1. Discharge Prohibition III.A (Discharge at a location or in a manner different than described):** This prohibition is based on 40 C.F.R. section 122.21(a) and Water Code section 13260, which require filing an application and Report of Waste Discharge before a discharge can occur. Discharges not described in the application and Report of Waste Discharge, and subsequently in this Order, are prohibited.
- 2. Discharge Prohibition III.B (Discharge not receiving initial dilution of 43:1):** The Order allows a dilution credit of 43:1 in the calculation of one or more water quality-based effluent limitations based on the initial dilution achieved at the outfall. Therefore, this prohibition is necessary to ensure that the assumptions used to derive the dilution credit remain substantially the same so the limitations are protective of water quality.
- 3. Discharge Prohibition III.C (Bypass of untreated or partially-treated wastewater):** This prohibition is based on 40 C.F.R. section 122.41(m) (see Attachment D section I.G). Bypasses are prohibited when flows to the treatment plant are below 30 MGD (the secondary treatment capability). When flows are above 30 MGD, this Order approves the bypass of secondary treatment for the portion above 30 MGD in accordance with Attachment D section I.G. This portion must be “blended” with the secondary-treated effluent and disinfected prior to discharge to San Francisco Bay. As discussed below, the Dischargers meet the three criteria to allow blending listed in Attachment D section I.G and 40 C.F.R. section 122.41(m)(4)(i)(A)-(C):

- a. *Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage.* With peak wet weather flows above 30 MGD, bypasses are unavoidable to prevent (i) backups and overflow of raw sewage into basements or onto city streets, which could result in severe property damage or personal injury, or (ii) overflows within the treatment plant that could flood and damage equipment and thus compromise CMSA's ability to treat wastewater long after the bypass ends.
- b. *There are no feasible alternatives to the bypass.* As part of CMSA's January 2017 Report of Waste Discharge, CMSA submitted a Utility Analysis that evaluated alternatives to reduce or eliminate bypasses. CMSA identified several storage and treatment alternatives that could reduce or eliminate bypasses, including the following:
 - i. Improve storage by (a) converting an existing secondary-treated effluent storage pond to a primary-treated effluent storage pond or (b) installing a new below-grade storage tank, and
 - ii. Expand secondary treatment by (a) modifying the biotowers and activated sludge units to run in parallel, (b) installing new high-rate aeration units with ballasted flocculation, or (c) expanding conventional treatment.

CMSA expanded its secondary treatment capacity during the previous order term. It can now treat wet weather flows about four times higher than dry weather flows. Because of this increased treatment capacity and the high cost of expanding storage or treatment further, CMSA deems the above options to be infeasible. To reduce or eliminate blending bypasses, Provision IV.C.5.b requires CMSA to work with the satellite collection system agencies to identify portions of the service area that most contribute to excessive wet weather flows. Provision IV.C.5.a requires the satellite collection system agencies to implement improvements to their collection systems to reduce inflow and infiltration.

- c. *The Dischargers provided notice at least ten days before the date of the bypass.* With its Report of Waste Discharge, CMSA notified the Regional Water Board of the need to blend when peak wet weather flows exceed 30 MGD.
4. **Discharge Prohibition III.D (Average dry weather effluent flow in excess of 10 MGD):** This prohibition is based on the treatment plant's design treatment capacity (i.e., the historic and tested reliability of the treatment plant). Exceeding the average dry weather flow design capacity of 10 MGD could lower the plant's reliability with respect to complying with this Order's requirements.
5. **Discharge Prohibition III.E (Sanitary sewer overflows):** This prohibition is based on Basin Plan Table 4-1 (Discharge Prohibition 15) and the CWA, which prohibit the discharge of wastewater to surface waters, except as authorized under an NPDES permit. Publicly-owned treatment works must achieve secondary treatment at a minimum and any more stringent limitations necessary to meet water quality standards (33 U.S.C. § 1311[b][1][B and C]). A sanitary sewer overflow that results in a surface water discharge of raw sewage or wastewater not meeting this Order's effluent limitations is therefore prohibited under the CWA and the Basin Plan. (See Fact Sheet section VI.C.4.b.)

B. Technology-Based Effluent Limitations

1. Scope and Authority

CWA section 301(b) and 40 C.F.R. section 122.44 require that permits include conditions meeting technology-based requirements, at a minimum, and any more stringent effluent limitations necessary to meet water quality standards. The discharges authorized by this Order must meet minimum federal technology-based requirements based on the Secondary Treatment Standards at 40 C.F.R. part 133 as summarized below. In addition, the 30-day average percent removal for BOD₅ (or carbonaceous biochemical oxygen demand, CBOD₅) and TSS, by concentration, is not to be less than 85 percent. The Basin Plan contains additional requirements for certain pollutants.

Table F-6. Secondary Treatment Standards

Parameter	Monthly Average	Weekly Average
Biochemical Oxygen Demand, 5-day @ 20°C ^[1,2]	30 mg/L	45 mg/L
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C ^[1,2]	25 mg/L	40 mg/L
Total Suspended Solids ^[2]	30 mg/L	45 mg/L
pH	6.0 – 9.0 standard units	

Unit Abbreviation:

mg/L= milligrams per liter

Footnotes:

^[1] CBOD₅ effluent limitations may be substituted for BOD₅ limitations.

^[2] The monthly average percent removal, by concentration, is also not to be less than 85 percent.

2. Effluent Limitations

- a. **CBOD₅ and TSS.** The weekly and average monthly limitations, including the 85 percent removal requirements, are based on the Secondary Treatment Standards and Basin Plan Table 4-2.
- b. **Oil and Grease.** The oil and grease effluent limitations are based on Basin Plan Table 4-2.
- c. **pH.** The pH effluent limitations are based on the Secondary Treatment Standards and Basin Plan Table 4-2.
- d. **Total Chlorine Residual.** The residual chlorine effluent limit is based on Basin Plan Table 4-2. The Monitoring and Reporting Program (MRP, Attachment E) provides for an allowance for determining false positive using continuous devices based on the fact that continuous instruments occasionally have anomalous spikes, and it is chemically improbable to have free chlorine present in the presence of sodium bisulfite. The allowance for using only on-the-hour measurements for mandatory minimum penalty assessment purposes under Water Code section 13385.1 is based on a 2004 strategy developed between the Regional Water Board and the Bay Area Clean Water Agencies.

- e. **Enterococcus Bacteria.** Enterococcus bacteria effluent limits are based on Basin Plan Table 4-2A, which requires this limitation for discharges to receiving waters with the water contact recreation beneficial use.
- f. **Total Coliform Organisms.** The total coliform effluent limits are based on Basin Plan Table 4-2A, which requires these limitations for discharges to receiving waters with the shellfish harvesting beneficial use.

C. Water Quality-Based Effluent Limitations (WQBELs)

1. Scope and Authority

This Order contains WQBELs that protect beneficial uses. CWA section 301(b) and 40 C.F.R. section 122.44(d) require that permits include limitations more stringent than federal technology-based requirements where necessary to achieve applicable water quality standards. According to 40 C.F.R. section 122.44(d)(1)(i), permits must include effluent limitations for all pollutants that are or may be discharged at levels that have a reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective, WQBELs must be established using (1) U.S. EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting a narrative criterion, supplemented with relevant information (40 C.F.R. § 122.44[d][1][vi]). The process for determining reasonable potential and calculating WQBELs is intended to achieve applicable water quality objectives and criteria and protect designated uses of receiving waters as specified in the Basin Plan.

2. Beneficial Uses and Water Quality Criteria and Objectives

Discharge Point No. 001 discharges to Central San Francisco Bay. Fact Sheet section III.C.1 identifies the beneficial uses of Central San Francisco Bay. Water quality criteria and objectives to protect these beneficial uses are described below:

- a. **Basin Plan Objectives.** The Basin Plan sets forth numerous water quality objectives, including numeric objectives for 10 priority pollutants and un-ionized ammonia, and narrative objectives for toxicity and bioaccumulation.
 - i. **Ammonia.** Basin Plan section 3.3.20 contains water quality objectives for un-ionized ammonia of 0.025 mg/L (as nitrogen) as an annual median and 0.16 mg/L (as nitrogen) as a maximum for Central San Francisco Bay and upstream waters. Effluent and receiving water data are available for total ammonia, but not un-ionized ammonia, because (1) sampling and laboratory methods are unavailable to analyze for un-ionized ammonia, and (2) the fraction of total ammonia that exists in the toxic un-ionized form depends on pH, salinity, and temperature of the receiving water.

To translate the un-ionized ammonia objectives into total ammonia criteria, pH, salinity, and temperature collected at the Region Monitoring Program Red Rock Station (BC60). The un-ionized fraction of the total ammonia was calculated using the following equation, which applies to waters with salinities greater than 10 parts

per thousand (*Ambient Water Quality Criteria for Ammonia (Saltwater)*–1989, EPA Publication 440/5-88-004, 1989):

$$\text{Fraction of NH}_3 = \frac{1}{1 + 10^{(pK - pH)}}$$

For salinity > 10 ppt:

$$pK = 9.245 + 0.116(I) + 0.0324 (298 - T) + \frac{0.0415(P)}{(T)}$$

where:

$$I = \text{Molal ionic strength of saltwater} = \frac{19.9273(S)}{(1,000 - 1.005109(S))}$$

S = Salinity (parts per thousand)

T = Temperature (Kelvin)

P = Pressure (one atmosphere)

The 90th percentile and median un-ionized ammonia fractions were then used to express the maximum and annual average un-ionized objectives as acute and chronic total ammonia criteria. This approach is consistent with U.S. EPA guidance on translating dissolved metal water quality objectives to total recoverable metal water quality objectives (USEPA, 1996, *The Metals Translator: Guidance for Calculating a Total Recoverable Limit from a Dissolved Criterion*, EPA Publication 823-B96-007). The equivalent acute and chronic total ammonia criteria are 5.3 mg/L and 1.4 mg/L (as nitrogen).

- ii. **Dioxin-TEQ.** The narrative bioaccumulation objective (Basin Plan section 3.3.2) states, “Many pollutants can accumulate on particulates, in sediments, or bioaccumulate in fish and other aquatic organisms. Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life. Effects on aquatic organisms, wildlife, and human health will be considered.” Because it is the consensus of the scientific community that dioxins and furans associate with particulates, accumulate in sediments, and bioaccumulate in the fatty tissue of fish and other organisms, the Basin Plan’s narrative bioaccumulation water quality objective applies to these pollutants. Elevated levels of dioxins and furans in San Francisco Bay fish tissue demonstrate that the narrative bioaccumulation water quality objective is not being met. U.S. EPA has therefore placed Central San Francisco Bay on its 303(d)-list of receiving waters where water quality objectives are not being met after imposition of applicable technology-based requirements.

When the CTR was promulgated, U.S. EPA stated its support for the regulation of dioxin and dioxin-like compounds through the use of toxicity equivalencies (TEQs). U.S. EPA stated, “For California waters, if the discharge of dioxin or dioxin-like compounds has reasonable potential to cause or contribute to a violation of a narrative criterion, numeric water quality-based effluent limits for dioxin or dioxin-like compounds should be included in NPDES permits and should be expressed using a

TEQ scheme” (Fed. Reg. Vol. 65, No. 97, pages 31695-31696, May 18, 2000). This Order uses a TEQ scheme based on a set of toxicity equivalency factors (TEFs) the World Health Organization developed in 1998, and a set of bioaccumulation equivalency factors (BEFs) U.S. EPA developed for the Great Lakes region (40 C.F.R. § 132, Appendix F) to convert the concentration of any congener of dioxin or furan into an equivalent concentration of 2,3,7,8-tetrachlorinated dibenzo-p-dioxin (2,3,7,8-TCDD). Although the 1998 World Health Organization scheme includes TEFs for dioxin-like PCBs, they are not included in this Order’s TEQ scheme. The CTR has established a specific water quality criterion for PCBs, and dioxin-like PCBs are included in the analysis of total PCBs.

The CTR establishes a numeric water quality objective for 2,3,7,8-TCDD of 1.4×10^{-8} µg/L for the protection of human health when aquatic organisms are consumed. This CTR criterion is used as a criterion for dioxin-TEQ because dioxin-TEQ represents a toxicity-weighted concentration equivalent to 2,3,7,8-TCDD, thus translating the narrative bioaccumulation objective into a numeric criterion.

- iii. Chronic Toxicity.** The narrative toxicity objective (Basin Plan section 3.3.18) states, “All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.... There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community. Attainment of this objective will be determined by analyses of indicator organisms, species diversity, population density, growth anomalies, or toxicity tests..., or other methods selected by the Water Board.”

For this Order, this narrative objective is translated into a numeric criterion of 1.0 chronic toxicity unit (TU_c). At 1.0 TU_c , there is no observable detrimental effect when the indicator organism is exposed to 100 percent effluent; therefore, 1.0 TU_c is a direct translation of the narrative objective into a number. Moreover, in U.S. EPA’s *Technical Support Document for Water Quality-based Toxics Control* (EPA/505/2-90-001; see section 3.3.3, “Step 3: Decision Criteria for Permit Limit Development”), U.S. EPA recommends that 1.0 TU_c be used as a criterion continuous concentration (typically a four-day average). It further states that reasonable potential is shown where an effluent is projected to cause an excursion above the criterion continuous concentration. This document applies here as guidance because it directly addresses effluent characterization for toxicity.

- b. CTR Criteria.** The CTR specifies numeric aquatic life and human health criteria for numerous priority pollutants. These criteria apply to inland surface waters and enclosed bays and estuaries. Some human health criteria are for consumption of “water and organisms” and others are for consumption of “organisms only.” The criteria applicable to “organisms only” apply to Central San Francisco Bay because it is not a source of drinking water.

- c. **NTR Criteria.** The NTR establishes numeric aquatic life and human health criteria for a number of toxic pollutants for San Francisco Bay waters upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. These NTR criteria apply to Central San Francisco Bay.
- d. **Sediment Quality Objectives.** The *Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality* contains a narrative water quality objective: “Pollutants in sediments shall not be present in quantities that, alone or in combination, are toxic to benthic communities in bays and estuaries of California.” This objective is to be implemented by integrating three lines of evidence: sediment toxicity, benthic community condition, and sediment chemistry. The policy requires that if the Regional Water Board determines that a discharge has reasonable potential to cause or contribute to an exceedance of this objective, it is to impose the objective as a receiving water limit.
- e. **Receiving Water Salinity.** Basin Plan section 4.6.2 (like the CTR and NTR) states that the salinity characteristics (i.e., freshwater vs. saltwater) of the receiving water are to be considered in determining the applicable water quality objectives. Freshwater criteria apply to discharges to waters with salinities equal to or less than one part per thousand (ppt) at least 95 percent of the time. Saltwater criteria apply to discharges to waters with salinities equal to or greater than 10 ppt at least 95 percent of the time in a normal water year. For discharges to waters with salinities between these two categories, or tidally-influenced freshwaters that support estuarine beneficial uses, the water quality objectives are the lower of the salt or freshwater objectives (the latter calculated based on ambient hardness) for each substance.

Central San Francisco Bay is an estuarine environment based on salinity data collected at the Regional Monitoring Program Red Rock Station (BC60) from February 1994 to August 2001 (when this station was last monitored). During that period, the salinity was never less than 1 ppt and greater than 10 ppt in 78 percent of the samples. Central San Francisco Bay is therefore classified as estuarine and the reasonable potential analysis and WQBELs in this Order are based on the more stringent of the freshwater and saltwater water quality objectives.

- f. **Receiving Water Hardness.** For hardness-dependent metals, a hardness value of 400 mg/L was used to determine those objectives. This is because the hardness values measured at the Regional Monitoring Program Red Rock Station have always been above 400 mg/L, and the CTR recommends capping the hardness value at 400 mg/L in such cases.
- g. **Metals Translators.** Effluent limitations for metals must be expressed as total recoverable metal (40 C.F.R. § 122.45[c]). Since the water quality objectives for metals are typically expressed as dissolved metals, translators must be used to convert metals concentrations from dissolved to total recoverable and vice versa. The CTR contains default translators; however, site-specific conditions, such as water temperature, pH, total suspended solids, and organic carbon may affect the form of metal (dissolved, non-filterable, or otherwise) present and therefore available to cause toxicity. In general, dissolved metals are more available and more toxic to aquatic life than other forms. Site-specific translators can account for site-specific conditions, thereby preventing overly stringent or under-protective water quality objectives.

CTR default translators were used for all metals other than copper and nickel. Basin Plan Table 7.2.1-2 sets forth site-specific copper translators. The Clean Estuary Partnership's *North of Dumbarton Bridge Copper and Nickel Development and Selection of Final Translators* (March 2005) contains site-specific nickel translators. These site-specific translators are listed in the table below:

Table F-7. Site-Specific Translators

Parameter	Site Specific Translators	
	Acute	Chronic
Copper	0.87	0.73
Nickel	0.85	0.65

3. Need for WQBELs (Reasonable Potential Analysis)

Assessing whether a pollutant has reasonable potential to exceed a water quality objective is the fundamental step in determining whether a WQBEL is required.

- a. **Available Information.** The reasonable potential analysis for this Order is based on effluent monitoring data CMSA collected from April 2012 through April 2016 and ambient background data the Regional Monitoring Program collected at the Yerba Buena Station (BC10) from 1993 through 2015, supplemented by additional Bay Area Clean Water Agencies data from *San Francisco Bay Ambient Water Monitoring Interim Report* (2003) and *Ambient Water Monitoring: Final CTR Sampling Update* (2004). SIP section 1.4.3 requires that background water quality data be representative of the ambient receiving water that will mix with the discharge.

This Order does not contain WQBELs for constituents that do not demonstrate reasonable potential; however, Provision VI.C.2 of the Order requires monitoring for those pollutants. If concentrations are found to have increased significantly, Provision VI.C.2 of the Order requires CMSA to investigate the sources of the increases and implement remedial measures if the increases pose a threat to receiving water quality.

b. Priority Pollutants, Ammonia, and Dioxin-TEQ

- i. **Methodology.** SIP section 1.3 sets forth the methodology used for this Order for assessing whether a priority pollutant has reasonable potential to exceed a water quality objective. For ammonia and dioxin-TEQ, SIP section 1.3 is used as guidance. The analysis begins with identifying the maximum effluent concentration (MEC) observed for each pollutant based on available effluent concentration data and the ambient background concentration (B). SIP section 1.4.3 states that ambient background concentrations are either the maximum ambient concentration observed or, for water quality objectives intended to protect human health, the arithmetic mean of observed concentrations. There are three triggers in determining reasonable potential:
 - (a) **Trigger 1** is activated if the maximum effluent concentration is greater than or equal to the lowest applicable water quality objective ($MEC \geq$ water quality objective).

(b) **Trigger 2** is activated if the ambient background concentration observed in the receiving water is greater than the lowest applicable water quality objective ($B > \text{water quality objective}$) *and* the pollutant is detected in any effluent sample.

(c) **Trigger 3** is activated if a review of other information indicates that a WQBEL is needed to protect beneficial uses.

ii. **Analysis.** The maximum effluent concentrations, most stringent applicable water quality criteria and objectives, and ambient background concentrations used in the analysis are presented in the following table, along with the reasonable potential analysis results (yes, no, or unknown) for each pollutant. Copper, cyanide, dioxin-TEQ, and ammonia exhibit reasonable potential. In addition, Basin Plan sections 7.2.1.2 and 4.7.2.2 require copper and cyanide WQBELs for all individual NPDES permits for municipal wastewater treatment facilities that discharge to San Francisco Bay.

Table F-8. Reasonable Potential Analysis

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) [1,2]	B or Minimum DL (µg/L) [1,2]	RPA Results ^[3]
1	Antimony	4,300	0.3	1.8	No
2	Arsenic	36	0.55	2.8	No
3	Beryllium	No Criteria	<0.01	0.22	U
4	Cadmium	1.0	0.78	0.13	No
5a	Chromium (III)	190	---	4.4	U
5b	Chromium (VI)	11.4	0.95	4.4	No
6	Copper	8.2	10	2.5	Yes^[4]
7	Lead	8.5	0.36	0.8	No
8	Mercury ^[5]	---	---	---	[5]
9	Nickel	13	5.7	3.7	No
10	Selenium ^[5]	---	---	---	[5]
11	Silver	2.2	0.35	0.052	No
12	Thallium	6.3	0.45	0.21	No
13	Zinc	86	45	5.1	No
14	Cyanide	2.9	7.1	<0.4	Yes^[4]
15	Asbestos	No Criteria	Unavailable	Unavailable	U
16	2,3,7,8-TCDD	1.4E-08	<2.7E-08	8.2E-09	U
	Dioxin-TEQ	1.4E-08	<7.1E-08	5.3E-08	Yes
17	Acrolein	780	<1.7	<0.5	No
18	Acrylonitrile	0.66	<0.69	0.03	No
19	Benzene	71	<0.18	<0.05	No
20	Bromoform	360	<0.15	<0.5	No
21	Carbon Tetrachloride	4.4	<0.16	0.06	No
22	Chlorobenzene	21,000	<0.18	<0.5	No
23	Chlorodibromomethane	34	<0.17	<0.05	No
24	Chloroethane	No Criteria	<0.38	<0.5	U

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) [1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
25	2-Chloroethylvinyl ether	No Criteria	<0.28	<0.5	U
26	Chloroform	No Criteria		<0.5	U
27	Dichlorobromomethane	46	<0.16	<0.05	No
28	1,1-Dichloroethane	No Criteria	<0.19	<0.05	U
29	1,2-Dichloroethane	99	<0.18	0.04	No
30	1,1-Dichloroethylene	3.2	<0.21	<0.5	No
31	1,2-Dichloropropane	39	<0.18	<0.05	No
32	1,3-Dichloropropylene	1,700	<0.16	<0.5	No
33	Ethylbenzene	29,000	<0.26	<0.5	No
34	Methyl Bromide	4,000	<0.17	<0.5	No
35	Methyl Chloride	No Criteria	<0.23	<0.5	U
36	Methylene Chloride	1,600	<0.26	22	No
37	1,1,2,2-Tetrachloroethane	11	<0.20	<0.05	No
38	Tetrachloroethylene	8.9	<0.19	<0.05	No
39	Toluene	200,000		<0.3	No
40	1,2-Trans-Dichloroethylene	140,000	<0.22	<0.5	No
41	1,1,1-Trichloroethane	No Criteria	<0.19	<0.5	U
42	1,1,2-Trichloroethane	42	<0.16	<0.05	No
43	Trichloroethylene	81	<0.20	<0.5	No
44	Vinyl Chloride	525	<0.25	<0.5	No
45	2-Chlorophenol	400	<0.7	<1.2	No
46	2,4-Dichlorophenol	790	<1.0	<1.3	No
47	2,4-Dimethylphenol	2,300	<0.8	<1.3	No
48	2-Methyl- 4,6-Dinitrophenol	765	<0.4	<1.2	No
49	2,4-Dinitrophenol	14,000	<0.83	<0.7	No
50	2-Nitrophenol	No Criteria	<0.6	<1.3	U
51	4-Nitrophenol	No Criteria	<0.5	<1.6	U
52	3-Methyl 4-Chlorophenol	No Criteria	<0.8	<1.1	U
53	Pentachlorophenol	7.9	<0.5	<1	No
54	Phenol	4,600,000	<0.5	<1.3	No
55	2,4,6-Trichlorophenol	6.5	<0.97	<1.3	No
56	Acenaphthene	2,700	0.01	0.0019	No
57	Acenaphthylene	No Criteria	0.02	0.0013	U
58	Anthracene	110,000	<0.01	0.00059	No
59	Benzidine	0.00054	<5	<0.0015	U
60	Benzo(a)Anthracene	0.049	<0.02	0.0053	No
61	Benzo(a)Pyrene	0.049	<0.01	0.0033	No
62	Benzo(b)Fluoranthene	0.049	<0.01	0.0046	No
63	Benzo(ghi)Perylene	No Criteria	<0.02	0.0045	U
64	Benzo(k)Fluoranthene	0.049	<0.01	0.0018	No
65	Bis(2-Chloroethoxy)Methane	No Criteria	<0.9	<0.3	U
66	Bis(2-Chloroethyl)Ether	1.4	<0.7	<0.3	No
67	Bis(2-Chloroisopropyl)Ether	170,000	<0.6	<0.6	No

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) ^[1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
68	Bis(2-Ethylhexyl)Phthalate	5.9	<0.6	<0.7	No
69	4-Bromophenyl Phenyl Ether	No Criteria	<0.7	<0.23	U
70	Butylbenzyl Phthalate	5,200	<0.9	0.0056	No
71	2-Chloronaphthalene	4,300	<0.9	<0.3	No
72	4-Chlorophenyl Phenyl Ether	No Criteria	<0.01	<0.3	U
73	Chrysene	0.049	<0.02	0.0028	No
74	Dibenzo(a,h)Anthracene	0.049	<0.27	0.00064	No
75	1,2-Dichlorobenzene	17,000	<0.18	<0.3	No
76	1,3-Dichlorobenzene	2,600	<0.18	<0.3	No
77	1,4-Dichlorobenzene	2,600	<5	<0.3	No
78	3,3 Dichlorobenzidine	0.077	<0.86	<0.001	No
79	Diethyl Phthalate	120,000	<0.97	<0.21	No
80	Dimethyl Phthalate	2,900,000	<0.92	<0.21	No
81	Di-n-Butyl Phthalate	12000	<0.7	0.016	No
82	2,4-Dinitrotoluene	9.1	<0.7	<0.27	No
83	2,6-Dinitrotoluene	No Criteria	<0.5	<0.29	U
84	Di-n-Octyl Phthalate	No Criteria	<0.7	<0.38	U
85	1,2-Diphenylhydrazine	0.54	<0.03	0.0037	No
86	Fluoranthene	370	<0.01	0.011	No
87	Fluorene	14,000	<0.07	0.0021	No
88	Hexachlorobenzene	0.00077	<0.06	2.2E-05	No
89	Hexachlorobutadiene	50	<0.02	<0.3	No
90	Hexachlorocyclopentadiene	17,000	<0.93	<0.3	No
91	Hexachloroethane	8.9	<0.1	<0.2	No
92	Indeno(1,2,3-cd)Pyrene	0.049	<0.02	0.0040	No
93	Isophorone	600	<0.93	<0.3	No
94	Naphthalene	No Criteria	<0.02	0.013	U
95	Nitrobenzene	1,900	<0.95	<0.25	No
96	N-Nitrosodimethylamine	8.1	<0.5	<0.3	No
97	N-Nitrosodi-n-Propylamine	1.4	<0.01	<0.001	No
98	N-Nitrosodiphenylamine	16	<0.02	<0.001	No
99	Phenanthrene	No Criteria	<0.6	0.0095	U
100	Pyrene	11,000	<0.02	0.019	No
101	1,2,4-Trichlorobenzene	No Criteria	<0.6	<0.3	U
102	Aldrin	0.00014	<0.004	2.8E-06	U
103	Alpha-BHC	0.013	<0.005	0.00050	No
104	Beta-BHC	0.046	<0.004	0.00041	No
105	Gamma-BHC	0.063	<0.004	0.00070	No
106	Delta-BHC	No Criteria	<0.004	5.3E-05	U
107	Chlordane	0.00059	<0.02	0.00018	No
108	4,4'-DDT	0.00059	<0.004	0.00017	No
109	4,4'-DDE (linked to DDT)	0.00059	<0.003	0.00069	No
110	4,4'-DDD	0.00084	<0.004	0.00031	No

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) ^[1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
111	Dieldrin (303d listed)	0.00014	<0.004	0.00026	No
112	Alpha-Endosulfan	0.0087	<0.004	3.1E-05	No
113	Beta-Endosulfan	0.0087	<0.005	6.9E-05	No
114	Endosulfan Sulfate	240	<0.005	8.2E-05	No
115	Endrin	0.0023	<0.005	4.0E-05	No
116	Endrin Aldehyde	0.81	<0.005	<0.005	No
117	Heptachlor	0.00021	<0.005	1.9E-05	No
118	Heptachlor Epoxide	0.00011	<0.004	9.4E-05	No
119-125	PCBs sum ^[5]	---	---	---	[5]
126	Toxaphene	0.0002	<0.3	Unavailable	U
	Ammonia	1.4	52	0.26	Yes

Abbreviations:

MEC = maximum effluent concentration
B = background concentration
C = water quality criterion or objective
DL = detection level
µg/L = micrograms per liter
RPA = reasonable potential analysis

Footnotes:

- [1] The MEC and ambient background concentration are the actual detected concentrations unless preceded by a “<” sign, in which case the value shown is the minimum DL.
- [2] The MEC or ambient background concentration is “unavailable” when there are no monitoring data for the constituent.
- [3] RPA Results = Yes, if MEC ≥ WQC, B > WQC and MEC is detected, or Trigger 3
= No, if MEC and B are < WQC or all effluent data are undetected
= Unknown (U) if no criteria have been promulgated or data are insufficient.
- [4] Reasonable potential is based in whole or part on Basin Plan sections 7.2.1.2 and 4.7.2.1.
- [5] SIP section 1.3 excludes from its reasonable potential analysis procedure priority pollutants for which a TMDL has been developed. TMDLs have been developed for mercury and PCBs in San Francisco Bay. Mercury and PCBs from wastewater discharges are regulated by NPDES Permit No. CA0038849, which implements the San Francisco Bay Mercury and PCBs TMDLs. A TMDL has also been developed for selenium in North San Francisco Bay, which includes Central San Francisco Bay. Basin Plan section 7.2.4.5 finds that municipal wastewater dischargers have no reasonable potential to cause or contribute to the selenium impairment in San Francisco Bay segments and, therefore, are not required to have numeric effluent limitations.

- c. Acute Toxicity.** Basin Plan section 4.5.5.3.1 requires acute toxicity monitoring and limitations.
- d. Chronic Toxicity.** The *Technical Support Document for Water Quality-based Toxics Control* allows for dilution to be considered when conducting a reasonable potential analysis. This Order establishes a chronic toxicity dilution credit of 10:1 (D = 9) consistent with Basin Plan section 4.5.5.3.2, which allows chronic toxicity dilution credits “comparable to those allowed for numeric chemical-specific objectives.” Fact Sheet section IV.C.4.a.i establishes a comparable dilution credit of 10:1 for non-bioaccumulative pollutants.

CMSA conducted quarterly chronic toxicity tests during the previous order term. The average was 3.1±0.9 TU_c and the maximum was 4.6 TU_c. Accounting for the dilution credit of 10:1 (D = 9), the resulting toxicity is less than 1.0 TU_c, which is also less than

the translated chronic toxicity objective (1.0 TU_c). Therefore, there is no reasonable potential for chronic toxicity in the receiving water, and no WQBEL is required.

- e. **Sediment Quality.** Pollutants in some receiving water sediments may be present in quantities that alone or in combination are toxic to benthic communities. Efforts are underway to identify stressors causing such conditions. However, to date there is no evidence directly linking compromised sediment conditions to the discharges subject to this Order; therefore, the Regional Water Board cannot draw a conclusion about reasonable potential for these discharges to cause or contribute to exceedances of the sediment quality objectives. Nevertheless, CMSA continues to participate in the Regional Monitoring Program, which monitors San Francisco Bay sediment and seeks to identify stressors responsible for degraded sediment quality. Thus far, the monitoring has provided only limited information about potential stressors and sediment transport. The Regional Water Board is exploring options for obtaining additional information that may inform future analyses.

4. Effluent Limitations

WQBELs were developed for the pollutants determined to have reasonable potential to cause or contribute to exceedances of water quality objectives. With the exception of acute toxicity (discussed below), the WQBELs in this Order are based on the procedures in SIP section 1.4. Average monthly effluent limitations (AMELs) and maximum daily effluent limitations (MDELs) were calculated as shown in Table F-9, below.

- a. **Dilution Credits.** SIP section 1.4.2 allows dilution credits under certain circumstances. CMSA's September 2011 Mixing Zone Study Report for the Central Marin Sanitation Agency Outfall Diffuser to Central San Francisco Bay indicates that the minimum initial dilution at the outfall is 43:1 and occurs within 13 feet of the outfall.
- i. **Bioaccumulative Pollutants.** For certain bioaccumulative pollutants, dilution credit is significantly restricted or denied. Specifically, these pollutants include dioxin and furan compounds, which appear on the CWA section 303(d) list for Central San Francisco Bay because, based on available data on the concentrations of these pollutants in aquatic organisms, sediment, and the water column, they impair Central San Francisco Bay beneficial uses. The following factors suggest insufficient assimilative capacity in San Francisco Bay for these pollutants.

Tissue samples taken from San Francisco Bay fish show the presence of these pollutants at concentrations greater than screening levels (*Contaminant Concentrations in Fish from San Francisco Bay*, May 1997). The results of a 1994 San Francisco Bay pilot study, presented in *Contaminated Levels in Fish Tissue from San Francisco Bay* (Regional Water Board, 1994) also show elevated levels of chemical contaminants in fish tissues. The Office of Environmental Health and Hazard Assessment completed a preliminary review of the data in the 1994 report and in December 1994 issued an interim consumption advisory covering certain fish species in San Francisco Bay due to the levels of some of these pollutants. The Office of Environmental Health and Hazard Assessment updated this advisory in a May 2011 report, *Health Advisory and Safe Eating Guidelines for San Francisco Bay Fish and Shellfish*, which still suggests insufficient assimilative capacity in San

Francisco Bay for 303(d)-listed pollutants. Therefore, dilution credits are denied for bioaccumulative pollutants on the 303(d) list for which data are lacking on sources and significant uncertainty exists about how different sources contribute to bioaccumulation.

- ii. **Non-Bioaccumulative Pollutants (except ammonia).** For non-bioaccumulative pollutants (except ammonia), a conservative dilution credit of 10:1 (D=9) has been assigned. The 10:1 dilution credit is based, in part, on Basin Plan Prohibition 1 (Table 4-1), which prohibits discharges with less than 10:1 dilution. SIP section 1.4.2 allows for limiting the dilution credit. The dilution credit is limited for the following reasons:
 - (a) San Francisco Bay is a complex estuarine system with highly variable and seasonal upstream freshwater inflows and diurnal tidal saltwater inputs. SIP section 1.4.3 allows background conditions to be determined on a discharge-by-discharge or water body-by-water body basis. A water body-by-water body approach is taken here due to inherent uncertainties in characterizing ambient background conditions in a complex estuarine system on a discharge-by-discharge basis.
 - (b) Because of the complex hydrology of San Francisco Bay, there are uncertainties in accurately determining an appropriate mixing zone. The models used to predict dilution do not consider the three dimensional nature of San Francisco Bay currents resulting from the interaction of tidal flushes and seasonal fresh water outflows. Being heavier and colder than fresh water, ocean salt water enters San Francisco Bay on a twice-daily tidal cycle, generally beneath the warmer fresh water that flows seaward. When these waters mix and interact, complex circulation patterns occur due to the varying densities of the fresh and ocean waters. The complex patterns occur throughout San Francisco Bay, but are most prevalent in San Pablo Bay, Carquinez Strait, and Suisun Bay. The locations of this mixing and interaction change depending on the strength of each tide. Additionally, sediment loads from the Central Valley change on a long-term basis, affecting the depth of different parts of San Francisco Bay, resulting in alteration of flow patterns, mixing, and dilution at the outfall.
- iii. **Ammonia.** For ammonia, a conservative estimate of actual initial dilution (43:1) was used to calculate effluent limits. This is justified because ammonia, a non-persistent pollutant, quickly disperses and degrades to a non-toxic state, and cumulative toxicity is unlikely. As such, there is unlikely to be cumulative toxicity associated with discharges containing elevated ammonia concentrations. Therefore, granting full dilution credit based on the modeled initial dilution will protect water quality.
- b. **WQBEL Calculations.** For pollutants with reasonable potential (except acute toxicity), average monthly effluent limitations (AMELs) and maximum daily effluent limitations (MDELs) were calculated as shown in the table below:

Table F-9. WQBEL Calculations

PRIORITY POLLUTANTS	Copper	Cyanide	Dioxin-TEQ	Total Ammonia (acute)	Total Ammonia (chronic)
Units	µg/L	µg/L	µg/L	mg/L N	mg/L N
Basis and Criteria type	CTR Aquatic Criteria	CTR Aquatic Criteria	Basin Plan Human Health	Basin Plan Aquatic Life	Basin Plan Aquatic Life
Criteria - Acute	-----	-----	-----	5.3	-----
Criteria - Chronic	-----	-----	-----	-----	1.4
Site-Specific Objective Criteria - Acute	3.9	9.4	-----	-----	-----
Site-Specific Objective Criteria - Chronic	2.5	2.9	-----	-----	-----
Water Effects ratio (WER)	2.4	1	1	1	1
Lowest WQO	8.2	2.9	1.4E-08	5.3	1.4
Site-Specific Translator - MDEL	0.87	-----	-----	-----	-----
Site-Specific Translator - AMEL	0.73	-----	-----	-----	-----
Dilution Factor (D)	9	9	0	42	42
No. of samples per month	4	4	4	4	30
Aquatic life criteria analysis required? (Y/N)	Y	Y	N	Y	Y
HH criteria analysis required? (Y/N)	N	Y	Y	N	N
Applicable Acute WQO	11	9.4	-----	5.3	-----
Applicable Chronic WQO	8.2	2.9	-----	-----	1.4
HH criteria	-----	2.2E+05	1.4E-08	-----	-----
Background (Maximum Conc for Aquatic Life calc)	2.5	0.4	-----	0.15	0.08
Background (Average Conc for Human Health calc)	-----	0.4	2.0E-08	-----	-----
Is the pollutant on the 303d list and/or bioaccumulative (Y/N)?	N	N	Y	N	N
ECA acute	85	90	-----	220	-----
ECA chronic	60	25	-----	-----	57
ECA HH	-----	2.2E+05	1.4E-08	-----	-----
No. of data points <10 or at least 80% of data reported non detect? (Y/N)	N	N	Y	N	N
Avg of effluent data points	4.1	1.4	-----	30	30
Std Dev of effluent data points	1.4	0.6	-----	11	11
CV calculated	0.34	0.40	N/A	0.37	0.37
CV (Selected) – Final	0.34	0.40	0.60	0.37	0.37
ECA acute mult99	0.49	0.44	-----	0.47	-----
ECA chronic mult99	0.68	0.64	-----	-----	0.96
LTA acute	42	40	-----	100	-----
LTA chronic	41	16	-----	-----	54

PRIORITY POLLUTANTS	Copper	Cyanide	Dioxin-TEQ	Total Ammonia (acute)	Total Ammonia (chronic)
Units	µg/L	µg/L	µg/L	mg/L N	mg/L N
minimum of LTAs	41	16	-----	100	54
AMEL mult95	1.3	1.4	1.55	1.3	1.1
MDEL mult99	2.0	2.3	3.11	2.1	2.1
AMEL (aquatic life)	53	22	-----	140	61
MDEL (aquatic life)	84	37	-----	220	120
MDEL/AMEL Multiplier	1.6	1.7	2.01	1.2	1.3
AMEL (human health)	-----	2.2E+05	1.4E-08	-----	-----
MDEL (human health)	-----	3.6E+05	2.8E-08	-----	-----
minimum of AMEL for Aq. life vs HH	53	22	1.4E-08	140	61
minimum of MDEL for Aq. Life vs HH	84	37	2.8E-08	220	120
Previous order limit - AMEL	49	21	1.4E-08	60	60
Previous order limit - MDEL	85	41	2.8E-08	120	120
Final limit - AMEL	49	21	1.4E-08	60	60
Final limit - MDEL	84	37	2.8E-08	120	120

- c. Acute Toxicity.** This Order includes acute toxicity effluent limitations based on Basin Plan Table 4-3, assuming monthly sampling as the MRP requires. Based on Basin Plan section 3.3.20, if CMSA can demonstrate that ammonia causes acute toxicity in excess of the acute toxicity limitations in this Order, and that the ammonia in the discharge complies with the ammonia effluent limitations in this Order, then such toxicity does not constitute a violation of the acute toxicity effluent limitations.

D. Discharge Requirement Considerations

- 1. Anti-backsliding.** This Order complies with the anti-backsliding provisions of CWA sections 402(o) and 303(d)(4) and 40 C.F.R. section 122.44(l), which generally require effluent limitations in a reissued permit to be as stringent as those in the previous permit. The requirements of this Order are at least as stringent as those in the previous order.
- 2. Antidegradation.** This Order complies with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16. It continues the status quo with respect to the level of discharge authorized in the previous order, which was adopted in accordance with antidegradation policies and thus serves as the baseline by which to measure whether degradation will occur. This Order does not allow for a flow increase, increased concentration, a reduced level of treatment, or an increase in effluent limitations relative to those in the previous order.

- 3. Stringency of Requirements for Individual Pollutants.** This Order contains both technology-based effluent limitations and WQBELs for individual pollutants. The technology-based requirements implement minimum, applicable federal technology-based requirements. In addition, this Order contains more stringent WQBELs as necessary to meet water quality standards. Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement CWA requirements.

This Order's WQBELs have been derived to implement water quality objectives that protect beneficial uses. The beneficial uses and water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. To the extent that WQBELs were derived from the CTR, the CTR is the applicable standard pursuant to 40 C.F.R. section 131.38. The procedures for calculating these WQBELs are based on the CTR, as implemented in accordance with the SIP, which U.S. EPA approved on May 18, 2000. U.S. EPA approved most Basin Plan beneficial uses and water quality objectives prior to May 30, 2000. Beneficial uses and water quality objectives submitted to U.S. EPA prior to May 30, 2000, but not approved by U.S. EPA before that date, are nonetheless "applicable water quality standards for purposes of the CWA" pursuant to 40 C.F.R. section 131.21(c)(1). U.S. EPA approved the remaining beneficial uses and water quality objectives so they are applicable water quality standards pursuant to 40 C.F.R. section 131.21(c)(2).

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

The receiving water limitations in sections V.A and V.B of the Order are based on Basin Plan narrative and numeric water quality objectives. The receiving water limitation in section V.C of the Order requires compliance with federal and State water quality standards in accordance with the CWA and regulations adopted thereunder.

VI. RATIONALE FOR PROVISIONS

A. Standard Provisions

Attachment D contains standard provisions that apply to all NPDES permits in accordance with 40 C.F.R. section 122.41 and additional conditions applicable to specific categories of permits in accordance with 40 C.F.R. section 122.42. The Dischargers must comply with these provisions. The conditions set forth in 40 C.F.R. sections 122.41(a)(1) and (b) through (n) apply to all state-issued NPDES permits and must be incorporated into permits either expressly or by reference.

In accordance with 40 C.F.R. section 123.25(a)(12), states may omit or modify conditions to impose more stringent requirements. Attachment G contains standard provisions that supplement the federal standard provisions in Attachment D. This Order omits the federal conditions that address enforcement authority specified in 40 C.F.R. sections 122.41(j)(5) and (k)(2) because the State's enforcement authority under the Water Code is more stringent. In lieu of these conditions, this Order incorporates Water Code section 13387(e) by reference.

B. Monitoring and Reporting

CWA section 308 and 40 C.F.R. sections 122.41(h), 122.41(j)-(l), 122.44(i), and 122.48 require that NPDES permits specify monitoring and reporting requirements. Water Code sections 13267 and 13383 also authorize the Regional Water Board to establish monitoring, inspection, entry,

reporting, and recordkeeping requirements. The MRP establishes monitoring, reporting, and recordkeeping requirements that implement federal and State requirements. For more background regarding these requirements, see Fact Sheet section VII. Regional Water Board Order No. R2-2016-0008 allows CMSA to opt for certain alternate monitoring requirements.

C. Special Provisions

1. Reopener Provisions

These provisions are based on 40 C.F.R. sections 122.62 and 122.63 and allow modification of this Order and its effluent limitations as necessary in response to updated water quality objectives, regulations, or other new and relevant information that may become available in the future, and other circumstances as allowed by law.

2. Effluent Characterization Study and Report

This Order does not include effluent limitations for priority pollutants that do not demonstrate reasonable potential, but this provision requires CMSA to continue monitoring for these pollutants as described in the MRP and Attachment G. Monitoring data are necessary to verify that the “no” and “unknown” reasonable potential analysis conclusions of this Order remain valid. This requirement is authorized pursuant to Water Code section 13267 and is necessary to inform the next permit reissuance and to ensure that CMSA takes timely steps in response to any unanticipated change in effluent quality during the term of this Order.

3. Pollutant Minimization Program

This provision is based on Basin Plan section 4.13.2 and SIP section 2.4.5.

4. Special Provisions for Publicly-Owned Treatment Works (POTWs)

- a. Pretreatment Program.** This provision is based on 40 C.F.R. part 403. CMSA implements a pretreatment program due to the nature and volume of industrial influent to the treatment plant. This provision lists CMSA’s responsibilities regarding its pretreatment program and requires compliance with the provisions in Attachment H, “Pretreatment Requirements.”
- b. Sludge and Biosolids Management.** This provision is based on Basin Plan section 4.17. “Sludge” refers to the solid, semisolid, and liquid residue removed during primary, secondary, and advanced wastewater treatment processes. “Biosolids” refers to sludge that has been treated and may be beneficially reused.
- c. Collection System Management.** CMSA does not own or operate any part of the collection systems that are part of the Facility regulated through this Order. This Order regulates the collection systems for the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County. This provision requires compliance with Attachments D and G and states that these requirements may be satisfied by complying with State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by

State Water Board Order No. WQ 2013-0058-EXEC and any subsequent order updating these requirements. These statewide WDRs require public agencies that own or operate sanitary sewer systems with one or more miles of sewer lines to enroll for coverage and comply with requirements to develop sanitary sewer management plans and report sanitary sewer overflows, among other provisions and prohibitions. The statewide WDRs contain requirements for operation and maintenance of collection systems, and for reporting and mitigating sanitary sewer overflows, that are more extensive and, therefore, more stringent than the standard provisions in Attachments D and G.

5. Other Special Provisions

- a. **Collection System Agency Tasks to Reduce Blending.** Because excessive inflow and infiltration contributes to blending at CMSA's wastewater treatment plant, this provision is necessary to ensure that the satellite collection system agencies implement all feasible alternatives to eliminate wet weather bypasses consistent with Attachment D section I.G and 40 C.F.R. section 122.41(m) (see fact sheet section II.A.3). Specifically, this provision requires each satellite collection system agency to take all feasible actions to rehabilitate portions of their collection systems to reduce inflow and infiltration. These tasks include the development of point of sale ordinances that require homeowners to repair private sewer laterals prior to sale and the repair and replacement of main sewer lines as necessary. Sanitary District No. 1 of Marin County has already adopted a point of sale sewer lateral ordinance, which demonstrates that it is also feasible for the other collection system agencies.
- b. **CMSA Tasks to Reduce Blending.** Consistent with Attachment D section I.G and 40 C.F.R. section 122.41(m), CMSA submitted a No Feasible Alternatives Analysis with its permit reissuance application to determine whether any feasible alternatives are available to CMSA to reduce blending. The analysis indicated that there is very little that CMSA can do to reduce blending because it is infeasible to further expand its treatment plant capacity (CMSA recently completed a major treatment expansion) and because the primary cause of blending is due to inflow and infiltration of stormwater into the collection systems during wet weather. CMSA does not own the collection systems (see fact sheet section II.A.3), so Provision VI.C.5.a of this Order requires the collection system agencies to complete tasks to reduce blending. Provision VI.C.5.b of this Order requires CMSA to perform feasible tasks within its control and to assist the collection system agencies. The analysis and reporting requirements are based in part on U.S. EPA's proposed *Peak Wet Weather Policy* (December 2005).
- c. **Copper Action Plan.** This provision is based on Basin Plan section 7.2.1.2 and is necessary to ensure that use of copper site-specific objectives is consistent with antidegradation policies. CMSA submitted an inventory of potential copper sources with its Pollution Prevention Report dated February 24, 2017. This provision requires CMSA to implement pretreatment, source control, and pollution prevention for identified copper sources. Additional actions may be necessary depending on the three-year rolling mean copper concentration in Central San Francisco Bay. Data the San Francisco Estuary Institute compiled for 2011-2015 indicate no degradation of San Francisco Bay water quality with respect to copper (<http://www.sfei.org/pages/copper-site-specific-objective-3-year-rolling-averages-0>).

- d. Cyanide Action Plan.** This provision is based on Basin Plan section 4.7.2.2 and is necessary to ensure that use of cyanide site-specific objectives is consistent with antidegradation policies. The threshold for considering influent cyanide concentrations to indicate a possible “significant cyanide discharge” in CMSA’s service area is set at 10 µg/L, the maximum influent cyanide concentration from April 2012 through August 2016.

6. Anaerobically-Digestible Material

Standard Operating Procedures are required for dischargers that accept hauled waste food, fats, oil, and grease for injection into anaerobic digesters. The development and implementation of Standard Operating Procedures for management of these materials is intended to allow the California Department of Resources Recycling and Recovery to exempt operations from separate and redundant permitting programs. CMSA’s most recent update, dated May 2013, *Standard Operating Procedures for Anaerobically Digestible Materials*, describes how it manages high strength wastes for resource recovery.

Some POTWs choose to accept organic material, such as waste food, fats, oils, and grease, into their anaerobic digesters to increase production of methane and other biogas for energy production and to prevent such materials from being discharged into the collection system and potentially causing sanitary sewer overflows. This activity also results in landfill diversion and greenhouse gas reduction. The California Department of Resources Recycling and Recovery has proposed to exclude POTWs from Process Facility/Transfer Station permit requirements when the same activities are regulated under WDRs or NPDES permits. The proposed exclusion is restricted to anaerobically-digestible materials that have been prescreened, slurried, processed, and conveyed in a closed system for co-digestion with regular sewage sludge. The exclusion assumes that the facility has developed Standard Operating Procedures for proper handling, processing, tracking, and management.

VII. RATIONALE FOR MONITORING AND REPORTING PROGRAM (MRP)

Attachment E contains the MRP for this Order. It specifies sampling stations, pollutants to be monitored (including all parameters for which effluent limitations are specified), monitoring frequencies, and reporting requirements. The following provides the rationale for these requirements:

A. MRP Requirements Rationale

- 1. Influent Monitoring.** Influent monitoring at Monitoring Location INF-001 is necessary to understand Facility operations and to evaluate compliance with Prohibition III.D, which prohibits average dry weather influent flow greater than 10 MGD. Influent CBOD₅ and TSS monitoring is necessary to evaluate compliance with this Order’s 85 percent removal requirement. Basin Plan section 4.7.2.2 requires cyanide monitoring because this Order is based on site-specific cyanide water quality objectives.
- 2. Effluent Monitoring.** Effluent monitoring at Monitoring Locations EFF-001, EFF-002, and EFF-002b is necessary to understand Facility operations, to evaluate compliance with this Order’s effluent limitations, and to conduct future reasonable potential analyses. Bacteria

monitoring is allowed at Monitoring Location EFF-001 (prior to dechlorination) because bacteria could regrow between the point of dechlorination and the sampling location. Samples collected for bacteria analysis are immediately dechlorinated with sodium thiosulfate after the sample is collected.

3. **Toxicity Testing.** Acute toxicity tests are necessary to evaluate compliance with the acute toxicity effluent limitations and to conduct future reasonable potential analyses. Chronic toxicity tests are necessary to conduct future reasonable potential analyses and to evaluate whether chronic toxicity exceeds triggers for accelerated monitoring and Toxicity Reduction Evaluations based on Basin Plan sections 4.5.5.3.2 and 4.5.5.3.3 and Basin Plan Table 4-5. A chronic toxicity screening phase study, as described in MRP Appendix E-1, is needed following any significant change in the nature of the effluent and at least prior to permit reissuance to ensure that toxicity tests continue to be conducted with the most sensitive organism.

Because CMSA elected to participate in the *Alternate Monitoring and Reporting Requirements for Municipal Wastewater Dischargers for the Purpose of Adding Support to the San Francisco Bay Regional Monitoring Program* (Order No. R2-2016-0008), it did not conduct a chronic toxicity screening phase study for this permit reissuance. CMSA's previous chronic toxicity study, August 23, 2001, indicated that *Americamysis bahia* (mysid shrimp) was the most sensitive species.

4. **Receiving Water Monitoring.** CMSA is required to continue participating in the Regional Monitoring Program, which involves collecting data on pollutants and toxicity in San Francisco Bay water, sediment, and biota. This monitoring is necessary to characterize the receiving water and the effects of the discharge this Order authorizes.
5. **Pretreatment and Biosolids Monitoring.** The pretreatment and biosolids monitoring requirements for influent, effluent, and biosolids are necessary to evaluate compliance with pretreatment requirements.
6. **Other Monitoring Requirements.** Pursuant to CWA section 308, U.S. EPA requires dischargers to participate in a Discharge Monitoring Report-Quality Assurance (DMR-QA) Study Program. The program annually evaluates the analytical abilities of laboratories that perform or support NPDES permit-required monitoring. The program applies to discharger laboratories and contract laboratories. There are two options to comply: (1) dischargers can obtain and analyze DMR-QA samples, or (2) pursuant to a waiver U.S. EPA issued to the State Water Board, dischargers can submit results from the most recent Water Pollution Performance Evaluation Study. Dischargers must submit results annually to the State Water Board, which then forwards the results to U.S. EPA.

B. Monitoring Requirements Summary. The table below summarizes routine monitoring requirements. This table is for informational purposes only. The actual requirements are specified in the MRP and elsewhere in this Order.

Table F-10. Monitoring Requirements Summary

Parameter	Influent INF-001	Effluent EFF-001	Effluent EFF-002 (EFF-001 after dechlorination)	Effluent EFF-002b (during blending)	Biosolids BIO-001	Receiving Water
Flow	Continuous/ D	Continuous/D		Continuous/D	---	---
Volume of blended wastewater				1/Event		
Duration of blending event				1/Event		
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	1/Week	---	1/Week	1/Year	---	---
Total Suspended Solids	1/Week	---	2/Week	1/Day	---	---
Cyanide, Total	1/Month	---	1/Month	1/Year	2/Year	Support RMP
pH	---	---	1/Day or Continuous	1/Day or Continuous	---	Support RMP
Oil and Grease	---	---	2/Year		---	---
Enterococcus	---	1/Quarter	---	1/Day	---	---
Total Coliform		3/Week		1/Day		
Total Residual Chlorine	---	---	Continuous	Continuous	---	---
Acute Toxicity	---	---	1/Month		---	---
Chronic Toxicity	---	---	1/Quarter		---	---
Ammonia, Total	---	---	1/Month	1/Year	---	Support RMP
Copper, Total Recoverable	---	---	1/Month	1/Year	---	Support RMP
Dioxin-TEQ	---	---	2/Year		---	Support RMP
Priority Pollutants ^[1]	---	---	1/Year		---	Support RMP
VOC ^[2]	2/Year	---	2/Year		2/Year	---
BNA ^[3]	2/Year	---	2/Year		2/Year	---
Metals and Other Elements ^[4]	1/Month	---	1/Month		2/Year	---
Hexavalent Chromium or Total Chromium	1/Month	---	1/Month		2/Year	---
Mercury	1/Month	---	1/Month		2/Year	---
Metric tons/year	---	---	---	---	See Att. G § III.B.2	---
Paint filter test	---	---	---	---	See Att. G § III.B.2	---

Sampling Frequencies:

Continuous/D = measured continuously, and recorded and reported daily

1/Day = once per day

3/Week = three times per week

1/Month = once per month

1/Quarter = once per quarter

1/Year = once per year

2/Year = twice per year

Footnotes:

^[1] This monitoring is required by Provision VI.C.2 of the Order.

[2] VOC: volatile organic compounds

[3] BNA: base/neutrals and acid extractable organic compounds

[4] The metals and other elements are arsenic, cadmium, copper, lead, nickel, selenium, silver, and zinc.

VIII. PUBLIC PARTICIPATION

The Regional Water Board considered the issuance of WDRs that will serve as an NPDES permit for the Facility. As a step in the WDR adoption process, Regional Water Board staff developed tentative WDRs and encouraged public participation in the WDR adoption process.

A. Notification of Interested Parties. The Regional Water Board notified the Dischargers and interested agencies and persons of its intent to prescribe WDRs for the discharge and provided an opportunity to submit written comments and recommendations. Notification was provided through the *Marin Independent Journal*. The public had access to the agenda and any changes in dates and locations through the Regional Water Board's website at <http://www.waterboards.ca.gov/sanfranciscobay>.

B. Written Comments. Interested persons were invited to submit written comments concerning the tentative WDRs as explained through the notification process. Comments were to be submitted either in person or by mail to the Executive Officer at the Regional Water Board at 1515 Clay Street, Suite 1400, Oakland, California 94612, to the attention of Vincent Christian.

For full staff response and Regional Water Board consideration, the written comments were due at the Regional Water Board office by 5:00 p.m on **October 23, 2017**.

C. Public Hearing. The Regional Water Board held a public hearing on the tentative WDRs during its regular meeting at the following date and time, and at the following location:

Date: **January 10, 2018**
Time: 9:00 am
Location: Elihu Harris State Office Building
1515 Clay Street, 1st Floor Auditorium
Oakland, CA 94612

Contact: Vincent Christian, (510) 622-2336, vince.christian@waterboards.ca.gov .

Interested persons were invited to attend. At the public hearing, the Regional Water Board heard testimony pertinent to the discharge, WDRs, and permit. For accuracy of the record, important testimony was requested to be in writing.

Dates and venues change. The Regional Water Board web address is <http://www.waterboards.ca.gov/sanfranciscobay>, where one could access the current agenda for changes in dates and locations.

D. Reconsideration of Waste Discharge Requirements. Any aggrieved person may petition the State Water Board to review the Regional Water Board decision regarding the final WDRs. The State Water Board must receive the petition at the following address within 30 calendar days of the Regional Water Board action:

State Water Resources Control Board
Office of Chief Counsel

P.O. Box 100, 1001 I Street
Sacramento, CA 95812-0100

For instructions on how to file a petition for review, see
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml.

- E. Information and Copying.** The Report of Waste Discharge, related supporting documents, and comments received are on file and may be inspected at the address above at any time between 9:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged 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 the 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 Vincent Christian, at (510) 622-2336, or vince.christian@waterboards.ca.gov.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ATTACHMENT G

REGIONAL STANDARD PROVISIONS, AND
MONITORING AND REPORTING REQUIREMENTS
(SUPPLEMENT TO ATTACHMENT D)

November 2017

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REGIONAL STANDARD PROVISIONS, AND MONITORING AND REPORTING REQUIREMENTS

APPLICABILITY

This document supplements the requirements of Federal Standard Provisions (Attachment D). For clarity, these provisions are arranged using to the same headings as those used in Attachment D.

I. STANDARD PROVISIONS - PERMIT COMPLIANCE

A. Duty to Comply – Not Supplemented

B. Need to Halt or Reduce Activity Not a Defense – Not Supplemented

C. Duty to Mitigate – Supplement to Attachment D, Provision I.C.

- 1. Contingency Plan.** The Discharger shall maintain a Contingency Plan as prudent in accordance with current facility emergency planning. The Contingency Plan shall describe procedures to ensure that existing facilities remain in, or are rapidly returned to, operation in the event of a process failure or emergency incident, such as employee strike, strike by suppliers of chemicals or maintenance services, power outage, vandalism, earthquake, or fire. The Discharger may combine the Contingency Plan and Spill Prevention Plan (see Provision I.C.2, below) into one document. In accordance with Regional Water Board Resolution No. 74-10, discharge in violation of the permit where the Discharger has failed to develop and implement a Contingency Plan as described below may be the basis for considering the discharge a willful and negligent violation of the permit pursuant to California Water Code section 13387. The Contingency Plan shall, at a minimum, provide for the following:
 - a. Sufficient personnel for continued facility operation and maintenance during employee strikes or strikes against contractors providing services;
 - b. Maintenance of adequate chemicals or other supplies, and spare parts necessary for continued facility operations;
 - c. Emergency standby power;
 - d. Protection against vandalism;
 - e. Expeditious action to repair failures of, or damage to, equipment, including any sewer lines;
 - f. Reporting of spills and discharges of untreated or inadequately treated wastes, including measures taken to clean up the effects of such discharges; and
 - g. Maintenance, replacement, and surveillance of physical condition of equipment and facilities, including any sewer lines.

2. **Spill Prevention Plan.** The Discharger shall maintain a Spill Prevention Plan to prevent accidental discharges and to minimize the effects of any such discharges. The Spill Prevention Plan shall do the following:
 - a. Identify the possible sources of accidental discharge, untreated or partially-treated waste bypass, and polluted drainage;
 - b. State when current facilities and procedures became operational and evaluate their effectiveness; and
 - c. Predict the effectiveness of any proposed facilities and procedures and provide an implementation schedule with interim and final dates when the proposed facilities and procedures will be constructed, implemented, or operational.

D. Proper Operation and Maintenance – Supplement to Attachment D, Provision I.D

1. **Operation and Maintenance Manual.** The Discharger shall maintain an Operation and Maintenance Manual to provide the plant and regulatory personnel with a source of information describing all equipment, recommended operational strategies, process control monitoring, and maintenance activities. To remain a useful and relevant document, the Operation and Maintenance Manual shall be kept updated to reflect significant changes in treatment facility equipment and operational practices. The Operation and Maintenance Manual shall be maintained in usable condition and be available for reference and use by all relevant personnel and Regional Water Board staff.
2. **Wastewater Facilities Status Report.** The Discharger shall maintain a Wastewater Facilities Status Report and regularly review, revise, or update it, as necessary. This report shall document how the Discharger operates and maintains its wastewater collection, treatment, and disposal facilities to ensure that all facilities are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as necessary to provide adequate and reliable transport, treatment, and disposal of all wastewater from both existing and planned future wastewater sources under the Discharger's service responsibilities.
3. **Proper Supervision and Operation of Publicly-Owned Treatment Works (POTWs).** POTWs shall be supervised and operated by persons possessing certificates of appropriate grade pursuant to Title 23, section 3680, of the California Code of Regulations.

E. Property Rights – Not Supplemented

F. Inspection and Entry – Not Supplemented

G. Bypass – Not Supplemented

H. Upset – Not Supplemented

I. Other – Addition to Attachment D

1. Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code section 13050.
2. Collection, treatment, storage, and disposal systems shall be operated in a manner that precludes public contact with wastewater. If public contact with wastewater could reasonably occur on public property, warning signs shall be posted.
3. If the Discharger submits a timely and complete Report of Waste Discharge for permit reissuance, this permit shall continue in force and effect until the permit is reissued or the Regional Water Board rescinds the permit.

II. STANDARD PROVISIONS – PERMIT ACTION – Not Supplemented

III. STANDARD PROVISIONS – MONITORING

A. Sampling and Analyses – Supplement to Attachment D, Provisions III.A and III.B

1. **Certified Laboratories.** Water and waste analyses shall be performed by a laboratory certified for these analyses in accordance with California Water Code section 13176.
2. **Minimum Levels.** For the 126 priority pollutants, the Discharger should use the analytical methods listed in Table B unless the Monitoring and Reporting Program (MRP, Attachment E) requires a particular method or minimum level (ML). All monitoring instruments and equipment shall be properly calibrated and maintained to ensure accuracy of measurements.
3. **Monitoring Frequency.** The MRP specifies the minimum sampling and analysis schedule.

a. Sample Collection Timing

- i. The Discharger shall collect influent samples on varying days selected at random and shall not include any plant recirculation or other sidestream wastes, unless otherwise stipulated in the MRP. The Executive Officer may approve an alternative influent sampling plan if it is representative of plant influent and complies with all other permit requirements.
- ii. The Discharger shall collect effluent samples on days coincident with influent sampling, unless otherwise stipulated by the MRP. If influent sampling is not required, the Discharger shall collect effluent samples on varying days selected at random, unless otherwise stipulated in the MRP. The Executive Officer may approve an alternative effluent sampling plan if it is representative of plant discharge and in compliance with all other permit requirements.
- iii. The Discharger shall collect effluent grab samples during periods of daytime maximum peak flows (or peak flows through secondary treatment units for facilities that recycle effluent).

- iv. Effluent sampling for conventional pollutants shall occur on at least one day of any multiple-day bioassay the MRP requires. During the course of the bioassay, on at least one day, the Discharger shall collect and retain samples of the discharge. In the event that a bioassay result does not comply with effluent limitations, the Discharger shall analyze the retained samples for pollutants that could be toxic to aquatic life and for which it has effluent limitations.
 - (a) The Discharger shall perform bioassays on final effluent samples; when chlorine is used for disinfection, bioassays shall be performed on effluent after chlorination and dechlorination; and
 - (b) The Discharger shall analyze for total ammonia nitrogen and calculate the amount of un-ionized ammonia whenever test results fail to meet effluent limitations.

b. Conditions Triggering Accelerated Monitoring

- i. **Average Monthly Effluent Limitation Exceedance.** If the results from two consecutive samples of a constituent monitored in a particular month exceed the average monthly effluent limitation for any parameter (or if the required sampling frequency is once per month or less and the monthly sample exceeds the average monthly effluent limitation), the Discharger shall, within 24 hours after the results are received, increase its sampling frequency to daily until the results from the additional sampling show that the parameter complies with the average monthly effluent limitation.
- ii. **Maximum Daily Effluent Limitation Exceedance.** If a sample result exceeds a maximum daily effluent limitation, the Discharger shall, within 24 hours after the result is received, increase its sampling frequency to daily until the results from two samples collected on consecutive days show compliance with the maximum daily effluent limitation.
- iii. **Acute Toxicity.** If final or intermediate results of an acute bioassay indicate a violation or threatened violation (e.g., the percentage of surviving test organisms of any single acute bioassay is less than 70 percent), the Discharger shall initiate a new test as soon as practical or as described in applicable State Water Board plan provisions that become effective after adoption of these Regional Standard Provisions. The Discharger shall investigate the cause of the mortalities and report its findings in the next self-monitoring report.
- iv. **Chlorine.** The Discharger shall calibrate chlorine residual analyzers against grab samples as frequently as necessary to maintain accurate control and reliable operation. If an effluent violation is detected, the Discharger shall collect grab samples at least every 30 minutes until compliance with the limitation is achieved, unless the Discharger monitors chlorine residual continuously. In such cases, the Discharger shall continue to conduct continuous monitoring.
- v. **Bypass.** Except as indicated below, if a Discharger bypasses any portion of its treatment facility, it shall monitor flows and collect samples at affected discharge

points and analyze samples for all constituents with effluent limitations on a daily basis for the duration of the bypass. The Discharger need not accelerate chronic toxicity monitoring. The Discharger also need not collect and analyze samples for mercury, dioxin-TEQ, and PCBs after the first day of the bypass. The Discharger may satisfy the accelerated acute toxicity monitoring requirement by conducting a flow-through test or static renewal test that captures the duration of the bypass (regardless of the method specified in the MRP). If bypassing disinfection units only, the Discharger shall only monitor bacteria indicators daily.

(a) Bypass for Essential Maintenance. If a Discharger bypasses a treatment unit for essential maintenance pursuant to Attachment D section I.G.2, the Executive Officer may reduce the accelerated monitoring requirements above if the Discharger (i) monitors effluent at affected discharge points on the first day of the bypass for all constituents with effluent limitations, except chronic toxicity; and (ii) identifies and implements measures to ensure that the bypass will continue to comply with effluent limitations.

(b) Approved Wet Weather Bypasses. If a Discharger bypasses a treatment unit or permitted outfall during wet weather with Executive Officer approval pursuant to Attachment D section I.G.4, the Discharger shall monitor flows and collect and retain samples for affected discharge points on a daily basis for the duration of the bypass. The Discharger shall analyze daily for TSS using 24-hour composites (or more frequent increments) and for bacteria indicators with effluent limitations using grab samples. If TSS exceeds 45 mg/L in any composite sample, the Discharger shall also analyze daily the retained samples for all other constituents with effluent limitations, except oil and grease, mercury, PCBs, dioxin-TEQ, and acute and chronic toxicity. Additionally, at least once each year, the Discharger shall analyze the retained samples for one approved bypass for all other constituents with effluent limitations, except oil and grease, mercury, PCBs, dioxin-TEQ, and acute and chronic toxicity. This monitoring shall be in addition to the minimum monitoring specified in the MRP.

B. Standard Observations – Addition to Attachment D

- 1. Receiving Water Observations.** The following requirements only apply when the MRP requires standard observations of receiving waters. Standard observations shall include the following:
 - a. Floating and Suspended Materials** (e.g., oil, grease, algae, and other microscopic particulate matter) — presence or absence, source, and size of affected area.
 - b. Discoloration and Turbidity** — color, source, and size of affected area.
 - c. Odor** — presence or absence, characterization, source, and distance of travel.
 - d. Beneficial Water Use** — estimated number of water-associated waterfowl or wildlife, fisherpeople, and other recreational activities.

- e. Hydrographic Condition** — time and height of high and low tides (corrected to nearest National Oceanic and Atmospheric Administration location for the sampling date and time).
 - f. Weather Conditions** — wind direction, air temperature, and total precipitation during five days prior to observation.
- 2. Wastewater Effluent Observations.** The following requirements only apply when the MRP requires standard observations of wastewater effluent. Standard observations shall include the following:
 - a. Floating and Suspended Material of Wastewater Origin** (e.g., oil, grease, algae, and other microscopic particulate matter) — presence or absence.
 - b. Odor** — presence or absence, characterization, source, distance of travel, and wind direction.
- 3. Beach and Shoreline Observations.** The following requirements only apply when the MRP requires standard observations of beaches or shorelines. Standard observations shall include the following:
 - a. Material of Wastewater Origin** — presence or absence, description of material, estimated size of affected area, and source.
 - b. Beneficial Use** — estimate of number of people participating in recreational water contact, non-water contact, and fishing activities.
- 4. Waste Treatment and/or Disposal Facility Periphery Observations.** The following requirements only apply when the MRP requires standard observations of the periphery of waste treatment or disposal facilities. Standard observations shall include the following:
 - a. Odor** — presence or absence, characterization, source, and distance of travel.
 - b. Weather Conditions** — wind direction and estimated velocity.

IV. STANDARD PROVISIONS – RECORDS

A. Records to be Maintained – Supplement to Attachment D, Provision IV.A

The Discharger shall maintain records in a manner and at a location (e.g., the wastewater treatment plant or the Discharger's offices) such that the records are accessible to Regional Water Board staff. The minimum retention period specified in Attachment D, Provision IV, shall be extended during the course of any unresolved litigation regarding permit-related discharges, or when requested by Regional Water Board or U.S. EPA, Region IX, staff.

A copy of the permit shall be maintained at the discharge facility and be available at all times to operating personnel.

B. Records of Monitoring – Supplement to Attachment D, Provision IV.B

Monitoring records shall include the following:

- 1. Analytical Information.** Records shall include analytical method detection limits, minimum levels, reporting levels, and related quantification parameters.
- 2. Disinfection Process.** For the disinfection process, records shall include the following:
 - a.** For bacteriological analyses:
 - i.** Wastewater flow rate at the time of sample collection; and
 - ii.** Required statistical parameters for cumulative bacterial values (e.g., moving median or geometric mean for the number of samples or sampling period identified in the MRP).
 - b.** For the chlorination process (when chlorine is used for disinfection), at least daily average values for the following:
 - i.** Chlorine residual of treated wastewater as it enters the chlorine contact basin (mg/L);
 - ii.** Chlorine dosage (kg/day); and
 - iii.** Dechlorination chemical dosage (kg/day).
- 3. Wastewater Treatment Process Solids.** For each treatment unit process that involves solids removal from the wastewater stream, records shall include the following:
 - a.** Total volume or mass of solids removed from each collection unit (e.g., grit, skimmings, undigested biosolids, or combination) for each calendar month or other time period as appropriate, but not to exceed annually; and
 - b.** Final disposition of such solids (e.g., landfill, other subsequent treatment unit).
- 4. Treatment Process Bypasses.** For all treatment process bypasses, including wet weather blending, records shall include the following:
 - a.** Chronological log of treatment process bypasses;
 - b.** Identification of treatment processes bypassed;
 - c.** Beginning and ending dates and times of bypasses;
 - d.** Bypass durations;
 - e.** Estimated bypass volumes; and
 - f.** Description of, or reference to other reports describing, the bypasses, their cause, the corrective actions taken (except for wet weather blending explicitly approved within the permit and in compliance with any related permit conditions), and any additional monitoring conducted.

- 5. Treatment Plant Overflows.** The Discharger shall retain a chronological log of overflows at the treatment plant, including the headworks and all units and appurtenances downstream, and records supporting the information provided in accordance with Provision V.E.2, below.

C. Claims of Confidentiality – Not Supplemented

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information – Not Supplemented

B. Signatory and Certification Requirements – Not Supplemented

C. Monitoring Reports – Supplement to Attachment D, Provision V.C

- 1. Self-Monitoring Reports.** For each reporting period established in the MRP, the Discharger shall submit a self-monitoring report to the Regional Water Board in accordance with the requirements listed in the MRP and below:
 - a. Transmittal Letter.** Each self-monitoring report shall be submitted with a transmittal letter that includes the following:
 - i.** Identification of all violations of effluent limitations or other waste discharge requirements found during the reporting period;
 - ii.** Details regarding the violations, such as parameters, magnitude, test results, frequency, and dates;
 - iii.** Causes of the violations;
 - iv.** Corrective actions taken or planned to resolve violations and prevent recurrences, and dates or time schedules for implementation (the Discharger may refer to previously submitted reports that address the corrective actions);
 - v.** Explanation for any data invalidation. Data should not be submitted in a self-monitoring report if it does not meet quality assurance/quality control standards. However, if the Discharger wishes to invalidate a measurement after submitting it in a self-monitoring report, the Discharger shall identify the measurement suspected to be invalid and state the Discharger's intent to submit, within 60 days, a formal request to invalidate the measurement. The formal request shall include the original measurement in question, the reason for invalidating the measurement, all relevant documentation that supports invalidation (e.g., laboratory sheet, log entry, test results), and a discussion of the corrective actions taken or planned (with a time schedule for completion) to prevent recurrence of the sampling or measurement problem;
 - vi.** Description of blending, if any. If the Discharger blends, it shall describe the duration of blending events and certify whether the blending complied with all conditions for blending;

- vii.** Description of other bypasses, if any. If the Discharger bypasses any treatment units (other than blending), it shall describe the duration of the bypasses and effluent quality during those times; and
 - viii.** Signature. The transmittal letter shall be signed in accordance with Attachment D, Provision V.B.
- b. Compliance Evaluation Summary.** Each self-monitoring report shall include a compliance evaluation summary that addresses each parameter for which the permit specifies effluent limitations, the number of samples taken during the monitoring period, and the number of samples that exceed the effluent limitations.
- c. More Frequent Monitoring.** If the Discharger monitors any pollutant more frequently than required by the MRP, the Discharger shall include the results of such monitoring in the calculation and reporting of the data submitted in the self-monitoring report.
- d. Analysis Results**
 - i. Tabulation.** Each self-monitoring report shall include tabulations of all required analyses and observations, including parameters, dates, times, sample stations, types of samples, test results, method detection limits, method minimum levels, and method reporting levels (if applicable), signed by the laboratory director or other responsible official.
 - ii. Multiple Samples.** Unless the MRP specifies otherwise, when determining compliance with effluent limitations (other than instantaneous effluent limitations) and more than one sample result is available, the Discharger shall compute the arithmetic mean. If the data set contains one or more results that are “Detected, but Not Quantified (DNQ)” or “Not Detected” (ND), the Discharger shall instead compute the median in accordance with the following procedure:
 - (a)** The data set shall be ranked from low to high, reported ND determinations lowest, DNQ determinations next, followed by quantified values (if any). The order of the individual ND or DNQ determinations is unimportant.
 - (b)** The median of the data set shall be determined. If the data set has an odd number of data points, the median is the middle value. If the data set has an even number of data points, the median is the average of the two values around the middle, unless one or both of these values is ND or DNQ, in which case the median shall be the lower of the two results (where DNQ is lower than a quantified value and ND is lower than DNQ).
 - iii. Duplicate Samples.** The Discharger shall report the average of duplicate sample analyses when reporting for a single sample result (or the median if one or more of the duplicates is DNQ or ND [see Provision V.C.1.c.ii, above]). For bacteria indicators, the Discharger shall report the geometric mean of the duplicate analyses.

- iv. Dioxin-TEQ.** The Discharger shall report for each dioxin and furan congener the analytical results of effluent monitoring, including the reporting level, the method detection limit, and the measured concentration. The Discharger shall report all measured values of individual congeners, including data qualifiers. When calculating dioxin-TEQ, the Discharger shall set congener concentrations below the minimum levels (MLs) to zero. The Discharger shall calculate and report dioxin-TEQ using the following formula, where the MLs, toxicity equivalency factors (TEFs), and bioaccumulation equivalency factors (BEFs) are as provided in Table A:

$$\text{Dioxin-TEQ} = \sum (C_x \times \text{TEF}_x \times \text{BEF}_x)$$

where: C_x = measured or estimated concentration of congener x
 TEF_x = toxicity equivalency factor for congener x
 BEF_x = bioaccumulation equivalency factor for congener x

Table A
Minimum Levels, Toxicity Equivalency Factors,
and Bioaccumulation Equivalency Factors

Dioxin or Furan Congener	Minimum Level (pg/L)	2005 Toxicity Equivalency Factor (TEF)	Bioaccumulation Equivalency Factor (BEF)
2,3,7,8-TCDD	10	1.0	1.0
1,2,3,7,8-PeCDD	50	1.0	0.9
1,2,3,4,7,8-HxCDD	50	0.1	0.3
1,2,3,6,7,8-HxCDD	50	0.1	0.1
1,2,3,7,8,9-HxCDD	50	0.1	0.1
1,2,3,4,6,7,8-HpCDD	50	0.01	0.05
OCDD	100	0.0003	0.01
2,3,7,8-TCDF	10	0.1	0.8
1,2,3,7,8-PeCDF	50	0.03	0.2
2,3,4,7,8-PeCDF	50	0.3	1.6
1,2,3,4,7,8-HxCDF	50	0.1	0.08
1,2,3,6,7,8-HxCDF	50	0.1	0.2
1,2,3,7,8,9-HxCDF	50	0.1	0.6
2,3,4,6,7,8-HxCDF	50	0.1	0.7
1,2,3,4,6,7,8-HpCDF	50	0.01	0.01
1,2,3,4,7,8,9-HpCDF	50	0.01	0.4
OCDF	100	0.0003	0.02

- e. Results Not Yet Available.** The Discharger shall make all reasonable efforts to obtain analytical data for required parameter sampling in a timely manner. Certain analyses may require additional time to complete analytical processes and report results. In these cases, the Discharger shall describe the circumstances in the self-monitoring report and include the data for these parameters and relevant discussions of any violations in the next self-monitoring report due after the results are available.

- f. Annual Self-Monitoring Reports.** By the date specified in the MRP, the Discharger shall submit an annual self-monitoring report covering the previous calendar year. The report shall contain the following:
- i.** Comprehensive discussion of treatment plant performance, including documentation of any blending or other bypass events, and compliance with the permit. This discussion shall include any corrective actions taken or planned, such as changes to facility equipment or operation practices that may be needed to achieve compliance, and any other actions taken or planned that are intended to improve the performance and reliability of wastewater collection, treatment, or disposal practices;
 - ii.** List of approved analyses, including the following:
 - (a)** List of analyses for which the Discharger is certified;
 - (b)** List of analyses performed for the Discharger by a separate certified laboratory (copies of reports signed by the laboratory director of that laboratory need not be submitted but shall be retained onsite); and
 - (c)** List of “waived” analyses, as approved;
 - iii.** Plan view drawing or map showing the Discharger’s facility, flow routing, and sampling and observation station locations; and
 - iv.** Results of facility report reviews. The Discharger shall regularly review, revise, and update, as necessary, the Operation and Maintenance Manual, Contingency Plan, Spill Prevention Plan, and Wastewater Facilities Status Report so these documents remain useful and relevant to current practices. At a minimum, reviews shall be conducted annually. The Discharger shall describe or summarize its review and evaluation procedures, recommended or planned actions, and estimated time schedule for implementing these actions. The Discharger shall complete changes to these documents to ensure that they remain up-to-date.

D. Compliance Schedules – Not supplemented

E. Twenty-Four Hour Reporting – Supplement to Attachment D, Provision V.E

1. Oil or Other Hazardous Material Spills

- a.** Within 24 hours of becoming aware of a spill of oil or other hazardous material not contained onsite and completely cleaned up, the Discharger shall report as follows:
 - i.** If the spill exceeds reportable quantities for hazardous materials listed in 40 C.F.R. part 302. The Discharger shall call the California Office of Emergency Services (800-852-7550).
 - ii.** If the spill does not exceed reportable quantities for hazardous materials listed in 40 C.F.R., part 302, the Discharger shall call the Regional Water Board (510-622-2369).

- b.** The Discharger shall submit a written report to the Regional Water Board within five working days following either of the above telephone notifications unless directed otherwise by Regional Water Board staff. A report submitted electronically is acceptable. The written report shall include the following:
 - i.** Date and time of spill, and duration if known;
 - ii.** Location of spill (street address or description of location);
 - iii.** Nature of material spilled;
 - iv.** Quantity of material spilled;
 - v.** Receiving water body affected, if any;
 - vi.** Cause of spill;
 - vii.** Estimated size of affected area;
 - viii.** Observed impacts to receiving waters (e.g., oil sheen, fish kill, water discoloration);
 - ix.** Corrective actions taken to contain, minimize, or clean up the spill;
 - x.** Future corrective actions planned to prevent recurrence, and implementation schedule; and
 - xi.** Persons or agencies notified.

2. Unauthorized Municipal Wastewater Treatment Plant Discharges¹

- a. Two-Hour Notification.** For any unauthorized discharge that enters a drainage channel or surface water, the Discharger shall, as soon as possible, but not later than two hours after becoming aware of the discharge, notify the California Office of Emergency Services (800-852-7550) and the local health officer or director of environmental health with jurisdiction over the affected water body. Notification shall include the following:
 - i.** Incident description and cause;
 - ii.** Location of threatened or involved waterways or storm drains;
 - iii.** Date and time that the unauthorized discharge started;
 - iv.** Estimated quantity and duration of the unauthorized discharge (to the extent known), and estimated amount recovered;

¹ California Code of Regulations, Title 23, section 2250(b), defines an unauthorized discharge 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.

- More definitions can be found in Attachment A of this NPDES Permit.

A. Arithmetic Calculations –

- 1. Geometric Mean.** The antilog of the log mean or the back-transformed mean of the logarithmically transformed variables, which is equivalent to the multiplication of the antilogarithms. The geometric mean can be calculated with either of the following equations:

$$\text{Geometric Mean} = \text{Anti log} \left(\frac{1}{N} \sum_{i=1}^N \text{Log}(C_i) \right)$$

or

$$\text{Geometric Mean} = (C_1 \times C_2 \times \dots \times C_N)^{1/N}$$

Where “N” is the number of data points for the period analyzed and “C” is the concentration for each of the “N” data points.

- 2. Mass Emission Rate.** The rate of discharge expressed in mass. The mass emission rate is obtained from the following calculation for any calendar day:

$$\text{Mass emission rate (lb/day)} = \frac{8.345}{N} \sum_{i=1}^N Q_i C_i$$

$$\text{Mass emission rate (kg/day)} = \frac{3.785}{N} \sum_{i=1}^N Q_i C_i$$

In which “N” is the number of samples analyzed in any calendar day and “Q_i” and “C_i” are the flow rate (MGD) and the constituent concentration (mg/L) associated with each of the “N” grab samples that may be taken in any calendar day. If a composite sample is taken, “C_i” is the concentration measured in the composite sample and “Q_i” is the average flow rate occurring during the period over which the samples are composited. The daily concentration of a constituent measured over any calendar day shall be determined from the flow-weighted average of the same constituent in the combined waste streams as follows:

$$C_d = \text{Average daily concentration} = \frac{1}{Q_t} \sum_{i=1}^N Q_i C_i$$

In which “N” is the number of component waste streams and “Q” and “C” are the flow rate (MGD) and the constituent concentration (mg/L) associated with each of the “N” waste streams. “Q_t” is the total flow rate of the combined waste streams.

- 3. Removal Efficiency.** The ratio of pollutants removed by the treatment facilities to pollutants entering the treatment facilities (expressed as a percentage). The Discharger shall determine removal efficiencies using monthly averages (by calendar month unless otherwise specified)

of pollutant concentration of influent and effluent samples collected at about the same time and using the following equation (or its equivalent):

$$\text{Removal Efficiency (\%)} = 100 \times [1 - (\text{Effluent Concentration} / \text{Influent Concentration})]$$

- B. Blending** – the practice of bypassing biological treatment units and recombining the bypass wastewater with biologically-treated wastewater.
- C. Composite Sample** – a sample composed of individual grab samples collected manually or by an automatic sampling device on the basis of time or flow as specified in the MRP. For flow-based composites, the proportion of each grab sample included in the composite sample shall be within plus or minus five percent (+/-5%) of the representative flow of the waste stream being measured at the time of grab sample collection. Alternatively, equal volume grab samples may be individually analyzed with the flow-weighted average calculated by averaging flow-weighted ratios of each grab sample analytical result. Grab samples comprising time-based composite samples shall be collected at intervals not greater than those specified in the MRP. The quantity of each grab sample comprising a time-based composite sample shall be a set of flow proportional volumes as specified in the MRP. If a particular time-based or flow-based composite sampling protocol is not specified in the MRP, the Discharger shall determine and implement the most representative protocol.
- D. Duplicate Sample** – a second sample taken from the same source and at the same time as an initial sample (such samples are typically analyzed identically to measure analytical variability).
- E. Grab Sample** – an individual sample collected during a short period not exceeding 15 minutes. Grab samples represent only the condition that exists at the time the sample is collected.
- F. Overflow** – the intentional or unintentional spilling or forcing out of untreated or partially-treated waste from a transport system (e.g., through manholes, at pump stations, or at collection points) upstream of the treatment plant headworks or from any part of a treatment plant.
- G. Priority Pollutants** – those constituents referred to in 40 C.F.R. part 122 as promulgated in the Federal Register, Vol. 65, No. 97, Thursday, May 18, 2000, also known as the California Toxics Rule.
- H. Untreated waste** – raw wastewater.

Table B
List of Monitoring Parameters and Analytical Methods

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVAA	DCP
1	Antimony	204.2					10	5	50	0.5	5	0.5		1000
2	Arsenic	206.3				20		2	10	2	2	1		1000
3	Beryllium						20	0.5	2	0.5	1			1000
4	Cadmium	200 or 213					10	0.5	10	0.25	0.5			1000
5a	Chromium (III)	SM 3500												
5b	Chromium (VI)	SM 3500				10	5							1000
	Chromium (total) ⁴	SM 3500					50	2	10	0.5	1			1000
6	Copper	200.9					25	5	10	0.5	2			1000
7	Lead	200.9					20	5	5	0.5	2			10,000
8	Mercury	1631 (note) ⁵												
9	Nickel	249.2					50	5	20	1	5			1000
10	Selenium	200.8 or SM 3114B or C						5	10	2	5	1		1000
11	Silver	272.2					10	1	10	0.25	2			1000
12	Thallium	279.2					10	2	10	1	5			1000
13	Zinc	200 or 289					20		20	1	10			
14	Cyanide	SM 4500 CN ⁻ C or I				5								
15	Asbestos (only required for dischargers to MUN waters) ⁶	0100.2 ⁷												
16	2,3,7,8-TCDD and 17 congeners (Dioxin)	1613												
17	Acrolein	603	2.0	5										
18	Acrylonitrile	603	2.0	2										
19	Benzene	602	0.5	2										
33	Ethylbenzene	602	0.5	2										
39	Toluene	602	0.5	2										
20	Bromoform	601	0.5	2										
21	Carbon Tetrachloride	601	0.5	2										
22	Chlorobenzene	601	0.5	2										
23	Chlorodibromomethane	601	0.5	2										
24	Chloroethane	601	0.5	2										
25	2-Chloroethylvinyl Ether	601	1	1										
26	Chloroform	601	0.5	2										
75	1,2-Dichlorobenzene	601	0.5	2										

² The suggested method is the U.S. EPA Method unless otherwise specified (SM = Standard Methods). The Discharger may use another U.S. EPA-approved or recognized method if that method has a level of quantification below the applicable water quality objective. Where no method is suggested, the Discharger has the discretion to use any standard method.

³ Minimum levels are from the *State Implementation Policy*. They are the concentration of the lowest calibration standard for that technique based on a survey of contract laboratories. Laboratory techniques are defined as follows: GC = Gas Chromatography; GCMS = Gas Chromatography/Mass Spectrometry; LC = High Pressure Liquid Chromatography; Color = Colorimetric; FAA = Flame Atomic Absorption; GFAA = Graphite Furnace Atomic Absorption; ICP = Inductively Coupled Plasma; ICPMS = Inductively Coupled Plasma/Mass Spectrometry; SPGFAA = Stabilized Platform Graphite Furnace Atomic Absorption (i.e., U.S. EPA 200.9); Hydride = Gaseous Hydride Atomic Absorption; CVAA = Cold Vapor Atomic Absorption; DCP = Direct Current Plasma.

⁴ Analysis for total chromium may be substituted for analysis of chromium (III) and chromium (VI) if the concentration measured is below the lowest hexavalent chromium criterion (11 µg/l).

⁵ The Discharger shall use ultra-clean sampling (U.S. EPA Method 1669) and ultra-clean analytical methods (U.S. EPA Method 1631) for mercury monitoring. The minimum level for mercury is 2 ng/l (or 0.002 µg/l).

⁶ MUN = Municipal and Domestic Supply. This designation, if applicable, is in the Findings of the permit.

⁷ Determination of Asbestos Structures over 10 [micrometers] in Length in Drinking Water Using MCE Filters, U.S. EPA 600/R-94-134, June 1994.

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVA	DCP
76	1,3-Dichlorobenzene	601	0.5	2										
77	1,4-Dichlorobenzene	601	0.5	2										
27	Dichlorobromomethane	601	0.5	2										
28	1,1-Dichloroethane	601	0.5	1										
29	1,2-Dichloroethane	601	0.5	2										
30	1,1-Dichloroethylene or 1,1-Dichloroethene	601	0.5	2										
31	1,2-Dichloropropane	601	0.5	1										
32	1,3-Dichloropropylene or 1,3-Dichloropropene	601	0.5	2										
34	Methyl Bromide or Bromomethane	601	1.0	2										
35	Methyl Chloride or Chloromethane	601	0.5	2										
36	Methylene Chloride or Dichloromethane	601	0.5	2										
37	1,1,2,2-Tetrachloroethane	601	0.5	1										
38	Tetrachloroethylene	601	0.5	2										
40	1,2-Trans-Dichloroethylene	601	0.5	1										
41	1,1,1-Trichloroethane	601	0.5	2										
42	1,1,2-Trichloroethane	601	0.5	2										
43	Trichloroethene	601	0.5	2										
44	Vinyl Chloride	601	0.5	2										
45	2-Chlorophenol	604	2	5										
46	2,4-Dichlorophenol	604	1	5										
47	2,4-Dimethylphenol	604	1	2										
48	2-Methyl-4,6-Dinitrophenol or Dinitro-2-methylphenol	604	10	5										
49	2,4-Dinitrophenol	604	5	5										
50	2-Nitrophenol	604		10										
51	4-Nitrophenol	604	5	10										
52	3-Methyl-4-Chlorophenol	604	5	1										
53	Pentachlorophenol	604	1	5										
54	Phenol	604	1	1		50								
55	2,4,6-Trichlorophenol	604	10	10										
56	Acenaphthene	610 HPLC	1	1	0.5									
57	Acenaphthylene	610 HPLC		10	0.2									
58	Anthracene	610 HPLC		10	2									
60	Benzo(a)Anthracene or 1,2 Benzanthracene	610 HPLC	10	5										
61	Benzo(a)Pyrene	610 HPLC		10	2									
62	Benzo(b)Fluoranthene or 3,4 Benzo(b)fluoranthene	610 HPLC		10	10									
63	Benzo(ghi)Perylene	610 HPLC		5	0.1									
64	Benzo(k)Fluoranthene	610 HPLC		10	2									
74	Dibenzo(a,h)Anthracene	610 HPLC		10	0.1									
86	Fluoranthene	610 HPLC	10	1	0.05									
87	Fluorene	610 HPLC		10	0.1									
92	Indeno(1,2,3-cd) Pyrene	610 HPLC		10	0.05									
100	Pyrene	610 HPLC		10	0.05									
68	Bis(2-Ethylhexyl)Phthalate	606 or 625	10	5										
70	Butylbenzyl Phthalate	606 or 625	10	10										
79	Diethyl Phthalate	606 or 625	10	2										
80	Dimethyl Phthalate	606 or 625	10	2										
81	Di-n-Butyl Phthalate	606 or 625		10										

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVAA	DCP
84	Di-n-Octyl Phthalate	606 or 625		10										
59	Benzidine	625		5										
65	Bis(2-Chloroethoxy)Methane	625		5										
66	Bis(2-Chloroethyl)Ether	625	10	1										
67	Bis(2-Chloroisopropyl)Ether	625	10	2										
69	4-Bromophenyl Phenyl Ether	625	10	5										
71	2-Chloronaphthalene	625		10										
72	4-Chlorophenyl Phenyl Ether	625		5										
73	Chrysene	625		10	5									
78	3,3'-Dichlorobenzidine	625		5										
82	2,4-Dinitrotoluene	625	10	5										
83	2,6-Dinitrotoluene	625		5										
85	1,2-Diphenylhydrazine (note) ⁸	625		1										
88	Hexachlorobenzene	625	5	1										
89	Hexachlorobutadiene	625	5	1										
90	Hexachlorocyclopentadiene	625	5	5										
91	Hexachloroethane	625	5	1										
93	Isophorone	625	10	1										
94	Naphthalene	625	10	1	0.2									
95	Nitrobenzene	625	10	1										
96	N-Nitrosodimethylamine	625	10	5										
97	N-Nitrosodi-n-Propylamine	625	10	5										
98	N-Nitrosodiphenylamine	625	10	1										
99	Phenanthrene	625		5	0.05									
101	1,2,4-Trichlorobenzene	625	1	5										
102	Aldrin	608	0.005											
103	α-BHC	608	0.01											
104	β-BHC	608	0.005											
105	γ-BHC (Lindane)	608	0.02											
106	δ-BHC	608	0.005											
107	Chlordane	608	0.1											
108	4,4'-DDT	608	0.01											
109	4,4'-DDE	608	0.05											
110	4,4'-DDD	608	0.05											
111	Dieldrin	608	0.01											
112	Endosulfan (alpha)	608	0.02											
113	Endosulfan (beta)	608	0.01											
114	Endosulfan Sulfate	608	0.05											
115	Endrin	608	0.01											
116	Endrin Aldehyde	608	0.01											
117	Heptachlor	608	0.01											
118	Heptachlor Epoxide	608	0.01											
119-125	PCBs: Aroclors 1016, 1221, 1232, 1242, 1248, 1254, 1260	608	0.5											
126	Toxaphene	608	0.5											

⁸ Measurement for 1,2-Diphenylhydrazine may use azobenzene as a screen: if azobenzene is measured at >1 ug/l, then the Discharger shall analyze for 1,2-Diphenylhydrazine.

ATTACHMENT H – PRETREATMENT REQUIREMENTS

CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD
SAN FRANCISCO BAY REGION

**ATTACHMENT H
PRETREATMENT PROGRAM PROVISIONS**

For
NPDES POTW WASTEWATER DISCHARGE PERMITS

March 2011
(Corrected May 2011)

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Attachment H: Pretreatment Program Provisions

- A.** The Discharger shall be responsible and liable for the performance of all Control Authority pretreatment requirements contained in 40 CFR 403, including any regulatory revisions to Part 403. Where a Part 403 revision is promulgated after the effective date of the Discharger's permit and places mandatory actions upon the Discharger as Control Authority but does not specify a timetable for completion of the actions, the Discharger shall complete the required actions within six months from the issuance date of this permit or six months from the effective date of the Part 403 revisions, whichever comes later.

(If the Discharger cannot complete the required actions within the above six-month period due to the need to process local adoption of sewer use ordinance modifications or other substantial pretreatment program modifications, the Discharger shall notify the Executive Officer in writing at least 60 days prior to the six-month deadline. The written notification shall include a summary of completed required actions, an explanation for why the six month deadline cannot be met, and a proposed timeframe to complete the rest of the required actions as soon as practical but not later than within twelve months of the issuance date of this permit or twelve months of the effective date of the Part 403 revisions, whichever comes later. The Executive Officer will notify the Discharger in writing within 30 days of receiving the request if the extension is not approved.)

The United States Environmental Protection Agency (U.S. EPA), the State and/or other appropriate parties may initiate enforcement action against a nondomestic user for noncompliance with applicable standards and requirements as provided in the Clean Water Act (Act).

- B.** The Discharger shall enforce the requirements promulgated under Sections 307(b), 307(c), 307(d) and 402(b) of the Act with timely, appropriate and effective enforcement actions. The Discharger shall cause nondomestic users subject to Federal Categorical Standards to achieve compliance no later than the date specified in those requirements or, in the case of a new nondomestic user, upon commencement of the discharge.
- C.** The Discharger shall perform the pretreatment functions as required in 40 CFR 403 and amendments or modifications thereto including, but not limited to:
- 1.** Implement the necessary legal authorities to fully implement the pretreatment regulations as provided in 40 CFR 403.8(f)(1);
 - 2.** Implement the programmatic functions as provided in 40 CFR 403.8(f)(2);
 - 3.** Publish an annual list of nondomestic users in significant noncompliance as provided per 40 CFR 403.8(f)(2)(viii);
 - 4.** Provide for the requisite funding and personnel to implement the pretreatment program as provided in 40 CFR 403.8(f)(3); and

5. Enforce the national pretreatment standards for prohibited discharges and categorical standards as provided in 40 CFR 403.5 and 403.6, respectively.
- D. The Discharger shall submit annually a report to U.S. EPA Region 9, the State Water Board and the Regional Water Board describing its pretreatment program activities over the previous calendar year. In the event that the Discharger is not in compliance with any conditions or requirements of the Pretreatment Program, the Discharger shall also include the reasons for noncompliance and a plan and schedule for achieving compliance. The report shall contain, but is not limited to, the information specified in Appendix H-1 entitled, "Requirements for Pretreatment Annual Reports." The annual report is due each year on February 28.
- E. The Discharger shall submit a pretreatment semiannual report to U.S. EPA Region 9, the State Water Board and the Regional Water Board describing the status of its significant industrial users (SIUs). The report shall contain, but is not limited to, information specified in Appendix H-2 entitled, "Requirements for Pretreatment Semiannual Reports." The semiannual report is due July 31 for the period January through June. The information for the period July through December of each year shall be included in the Annual Report identified in Appendix H-1. The Executive Officer may exempt the Discharger from the semiannual reporting requirements on a case by case basis subject to State Water Board and U.S. EPA's comment and approval.
- F. The Discharger shall conduct the monitoring of its treatment plant's influent, effluent, and sludge (biosolids) as described in Appendix H-4 entitled, "Requirements for Influent, Effluent and Sludge (Biosolids) Monitoring." (The term "biosolids," as used in this Attachment, shall have the same meaning as wastewater treatment plant "sludge" and will be used from this point forward.) The Discharger shall evaluate the results of the sampling and analysis during the preparation of the semiannual and annual reports to identify any trends. Signing the certification statement used to transmit the reports shall be deemed to certify the Discharger has completed this data evaluation. A tabulation of the data shall be included in the pretreatment annual report as specified in Appendix H-4. The Executive Officer may require more or less frequent monitoring on a case by case basis.

APPENDIX H-1

REQUIREMENTS FOR PRETREATMENT ANNUAL REPORTS

The Pretreatment Annual Report is due each year on February 28 and shall contain activities conducted during the previous calendar year. The purpose of the Annual Report is to:

- Describe the status of the Discharger's pretreatment program; and
- Report on the effectiveness of the program, as determined by comparing the results of the preceding year's program implementation.

The report shall contain, at a minimum, the following information:

A. Cover Sheet

The cover sheet shall include:

1. The name(s) and National Pollutant Discharge Elimination System (NPDES) permit number(s) of the Discharger(s) that is part of the Pretreatment Program;
2. The name, address and telephone number of a pretreatment contact person;
3. The period covered in the report;
4. A statement of truthfulness; and
5. The dated signature of a principal executive officer, ranking elected official, or other duly authorized employee who is responsible for overall operation of the Publicly Owned Treatment Works (POTW) (40 CFR 403.12(m)).

B. Introduction

This section shall include:

1. Any pertinent background information related to the Discharger and/or the nondomestic user base of the area;
2. List of applicable interagency agreements used to implement the Discharger's pretreatment program (e.g., Memoranda of Understanding (MOU) with satellite sanitary sewer collection systems); and
3. A status summary of the tasks required by a Pretreatment Compliance Inspection (PCI), Pretreatment Compliance Audit (PCA), Cleanup and Abatement Order (CAO), or other pretreatment-related enforcement actions required by the Regional Water Board or the U.S. EPA. A more detailed discussion can be referenced and included in the section entitled, "Program Changes," if needed.

C. Definitions

This section shall include a list of key terms and their definitions that the Discharger uses to describe or characterize elements of its pretreatment program, or the Discharger may provide a reference to its website if the applicable definitions are available on-line.

D. Discussion of Upset, Interference and Pass Through

This section shall include a discussion of Upset, Interference or Pass Through incidents, if any, at the Discharger's treatment plant(s) that the Discharger knows of or suspects were caused by nondomestic user discharges. Each incident shall be described, at a minimum, consisting of the following information:

1. A description of what occurred;
2. A description of what was done to identify the source;
3. The name and address of the nondomestic user responsible;
4. The reason(s) why the incident occurred;
5. A description of the corrective actions taken; and
6. An examination of the local and federal discharge limits and requirements for the purposes of determining whether any additional limits or changes to existing requirements may be necessary to prevent other Upset, Interference or Pass Through incidents.

E. Influent, Effluent and Biosolids Monitoring Results

The Discharger shall evaluate the influent, effluent and biosolids monitoring results as specified in Appendix H-4 in preparation of this report. The Discharger shall retain the analytical laboratory reports with the Quality Assurance and Quality Control (QA/QC) data validation and make these reports available upon request.

This section shall include:

1. Description of the sampling procedures and an analysis of the results (see Appendix H-4 for specific requirements);
2. Tabular summary of the compounds detected (compounds measured above the detection limit for the analytical method used) for the monitoring data generated during the reporting year as specified in Appendix H-4;
3. Discussion of the investigation findings into any contributing sources of the compounds that exceed NPDES limits; and
4. Graphical representation of the influent and effluent metal monitoring data for the past five years with a discussion of any trends.

F. Inspection, Sampling and Enforcement Programs

This section shall include at a minimum the following information:

1. Inspections: Summary of the inspection program (e.g., criteria for determining the frequency of inspections and inspection procedures);
2. Sampling Events: Summary of the sampling program (e.g., criteria for determining the frequency of sampling and chain of custody procedures); and
3. Enforcement: Summary of Enforcement Response Plan (ERP) implementation including dates for adoption, last revision and submission to the Regional Water Board.

G. Updated List of Regulated SIUs

This section shall contain a list of all of the federal categories that apply to SIUs regulated by the Discharger. The specific categories shall be listed including the applicable 40 CFR subpart and section, and pretreatment standards (both maximum and average limits). Local limits developed by the Discharger shall be presented in a table including the applicability of the local limits to SIUs. If local limits do not apply uniformly to SIUs, specify the applicability in the tables listing the categorical industrial users (CIUs) and non-categorical SIUs. Tables developed in Sections 7A and 7B can be used to present or reference this information.

1. CIUs - Include a table that alphabetically lists the CIUs regulated by the Discharger as of the end of the reporting period. This list shall include:
 - a. Name;
 - b. Address;
 - c. Applicable federal category(ies);
 - d. Reference to the location where the applicable Federal Categorical Standards are presented in the report;
 - e. Identify all deletions and additions keyed to the list submitted in the previous annual report. All deletions shall be briefly explained (e.g., closure, name change, ownership change, reclassification, declassification); and
 - f. Information, calculations and data used to determine the limits for those CIUs for which a combined waste stream formula is applied.
2. Non-categorical SIUs - Include a table that alphabetically lists the SIUs not subject to any federal categorical standards that were regulated by the Discharger as of the end of the reporting period. This list shall include:
 - a. Name;

- b. Address;
- c. A brief description of the type of business;
- d. Identify all deletions and additions keyed to the list submitted in the previous annual report. All deletions shall be briefly explained (e.g., closure, name change, ownership change, reclassification, declassification); and
- e. Indicate the applicable discharge limits (e.g., different from local limits) to which the SIUs are subject and reference to the location where the applicable limits (e.g., local discharge limits) are presented in the report.

H. SIU (categorical and non-categorical) Compliance Activities

The information required in this section may be combined in the table developed in Section 7 above.

- 1. Inspection and Sampling Summary:** This section shall contain a summary of all the SIU inspections and sampling activities conducted by the Discharger and sampling activities conducted by the SIU over the reporting year to gather information and data regarding SIU compliance. The summary shall include:
 - a. The number of inspections and sampling events conducted for each SIU by the Discharger;
 - b. The number of sampling events conducted by the SIU. Identify SIUs that are operating under an approved Total Toxic Organic Management Plan;
 - c. The quarters in which the above activities were conducted; and
 - d. The compliance status of each SIU, delineated by quarter, and characterized using all applicable descriptions as given below:
 - (1) Consistent compliance;
 - (2) Inconsistent compliance;
 - (3) Significant noncompliance;
 - (4) On a compliance schedule to achieve compliance (include the date final compliance is required);
 - (5) Not in compliance and not on a compliance schedule; and
 - (6) Compliance status unknown, and why not.
- 2. Enforcement Summary:** This section shall contain a summary of SIU compliance and enforcement activities during the reporting year. The summary may be included in the summary table developed in section 8A and shall include the names and addresses of all SIUs affected by

the actions identified below. For each notice specified in enforcement action “i” through “iv,” indicate whether it was for an infraction of a federal or local standard/limit or requirement.

- a. Warning letters or notices of violations regarding SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- b. Administrative Orders regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- c. Civil actions regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- d. Criminal actions regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- e. Assessment of monetary penalties. Identify the amount of penalty in each case and reason for assessing the penalty;
- f. Order to restrict/suspend discharge to the Discharger; and
- g. Order to disconnect the discharge from entering the Discharger.

3. July-December Semiannual Data: For SIU violations/noncompliance during the semiannual reporting period from July 1 through December 31, provide the following information:

- a. Name and facility address of the SIU;
- b. Indicate if the SIU is subject to Federal Categorical Standards; if so, specify the category including the subpart that applies;
- c. For SIUs subject to Federal Categorical Standards, indicate if the violation is of a categorical or local standard;
- d. Indicate the compliance status of the SIU for the two quarters of the reporting period; and
- e. For violations/noncompliance identified in the reporting period, provide:
 - (1) The date(s) of violation(s);
 - (2) The parameters and corresponding concentrations exceeding the limits and the discharge limits for these parameters; and
 - (3) A brief summary of the noncompliant event(s) and the steps that are being taken to achieve compliance.

I. Baseline Monitoring Report Update

This section shall provide a list of CIUs added to the pretreatment program since the last annual report. This list of new CIUs shall summarize the status of the respective Baseline Monitoring Reports (BMR). The BMR must contain the information specified in 40 CFR 403.12(b). For each new CIU, the summary shall indicate when the BMR was due; when the CIU was notified by the Discharger of this requirement; when the CIU submitted the report; and/or when the report is due.

J. Pretreatment Program Changes

This section shall contain a description of any significant changes in the Pretreatment Program during the past year including, but not limited to:

1. Legal authority;
2. Local limits;
3. Monitoring/ inspection program and frequency;
4. Enforcement protocol;
5. Program's administrative structure;
6. Staffing level;
7. Resource requirements;
8. Funding mechanism;
9. If the manager of the Discharger's pretreatment program changed, a revised organizational chart shall be included; and
10. If any element(s) of the program is in the process of being modified, this intention shall also be indicated.

K. Pretreatment Program Budget

This section shall present the budget spent on the Pretreatment Program. The budget, either by the calendar or fiscal year, shall show the total expenses required to implement the pretreatment program. A brief discussion of the source(s) of funding shall be provided. In addition, the Discharger shall make available upon request specific details on its pretreatment program expense amounts such as for personnel, equipment, and chemical analyses.

L. Public Participation Summary

This section shall include a copy of the public notice as required in 40 CFR 403.8(f)(2)(viii). If a notice was not published, the reason shall be stated.

M. Biosolids Storage and Disposal Practice

This section shall describe how treated biosolids are stored and ultimately disposed. If a biosolids storage area is used, it shall be described in detail including its location, containment features and biosolids handling procedures.

N. Other Pollutant Reduction Activities

This section shall include a brief description of any programs the Discharger implements to reduce pollutants from nondomestic users that are not classified as SIUs. If the Discharger submits any of this program information in an Annual Pollution Prevention Report, reference to this other report shall satisfy this reporting requirement.

O. Other Subjects

Other information related to the Pretreatment Program that does not fit into any of the above categories should be included in this section.

P. Permit Compliance System (PCS) Data Entry Form

The annual report shall include the PCS Data Entry Form. This form shall summarize the enforcement actions taken against SIUs in the past year. This form shall include the following information:

1. Discharger's name,
2. NPDES Permit number,
3. Period covered by the report,
4. Number of SIUs in significant noncompliance (SNC) that are on a pretreatment compliance schedule,
5. Number of notices of violation and administrative Orders issued against SIUs,
6. Number of civil and criminal judicial actions against SIUs,
7. Number of SIUs that have been published as a result of being in SNC, and
8. Number of SIUs from which penalties have been collected.

APPENDIX H-2

REQUIREMENTS FOR JANUARY-JUNE PRETREATMENT SEMIANNUAL REPORT

The pretreatment semiannual report is due on July 31 for pretreatment program activities conducted from January through June unless an exception has been granted by the Regional Water Board's Executive Officer (e.g., pretreatment programs without any SIUs may qualify for an exception to the pretreatment semiannual report). Pretreatment activities conducted from July through December of each year shall be included in the Pretreatment Annual Report as specified in Appendix H-1. The pretreatment semiannual report shall contain, at a minimum the following information:

A. Influent, Effluent and Biosolids Monitoring

The influent, effluent and biosolids monitoring results shall be evaluated in preparation of this report. The Discharger shall retain analytical laboratory reports with the QA/QC data validation and make these reports available upon request. The Discharger shall also make available upon request a description of its influent, effluent and biosolids sampling procedures. Violations of any parameter that exceed NPDES limits shall be identified and reported. The contributing source(s) of the parameters that exceed NPDES limits shall be investigated and discussed.

B. Significant Industrial User Compliance Status

This section shall contain a list of all SIUs that were not in consistent compliance with all pretreatment standards/limits or requirements for the reporting period. For the reported SIUs, the compliance status for the previous semiannual reporting period shall be included. Once the SIU has determined to be out of compliance, the SIU shall be included in subsequent reports until consistent compliance has been achieved. A brief description detailing the actions that the SIU undertook to come back into compliance shall be provided.

For each SIU on the list, the following information shall be provided:

1. Name and facility address of the SIU;
2. Indicate if the SIU is subject to Federal Categorical Standards; if so, specify the category including the subpart that applies;
3. For SIUs subject to Federal Categorical Standards, indicate if the violation is of a categorical or local standard;
4. Indicate the compliance status of the SIU for the two quarters of the reporting period; and
5. For violations/noncompliance identified in the reporting period, provide:
 - a. The date(s) of violation(s);
 - b. The parameters and corresponding concentrations exceeding the limits and the discharge limits for these parameters; and

- c. A brief summary of the noncompliant event(s) and the steps that are being taken to achieve compliance.

C. Discharger's Compliance with Pretreatment Program Requirements

This section shall contain a discussion of the Discharger's compliance status with the Pretreatment Program Requirements as indicated in the latest Pretreatment Compliance Audit (PCA) Report or Pretreatment Compliance Inspection (PCI) Report. It shall contain a summary of the following information:

1. Date of latest PCA or PCI report;
2. Date of the Discharger's response;
3. List of unresolved issues; and
4. Plan(s) and schedule for resolving the remaining issues.

APPENDIX H-3

SIGNATURE REQUIREMENTS FOR PRETREATMENT ANNUAL AND SEMIANNUAL REPORTS

The pretreatment annual and semiannual reports shall be signed by a principal executive officer, ranking elected official, or other duly authorized employee who is responsible for the overall operation of the Discharger (POTW 40 CFR section 403.12[m]). Signed copies of the reports shall be submitted to the State Water Board and the Regional Water Board through the electronic self-monitoring report (eSMR) module of the California Integrated Water Quality System (CIWQS). Signed copies of the reports shall also be submitted electronically to U.S. EPA at R9Pretreatment@epa.gov or as instructed otherwise.

Pretreatment Program Reports
Clean Water Act Compliance Office (WTR-7)
Water Division
Pacific Southwest Region
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105-3901

Submit electronic copies only to State and Regional Water Boards:

Pretreatment Program Manager
Regulatory Unit
State Water Resources Control Board
Division of Water Quality-15th Floor
1001 I Street
Sacramento, CA 95814
DMR@waterboards.ca.gov
NPDES_Wastewater@waterboards.ca.gov

Pretreatment Coordinator
NPDES Wastewater Division
SF Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

(Submit the report as a single Portable Document Format (PDF) file to the Pretreatment Coordinator's folder in the Regional Water Board's File Transfer Protocol (FTP) site. The instructions for using the FTP site can be found at the following internet address:
http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/FTP_Discharger_Guide-12-2010.pdf.)

APPENDIX H-4

REQUIREMENTS FOR INFLUENT, EFFLUENT AND BIOSOLIDS MONITORING

The Discharger shall conduct sampling of its treatment plant's influent, effluent and biosolids at the frequency shown in **the pretreatment requirements table** of the Monitoring and Reporting Program (MRP, Attachment E). When sampling periods coincide, one set of test results, reported separately, may be used for those parameters that are required to be monitored by both the influent and effluent monitoring requirements of the MRP and the Pretreatment Program. The Pretreatment Program monitoring reports as required in Appendices H-1 and H-2 shall be transmitted to the Pretreatment Program Coordinator.

A. Reduction of Monitoring Frequency

The minimum frequency of Pretreatment Program influent, effluent, and biosolids monitoring shall be dependent on the number of SIUs identified in the Discharger's Pretreatment Program as indicated in Table H-1.

Table H-1: Minimum Frequency of Pretreatment Program Monitoring	
Number of SIUs	Minimum Frequency
< 5	Once every five years
> 5 and < 50	Once every year
> 50	Twice per year

If the Discharger's required monitoring frequency is greater than the minimum specified in Table H-1, the Discharger may request a reduced monitoring frequency for that constituent(s) as part of its application for permit reissuance if it meets the following criteria:

The monitoring data for the constituent(s) consistently show non-detect (ND) levels for the effluent monitoring and very low (i.e., near ND) levels for influent and biosolids monitoring for a minimum of eight previous years' worth of data.

The Discharger's request shall include tabular summaries of the data and a description of the trends in the industrial, commercial, and residential customers in the Discharger's service area that demonstrate control over the sources of the constituent(s). The Regional Water Board may grant a reduced monitoring frequency in the reissued permit after considering the information provided by the Discharger and any other relevant information.

B. Influent and Effluent Monitoring

The Discharger shall monitor for the parameters using the required sampling and test methods listed in **the pretreatment table** of the MRP. Any test method substitutions must have received prior written Executive Officer approval. Influent and effluent sampling locations shall be the same as those sites specified in the MRP.

The influent and effluent samples should be taken at staggered times to account for treatment plant detention time. Appropriately staggered sampling is considered consistent with the requirement for collection of effluent samples coincident with influent samples in Section III.A.3.a(2) of

Attachment G. All samples must be representative of daily operations. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. For effluent monitoring, the reporting limits for the individual parameters shall be at or below the minimum levels (MLs) as stated in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (2000) [also known as the State Implementation Policy (SIP)]; any revisions to the MLs shall be adhered to. If a parameter does not have a stated ML, then the Discharger shall conduct the analysis using the lowest commercially available and reasonably achievable detection levels.

The following report elements should be used to submit the influent and effluent monitoring results. A similarly structured format may be used but will be subject to Regional Water Board approval. The monitoring reports shall be submitted with the Pretreatment Annual Report identified in Appendix H-1.

1. Sampling Procedures, Sample Dechlorination, Sample Compositing, and Data Validation (applicable quality assurance/quality control) shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. The Discharger shall make available upon request its sampling procedures including methods of dechlorination, compositing, and data validation.
2. A tabulation of the test results for the detected parameters shall be provided.
3. Discussion of Results – The report shall include a complete discussion of the test results for the detected parameters. If any pollutants are detected in sufficient concentration to upset, interfere or pass through plant operations, the type of pollutant(s) and potential source(s) shall be noted, along with a plan of action to control, eliminate, and/or monitor the pollutant(s). Any apparent generation and/or destruction of pollutants attributable to chlorination/dechlorination sampling and analysis practices shall be noted.

C. Biosolids Monitoring

Biosolids should be sampled in a manner that will be representative of the biosolids generated from the influent and effluent monitoring events except as noted in (3. below. The same parameters required for influent and effluent analysis shall be included in the biosolids analysis. The biosolids analyzed shall be a composite sample of the biosolids for final disposal consisting of:

1. Biosolids lagoons – 20 grab samples collected at representative equidistant intervals (grid pattern) and composited as a single grab, or
2. Dried stockpile – 20 grab samples collected at various representative locations and depths and composited as a single grab, or
3. Dewatered biosolids - daily composite of 4 representative grab samples each day for 5 days taken at equal intervals during the daily operating shift taken from a) the dewatering units or b) each truckload, and shall be combined into a single 5- day composite.

The U.S. EPA manual, POTW Sludge Sampling and Analysis Guidance Document, August 1989, containing detailed sampling protocols specific to biosolids is recommended as a guidance for sampling procedures. The U.S. EPA manual Analytical Methods of the National Sewage Sludge

Survey, September 1990, containing detailed analytical protocols specific to biosolids, is recommended as a guidance for analytical methods.

In determining if the biosolids are a hazardous waste, the Discharger shall adhere to Article 2, “Criteria for Identifying the Characteristics of Hazardous Waste,” and Article 3, “Characteristics of Hazardous Waste,” of Title 22, California Code of Regulations, sections 66261.10 to 66261.24 and all amendments thereto.

The following report elements should be used to submit the biosolids monitoring results. A similarly structured form may be used but will be subject to Regional Water Board approval. The results shall be submitted with the Pretreatment Annual Report identified in Appendix H-1.

- Sampling Procedures and Data Validation (applicable quality assurance/quality control) shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. The Discharger shall make available upon request its biosolids sampling procedures and data validation methods.
- Test Results – Tabulate the test results for the detected parameters and include the percent solids.
- Discussion of Results – Include a complete discussion of test results for the detected parameters. If the detected pollutant(s) is reasonably deemed to have an adverse effect on biosolids disposal, a plan of action to control, eliminate, and/or monitor the pollutant(s) and the known or potential source(s) shall be included. Any apparent generation and/or destruction of pollutants attributable to chlorination/dechlorination sampling and analysis practices shall be noted.

The Discharger shall also provide a summary table presenting any influent, effluent or biosolids monitoring data for non-priority pollutants that the Discharger believes may be causing or contributing to interference, pass through or adversely impacting biosolids quality.

EXHIBIT B



October 23, 2017

Vince Christian
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

VIA EMAIL: vchristian@waterboards.ca.gov

Subject: Tentative Order No. R2-2017-00XX NPDES, No. CA0038628 for Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County Marin County

Dear Mr. Christian,

The Bay Area Clean Water Agencies (BACWA), California Association of Sanitation Agencies (CASA), and the Southern California Alliance of POTWs (SCAP), jointly referred to as the Associations, appreciate the opportunity to provide comments on Tentative Order No. R2-2017-00XX NPDES, No. CA0038628 for Central Marin Sanitation Agency (CMSA), San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County Marin County (Tentative Order). With the exception of CMSA, the agencies included in the Tentative Order are referred to in this letter as the satellite collection systems.

BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay (SF Bay) Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health. CASA has been the leading voice for public wastewater agencies on regulatory, legislative and legal issues. CASA is an association of local agencies, engaged in advancing the recycling of wastewater into usable water, generation of renewable energy, and other valuable resources. Through these efforts CASA's members help create a clean and sustainable environment for Californians. SCAP represents over 80 public agencies providing water and wastewater service for 19 million people in seven counties of southern California. The Associations are concerned about the inclusion of the satellite collection systems in CMSA's NPDES permit.

The Associations support addressing inflow and infiltration (I/I) as the primary means to reduce blending. Compared to wastewater treatment plant upgrades and expansion, work to improve

collection systems, and to enhance repair and replacement programs, is a more sustainable means to manage wet weather flows. We appreciate that Regional Water Board staff worked with the satellite collection system agencies to develop the list of projects to reduce I/I that are included in Table 5 of the Tentative Order. However, it is more appropriate to use this list as a blueprint for collection systems improvements over the next five years, not as an enforceable provision within CMSA's NPDES permit.

The satellite collection systems are already subject to the Statewide General WDR for Sanitary Sewer Systems WQO-2006-0003 (SSS WDR), which includes provisions for controlling I/I in general. When planning the scope of the SSS WDR, the State Water Board considered, and rejected the idea of NPDES coverage for satellite collection systems. As described beginning on pg. 3 of the SSS WDR Fact Sheet, which is incorporated by reference into the Order itself:

“Satellite sewer collection systems (i.e., systems not owned or operated by the POTW) have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements.

Comments were received that argued every collection system leading to a POTW that is subject to an NPDES permit should also be permitted based upon the USEPA definition of POTW. Under this theory, all current POTW NPDES permits could be expanded to include all satellite sewer collection systems, or alternatively, the satellite owners and operators could be permitted separately. However, this interpretation is not widely accepted and USEPA has no official guidance to this fact.”

While it is reasonable that collection systems be encouraged to reduce excessive I/I that results in sewer spills or other adverse environmental impacts, the NPDES permit is not an appropriate vehicle to control these actions. The satellite collection systems do not discharge to Waters of the United States, and therefore as regulated entities, should not be subject to federal jurisdiction. Moreover, including satellite agencies in NPDES permits opens them up to the potential for third party lawsuits under the Clean Water Act as well as USEPA enforcement, without providing a water quality benefit to balance this increased liability. This is particularly true given that there are other apparatuses under which they can be regulated, such as California's Porter-Cologne Water Quality Control Act, which is the route that the State Water Board ultimately selected for the SSS WDR.

The Associations urge the Regional Water Board to explore other mechanisms to regulate the satellites' activities pertaining to I/I reduction, including those already available under the SSS WDR. A more appropriate alternative would be to issue a supplemental WDR pertaining directly to the three satellite collection systems included in this Tentative Order. The WDR could include the I/I reduction tasks that are described in Table 5 of the Tentative Order without the additional federal liability.

The Tentative Order incorporates the SSS WDR by reference, which exposes the permittees to federal liability for requirements to which they are already subject, regardless of this Order. If, contrary to the Associations recommendation, the satellite collection system agencies are to be

included in the Tentative Order, the Associations recommend removing language in Section VI.C.4.c on page 13 of the Tentative Order as follows:

“On State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply with both the statewide WDRs and this Order, the statewide WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. ~~Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.~~”

We appreciate your attention to our comments. Please do not hesitate to contact us with any questions or concerns.

Sincerely,



David R. Williams
Executive Director, BACWA



Adam D. Link
Director of Government Affairs, CASA



Steve Jepson,
Executive Director, SCAP

Cc: BACWA Executive Board
Chris Dembiczak, BACWA Permits Committee Chair
Robert Wilson, BACWA Permits Committee Vice-Chair
Erin Smith, BACWA Collection Systems Committee Chair

Andrew Damron, BACWA Collection Systems Committee Vice-Chair
Jason Dow, General Manager, Central Marin Sanitation Agency
Melissa Thorne, Downey Brand LLP

EXHIBIT C

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

CEASE AND DESIST ORDER NO. R2-2013-0020
REQUIRING THE

SANITARY DISTRICT NO. 1 OF MARIN COUNTY
(ALSO KNOWN AS "ROSS VALLEY SANITARY DISTRICT")
SANITARY SEWER COLLECTION SYSTEM
IN MARIN COUNTY

TO CEASE AND DESIST DISCHARGING WASTE
IN VIOLATION OF REQUIREMENTS IN

STATE WATER BOARD ORDER NO. 2006-0003-DWQ,
STATE WATER BOARD ORDER NO. 2008-0002-EXEC,
SECTION 301 OF THE CLEAN WATER ACT, AND
CALIFORNIA WATER CODE SECTION 13376

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

1. The Sanitary District No. 1 of Marin County (hereinafter Discharger) owns and operates a collection system subject to State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Sanitary Sewer Order), and State Water Board Order No. 2008-0002-EXEC, *Adopting Amended Monitoring and Reporting Requirements for the Sanitary Sewer Order* (MRP).
2. The Discharger signed a notice of intent to comply with the Sanitary Sewer Order, and any subsequent amendments, on July 11, 2006.
3. The Discharger's collection system includes about 195 miles of gravity sewers, 9 miles of force mains, and 19 pump stations. The Discharger's collection system collects and transports approximately 5 million gallons per day (MGD) of wastewater to the Central Marin Sanitation Agency (CMSA) Treatment Plant. The Discharger's collection system serves an approximate population of 50,000.
4. On June 20, 2012, the Regional Water Board issued Administrative Civil Liability Order No. R2-2012-0055 to the Discharger assessing \$1,539,100 in liabilities for sanitary sewer overflows (SSOs) between January 1, 2008, and April 21, 2011. The total volume discharged, not recovered, and that reached waters of the United States due to these events was 2,555,535

gallons. The Regional Water Board approved as part of settlement for these violations the suspension of \$482,380 of the total liability conditioned upon the successful completion in 2016 of a supplemental environmental project to incentivize the replacement and rehabilitation of defective private sewer laterals. A private sewer lateral is that portion of a sewer pipe from a building foundation to the property line, or in some cases extending to the sewer main line, that the property owner is responsible for maintaining. Defective private sewer laterals contribute to wet weather inflow and infiltration into the Discharger's system and can contribute to the frequency and volume of sanitary sewer overflows.

5. The Sanitary Sewer Order specifies provisions for which enrollees must comply as operators of a collection system:
 - a. Enrollees must properly, manage, operate, and maintain all parts of the collection system (Provision D.8).
 - b. Enrollees must allocate adequate resources for the operation, maintenance, and repair of its collection system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure adequate revenues and expenditures (Provision D.9).
 - c. Enrollees shall take all feasible steps to eliminate SSOs (Provision D.3).
 - d. Enrollees shall provide adequate capacity to convey base and peak flows (Provision D.10).
 - e. Enrollees shall develop and implement a written Sewer System Management Plan (SSMP) that contains mandatory elements, and comply with a completion time schedule and a schedule for developing the funds needed for the capital improvement plan (Provisions D.11, D.13 and D.15).
 - f. Enrollees shall prepare and implement a system evaluation and capacity assurance plan that will provide hydraulic capacity of key sanitary sewer system elements for dry weather peak flow conditions, as well as the appropriate design storm or wet weather event (Provision D.13(viii)).
6. The Sanitary Sewer Order prohibits any SSO that results in a discharge of untreated or partially treated wastewater to waters of the U.S. or creates a nuisance as defined in Water Code section 13050(m) (Prohibitions C.1 and C.2 of the Sanitary Sewer Order, respectively).

7. As of July 20, 2011, the Discharger is in violation of Provisions D.8 and D.9 of the Sanitary Sewer Order by approving a fiscal year (FY) 2011/2012¹ budget that did not allocate adequate resources for, and thus failing to ensure for, the proper operation, maintenance, and repair of its collection system. The Discharger is in violation of Provision D.11 of the Sanitary Sewer Order by failing to implement its 2007 Sewer System Management Plan (SSMP).
- a. The Discharger prepared a Sewer System Replacement Master Plan (Sewer Master Plan) dated January 2007 and a Sewer Hydraulic Evaluation and Capacity Assurance Plan (SHECAP) dated August 2006, which identified sewer rehabilitation needs as well as capital improvement projects that will provide adequate hydraulic capacity of key system elements for dry and wet weather conditions. The Discharger also had prepared a Capital Improvement Strategic Plan (CIP) dated January 31, 2007, which presented a 10-year CIP that included projects identified in the Sewer Master Plan using a weighted decision model. The CIP recommended a rate of sewer pipe replacement of 2.0 to 3.4 miles per year, with a 10-year average of 2.3 miles per year. The CIP identified \$60.6 million in capital improvement projects through FY 2015/2016. The Sewer Master Plan did not identify a source of funding.
 - b. At an April 7, 2011, Discharger Board Meeting, the Discharger's staff proposed a sewer service rate increase of up to \$904 per year for five years to expand the District's funding for operation and maintenance of the District's sewer system, increase funding for capital projects, and increase the District's rate of pipe replacement.
 - c. On July 20, 2011, the Discharger's Board approved a sewer service rate of \$638 for one year.
 - d. On May 23, 2012, the Discharger's Board approved a FY 2012/2013 budget that included proposed capital expenditures in the amount of \$23.3 million. In the FY 2012/2013 budget, it was anticipated that the capital expenditures would be funded by the future sale of revenue bonds. However, the Discharger's Board did not approve the sale of the revenue bonds with passage of the FY 2012/2013 budget.
 - e. On October 3, 2012, the Discharger's Board adopted a revised 2012/2013 FY budget that resulted in a FY 2012/2013 budget of \$19.9 million instead of the \$31.4 million as originally approved.

¹ The Discharger's fiscal year is July 1 to June 30.

- f. As of December 31, 2012², Discharger staff had identified 914 gravity sewer pipes with at least one Grade 4 or 5 structural defect.³ The Discharger's Board was informed of pipe locations needing immediate repair (a total of 56⁴ pipe locations with Grade 5 structural defects) at its monthly Board meetings in 2011 and 2012. Before running out of FY 2011/2012 funds, the Discharger completed or was nearing completion of the emergency repair work for 11 of the 12 pipe failure locations identified at the December 2011 Board meeting. The remaining 45 pipe failure locations needing urgent repair (i.e., with Grade 5 structural defects) had not been addressed and the Discharger's Board had taken no action to provide for adequate funds to address them. The Discharger's Board had also not taken action to provide for additional capital funds to address the hundreds of other Grade 4 or 5 structurally defective pipe segments in need of rehabilitation. However, existing operation and maintenance activities have addressed some of the additional Grade 4 and 5 structurally defective pipe segments that were in the need of rehabilitation. A list of the identified 45 pipe locations that needed urgent repair is included in Attachment A. The 914 gravity sewer pipe segments⁵ (625 pipe segments with a most severe structural defect of Grade 5 and 289 pipe segments with a most severe structural defect of Grade 4) in need of rehabilitation are identified in the Discharger's Closed Circuit Televising (CCTV) Crew survey report included as Attachment B. Attachments A and B are incorporated herein by reference.
8. As of October 3, 2012, the Discharger is in violation of Provisions D.10 and D.13(viii) of the Sanitary Sewer Order by amending its FY 2012/2013 budget that authorized zero dollars for implementation of its Sewer Master Plan and SHECAP. As set forth in finding 7.a, the Discharger prepared a SHECAP which identified capital improvement projects that will provide hydraulic capacity of key system elements for dry and wet weather conditions. For FY 2011/2012, the Discharger budgeted for projects currently under construction, but deferred any additional capital improvement and rehabilitation projects for one year, as set forth in finding 7, above. Then, as previously set forth, on October 3, 2012, the Discharger's Board amended its FY 2012/2013 budget that authorized

² Data based on pipe condition assessment conducted on 46 percent of the Discharger's gravity sewer system (or approximately 89 miles of a total 194 miles of gravity sewer pipe). Source: Discharger's January 16, 2013, Agenda Meeting Packet, Informational Item k.

³ Pipe grading is based on National Association of Sewer Service Companies Pipeline Assessment and Certification Program (a national industry-standard sewer pipe condition assessment system). The structural defects of a sewer pipe represent current failure or a very high likelihood of failure within five years (Grade 5) to ten years (Grade 4).

⁴ At the December 2011 Discharger Board meeting, the Board was informed of 12 pipe failure locations; at the January, February, March and April 2012 Discharger Board meetings, the Board was informed of an additional 44 pipe locations needing urgent repair.

⁵ Subsequent to completing its CCTV survey report, the Discharger's staff determined that there is an overlap between the 45 pipes needing urgent repair and 976 Grade 4 and 5 structurally defective pipes. The actual number of Grade 4 and 5 structurally defective pipes is 914 known at this time, which include pipes requiring point repairs, as well as pipes requiring replacement from manhole to manhole.

zero dollars for continued implementation of scheduled capital improvement projects identified in its Sewer Master Plan and SHECAP.

9. The Discharger violated Prohibition C.1 of the Sanitary Sewer Order. From April 21, 2011, to February 1, 2013, the Discharger reported a total of 50 SSOs from the Discharger's collection system to the State's online SSO system, the California Integrated Water Quality System (CIWQS). Of the total, 10 SSOs reached waters of the State and United States and are violations of Prohibition C.1 of the Sanitary Sewer Order. A detailed list of the 10 SSOs is contained in Attachment C, incorporated herein by reference.
10. The Discharger threatens to violate Prohibitions C.1 and C.2, and Provision D.3 of the Sanitary Sewer Order by failing to properly manage, operate, and maintain parts of its collection system. As described in finding 7.f, currently there are 45 identified pipe failure locations in need of urgent repair. If these failure locations are not repaired, and/or any of the 914 Grade 4 or 5 structural defects worsen, it is likely that significant SSOs would occur during wet weather. If not addressed, these failure locations could also result in the formation of sinkholes that are a public health and safety hazard, and/or a condition of nuisance pursuant to Water Code section 13050(m).
11. On November 21, 2012, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger alleging violations of the Sanitary Sewer Order as described in the above findings. The NOV required the Discharger to submit an action plan to correct the violations. The Discharger submitted a plan on January 25, 2013, that identified actions and timeframes for those actions. The requirements in this Order are based in part on this plan. To the extent the Discharger has future sanitary SSO violations while implementing the actions under this Order, the Regional Water Board will consider in any future enforcement action the progress the Discharger has made to reduce SSOs. For example and without limiting the Regional Water Board's future discretion, the Board could consider progress as reducing SSOs by six every year.
12. Water Code section 13301 authorizes the Regional Water Board to issue a cease and desist order when it finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the Regional or State Water Board.
13. Water Code section 13267 authorizes the Regional Water Board to require any person who discharged, discharges, or is suspected of having discharged or discharging, within its region, to furnish technical or monitoring program reports in connection with any action relating to any requirement authorized by Division 7 of the Water Code.

14. This Order requires the Discharger to submit reports and technical information pursuant to Water Code section 13267. The reports and technical information required herein are necessary to assess system management and implementation of necessary corrective measures to reduce and eliminate SSOs and associated violations and to ensure compliance with this Order. The evidence supporting this requirement is contained in the public file for this matter. The burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits obtained from them.
15. This Order is an enforcement action and, as such, is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21000 *et seq.*) in accordance with Title 14, California Code of Regulations section 15321. Actions associated with implementing this Order are not exempt from CEQA and may need to be evaluated by the appropriate lead CEQA agency.
16. The Regional Water Board notified the Discharger and interested persons of its intent to consider adoption of this Order, 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.
17. Any person adversely affected by this action of the Regional Water Board may petition the State Water Board to review the action. The petition must be received by the State Water Board Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date which the action was taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.
18. This Order contains more specific or stringent requirements than the Sanitary Sewer Order, as allowed by Sanitary Sewer Order Provision D. 2.(iv). This Order does not relieve the Discharger of any of its obligations to comply with the Sanitary Sewer Order.

IT IS HEREBY ORDERED, in accordance with Water Code section 13301 and section 13267, that the Discharger shall cease and desist from discharging and threatening to discharge wastes, in violation of the Sanitary Sewer Order and shall take appropriate remedial or preventative actions as follows :

I. Rehabilitation and Capital Improvement Performance Standards

- a. By July 24, 2013, the Discharger shall award a construction contract (or contracts) for the replacement or rehabilitation of 24 pipe segments from the 45 pipe segment locations with known Grade 5 structural defects listed in Attachment A (see Finding 7.f).
- b. By December 31, 2013, the Discharger shall complete replacement or rehabilitation of the pipe segments with known Grade 5 structural defects

of 24 pipe segments from the 45 pipe segment locations with known Grade 5 structural defects listed in Attachment A.

- c. By December 31, 2013, the Discharger shall award a construction contract (or contracts) for the replacement or rehabilitation of the remaining 21 pipe segments from the 45 pipe segment locations with known Grade 5 structural defects listed in Attachment A that were not subject to the contract or contracts or completion identified in Provisions I.a and I.b above.
- d. By June 30, 2014, the Discharger shall complete replacement or rehabilitation of the remaining 21 pipe segments from the 45 pipe segment locations with Grade 5 structural defects listed in Attachment A identified in Provision I.c above.
- e. By October 1, 2013, the Discharger shall submit its Infrastructure Asset Management Plan (IAMP). The IAMP shall, at a minimum, include the following collection system rehabilitation and operation and maintenance improvements:
 - i. Prioritize and establish a schedule for replacement or rehabilitation of the 625 pipe segments with a known Grade 5 structural defect (see Finding 7.f). For the 625 pipe segments with a known Grade 5 structural defect, the schedule established in the IAMP shall show that such Grade 5 structural defects will be replaced or rehabilitated no later than June 30, 2018. If upon re-inspection within three years of the effective date of this Order the re-inspection indicates that the Grade 5 structural defect in question has not deteriorated from its original assessment, then the Discharger may revise the schedule to allow for replacement or rehabilitation of that Grade 5 structural defect within the next five years. In no event shall such schedule extensions extend beyond June 30, 2021.
 - ii. Prioritize and establish a schedule for the re-inspection of the 289 pipe segments with a known Grade 4 structural defect at least once every five years (see Finding 7.f). At the time of re-inspection, if the Grade 4 structural defect maintains a PACP rating of Grade 4, then the identified pipe segment shall be scheduled for re-inspection again within five years. At the time of re-inspection, if the previously identified Grade 4 structural defect is now considered to be a Grade 5 structural defect under the PACP rating system, then the pipe segment in question shall be replaced or rehabilitated within five years of discovery.
 - iii. Prioritize and establish a schedule for capital improvement subprojects as identified in the Discharger's CIP, which are identified in Attachment D to this Order, incorporated herein by

reference. (Attachment D may be subsequently amended by the Executive Officer after consideration of subprojects from the IAMP.) The schedule shall show that such capital improvement subprojects will be completed no later than June 30, 2019.

- iv. Establish a schedule to assess the condition of remaining gravity pipelines using CCTV, and the condition of all force mains using appropriate methods, and the condition of pump stations. The schedule for assessment shall not extend beyond three years of the effective date of this Order.
 - v. Prioritize the replacement or rehabilitation of additional pipes based on future CCTV or other condition assessment work, using a consistent methodology that considers both condition assessment and risk factors.
 - vi. Prioritize pump station, force main, and interceptor capital improvement needs and integrate these replacements, and their needed funding, into the Discharger's overall capital improvement project plan.
 - vii. Evaluate and provide recommended improvements to existing cleaning and condition assessment programs with a focus on continued reduction in maintenance-related SSOs with roots, fats, oils and grease, or debris as their primary cause.
 - viii. Provide an ongoing process for the assessment and prioritization of pipeline, force main, and pump station replacement and rehabilitation based on the results of condition assessments completed.
- f. The Discharger shall implement the recommendations of the IAMP which includes, but is not limited to, completing the capital improvement projects (e.g., replacement or rehabilitation of gravity pipelines, pump stations, and force mains) identified in its Sewer Master Plan, SHECAP, and Attachment D. Attachment D may be amended by the Executive Offer after consideration of the IAMP.
- g. The IAMP will create significant program changes since the 2007 SSMP. Therefore, the Discharger shall re-certify its SSMP pursuant to Sanitary Sewer Order Provision 14 by December 2, 2013.
- h. The Discharger shall replace or rehabilitate additional pipe segments with newly identified⁶ Grade 5 structural defects as they are discovered for the duration of this Order within five years of discovery, or if the pipe segment is re-inspected within three years of first discovery and the re-inspection

⁶ The term "newly identified" for the purposes of this Order refers to any defect not already included in the Discharger's CCTV survey report, dated January 10, 2013 (Attachment B).

indicates that the Grade 5 structural defect in question has not deteriorated from its original assessment, then the Discharger may revise the schedule to allow for replacement or rehabilitation of that Grade 5 structural defect within the next five years, or re-inspection within the next three years. If upon re-inspection the Grade 5 structural defect in question has deteriorated from its most recent previous assessment, then the Discharger shall replace or rehabilitate the pipe segment of concern within the original five-year period.

- i. Any newly identified pipe segment with a Grade 4 structural defect shall be re-inspected every five years for the duration of this Order. If upon re-inspection the previously identified Grade 4 structural defect has now become a Grade 5 structural defect, then the pipe segment in question is subject to Provision I.h for the duration of this Order.
- j. Beginning FY 2013-2014, the Discharger shall rehabilitate its collection system at an average rate of 4 miles per fiscal year, based on a three-year rolling average.
- k. By January 1, 2014, and quarterly for two years and annually thereafter for the duration of this Order, the Discharger shall submit a report providing the status of its Rehabilitation and Capital Improvement Projects as identified in Provisions I.a through I.i. The report shall include a summary of completed pipe repairs, replacements, and rehabilitations (locations and lengths), and a running tally of the progress of all pipe repair, replacement, and rehabilitation projects to be completed.
- l. Failure to achieve compliance with Provisions I.a through I.i above may subject the Discharger to civil liability and/or other enforcement for violating this Order, and for any other underlying violations of the Sanitary Sewer Order or the Water Code. If the Discharger fails to achieve compliance with Provisions I.a through I.i above, the Discharger shall submit a Rehabilitation and Capital Improvement Compliance Report no later than 30 days after the respective deadline that (1) addresses why compliance was not achieved, (2) provides sufficient information concerning the specific circumstances leading to noncompliance, (3) provides evidence for any pertinent affirmative defenses, and (4) provides a plan and time schedule to remedy the violation as soon as possible.

II. Financial Performance Targets

- a. By July 1, 2013, the Discharger shall put into place an interim funding mechanism or interim financing measure to ensure adequate funding of tasks required in Provisions I.a through I.d, and development of the IAMP as identified in Provision I.e. The Discharger shall submit a report by August 1, 2013, justifying the appropriateness and adequacy of the methods chosen to ensure adequate funding for implementation of the

tasks identified in Provisions I.a through I.d, and for the development of the IAMP as specified in Provision I.e.

- b. By July 1, 2014, the Discharger shall put in place adjusted sewer rates or other financing to ensure adequate funding to implement the tasks identified in the IAMP and as otherwise required in this Order and the Sanitary Sewer Order. The Discharger shall submit a report by August 1, 2014, justifying the appropriateness and adequacy of the methods chosen to ensure adequate funding for implementation of the IAMP, and other tasks as required by this Order and the Sanitary Sewer Order.
- c. By February 28, 2015, and annually thereafter, the Discharger shall evaluate its revenues and make necessary adjustments to its ensuing fiscal year sewer rates or other financing to ensure funding to complete tasks required in this Order and the Sanitary Sewer Order.
- d. Failure to achieve compliance with Provision II.a may subject the Discharger to civil liability and/or other enforcement for violating this Order, and for any other underlying violations of the Sanitary Sewer Order or the Water Code. If the Discharger fails to achieve compliance with Provision II.a, then the Discharger shall submit a Financing Compliance Report no later than August 1, 2013, that (1) addresses why compliance was not achieved, (2) provides sufficient information concerning the specific circumstances leading to noncompliance, (3) provides evidence for any pertinent affirmative defenses, and (4) provides a plan and time schedule for remedying the violation as soon as possible.
- e. Failure to achieve compliance with Provision II.b may subject the Discharger to civil liability and/or other enforcement for violating this Order, and for any other underlying violations of the Sanitary Sewer Order or the Water Code. If the Discharger fails to achieve compliance with Provision II.b, then the Discharger shall submit a Financing Compliance Report no later than August 1, 2014, that (1) addresses why compliance was not achieved, (2) provides sufficient information concerning the specific circumstances leading to noncompliance, (3) asserts and provides supporting evidence for any pertinent affirmative defenses, and (4) provides a plan and time schedule for achieving compliance as soon as possible.

III. Private Sewer Service Lateral Program

By June 30, 2014, the Discharger shall prepare and consider adopting an ordinance requiring (1) testing of private sewer laterals upon sale of property, a remodel greater than \$75,000 and any remodel that adds a bathroom, and/or other appropriate triggers; (2) replacement of defective private sewer laterals; and (3) evidence from property owner that the defective private sewer lateral has been repaired, rehabilitated, or replaced as condition to close of escrow, or the Discharger's sign-off on a building/plumbing permit.

IV. Consequences of Non-Compliance

If the Discharger fails to comply with the provisions of this Order the Regional Water Board can take additional enforcement action, which may include the imposition of administrative or judicial civil liability pursuant to Water Code sections 13331, 13350, 13268, and/or 13385, or referral to the Attorney General. The Executive Officer is authorized herein to refer violations of this Order to the Attorney General to take such legal action as he or she may deem appropriate.

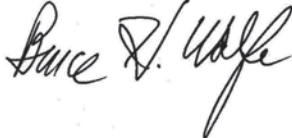
V. Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the Regional Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against the Discharger in response to any SSO event regardless of Discharger's compliance with the SSO Performance Standards in Section II herein.

VI. Regulatory Changes

Nothing in this Order shall excuse the Discharger from meeting any more stringent requirements that may be imposed hereafter by changes in applicable and legally binding legislation, regulations, or generally applicable state-wide or regional requirements.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is full, true, and correct copy of an order adopted by the Regional Water Board, on May 8, 2013.

 Digitally signed
by Bruce H. Wolfe
Date: 2013.05.13
16:01:06 -07'00'

Bruce H. Wolfe, Executive Officer

Attachments A, B, C, and D

EXHIBIT D

California Regional Water Quality Control Board
San Francisco Bay Region

January 10, 2018

9:06 a.m.

Item 6

Elihu M. Harris Building
First Floor Auditorium
1515 Clay Street
Oakland, CA 94612

Reported by:
Julie Link, CER-830

APPEARANCES**Board Members**

James McGrath, Vice Chair
Newsha Ajami
Jayne Battey
William D. Kissinger
Steve Lefkovits
Cecilia Ogbu

Staff

Bruce H. Wolfe, Executive Officer
Thomas Mumley, Assistant Executive Officer
Lisa Horowitz McCann, Assistant Executive Officer
Tamarin Austin, Counsel to the Board
Marnie Ajello, Counsel to the Board
Brandy Stone, Executive Assistant

Groundwater Protection/Waste Containment Division

Alec Naugle, Section Leader
Yemia Hashimoto, Engineering Geologist
Maya McInerney, Environmental Scientist

Wastewater Control and Enforcement Division

Bill Johnson, Chief
Robert Schlipf, Section Leader
Vince Christian, Individual Permits, Pollution Prevention

Toxics Cleanup Division

Selina Hernandez, Engineering Geologist
Madeline Little, Scientific Aide

APPEARANCES (CONT.)

Public Comment

Jason Dow, General Manager, Central Marin Sanitation Agency
Greg Norby, General Manager, Ross Valley Sanitary District
Doris Toy, San Rafael Sanitation District
Melissa Thorne, Downey Brand LLP representing Ross Valley
Sanitary District and San Rafael Sanitation District.
Becky Mitschele, EPA Region 9, NPDES Permits Office

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Central Marin Sanitation Agency, Wastewater
Treatment Plant, San Rafael; San Rafael
Sanitation District, Collection System,
San Rafael; Sanitary District No. 1 of
Marin County, Collection System, Corte Madera;
and Sanitary District No. 2 of Marin County
(a.k.a Ross Valley Sanitary District),
Collection System, San Rafael; Marin County -
Reissuance of NPDES Permit

P R O C E E D I N G S

JANUARY 10, 2018

Item 6. NPDES Permit

VICE CHAIR MCGRATH: All right, we're moving into the meatier part of our agenda and it's time to have the swearing in.

All relevant evidence that any person desires to be considered by this Board must be introduced at this hearing first by the Board staff, second by the discharger, third by public agencies, and fourth by any other interested parties.

The Board and Board counsel may ask questions to clarify the testimony of a witness at any time. Cross-examination of any witness by others will be allowed following completion of direct testimony by all persons.

Each person testifying will commence by stating his or her name, whom he or she represents and whether he or she took the oath to tell the truth.

The hearings will not be conducted according to technical rules of evidence. The Board will accept any evidence or testimony that is reasonably relevant to the issue. All Board files,

1 exhibits and agenda materials pertaining to this
2 matter will be made part of the record of this
3 proceeding. Additional written material will be
4 made part of the record at the discretion of the
5 Board.

6 Those wishing to testify in the hearing
7 will now rise or raise their hand. Do you promise
8 to tell the truth?

9 (Collective affirmations)

10 MR. WOLFE: So, this next item, Item 6, is
11 consideration of reissuance of NPDES Permit for the
12 Central Marin Sanitation Agency. The permit
13 proposes to also name the San Rafael Sanitation
14 District, Sanitary District No. 1 of Marin County
15 and Sanitary District No. 2 of Marin County as part
16 of the permit.

17 I recognize that two of the agencies have,
18 this week, submitted a letter to us asking it to be
19 included in the administrative record. I recommend
20 we consider whether we would be accepting that into
21 the record after the staff presentation.

22 So, I do have an additional card I will
23 hand off to you.

24 With that and assuming we've got the
25 computer system working, I'd like Vince Christian

1 to make the presentation.

2 MR. CHRISTIAN: Okay thanks. Good morning
3 Vice Chair McGrath and Board. My name is Vince
4 Christian.

5 Oh, the lights. Does somebody know how to
6 do the lights? Thanks.

7 As I said, my name is Vince Christian. I
8 will be discussing the permit reissuance for
9 Central Marin Sanitation Agency Wastewater
10 Treatment Plant in San Rafael.

11 Central Marin Sanitation Agency treats
12 about 7 million gallons per day of domestic
13 wastewater from the San Rafael area. The treatment
14 plant is located to the west of Interstate 580,
15 near the Richmond-San Rafael Bridge. As I'm
16 showing here, the plant discharges about a mile
17 offshore into San Francisco Bay.

18 Central Marin Sanitation Agency is a joint
19 powers authority comprised of San Rafael Sanitation
20 District, Sanitary District No. 1 of Marin County,
21 also known as Ross Valley Sanitary District, and
22 Sanitary District No. 2 of Marin County.

23 Central Marin owns and operates the
24 treatment plant, but it doesn't control the sewer
25 collection systems that supply wastewater to the

1 plant. The collection systems are owned and
2 operated by three major sanitary districts. The
3 approximate service areas are shown on this map.

4 San Rafael Sanitation District operates
5 about 150 miles of sewer line, servicing the City
6 of San Rafael. Sanitary District No. 1 operates
7 about 200 miles of sewer lines, servicing the Ross
8 Valley area. And Sanitary District No. 2 operates
9 about 45 miles of sewer line, servicing the Corte
10 Madera area.

11 The California Department of Corrections
12 and the County of Marin also operate smaller
13 collection systems serving San Quentin Prison.

14 This diagram shows how the plant operates
15 during normal dry weather conditions. The
16 wastewater goes through a series of physical,
17 chemical and biological processes before being
18 discharged to the Bay. About 7 million gallons per
19 day of wastewater enters the plant, with high
20 levels of organic matter and solids.

21 The biochemical oxygen demand, which is an
22 indicator of the organic matter, is about 400
23 milligrams per liter, and the total suspended
24 solids are about 600 milligrams per liter.

25 The wastewater is screened and the solids

1 are settled out in the primary clarifiers. It is
2 then treated biologically with microorganisms. It
3 then goes through another set of clarifiers, is
4 dechlorinated with -- well, is chlorinated with
5 chlorine -- it is disinfected with chlorine and
6 dechlorinated with sodium bisulfate. And then
7 discharged to the Bay about a mile offshore.

8 After treatment the concentrations are
9 reduced by about 98 percent. The BOD and the TSS
10 are about 5 milligrams per liter when it leaves.

11 The reason that the treatment is so
12 effective is mostly because of the biological
13 processes. Central Marin used two types of
14 biological processes, which are shown in the top,
15 center photo.

16 The large, octagonal biotowers work by
17 spraying water over the top of the towers, as shown
18 in the lower, left photo, and letting it filter
19 through a porous plastic structure. Microorganisms
20 growing on the plastic metabolize the wastewater,
21 reducing pollutants in the process.

22 The aeration basins work through a similar
23 process, but instead of trickling water over a
24 porous medium, the microbes are grown in large
25 tanks that are aerated and mixed by air blowers at

1 the bottom of the tank.

2 While the physical treatment processes can
3 be rapidly scaled up because they rely on gravity
4 to do the work, this is more difficult with
5 biological treatment because the microbes cannot
6 grow fast enough to keep up with the increased
7 flow. They would instead be diluted and washed out
8 of the treatment units.

9 Infiltration into the sewers can cause the
10 flow to the treatment plant to increase by up to
11 ten times the normal dry weather flow. When this
12 happens, Central Marin is forced to partially
13 bypass biological treatment by an operation known
14 as blending, which I will illustrate in the next
15 slide.

16 This shows how blending works. In this
17 example, the wet weather flow going to the
18 treatment plant is 40 MGD, or 10 MGD higher than
19 the biological treatment capacity of 30 MGD. So,
20 the flow is split at the primary clarifiers with 30
21 MGD going to biological treatment and the excess 10
22 MGD bypassing -- going directly from primary
23 clarification to disinfection, bypassing biological
24 treatment entirely.

25 When this happens, Central Marin is still

1 required to meet all of its effluent limits. And
2 with only one exception, Central Marin has been
3 able to meet its effluent limits when blending.
4 However, the treatment is not as effective.

5 While the influent concentrations are
6 lower because of dilution, the effluent
7 concentrations are about twice as high as during
8 dry weather. For this reason, blending is
9 undesirable. In fact, Federal regulations prohibit
10 blending bypasses.

11 Although bypasses are prohibited, the
12 Regional Water Board can approve them, meaning that
13 will not take enforcement for them if three
14 conditions are met.

15 These conditions are A, the bypass was
16 unavoidable to prevent the loss of life, injury or
17 property damage. B, there were no feasible
18 alternatives to the bypass, such as auxiliary
19 treatment facilities or retention. And C, the
20 permittee provided notices of the bypass.

21 Historically, Central Marin reduced
22 blending by expanding the treatment plant to
23 accommodate wet weather flows. These construction
24 photos show the upgrades that were done in about
25 2009. Central Marin built very large, primary

1 clarifiers that are empty during dry weather, but
2 provide settling capacity during wet weather.
3 These upgrades have decreased the amount that
4 Central Marin blends by about half of the
5 preconstruction rates.

6 However, it has not eliminated blending.
7 It still blends about 11 times per year. It has
8 maximized all of its on-site storage capacity and
9 additional expansion of the treatment plant is not
10 likely to further reduce blending.

11 Now, the only feasible way to reduce
12 blending is to reduce the wet weather flow coming
13 into the treatment plant by fixing the collection
14 systems.

15 This table summarizes the tasks that the
16 tentative order requires of the collection systems.
17 Sanitary District No. 1 will be required to
18 rehabilitate about 22 miles of sewer line and smoke
19 test about 45 miles of sewer line.

20 Sanitary District No. 2 will be required
21 to rehabilitate 2.6 miles of sewer line and develop
22 a private lateral ordinance.

23 San Rafael Sanitation District will be
24 required to rehabilitate two miles of sewer line,
25 televise 50 miles, and also develop a private

1 lateral ordinance.

2 The tentative order does not require
3 Sanitary District No. 1 to develop a lateral
4 ordinance because it already has one.

5 Sanitary District No. 1 and San Rafael
6 Sanitation District object to be named as
7 dischargers and having the tasks as enforceable
8 permit requirements for three primary reasons.

9 First, the Districts assert that the
10 collection systems should not be regulated by
11 individual NPDES Permits. They claim that they are
12 not point sources and they are already regulated by
13 the Statewide General Order for Collection Systems.

14 Second, they assert that being named in an
15 NPDES Permit greatly increases their legal
16 liability and that we could find a different way to
17 regulate them that would achieve the same
18 objective, with less risk of a third-party
19 enforcement.

20 And finally, they assert that blending is
21 not a prohibited bypass because the plant was
22 designed to blend during wet weather. They urge us
23 to adopt the reasoning of the 8th Circuit Court of
24 Appeals which rejected EPA's finding that blending
25 flows receiving physical, but not biological

1 secondary treatment were bypasses.

2 We disagree on all three points. The
3 tentative order names the collection system
4 districts to address blending because they are part
5 of the regulated facility which is a point source
6 and because they are the only entities that can fix
7 the sewers.

8 The Statewide General Order for Collection
9 Systems does not address high, wet weather flows
10 that result in blending, and its findings recognize
11 that additional regulation through individual NPDES
12 Permits may be necessary for some sites.

13 Regarding liability, we don't believe that
14 the liability will be substantially greater under
15 an NPDES Permit. The Clean Water Act allows third
16 parties to sue any time there's a sanitary sewer
17 overflow, regardless of whether the Districts are
18 regulated by an NPDES Permit, the Statewide General
19 Order, or both.

20 Regarding the 8th Circuit Court opinion,
21 not only is it inapplicable in this jurisdiction,
22 the circumstances of the case are different. That
23 case proposed using additional physical treatment
24 processes instead of biological treatment. Whereas
25 in this case there are no additional treatment

1 processes proposed to replace biological treatment.

2 Finally, the Clean Water Act is clear that
3 bypassing any part of the treatment system is
4 prohibited. Unless the Regional Water Board finds
5 that all feasible alternatives are being
6 implemented, it cannot approve blending.

7 Because the collection system improvements
8 are a feasible alternative to reduce blending, the
9 tentative order includes the collection system
10 districts, along with sewer improvement tasks.
11 This allows the Regional Water Board to approve
12 blending.

13 This tentative order does that, so we
14 recommend its adoption. And that concludes my
15 presentation.

16 VICE CHAIR MCGRATH: Before we go to the
17 Executive Director, are there questions of the
18 staff on the presentation?

19 BOARD MEMBER KISSINGER: I have a couple
20 of questions.

21 VICE CHAIR MCGRATH: Mr. Kissinger.

22 BOARD MEMBER KISSINGER: So, in the last
23 slide about NPDES Permit not increasing liability,
24 I think you say that's the case that it doesn't
25 increase liability because sanitary sewer overflows

1 are already a subject for which there is a citizen
2 suit remedy.

3 But a sanitary sewer overflow isn't the
4 same as a bypass, right? You can be bypassing and
5 not having any overflows, right?

6 MR. WOLFE: Correct, yeah.

7 BOARD MEMBER KISSINGER: So, it is the
8 case that if -- I don't know the law, so I haven't
9 checked it. But I take it we are increasing the
10 exposure of the Districts at least with regard to
11 bypass, but in terms of citizen suit exposure,
12 right?

13 MS. AJELLO: To clarify, the sanitary
14 districts are only responsible for specified tasks
15 within the order that relate to their repairs of
16 the pipes and that sort of thing. Bypass is CMSA's
17 responsibility.

18 BOARD MEMBER KISSINGER: No, I understand
19 that. My point only is that the pushback by the
20 Districts has been that there will be a new way by
21 which citizen suit enforcement can be brought
22 against them with regard to the specific
23 construction projects and the timetable that's set
24 forth in this, right?

25 So, that's sort of my preliminary

1 question. So, eyes wide open, it's not that we're
2 not increasing liability. WE are increasing
3 exposure to liability, anyway. I guess it's up to
4 them in terms of doing the work. But that's one
5 point, right, is that fair?

6 MR. JOHNSON: This is Bill Johnson. I
7 think that that's a fair way of portraying their
8 argument. I mean I think that what we are trying
9 to say is that they're already subject to certain
10 liabilities. And because there's a number of
11 mechanisms one could cite in order to make a case,
12 just by increasing the number of things that one
13 could cite doesn't necessarily increase the
14 likelihood of having to pay for a liability.

15 But that said, the NPDES Permit does have
16 specific tasks for their collection systems in it.

17 VICE CHAIR MCGRATH: Marnie, I think you
18 had a comment here. I want to make sure that
19 you're on the record, rather than just nodding.

20 MS. AJELLO: Well, we also assume that
21 parties are going to comply with our permit and
22 there wouldn't be any liability if they do the
23 things they're required to do on.

24 BOARD MEMBER KISSINGER: Understood. But
25 I guess, so it is the case that if we adopt this

1 order that it is a real scenario that citizen suits
2 under the Clean Water Act could be brought against
3 the Districts if they fail to complete on the
4 timetable, specified in our order, the specific
5 projects and by the deadlines that we've set forth?
6 And that is not the case under the waste discharge
7 requirements that they have today or any other
8 order that's in place. Is that right?

9 MR. JOHNSON: That is correct.

10 BOARD MEMBER KISSINGER: Okay. And then
11 the other point that I wanted to understand better
12 is why, in this case, the collection system which
13 is not a point source should be part of the NPDES
14 Permit. I understand there's a connection that the
15 collection system is the vehicle, is the means by
16 which the wastewater flows to the treatment
17 facility. But why is it necessarily required here
18 as opposed to in other circumstances?

19 I mean I assume our position is not that
20 all collection systems are subject to an NPDES
21 Permit, but in this case it is. And I understand
22 the logic that in order to provide for the bypasses
23 that we would be signing off on in the case of
24 storm events that all feasible actions have been
25 taken. I understand that logical connection.

1 But I don't necessarily understand why the
2 Clean Water Act requires that collection systems
3 that are not point sources themselves have to be
4 viewed as part of the treatment facility. Or, said
5 differently, if that's true here why that's not
6 true everywhere?

7 MR. JOHNSON: Okay and that's really the
8 fundamental question I think that you're asking is
9 why are we doing it here and not necessarily
10 everywhere?

11 So, the definition of a publicly-owned
12 treatment works, a POTW, includes the entire
13 facility, which includes the collection system.
14 And so, in our permits we actually do include
15 collection systems in all of our NPDES Permits for
16 PODWs.

17 But the collection systems, as you look
18 out into the systems there are multiple parties,
19 there are satellites, you know, flowing into one
20 collection system into another collection system,
21 and it gets very complicated.

22 And so, we kind of had to do a compromise
23 in terms of deciding so how far out do we want to
24 go to pull in the collection systems within the
25 NPDES context.

1 And so, what we've been doing as a
2 practice is we have been including the treatment
3 works, the plant, and the portions of the
4 collection systems that the owner and operator of
5 that plant directly controls. So, sort of a first
6 tier of the collection systems without going beyond
7 into multiple tiers. And that's mostly a matter of
8 just trying to be practical about this.

9 But there are certain cases where the
10 folks who own and operate the treatment plant
11 actually have no collection system whatsoever.
12 That's the case here with Central Marin. It's the
13 case with some other treatment plants.

14 For instance, the San Jose-Santa Clara
15 Treatment Plant also is operated by a JPA and that
16 doesn't control any portion of its collection
17 system. So, what we did there is we named the two
18 collection system agencies that contribute most
19 significantly to that flow, we named the City of
20 San Jose and the City of Santa Clara both in that
21 permit because they controlled the collection
22 system. And as it turns out, those are the
23 agencies that work together to make that JPA in the
24 first place.

25 So, what we're doing here with the Central

1 Marin case is exactly the same as what we did in
2 the San Jose-Santa Clara case where we're going out
3 sort of one level to pull out most of the
4 collection system and cover that in the NPDES
5 Permit. And we're now reaching out farther to get
6 to some of the smaller entities, like the prison in
7 this case, or the satellites.

8 Not that we couldn't do it, but we
9 actually don't see a benefit to doing that right
10 now.

11 BOARD MEMBER KISSINGER: One of the issues
12 that the Districts raised was look -- and we'll
13 hear from them momentarily. But one of the issues
14 they raised was, look, and maybe they won't
15 actually say this here but, look, we're willing to
16 do this work but we don't want to do it under the
17 NPDES Permit. There's all these other ways. You
18 know, a private contract, or amending the waste
19 discharge requirements, or a cease and desist
20 order.

21 Why couldn't these projects, whatever
22 series of improvements that are necessary or
23 recommended in order to reduce the intrusion, and I
24 forgot what the other "I" stands for, why couldn't
25 those projects be made part of either the Statewide

1 Waste Discharge Requirement that they're under, or
2 some kind of new waste discharge requirement that
3 we issue that specifically puts it forward and
4 avoids the additional incremental liability that
5 we're imposing by way of the NPDES Permit here?

6 MR. JOHNSON: Well, I think we tried to
7 respond to that in the response to comments. And
8 what I would say is it's possible that we could
9 point to a number of actions and this Board could
10 take a number of other actions, including
11 enforcement actions, or its own supplemental waste
12 discharge requirements on the collection systems.
13 We could take those as separate actions and delay
14 this NPDES Permit. And then, after everything is
15 in place take this permit and adopt a finding that
16 says, well, look, we've taken care of all of these
17 matters. They're all done. So, we can make this
18 finding and approve blending, or the wet weather
19 bypasses that we're approving here.

20 But we think that sort of administratively
21 that's certainly more burdensome for everyone. It
22 potentially involves, you know, taking enforcement
23 actions that we think are really unnecessary and
24 uncalled for. And we think that there's sort of a
25 -- it's a coherent strategy to just wrap them all

1 together in one NPDES Permit.

2 And again, we actually expect compliance
3 with the permit, so we're not really anticipating
4 that there will be a lot of additional liability.
5 But this permit allows us to be more specific about
6 what exactly the expectations are.

7 The Statewide Waste Discharge
8 Requirements, for instance, have requirements that
9 are somewhat narrative and dischargers can change
10 their goals, or the consequences for not
11 necessarily meeting those goals are just not as
12 clear.

13 And so, here we've actually been very
14 specific about what we think is feasible. The
15 actions that we've put forth in this permit are
16 actions that the collection system agencies
17 identified for themselves. And so, we think that
18 by having them here in this permit, in one action,
19 is clear, and clean, and it allows the approval of
20 wet weather bypasses to be made in the most
21 coherent way.

22 BOARD MEMBER KISSINGER: Yeah, I don't
23 quarrel with the administrative sensibility of it.
24 I get all that. That certainly does make sense.
25 And I certainly understand the notion that there's

1 a very close relationship between the POTW on the
2 one hand and the collection system on the other.

3 But I guess I'm still scratching my head a
4 little bit about the fact that there's a whole
5 series of projects with very specific dates, some
6 of which are not very far from now, to be done. I
7 don't know where they are in their process and I
8 guess we'll hear about that. But if they fall
9 behind -- you know, let's say they fall behind by a
10 month on one of the projects and we don't -- we
11 choose not to -- you know, there's a good reason
12 for it. We don't seek penalties.

13 There's another world out there where
14 someone can bring a citizen suit. And even if the
15 suit doesn't have any real legs because of the
16 prosecutorial discretion that we may exercise to
17 forebear doing something about it, the prospect of
18 that litigation is out there.

19 Which brings me back to the question that
20 I asked which is, is there another way to
21 accomplish what we're trying to accomplish here?
22 Which is valuable and which is important, and which
23 is to reduce the storm inflows.

24 And so, I guess I'll ask a question then
25 to your point about the administrative challenges

1 of doing this by way of a WDR path, or some other
2 path. Couldn't we -- I guess your suggestion with
3 regard to the waste discharge requirements is that
4 you'd have to have some enforcement proceeding to
5 issue waste discharge requirements to formalize, in
6 that setting, what we're trying to do here.

7 And I guess I ask that question, is it
8 really that much more complex in parallel to this
9 NPDES to issue a waste discharge requirement that's
10 specific to -- and we do, you know, basically tier
11 off of the State policy. Can we do that here? And
12 I see Tamarin nodding so --

13 VICE CHAIR MCGRATH: Perhaps we could have
14 an opportunity to address that and give the staff a
15 chance to prepare a schedule and what the
16 implications in terms of what would have to be
17 done, and when it would have to be done, and
18 whether or not it would increase the risk.

19 Or, do you have a response at this point?

20 MS. AJELLO: Well, one implication would
21 be that this permit, as written, could not be
22 issued now because there would be no feasible
23 alternative to blending that had been prepared.
24 So, it would cause a delay, at a minimum, with the
25 issuance of the CMSA Permit.

1 BOARD MEMBER KISSINGER: Okay. Well, I
2 need to know what kind of a delay we're talking
3 about. But I'm happy to let --

4 VICE CHAIR MCGRATH: Well, I want to see
5 if there's any other questions and I also want to
6 follow up your question.

7 MS. AUSTIN: Chair McGrath, if I could
8 just weigh in one additional point?

9 VICE CHAIR MCGRATH: Sure.

10 MS. AUSTIN: To, hopefully, respond to Mr.
11 Kissinger's concerns. And just to clarify,
12 Marnie's been advising on this permit and so I'm
13 speaking more from a broader perspective and not
14 with respect to this permit.

15 One of the options that this Board has is
16 when one of our permittees is sued under a Clean
17 Water Act lawsuit, we receive a notice of the Clean
18 Water Act lawsuit. And we, at that point, have an
19 option to exercise our own independent authority,
20 enforcement authority, and engage with the
21 dischargers, which sort of derails the Clean Water
22 Act lawsuit.

23 So, that has been done with respect to
24 other dischargers. I'm not suggesting that we
25 would ever have the need to do that in this

1 particular case, but that there is that option that
2 -- I don't know if you could view it as protective,
3 but a consideration.

4 BOARD MEMBER KISSINGER: Okay.

5 MR. JOHNSON: And I also think there's
6 actually a fairly quick answer to the question.

7 VICE CHAIR MCGRATH: Great.

8 MR. JOHNSON: And that is what we're
9 talking about is a brand-new permit. And the time
10 to do a brand-new permit may be in the order of
11 about nine months or so and would displace the
12 efforts that you would apply to doing other
13 permits. So, something would not get done.

14 And so, you know, we've got commitments to
15 get our NPDES Permits adopted on time. But that's
16 what would happen is we would adopt another permit.
17 It would take about nine months before we could
18 probably bring it to you. And in that time, you
19 know, we'd be displacing some other things.

20 The only other thing I wanted to say is
21 that while you could postpone adoption of this
22 permit until after those things were in place, the
23 other thing you have the adoption of doing is
24 simply not approving the wet weather bypasses. And
25 we're trying to make a case so that you can approve

1 the wet weather bypasses and thus give Central
2 Marin some assurance that when these bypasses
3 happen, if they're complying with all these other
4 things, the conditions in the permit, then we will
5 not take enforcement and neither will a third
6 party.

7 But if you don't grant that approval, then
8 there's third-party liabilities for the bypasses
9 during wet weather.

10 VICE CHAIR MCGRATH: You had a question?

11 BOARD MEMBER BATTEY: May I? I have a
12 few. I had a lot of the same questions as Board
13 Member Kissinger, so thank you for asking those.

14 I was hoping that you could just put this
15 whole thing in perspective for me a little bit
16 more. You know, talk a little bit more about how
17 long the blending has been happening on an annual
18 basis? Like I don't have a sense, has it been
19 going on for the last decade or not? Does it
20 happen in other areas? Is the type of permit
21 consolidation that we're talking about here, do we
22 do that in other places? I think maybe you
23 answered that one and the answer is yes.

24 And is this in any way precedent setting?
25 But I just need a little bit more frame up to put

1 this all in perspective.

2 MR. JOHNSON: I think there were four
3 questions in there, so maybe you can help me out.
4 Like take them one at a time and I'll --

5 BOARD MEMBER BATTEY: Okay. Can you talk
6 about blending and the -- I mean, clearly, this is
7 a facility from the late 1970s. And it's, you
8 know, like many infrastructures that we see around
9 the Bay, it's old. And so, can you talk about how
10 long blending has been going on and how long have
11 the plans for these projects that are all detailed
12 in here to improve things with the distribution
13 system, how long has that been on the boards?

14 MR. JOHNSON: This is not an especially
15 old plant, but it was designed to blend. And
16 blending, these wet weather bypasses have been
17 going on at a number of facilities for decades.

18 BOARD MEMBER BATTEY: Decades, okay.

19 MR. JOHNSON: And this has been sort of a
20 long-term strategy for dealing with wet weather
21 flows. And so, what we're trying to do now is to
22 actually think a little bit harder as we permit
23 these things, and trying to use the tools that are
24 available to get at that infiltration and inflow
25 issue in the collection systems.

1 Because the reason the wet weather
2 bypasses are necessary is because during wet
3 weather the peak of flows is so much greater than
4 what it is during dry weather that that's what the
5 problem is. So, we're trying to get at that
6 collection system issue of the infiltration and
7 inflow.

8 In the same way that we're looking at
9 collection systems to avoid sanitary sewer
10 overflows, it's all kind of the same issue.

11 So, we've been evolving over time and
12 trying to look more carefully at these things. So,
13 we have about 12 facilities in our Region where
14 we've granted approvals for wet weather bypasses,
15 which I think was your second question.

16 BOARD MEMBER BATTEY: Yeah, so 12 where
17 you have approved them.

18 MR. JOHNSON: Yes, where the Board has
19 approved them.

20 BOARD MEMBER BATTEY: Right. But in this
21 one you're not wanting to approve them, right?

22 MR. JOHNSON: No, no, no, this permit is
23 drafted --

24 BOARD MEMBER BATTEY: Is still allowed?

25 MR. JOHNSON: -- in the same way as the

1 others are to grant the approval for wet weather
2 bypasses. What's different here is that we're
3 drawing a stronger link to the collection systems.
4 And in order to get at the collection systems, they
5 have to be part of the permit. So, that's why
6 we've named them in the permit.

7 There's also something a little different
8 here in that I said before that we, in our small
9 "p" practice has been to go and pull in the
10 collection system that's associated with the plant.
11 In the last two permit issuances for this facility,
12 the findings say that there's a piece of the
13 collection system that CMSA, Central Marin owns and
14 operates. It turns out we were wrong. So, five
15 years, 10, 8 years ago we were wrong.

16 So, we corrected that because now it's
17 clear that Central Marin doesn't operate any part
18 of its collection system. So, we're actually just
19 doing what we would have done five or ten years ago
20 had we had the facts straight then.

21 BOARD MEMBER BATTEY: Okay.

22 BOARD MEMBER AJAMI: Sort of hypothetical
23 but -- well, maybe not. So, are we trying to help
24 them actually do something upstream beyond just
25 fixing the collection system, maybe implementing

1 some more natural systems to capture the storms?
2 Or, like green infrastructure, similar things that
3 are happening in the other parts of the country
4 right now and in our Region to kind of deal with
5 the storm peak?

6 Is this something that we assume they will
7 consider as part of their efforts? What's our
8 role?

9 MR. JOHNSON: Well, I think right now with
10 the actions that are here are actions that they've
11 identified as things that they can do.

12 BOARD MEMBER AJAMI: Right.

13 MR. JOHNSON: The Board reconsiders this
14 approval for wet weather bypasses every five years.
15 And as part of that, you're making a finding that
16 there's no feasible alternatives to the bypass.

17 So, in order to justify that finding, when
18 a discharger asks for that approval they do what
19 they call a no-feasible-alternatives analysis, and
20 they look into what is feasible for them to do.
21 So, it's certainly something that they can look at
22 as part of that analysis is what's feasible.

23 And then, if we found that maybe what they
24 were proposing didn't include everything feasible,
25 we could work with them to try to add that to it.

1 I think that also what you were trying to
2 get at is are we going a little bit maybe farther
3 than -- or, trying to be a little bit creative
4 here. And I think that this is a case where the
5 conditions here for the approval, which is a
6 discretionary approval on your part, include
7 requiring private sewer laterals for two of the
8 Districts that don't have them now. And so, it's
9 something we would certainly think everyone should
10 have.

11 But, you know, you don't have necessarily
12 the authority to mandate that in every case. But
13 here, if you're granting an approval that's based
14 on someone doing everything that's feasible, those
15 are certainly feasible actions that they could do.
16 And so, they're listed here as part of the action.

17 So, I think we're trying to be a little
18 bit creative and pushing the envelope a little bit.
19 But the green infrastructure things that you were
20 talking about are not necessarily here, but they
21 could be in the future.

22 MS. AJELLO: Just to note that this is not
23 a combined sewer system. This is a separate sewer,
24 so stormwater is regulated under different permits.

25 BOARD MEMBER AJAMI: Okay.

1 VICE CHAIR MCGRATH: Let me make sure that
2 Board Member Lefkovits, did you have questions?

3 You do?

4 BOARD MEMBER OGBU: Yeah, I just have a
5 quick one.

6 VICE CHAIR MCGRATH: Okay.

7 MR. CHRISTIAN: Oh, could I just say one
8 thing in response to Newsha?

9 BOARD MEMBER OGBU: Okay.

10 MR. CHRISTIAN: Is the green
11 infrastructure, that's typically done with combined
12 sewer systems, where stormwater and wastewater is
13 combined.

14 BOARD MEMBER AJAMI: Yes, I just realized
15 that.

16 MR. CHRISTIAN: So, they did that in
17 Philadelphia and all that.

18 BOARD MEMBER AJAMI: Yeah.

19 MR. CHRISTIAN: Okay.

20 MR. WOLFE: And I will note that the
21 County is working on some flood management projects
22 that do take a much more of a sort of onsite
23 detention approach. That's been a challenge moving
24 forward. But that's different than these agencies.

25 BOARD MEMBER AJAMI: Right, got it.

1 BOARD MEMBER OGBU: I just wanted to ask a
2 question, going back to the example of another
3 plant in our district where the collection systems
4 are separate, the San Jose-Santa Clara one that you
5 mentioned.

6 At that plant were the collection systems
7 included in the NPDES Permit from the start or was
8 it sort of a similar situation to this, where the
9 plant was the only one under the permit and then,
10 you know, the collection systems obviously are part
11 of it and can have impacts that can't be controlled
12 solely at the plant, they were brought in later?

13 MR. JOHNSON: That's really what it was,
14 they were brought in a little bit later.

15 BOARD MEMBER OGBU: Okay.

16 MR. JOHNSON: But it was quite a while ago
17 that we did this. It was two permit issuances for
18 San Jose-Santa Clara where we were looking at it.
19 And, again, first trying to make up this small "p"
20 practice. What would we do? What seemed
21 practical? And we, at that time, named San Jose
22 and Santa Clara in that permit. And we've reissued
23 the permit since then.

24 And their primary concern at the time was
25 that San Jose was concerned about being held

1 responsible for problems that could be happening in
2 Santa Clara and vice-versa. So, we worked really
3 hard in that permit to clarify who was responsible
4 for what.

5 And I think that what you'll see in this
6 tentative order is that we also worked very hard to
7 be very clear about who is responsible for what.

8 BOARD MEMBER OGBU: Yeah.

9 VICE CHAIR MCGRATH: Board Member
10 Lefkovits, did you have any questions?

11 BOARD MEMBER LEFKOVITS: Not yet.

12 BOARD MEMBER KISSINGER: Could I ask just
13 one last question?

14 VICE CHAIR MCGRATH: Sure.

15 BOARD MEMBER KISSINGER: Well, it won't be
16 my last question, but in this round.

17 (Laughter)

18 BOARD MEMBER KISSINGER: Is there good
19 legal authority for the proposition that a part of
20 it doesn't actually discharge into Waters of the
21 U.S., nonetheless can be a subject of an NPDES
22 Permit? I assume the answer must be yes to that
23 question but --

24 MR. JOHNSON: Yes.

25 BOARD MEMBER KISSINGER: Okay.

1 MR. WOLFE: And I think it's worth nothing
2 and this also builds on Board Member Ogbu's
3 question that we, in the situation dealing with
4 East Bay MUD and the East Bay communities, in that
5 case we actually have a consent decree to address
6 the inflow infiltration issue from all of those.
7 There's essentially six collection agencies.

8 In that case we did go with individual
9 NPDES Permits for each of the collection agencies.
10 That was largely an outgrowth of the consent
11 decree. That has been an administration challenge,
12 but that's why it's conceivable that would be an
13 approach of individual NPDES Permits for each of
14 the agencies. We feel this gets to the same place
15 must more expediently.

16 BOARD MEMBER KISSINGER: Yeah.

17 VICE CHAIR MCGRATH: This has gone on and
18 I've let it go on because it's extremely important
19 to the testimony that we expect to get from the
20 District. There's two questions here. One is
21 whether or not there's authority to include the
22 collection systems and the other is whether or not
23 it's reasonable, and the reasonableness of the
24 conditions.

25 So, I wanted to follow up on two points.

1 I think Board Member Kissinger made that second
2 point again and I think it's clearly before us is
3 there legal authority?

4 But I'd like to go back to an earlier
5 point that he made that there could be litigation
6 if they fail to meet the timelines.

7 On the other hand, if the timelines are
8 met is that an effective protection against third-
9 party lawsuits? I'm looking at our attorneys.

10 MS. AJELLO: Yes, so blending has been
11 authorized. You know, this is a feasible
12 alternative to blending. So, in essence if the
13 requirements of the permit that relate to the
14 collection agencies are complied with, then
15 blending is authorized and the collection agencies
16 have met their burden.

17 VICE CHAIR MCGRATH: Okay. So, the second
18 question is to the Executive Officer and it has to
19 do with the reasonableness of the timelines. I've
20 done projects on my own. I've done projects in
21 agencies. I know that unanticipated problems
22 sometimes arise.

23 If you remain in close consultation with
24 the collection agencies and something beyond their
25 control arises, can you administratively extend the

1 timelines as long as that deals with something that
2 was unanticipated, rather than nonperformance?

3 MR. WOLFE: It's not written right now to
4 expressly say that. We could certainly add a line
5 allowing the Executive Officer to moderate, under
6 due cause, the compliance dates in there.

7 We are taking the approach of requiring
8 annual progress reports from the agencies on their
9 progress moving forward. Usually we have, in other
10 permits, used that as essentially a check in for an
11 opportunity for agencies to indicate any --

12 VICE CHAIR MCGRATH: And, if necessary, to
13 bring it back to the Board you could do so in a way
14 that provides -- you know, reasonable further
15 progress is the standard that I'm looking for here,
16 rather than second guessing them on what the
17 project should be and not having full knowledge of
18 construction problems, because I've been there and
19 I've done that.

20 Reasonable further progress, given the
21 context so, that is another mechanism as we look
22 towards ways to make the finding.

23 And the reason that I've drawn this out
24 and drawn this very specific to the discharger is I
25 would like to hear comments focused -- you're going

1 to make the comments that you think you need to
2 make about authority, and that's all well and good.
3 But I want to make sure that you address the
4 question of reasonableness in both the scope of the
5 projects and the timeframe that's here. And
6 whether or not these have been imposed on you or
7 they're things that you can reasonably do. That's
8 the button up.

9 So with that, is it appropriate to move
10 into the speakers? Oh, there's the question of the
11 15-page letter. Bruce, tell us the facts?

12 MR. WOLFE: We, on Monday afternoon,
13 received an e-mail from the San Rafael Sanitation
14 District and Sanitary District No. 1 with an
15 attached 15-page letter. It was a rebuttal to our
16 response to comments and the request that that be
17 added to the administrative record because to cover
18 all those topics here at the meeting would take too
19 long to cover all of that.

20 That is something that is up to the
21 discretion of the Chair whether to accept that into
22 the administrative record. Typically, we have not
23 because Board Members have not had an opportunity
24 to go through that.

25 We feel that to a certain degree the

1 issues are reiterated. We have provided a response
2 to the comments. And my recommendation would be
3 not to accept that, but to have the parties raise
4 the issues in verbal testimony.

5 VICE CHAIR MCGRATH: And do the counsel
6 want to add anything to that advice?

7 MS. AJELLO: It is up to your discretion
8 to admit written testimony. The citations for that
9 would be California Code of Regulations, Title 23,
10 Section 648 and 648.4.

11 Also just to add that the commenters did
12 receive a 30-day comment period in accordance with
13 Water Code Section 13167.5.

14 VICE CHAIR MCGRATH: I'm going to rule
15 that it not be accepted. I do believe that's the
16 same ruling that Dr. Young would make. But I'm
17 going to provide a little bit further explanation.

18 I'm going to rule that way for the same
19 reason that I don't take phone calls and ex parte
20 communications, even though it is perhaps not
21 completely unallowed.

22 And the principle behind it is extremely
23 important. Everybody needs to react from the same
24 information. There are people who are interested
25 in wastewater permits. And regardless of your

1 concerns about third-party litigation, nobody's
2 here for that reason. And I would assume that a
3 part of that reason is that in many of the cases
4 they have to set their priorities and they accept
5 what the Regional Board record is on the
6 recommendations, because people do all get notice
7 of this.

8 And a last-minute change in the record is
9 not fair to people who are not here and are
10 assuming that based on the record that they're
11 there.

12 So, it's exactly the same reasoning to
13 make sure that everybody has the same information
14 before them. And people that are accepting the
15 recommendation and not here, I think are accorded
16 that same right.

17 So, I don't think Dr. Young ever gave that
18 explanation quite as detailed, but I think it's
19 extremely important. So, I'm going to rule against
20 it.

21 You can summarize the points, particularly
22 anything that is new. And it's very clear to us
23 what you commented on and the response of the
24 staff, so that's aware to us. You have ample
25 opportunity to verbally say what you think is new.

1 With that, the first card I have is
2 Melissa Thorme.

3 (Off-mic comment)

4 VICE CHAIR MCGRATH: And would that be
5 Jason Dow? I'm just looking at the cards in the
6 order I've got them stacked in front of me.

7 MR. DOW: Good morning Members of the
8 Board. My name is Jason Dow. I'm the General
9 Manager of the Central Marin Sanitation Agency,
10 also known as CMSA. And I've been with the Agency
11 for about 24 years. I've been the General Manager
12 for a little over 15 and a half years. And I've
13 been before your Board now three times to hear the
14 presentation, and discussion, and consideration of
15 the adoption of CMSA's permits.

16 Firstly, I'd just like to express my
17 appreciation to your staff for all their hard work
18 and diligence in preparing the permit and bringing
19 it to you today.

20 And at CMSA, you know, our board and our
21 staff, we're really excited and really proud of our
22 significant regulatory compliance over the last 13
23 years. We're also really excited about all of the
24 projects, and programs, and initiatives to
25 implement our comprehensive asset management

1 program, our capital improvement program, and our
2 numerous efforts to reduce greenhouse gas emissions
3 at the Agency, to divert organics from the local
4 landfill, to increase our energy efficiency, and to
5 make significant progress on becoming energy self-
6 sufficient.

7 And on that topic, CMSA has an organic
8 waste program which has been in effect, now, for
9 about four years. And under that program we accept
10 commercial food waste from our local solid waste
11 hauler, under a public/private partnership. We
12 receive fats, oils, and grease, and some other
13 types of organic wastes from private haulers.

14 And these materials are co-digested in our
15 digesters and they are -- the digesters produce
16 additional biogas that is used as a fuel in a co-
17 generation system to produce electricity, to power
18 our wastewater facilities, our treatment plant, and
19 our overall Agency operations.

20 And currently we're powering our
21 operations about 23 hours a day with the power we
22 generate. Some days it's 24, some days a little
23 less. And our goal for 2018, and we hope we
24 achieve this, is to become energy self-sufficient
25 and start delivering, you know, renewable green

1 power to the local utility through a power purchase
2 agreement with Marine Clean Energy.

3 So, lastly, I just want to mention that
4 CMSA has a really good and positive, constructive
5 working relationship with our JPA members in the
6 satellite collection agencies. They've done a lot
7 of just really positive work in terms of reaching
8 out to the communities to inform them of the
9 problems with, you know, repairing their laterals,
10 with doing other things to support the Districts.
11 They've increased their rate significantly over the
12 last five years to invest in the rehabilitation,
13 and replacement, and increased maintenance of the
14 infrastructure to address some of the issues that
15 you guys have been talking about.

16 And then also, you know, the staff at CMSA
17 are a bunch of great folks, you know, and they're
18 really dedicated to protecting the environment and
19 the health of the San Francisco Bay.

20 Anyway, that's it and I can answer any
21 questions that you guys have.

22 VICE CHAIR MCGRATH: Any questions?

23 BOARD MEMBER KISSINGER: I guess I had a
24 question. And, actually --

25 MR. WOLFE: Bill, move your microphone

1 down.

2 BOARD MEMBER KISSINGER: Sorry about that.
3 You know, I take that back. The questions I have
4 really are addressed to the collection agency. So,
5 I appreciate the presentation. Thank you.

6 MR. DOW: Okay, thanks.

7 VICE CHAIR MCGRATH: So, I have two
8 remaining cards from the collection agencies, one
9 from Greg Norby and one from Melissa Thorme. I
10 will leave it to you to which you want to come
11 first.

12 MR. NORBY: Good morning Vice Chair
13 McGrath and Board Members. My name is Greg Norby.
14 I'm the General Manager at the Ross Valley Sanitary
15 District. I've been operating in that capacity
16 since early 2013.

17 The last time I was here to speak with you
18 was under slightly different, more positive
19 circumstances. In May of 2016 we were here to
20 present to you a progress report on accomplishments
21 and achievements under what we already operate
22 under, which is a 2013 consent decree -- or a cease
23 and desist order, pardon me, issued by the Regional
24 Board. And that was a quite extensive regulatory
25 order that I think in hindsight, interestingly,

1 came about in a much different way than this
2 current permitting discussion that we're having
3 today.

4 What I mean by that is that we developed -
5 - at least from the District's perspective that
6 permit and those requirements were developed in
7 what we felt was an open and collaborative fashion
8 to really meet the public interest goals of the
9 safe, reliable wastewater service, and reinvestment
10 in the infrastructure, and getting away from
11 prescriptive, simplistic solutions and moving more
12 towards best practices, asset management, risk-
13 based approaches, and what we would refer to as
14 more performance-based compliance rather than, for
15 lack of a better word, prescriptive that doesn't
16 have any actual performance related to it.

17 In the time since then that progress has
18 continued. Just as a quick reminder, some of the
19 things going on at Ross Valley right now, we are --
20 well, first of all, we have met or exceeded every
21 aspect of that 2013 cease and desist order. Those
22 are documented in the annual reports that are
23 submitted to staff. It appears to be a different
24 set of staff that are here today.

25 I guess the staff that operate your WDR

1 Permits may or may not always communicate with the
2 other staff because one thing that was surprising
3 when we started this dialogue was staff seemed to
4 be largely unaware of the fact that we were
5 operating under a 2013 cease and desist order that
6 included virtually everything that we're now being
7 asked to duplicate in this new, Federal Permit.
8 So, that was a little bit of a surprise to us.

9 So, just to give you some refresher on
10 what that included, we gained community support.
11 Well, first of all we went back and we revamped our
12 entire asset management program under the cease and
13 desist order. We gained community support for a 50
14 percent increase in rates over five years. We have
15 been moving between six and seven miles per year or
16 gravity sewer rehabilitation.

17 We went from about 150 laterals per year
18 of replacement to we're now trending between 600
19 and 700 laterals per year under a voluntary program
20 that we developed that includes loans, grants, and
21 other incentives for homeowners.

22 I think it's safe to say it's probably one
23 of the -- on a per capita basis, given the size of
24 our system, it's probably one of the most
25 successful lateral replacement programs that you're

1 going to be able to find.

2 We currently have, as of now, about \$50
3 million in construction on the streets, active in
4 the Ross Valley to meet the obligations under that
5 2013 cease and desist order.

6 If you take a look at the table, I don't
7 have it in front of me, you have it in the draft
8 tentative order, every item in that list of
9 requirements that staff is asking for we're already
10 obligated to perform and meet under the 2013 cease
11 and desist order.

12 Just as an example, you'll see some -- and
13 we, out of a good faith effort, offered more
14 actions that we were already taking. Before this
15 whole conversation ever started, we were already
16 pursuing smoke testing. We were already pursuing
17 all of the best asset management practices.

18 You'll see one note in there that talks
19 about by some date in 2018 for us to have done 40
20 miles of smoke testing to reduce I&I. Well, I've
21 got good news for you. We've already completed
22 that 40 miles of smoke testing. It was done this
23 year. And it was done before these conversations -
24 - that effort started before any of this ever came
25 along.

1 So, we're sort of struck by the difference
2 between the conversation and the approach in the
3 2013 cease and desist order and what we feel is a
4 step back to an overly prescriptive, convoluted,
5 duplicative permitting process that appears to be
6 trying to solve a problem that doesn't actually
7 exist.

8 You have a treatment plant, and I won't
9 speak for CMSA, General Manager Dow can do that,
10 that has probably one of the most outstanding
11 compliance records for discharge that you're going
12 to find anywhere. Right, I think that record
13 speaks for itself.

14 You have a District, Ross Valley makes up
15 about, roughly 40 to 45 percent of the system that
16 is included in the Joint Powers Authority service
17 area, who has shown over the past five years that
18 they're willing to make the investments, and
19 they're willing to raise the rates, and they're
20 willing to institute best practices to reduce I&I,
21 and to provide efficient and reliable service to
22 the community, and to help protect, obviously, the
23 bottom line goal of water quality discharge to the
24 receiving waters.

25 So, that past approach we have seen for

1 the last several years, and we've said so
2 repeatedly in public, as we've seen it as a very
3 successful and illustrative of a very good approach
4 to smart, effective regulatory approaches versus
5 prescriptive, convoluted, duplicative approaches
6 which is what, in our view, we're being presented
7 with, with this new effort to be listed under the
8 Federal NPDES Permit.

9 So, we're caught off guard by all of this.
10 We're a little bit surprised after all the work and
11 effort that is ongoing right now. And again, I'll
12 remind you everything listed in those tables is
13 work that we're already doing. It's work we
14 already had planned. It's work that's already in
15 our capital program.

16 Now, you could turn that around and say,
17 well then what's the big deal, we're just asking
18 you to do what you're already doing?

19 But let's turn that around. You have
20 these regulations generally to push people to get
21 to do the things they're not already doing. We're
22 already doing all those things. So, it's not clear
23 to us what public value, what public interest is
24 being served by adding this new layer of, again,
25 what we consider to be convoluted, duplicative -- I

1 won't -- the lawyers can speak to that. I'm a
2 General Manager. I'm not going to try to dissect
3 the pros and cons of the legal arguments.

4 I will address the basic, what I think are
5 the basic stakeholder interests. They start with
6 the community who pays the bills, which have gone
7 up 50 percent in the past five years to pay for
8 these capital programs. Certainly, they include
9 our community. They include the folks interested
10 in the environmental health of the Bay. And I
11 can't identify any benefit to any stakeholder,
12 other than the Regional Board staff's preference
13 for this permitting approach that is being served
14 here, beyond what's already being offered.

15 And interestingly, in the first
16 discussions with staff we basically said -- I mean,
17 how often does a district come to you and say, no,
18 come on, we would like you to put us under a cease
19 and desist order and we'll go take care of all that
20 action. And that's literally what the other two
21 member agencies said to your staff.

22 They said, look, we get it, you want to
23 put us under this Federal Permit, but there's all
24 these reasons why we think that's a bad idea. So,
25 are we going to shirk our responsibility? No.

1 We're actually saying put us under a different,
2 more efficient, more direct regulatory approach and
3 we will meet those obligations in good faith.

4 And I think the track record of all three
5 agencies speaks for itself. Again, I think you're
6 solving a problem that doesn't exist right now.

7 We would very much like to continue to
8 work with the Regional Board staff to come up with
9 a more efficient, more balanced approach that
10 avoids all of the convoluted pitfalls that can be
11 addressed in the 15-page letter. Which, by the
12 way, it came when it did because we had -- we
13 delivered that letter four days after we got the
14 response to comments. So, I don't know how we were
15 supposed to get our information into the
16 administrative record sooner. But I respect the
17 decision, obviously, to delete that or refuse to
18 have it admitted to the administrative record.

19 So, I think earlier, I think one of the
20 staff made the point that the real root here is you
21 have I&I flows. Inflow and infiltration increases
22 the wet weather flows to the plant, it increases
23 the odds of having a blending event. 10/4, we all
24 understand that.

25 So, let me ask you a question. If the I&I

1 is the issue and it's up in the collection systems,
2 what makes more sense? To put a permit, a set of
3 permit requirements in place that is focused on the
4 collection systems directly or to take an indirect,
5 multi-layered, convoluted approach that is
6 duplicating things we're already doing?

7 VICE CHAIR MCGRATH: So, can I ask you to
8 summarize? I mean, you're beginning to duplicate,
9 I've heard --

10 MR. NORBY: Yeah, I will summarize.
11 That's it. That's it. Our ask of the Board is to
12 reject staff's recommendation, to issue the CMSA
13 NPDES Permit and it's essentially without any of
14 the listing of the collection agencies. I think
15 their record stands on its own as the basis for
16 doing so.

17 I think that Ross Valley will continue to
18 operate under the 2013 cease and desist order. And
19 if you're not going to do that, then terminate the
20 2013 cease and desist order and put all that into
21 the NPDES Permit.

22 VICE CHAIR MCGRATH: So, to summarize, as
23 I recall and I found the table on page 15 and 16,
24 items 21 through 31 are requirements of Sanitary
25 District No. 1, which is Ross Valley.

1 MR. NORBY: Correct.

2 VICE CHAIR MCGRATH: And there is no
3 requirement there that is not already included in
4 your cease and desist order.

5 MR. NORBY: It's all stuff we're already
6 doing.

7 VICE CHAIR MCGRATH: Most of them. So,
8 what you're suggesting in summary is that a cease
9 and desist order is a sufficient provision?

10 MR. NORBY: It's sufficient, direct and
11 uncomplicated.

12 VICE CHAIR MCGRATH: All right, I think we
13 understand that.

14 Any other questions?

15 MR. NORBY: Thank you for your time.

16 BOARD MEMBER AJAMI: I have a question.

17 VICE CHAIR MCGRATH: You have a question.

18 BOARD MEMBER AJAMI: Okay, I have a
19 question. So, Mr. Norby, I actually very clearly
20 remember the Ross Valley and your presentation, or
21 your colleagues' presentation here. And I have
22 actually used that case multiple times as talking
23 about the very productive interaction between the
24 regulatory agency and a sanitary district.

25 One question I have for you is if I

1 recall, when we were trying to put that cease and
2 desist order in place beforehand you did go to your
3 ratepayers and try to increase the rates, and that
4 did not go through.

5 MR. NORBY: Correct.

6 BOARD MEMBER AJAMI: And then we asked our
7 Board -- staff asked you to do asset management.
8 And I think that was something that came directly
9 from us to ask --

10 MR. NORBY: That would be not correct.

11 BOARD MEMBER AJAMI: That was not correct?

12 MR. NORBY: That is not correct.

13 BOARD MEMBER AJAMI: Okay.

14 MR. NORBY: No, the correct sequence of
15 events there was that in the draft cease and desist
16 order staff took a set of historic capital
17 improvement program projects that were essentially
18 out of date, and based on old thinking, pre-asset
19 management, pre-risk assessment. They stacked them
20 all on top of each other and said, here, go do
21 these in the next five years. That was the draft.

22 We made a request at the time to sit down
23 with staff and revisit that. And to the staff's
24 credit, they were receptive to that. And Dyan
25 Whyte and others, we sat down and we said, look,

1 give us six months. Let us come back to you with
2 an asset management plan approach that we think
3 will achieve everything else you're looking for,
4 but it will do it in a much more efficient manner.

5 Again, to Regional Board staffs' credit
6 they said okay, and that extension was granted. We
7 met that obligation. We came back six months later
8 with an asset management plan. It was largely
9 incorporated into the current cease and desist
10 order that we're operating under, and that's the
11 path that we've been working under for the past
12 four to five years, which we consider to be highly
13 successful in meeting all the stakeholder
14 obligations.

15 BOARD MEMBER AJAMI: Okay, I recall. You
16 know, I'm surprised to hear that we didn't -- we
17 did not ask for asset management. But I just want
18 to make sure that this has been something that we
19 have been trying to work with different districts
20 to kind of consider asset management as one of the
21 pathways to more effectively change their operation
22 systems just because it's easier, and more
23 effective in the way you spend your capital.

24 And then, you went back to public and
25 after they asset management they were willing to

1 pay more.

2 MR. NORBY: Correct.

3 BOARD MEMBER AJAMI: And for you to do the
4 work that was required.

5 MR. NORBY: Correct.

6 BOARD MEMBER AJAMI: So, while I really
7 appreciate that and again, as I said, I always use
8 Ross Valley as an example of what can be done, I
9 would also appreciate if the conversations are not
10 necessarily directed in the way that you did, which
11 is very harsh towards the efforts that's being done
12 by the staff.

13 MR. NORBY: Understood.

14 BOARD MEMBER AJAMI: And, you know, we do
15 understand your frustration. Of course, you know,
16 permitting process is not an easy thing. Not
17 everybody thinks the same way, but we're all trying
18 to achieve the same goal. Right?

19 MR. NORBY: Absolutely.

20 BOARD MEMBER AJAMI: So, it will be much
21 better if we try to, instead of saying one group
22 versus the other group, and using certain language
23 that's a little bit not necessarily positive, and
24 try to make it more productive and effective.

25 MR. NORBY: Absolutely. And I regret that

1 I came across in those tones. This is a very big
2 deal for our Agency.

3 BOARD MEMBER AJAMI: I understand.

4 MR. NORBY: And we've been really caught
5 off guard and surprised by this. So, yeah, it has
6 caused a lot of consternation, for lack of a better
7 word.

8 But let me be very clear, we are
9 interested in meeting the stakeholder, all of the
10 public stakeholder benefits. We're interested in
11 doing that in the smartest, most efficient manner.

12 Our view, as an Agency, and my
13 professional view as General Manager of the Ross
14 Valley Agency, is that the current proposal does
15 not meet that objective. There are better
16 solutions. And all we're asking for is time to
17 work with staff to develop those solutions and
18 that's it.

19 BOARD MEMBER AJAMI: Thank you.

20 VICE CHAIR MCGRATH: All right. So, next
21 we have, I believe you want the dischargers to go
22 first, so we have Doris Toy. She's with San Rafael
23 Sanitation District.

24 And Doris, so we don't have quite as much
25 confusion, I would appreciate it if you would focus

1 on what you think is new in this Board order that
2 you're not somehow already committed to. Because
3 the question I think we have has to go to
4 reasonableness. Is there a new requirement that
5 you've been surprised by or is it just in a
6 different box?

7 MS. TOY: Yes. My name is Doris Toy, San
8 Rafael Sanitation District.

9 A lot of issues and comments have been
10 raised already, so I don't want to repeat myself.
11 I just want to just reiterate my concern, basically
12 as the CIP table that's listed. Because in the
13 past few years, even though all those projects
14 listed is in my CIP, and we try to stick to it,
15 things do come up. And so, we would have to divert
16 funds to, you know, replace pipes. It is all in
17 pipe replacement. It's just not those specific
18 titled projects.

19 And we're just concerned, you know, that
20 we'll be in violation and a third party coming
21 after us and that sort of thing, and double
22 penalties. That's about it. I just want to ask
23 that the Board consider maybe, you know, releasing
24 the collection agencies from the NPDES Permit for
25 now, and have time with the staff to discuss

1 further alternatives.

2 VICE CHAIR MCGRATH: So, from your
3 perspective the list of projects on page 14 and 15
4 are projects that you're tentatively committed to.
5 However, when things go wrong you may have to move
6 funds from one project to another. Is that
7 correct?

8 MS. TOY: That's correct.

9 VICE CHAIR MCGRATH: And you want to make
10 sure there's flexibility to do that in consultation
11 with the Regional Board staff, without being
12 exposed to penalties?

13 MS. TOY: Right. And how easy would that
14 be?

15 VICE CHAIR MCGRATH: I think we can try to
16 do that. I may have spoken out of school but --

17 BOARD MEMBER KISSINGER: Ms. Toy, I have
18 one question. So, your District, unlike Ross
19 Valley, is not under a cease and desist order?

20 MS. TOY: That's correct.

21 BOARD MEMBER KISSINGER: So, there is a
22 difference between the Districts with regard to the
23 obligation, if you will, and/or what's new being
24 added. I understood Mr. Norby to say nothing new
25 is being added beyond what's already an obligation

1 that it has. But this is new with regard to your
2 District, is that fair?

3 MS. TOY: Yes, that's correct.

4 BOARD MEMBER KISSINGER: Okay, thanks.

5 VICE CHAIR MCGRATH: Is that it? Any
6 other questions?

7 BOARD MEMBER AJAMI: Steve, do you have
8 questions?

9 BOARD MEMBER LEFKOVITS: No.

10 VICE CHAIR MCGRATH: Thank you.

11 MS. TOY: Okay, thank you.

12 VICE CHAIR MCGRATH: I appreciate that.

13 Melissa Thorme, you knew you were up.

14 MS. THORME: I did. Thank you, Vice Chair
15 and Board Members for letting me bat cleanup. We
16 were hoping that I wasn't going to have to really
17 talk today because we did submit this letter on
18 Monday afternoon. And the reason was is we did not
19 see the response to comments until Thursday. And
20 so, we cranked as fast as we could, worked over the
21 weekend to try to get this information to you, so
22 you would have it ahead of time.

23 So, we're not really sure why the response
24 to comments could come into the record because that
25 was less than a week before the hearing and this

1 cannot. We do have due process rights that we need
2 to be heard with new things that came up in the
3 response to comments.

4 So, I just wanted to back up a little bit
5 and just reiterate that from the beginning we have
6 asked staff if we could help draft orders. Can we
7 help draft a supplemental WDR? Can we help draft a
8 revised cease and desist order, a new cease and
9 desist order, a time schedule order, or some other
10 kind of thing to take off the pressure from staff.

11 I've been doing this for, you know, going
12 on 30 years and I help write permits all over the
13 State. And it's something that we would have been
14 more than happy to help do because we understand
15 that staff is under a lot of pressure to get
16 permits out and doesn't have a whole lot of extra
17 capacity to do extra things. So, that still
18 stands. We would still perfectly be happy to help.

19 So, I'm going to have to go through a lot
20 of the responses to the comments verbally because
21 the letter isn't coming in and I apologize for
22 that.

23 So, this issue has really only come up in
24 the CMSA permit in the last two permits. So, they
25 have had permits since the early eighties. The

1 bypass regulations, and infiltration and inflow
2 regulations have been around since the late
3 seventies, early eighties. So, nothing has changed
4 really in the law. The only thing that's changing
5 is the interpretations of that law.

6 So, they're using the infiltration and
7 inflow to be one of the reasons for why the
8 collection systems need to be on this permit and
9 they're relying on 40 CFR 133.103(d), which is a
10 definition of excessive I&I. But it's only for a
11 certain purpose of getting a lower percent removal
12 or mass limit in lieu of the normal 85 percent
13 removal.

14 And what the reason for that is, is when
15 you have really dilute flows coming in during a
16 storm event it's really hard to get 85 percent of
17 the BOD or TSS out because it's already so clean.
18 And that's the only exceedance that CMSA has had in
19 the last 13 years was one time when they didn't get
20 85 percent removal, they had 82 percent removal.

21 And as staff said, normally they're at
22 like 98 percent removal. So, they're far exceeding
23 what the permit is requiring. And they have always
24 met their BOD and TSS secondary treatment
25 requirements. Even though they may have an

1 increase over time because of the blending events,
2 they're still meeting their permit.

3 So, your goal is water quality protection.
4 And I submit to you that water quality is being
5 protected even during blending. EPA grant funded
6 this treatment plant to be built to blend during
7 wet weather events. So, they already had to look
8 at the I&I issue and said it's more -- it's a
9 better use of our money, as the Federal Government,
10 to have it done this way because we know water
11 quality's going to be protected.

12 So, only the first time that this came up
13 in the CMSA Permit was two permits ago with this
14 no-feasible-alternative analysis, and the fact that
15 they were saying that the Water Board has to
16 approve these bypasses.

17 I submit to you that that's not necessary.
18 That this was an interpretation in a draft
19 regulation that EPA issued that was never
20 finalized, and it's still being utilized in that
21 same interpretation. So, it's the epitome of an
22 underground regulation.

23 The other part of the I&I analysis is the
24 cost effectiveness analysis, so they're only using
25 half of the definition. They're also not using

1 average flows when they're calculating the target
2 in that guidance document as 275 gallons per capita
3 per day. And they're using 30 MGD instead of an
4 average flow over a month or even a year. And if
5 you look at that, the number is much, much lower
6 than that.

7 They're also misinterpreting the bypass
8 regulations. And as I said, there's no authority
9 for this interpretation except for a 2005 EPA
10 guidance document, which is cited in the fact
11 sheet, but it is not a regulation and it's not even
12 a finalized document.

13 BOARD MEMBER KISSINGER: Can I interrupt
14 you just for a second?

15 MS. THORME: Sure.

16 BOARD MEMBER KISSINGER: Because I really
17 struggled in reading that portion of the letter to
18 understand the interaction between the
19 interpretations of the regulation and the
20 regulation as it stands today.

21 MS. THORME: Right.,

22 BOARD MEMBER KISSINGER: The regulation is
23 unambiguous in saying there's a prohibition on
24 bypass except for these circumstances.

25 MS. THORME: But this is not a bypass.

1 BOARD MEMBER KISSINGER: And it's not a
2 bypass in your view because the plant was designed
3 to have bypass?

4 MS. THORME: Right. So the --

5 BOARD MEMBER KISSINGER: But just to
6 finish it.

7 MS. THORME: Okay.

8 BOARD MEMBER KISSINGER: And, therefore,
9 any time you design a plant with bypass this
10 regulation is out the window?

11 MS. THORME: Right, because a bypass, the
12 thought is there's sometimes -- so, say your
13 clarifier goes down, likes something happens,
14 something breaks in it and you've got to bypass
15 around that clarifier because it's not working.

16 Then if you know in advance that you're
17 going to have to do that, you tell the Water Board
18 and say we're going to have to bypass around this
19 and get approval for it. But in an emergency you
20 can have that kind of a bypass and then there's
21 different reasons. So, it's like an intentional
22 diversion around that.

23 This isn't intentional. There isn't
24 somebody that goes out there and turns something
25 when the flows get high. It happens automatically.

1 So, it's not --

2 VICE CHAIR MCGRATH: Ms. THORME?

3 MS. THORME: Yes.

4 VICE CHAIR MCGRATH: Let me try to focus
5 you a little bit. I don't really want you to read
6 the full 15-page letter and rehash, particularly,
7 authority.

8 What I would like you to focus on and I
9 tried to do this with my preparatory comments, and
10 I think in asking each of the dischargers is focus
11 on what you think is new here that cannot
12 reasonably be accommodated without exposing the
13 District to increased liability? I think you have
14 a sympathetic Board before you on that issue. But
15 if there's really not much new or we need to do
16 some things to the permit to make sure that there's
17 a consultation process -- I don't want to argue
18 about authority and I don't want you to reread 15
19 pages of citations on authority. That's not an
20 easy fix here, please.

21 MS. THORME: Okay.

22 VICE CHAIR MCGRATH: The reasonableness
23 question, what's being asked that cannot be
24 reasonably done in terms of fund-raising and
25 scheduling. You know, those are, I think, more

1 realistic questions about the feasibility.

2 And what we're looking for here is a way
3 to be able to respond and make a finding that there
4 are no feasible alternatives and bypass can be
5 approved under these circumstances.

6 BOARD MEMBER KISSINGER: But let me just
7 add one piece to that and I encourage you to go on
8 to what Vice Chair McGrath suggests.

9 But I guess I would like from you, the
10 Board's comment -- or the Board's responses to your
11 comments are very categorical. And I guess this
12 regulation's been on the books for a long time.
13 The construction of projects with the ability to
14 bypass to accommodate storm flows is not a new
15 phenomenon. If, in fact, you are correct that
16 facilities that are designed to accommodate storm
17 flows by way of bypass takes them completely out of
18 this regulation, there should be clear, well-
19 articulated authority to that effect. And I didn't
20 see it in your papers.

21 Maybe I missed it. You cite to the 8th
22 Circuit one case, but that's not on this point.
23 So, what is the authority, if you have it? And
24 then, I'd like you to move on to Vice Chair
25 McGrath's point.

1 MS. THORME: Well, in the letter that we
2 provided on Monday, I gave you the entire bypass
3 regulation. It doesn't discuss blending in there
4 at all. Never mentions the word blending. And
5 staff is saying that clearly this regulation
6 includes blending. So, there is nothing in there
7 about that.

8 And the 8th Circuit decision is the most
9 clear authority on interpretation of that
10 regulation. And so, the Federal Court should have
11 jurisdiction to rule on what Federal rules mean.
12 And they said that there's nothing that gives the
13 permitting authority ability to get inside the
14 treatment plant. That you can say you have to meet
15 BOD of 30 and 45, and TSS 30 and 45 at the end of
16 the pipe, but how you do that is up to you. And if
17 you have to blend around your facilities, as long
18 as you're meeting those limits water quality is
19 protected and we can't get into the interminglings
20 of the treatment plant. There's several cases that
21 we cited to that effect.

22 Also under the Water Code, Section
23 13263(a), it says that you can't -- I'm sorry, I
24 don't have that, 13660(a). I'm sorry, it's in the
25 letter. The Water Code says when the Regional

1 Board issues an order you can't tell someone how to
2 comply with the order.

3 VICE CHAIR MCGRATH: But that was all
4 clear in your first comment letter and we have a
5 response on the record for that. And we understand
6 you don't agree with that response.

7 BOARD MEMBER KISSINGER: Yeah, I think
8 you've answered the question that the best
9 authority is the 8th Circuit decision on that
10 question, right.

11 VICE CHAIR MCGRATH: And we clearly -- I
12 mean we read that.

13 MS. THORME: Okay.

14 VICE CHAIR MCGRATH: We read your comment
15 and the response very carefully.

16 MS. THORME: Okay. And, well, staff is
17 also justifying it based on sanitary sewer
18 overflows. But sanitary sewer overflows into
19 waters are, number one, already prohibited by the
20 Clean Water Act and, number two already prohibited
21 by the Sanitary Sewer WDR. There's no need to have
22 an NPDES Permit that doesn't permit those
23 discharges and just to add another discharge
24 prohibition.

25 Plus, they said that the SSOs were higher

1 than the Regional average which is not borne out
2 because if you look at the CWIX data for San
3 Rafael, as an example they're at 1.82 spills per
4 mile per year, and the Regional average is 4. So,
5 they're well below that number. And on volume is
6 the same, they're at 275 gallons per thousand
7 capita per year, versus 1,781 as a Regional
8 average. So, that is not a good justification for
9 putting them under the permit.

10 VICE CHAIR MCGRATH: So, let me stop you
11 there. There's a table on page F-8, Table F-3
12 Collection System and SSO Rates. And you disagree
13 with that table?

14 MS. THORME: F-8. Well, I just pulled it
15 off of the CWIX, so it may be an average amount.
16 But this --

17 VICE CHAIR MCGRATH: This is extremely
18 important. So, you are allowed to provide rebuttal
19 information, but this table is the analytical
20 information that our staff has provided on overflow
21 rates. I think it's critical to our decision
22 making. If you want to provide a rebuttal, go
23 ahead.

24 MS. THORME: Well, I attached it to our
25 letter, there was the CWIX report for San Rafael.

1 I don't know whether these are all spills or
2 whether these are just spills to waters. So, for
3 Clean Water Act purposes, the only spills that are
4 able to be regulated in the Clean Water Act are the
5 ones that reach Waters of the United States.

6 So, I don't know if this is all of their
7 spills, I did not look at that carefully. But I'm
8 taking it from CWIX where they're looking at the
9 Regional average versus the average for that one
10 Sanitation District.

11 VICE CHAIR MCGRATH: Just as a heads up to
12 the staff, I'm going to want a response to that.

13 MS. THORME: There are also in the
14 response comments and today cited to other permits
15 as precedent, including the San Jose-Santa Clara.
16 But that is not necessarily a good example because
17 it wasn't challenged. They didn't challenge being
18 on the permit and there's been no review of the
19 validity of that permit. Plus, there were many
20 collection systems in the San Jose-Santa Clara
21 sewer shed that are not part of that permit. So,
22 it wasn't as though they put all the collection
23 systems on the permit, only the cities.

24 This is also contrary to the 2007 action
25 by this Board to basically take collection systems

1 off the NPDES Permit. Historically, you guys did
2 put them on routinely and then after the 2006
3 Sanitary Sewer WDR was issued by the State Board,
4 this Board took the collection systems off because
5 now they were being regulated. And it was in a way
6 that was not an NPDES Permit because they
7 recognized that there is additional liability. And
8 they also recognized that satellite collection
9 systems, where it was not owned by the POTW, that
10 they're not typically regulated as part of the
11 POTW.

12 So, what we think is that this is a
13 duplication of both the SSS WDR that the State
14 Board issued, which includes I&I. And also, Ross
15 Valley has a cease and desist order. As they said,
16 they'd be willing to take a cease and desist order
17 over the NPDES Permit to avoid the third party and
18 Federal liability.

19 When you become an NPDES Permit holder you
20 not only have the Regional Board as your master,
21 but now you have the Federal EPA that can come in
22 and enforce the permit, both civilly and
23 criminally, and you have citizen suits. That now
24 you have a permit where they could come in and
25 claim that you had unpermitted discharge. You now

1 have a discharge prohibition in there that says you
2 can't have a sewer spill. You have operation and
3 maintenance requirements that are duplicative in
4 the permit because you have three different places
5 where you say the same thing.

6 So, they can come in and allege each one
7 of those is a violation. At \$51,000 per day per
8 violation that adds up very quickly.

9 VICE CHAIR MCGRATH: Can I stop you there?

10 MS. THORME: Uh-hum.

11 VICE CHAIR MCGRATH: So, Ross Valley,
12 which is Sanitary District No. 1, has a cease and
13 desist order, but the San Rafael Sanitation
14 District and Sanitary District No. 22 do not.

15 MS. THORME: Correct.

16 VICE CHAIR MCGRATH: Are you suggesting a
17 cease and desist order for those two entities as an
18 alternative?

19 MS. THORME: They would take that. We've
20 offered either to have a supplemental WDR --

21 VICE CHAIR MCGRATH: I just wanted to be
22 clear.

23 MS. THORME: Yes.

24 VICE CHAIR MCGRATH: Because you said
25 "they" and I wanted to make sure that I knew who

1 you were --

2 MS. THORME: Well, I don't represent the
3 Corte Madera. I'm only representing San Rafael.
4 The person that was involved and came to the
5 meetings has retired and we don't even know who --

6 VICE CHAIR MCGRATH: So, San Rafael is the
7 "they" you're referring to?

8 MS. THORME: Yes. I mean, they would
9 prefer to have a WDR or a time schedule order that
10 isn't like that higher level of enforcement because
11 they don't think they've done anything wrong and
12 they're willing to come in and do this voluntarily.

13 But as an option to an NPDES Permit, they
14 would rather have a cease and desist order.

15 VICE CHAIR MCGRATH: Okay. I'm sorry if I
16 confuse you, but I want to make sure that your
17 testimony is very clear.

18 MS. THORME: Yes. So, as the manager
19 said, there were some concerns about timelines and
20 that things could slip for reasons beyond their
21 control. For example, you could have a strike.
22 And you said you were going to get something done
23 and now you can't because there's nobody to do the
24 work.

25 If it's in the NPDES Permit, you can't

1 easily come in and get that modified. You have to
2 go through a permit modification. Because it's an
3 NPDES Permit you have to go through the Federal and
4 State rules for modifying it. You can't delegate
5 that to the Executive Officer.

6 Whereas if you have a time schedule order
7 that is easily delegable to the Executive Officer
8 to change those time frames. So, if something like
9 this comes up, it can be changed. There was no
10 response to our comment on that concern. And so,
11 we still have some bare consequences with the NPDES
12 Permit.

13 There was in the response to comments
14 saying that we weren't surprised when we received
15 this NPDES Permit because we put in this huge
16 comment letter. Well, that wasn't that we weren't
17 surprised, it was just we were trying to cover all
18 the legal bases. So, that isn't a justification.

19 As I said, duplicative requirements right
20 now for a sewer spill you've got unpermitted
21 discharge, discharge prohibition, Provision 6.A
22 which says, "Comply with standard provisions
23 including operation, maintenance". And Attachment
24 D and G which say the same thing as Provision 6.A.
25 So, you've got five different ways that you could

1 get a citizen suit.

2 We do appreciate the changes that were
3 made, but we don't believe that they remove the
4 objections to the NPDES Permit. The duplication of
5 requirements in there, that still remain, cause
6 additional liability.

7 And you were talking about reasonableness
8 earlier, Vice Chair, and that is a Water Code
9 requirement, too. Section 13000 requires
10 reasonableness that you weight all the factors when
11 you are regulating for water quality, and have to
12 do what is reasonable.

13 So, as we've said that the ask is that we
14 remove the collection systems from the CMSA Permit.
15 As staff said, it was deliberately put in the
16 permit so certain things only apply to the
17 collection systems. It would be a fairly easy
18 errata to just remove the collection systems.

19 And we would like to work with staff and
20 potentially with the Bay Area Clean Water Agencies
21 Collection Systems group. I know that BACWA and
22 the Regional Board have worked very closely
23 together on many different regulatory issues and it
24 would be a good thing, probably, to get more voices
25 at the table because there are 11 other treatment

1 plants that have this same issue, that may be
2 coming before you.

3 And I think we could then address I&I on a
4 regional basis, where we're getting to that issue,
5 even though it may or may not be a water quality,
6 an issue.

7 VICE CHAIR MCGRATH: All right. Are you
8 done?

9 MS. THORME: I think so.

10 MS. AJELLO: I have some things to add,
11 also, just to clarify. Ms. Thorme is correct that
12 blending is not defined in the Federal regulations.
13 And we posit, and as the 8th Circuit case
14 demonstrates, there is sort of a wide range of
15 conduct that can be called blending. And so, what
16 this permit has determined is that the process that
17 CMSA does here is both blending and a bypass. I
18 wouldn't say that we're saying that in all cases,
19 all types of blending would be considered a bypass.

20 VICE CHAIR MCGRATH: Okay. Are there
21 questions of the Board?

22 BOARD MEMBER KISSINGER: Just a small one.
23 So, you don't represent Sanitary District No. 2.
24 Have they posed any objection or raised any
25 concerns about this?

1 MS. THORME: They were in the first two
2 meetings with staff. I wasn't at the first one.
3 The second one they were there and had the same
4 concerns, raised the same concerns. The gentleman
5 who was at that meeting has now retired and we
6 don't know who is there. And we've been copying
7 them on things, but I just think a ball has been
8 dropped, maybe, on their end and we don't know.
9 But they had expressed the same concerns.

10 VICE CHAIR MCGRATH: Okay, we understand
11 the concerns about dual liability.

12 So, we return it first to the staff and
13 then to the Board for discussion. Bruce, do you
14 want to add some comments before we begin?

15 MR. WOLFE: Well, I'll turn it over to our
16 legal counsel to weigh in. So, Marnie, if you want
17 to bring your points up?

18 (Off-mic comment)

19 MR. WOLFE: Oh, okay.

20 MS. AJELLO: Can you repeat that?

21 MR. WOLFE: So, now would be the time to -
22 - you were going to make some further response.
23 Or, if you're not, okay.

24 Okay, you had asked about the collection
25 systems' sanitary sewer overflow rates. Do we have

1 some background on how we determine those?

2 (Laughter)

3 VICE CHAIR MCGRATH: No one's listening to
4 you, Bruce.

5 MR. WOLFE: None of my staff pay attention
6 to me.

7 MR. CHRISTIAN: Is that the sanitary sewer
8 overflow rates, is that what you wanted to look at?

9 MR. WOLFE: Yeah.

10 VICE CHAIR MCGRATH: To be specific, we
11 have a table on F-3 and the --

12 MR. WOLFE: F8. I'm looking at it.

13 VICE CHAIR MCGRATH: I have messed up.
14 There is another green sheet. So, you can beat me
15 afterwards, Becky Mitschele. I apologize, a senior
16 moment.

17 MS. MITSCHELE: Thank you. My name is
18 Becky Mitschele and I work at EPA Region 9, in the
19 NPDES Permits Office. I took over from Robert
20 Stuber as the liaison for the staff.

21 I have some comments I'm going to read.
22 They hit on a lot of points that have already been
23 discussed, so I'll try to be brief.

24 In general, you know, I would like to
25 address the permit's approach to including the

1 collection system agencies as co-permittees. EPA
2 supports the approach in the draft permit to
3 identify the collection system as co-permittees,
4 and also to identify specific requirements
5 applicable to each agency.

6 This approach enables the Board to
7 incorporate wet weather bypass provisions in the
8 NPDES Permit, which makes sense given the facts in
9 this case.

10 EPA has been emphasizing the importance of
11 taking a holistic approach to wastewater system
12 asset management and integrative planning. And we
13 are very pleased that the draft permit embraces
14 these concepts.

15 It is appropriate and within your
16 authority to identify these collection system
17 agencies and co-permittees because the owner of the
18 treatment plant lacks the means to implement
19 comprehensive, systemwide O&M procedures.

20 Failure to properly implement O&M measures
21 in the collection system can cause excessive I&I to
22 enter, and strain, and overload the treatment
23 system capacity. The only way to ensure that I&I
24 is minimized is to directly ensure the collection
25 system operators take specific actions that are

1 specified in the draft permit.

2 By having these actions in the permit,
3 regarding the collection system agencies, the Board
4 has created an adequate basis to approve the wet
5 weather bypass. Without specifying these controls
6 in the permit, the Board would likely have an
7 insufficient basis to authorize the wet weather
8 bypass.

9 Several other states, including this
10 Board, and other EPA Regions have issues NPDES
11 Permits that identify collection system agencies as
12 co-permittees. So, your approval of these
13 provisions in the draft permit would not be
14 precedent setting.

15 Thank you.

16 VICE CHAIR MCGRATH: Any questions of the
17 EPA representative.

18 And you can all tease me for the next six
19 months about my memory.

20 (Laughter)

21 VICE CHAIR MCGRATH: All right. With
22 that, we return it to Bruce. Bruce, any responses
23 and any particular adjustments in terms of the
24 concerns about items in schedule beyond the
25 structure here?

1 MR. WOLFE: Well, it seems much of the
2 discussion revolves around the inclusion of the
3 task tables on Order's pages 14 through 17. And,
4 to a certain degree, by specifying compliance dates
5 we expand the potential for third-party action if
6 those dates are not met. And as noted by at least
7 the San Rafael Sanitation District that they would
8 like some flexibility, we don't disagree.

9 We were basing these dates on information
10 we received from the Districts themselves, but we
11 recognize that especially when you're trying to do
12 projects such as these, and the list is long, that
13 there may be a need to move things around or
14 achieve different things at different times.

15 As I noted earlier, we typically try to
16 use the annual reports as a mechanism for finding
17 out where they are, what are their problems, what
18 changes are recommended.

19 So, to make it clear that that would be
20 our preferred mechanism, two ways to do that would
21 be to make -- to box the dates into sort of annual
22 things, saying this is what you'll do annually and
23 not have dates such as October 31st, or June 30th.
24 Just say it would be done in a certain year.

25 Or, to add a clause basically saying that

1 upon justification, adequate justification
2 acceptable to the Executive Officer, the compliance
3 dates can be modified.

4 Staff, I think, has been looking at some
5 of those options and a wording. Do you have any
6 thoughts on suggested wording?

7 MR. JOHNSON: We have some suggested
8 wording to go in either one of those directions or
9 both. We actually have a third idea that we'll put
10 out there, which is just to clarify that for those
11 places where we have specified where rehab will
12 take place that we add a footnote that says, you
13 can rehab somewhere else if you like, as long as
14 you rehab the same amount.

15 VICE CHAIR MCGRATH: All right, with that,
16 we don't yet have a recommendation before us, but
17 it's time to return it to the Board for discussion.
18 I'll start at my left.

19 BOARD MEMBER KISSINGER: Well, just to
20 pick up where we just left off a moment ago, what
21 do you make of the assertion that that would
22 constitute -- to change dates, if you didn't make a
23 date, you'd have a -- it's not something that can
24 be delegated to the Executive Officer of the Board
25 that it would have to be a more complicated

1 modification of the order?

2 MR. WOLFE: I'd look to my legal counsel
3 for input on that.

4 MS. AJELLO: I would advise the Board that
5 adding a clause allowing the Executive Officer to
6 change deadlines at will would potentially violate
7 Water Code Section 13223, which circumscribes the
8 delegation authority of the Board. It provides
9 that the issuance of waste discharge requirements
10 is non-delegable, except for certain
11 nonsubstantive, de minimis changes.

12 And I think that changes like this, given
13 how connected they are to the approval of bypass
14 would be substantive. And, therefore, there could
15 be a delegation problem.

16 BOARD MEMBER KISSINGER: Is this
17 considered a waste discharge requirement? And
18 then, there was a suggestion further that there's a
19 Federal overlay, as well, in addition to what the
20 State authority is. Is there some separate Federal
21 process for modification or changes, as well?

22 MS. AUSTIN: No, it's just the types of --
23 the Code of Federal Regulations does have processes
24 for modifications, but I don't think that's what
25 we're talking about here.

1 BOARD MEMBER KISSINGER: Okay.

2 MS. AJELLO: This is how the modifications
3 can be implemented, by the Executive Officer, as
4 opposed to by the Regional Board, itself.

5 BOARD MEMBER KISSINGER: So, to the extent
6 that any changes needed to be made to the dates
7 that are set forth, whether they're collapsed into
8 a single date, as opposed to by year, would require
9 Board action? That's your reading of the law?

10 MS. AJELLO: I would advise that if you
11 were to change the dates now to have a single date
12 at the end of the year, that would be preferable to
13 a clause that would sort of freely allow the
14 Executive Officer to change dates at different
15 times throughout the permit without having the
16 permit come back to you for approval.

17 BOARD MEMBER KISSINGER: Going back to the
18 regulation we were talking about earlier on the
19 prohibition of bypass, and the argument that was
20 put forward that, no, it just doesn't even apply
21 here when you've got a POTW which is designed for
22 bypass in certain circumstances.

23 I'm curious, if it doesn't apply, then
24 there's no notice required of the bypass being
25 undertaken in storm events I assume is their

1 position. Just as a matter of historical practice,
2 did MRSA, I think I got it right, as a historical
3 matter give us notice during storm events that
4 bypasses were going to occur?

5 I mean I guess what I'm asking is in
6 practice did they observe the regulation in this
7 fashion, did they interpret it in this way?

8 MR. JOHNSON: Well, I think what we've
9 always said is when they apply for permit issuance
10 and they submit the Report of Waste Discharge, at
11 that time they've told us how they operate and
12 under what conditions they would want to bypass
13 during wet weather. And for us, that's been
14 sufficient notification of their intent to bypass.

15 So, while the permits have been set up so
16 that they do tell us when these bypasses are
17 happening and they submit their monitoring
18 information in a different way and whatnot, the
19 notice comes in with their Report of Waste
20 Discharge. I mean, we know when the bypass
21 happens, but we're not saying that they necessarily
22 have to notify us for each one of them.

23 BOARD MEMBER KISSINGER: Okay, understood.

24 Is there, and I'm not suggesting that we
25 should do this, but I'm just throwing it out to

1 understand, is there a reason to treat Mr. Norby's
2 District differently than the other two districts?

3 I'll put it more bluntly, is there a
4 reason not to include them in the NPDES Permit, if
5 we were to issue this permit, because of the cease
6 and desist order that they have in place?

7 VICE CHAIR MCGRATH: And then rely on the
8 cease and desist order?

9 BOARD MEMBER KISSINGER: Right.

10 VICE CHAIR MCGRATH: Can we rely on the
11 cease and desist order?

12 BOARD MEMBER KISSINGER: And maybe an
13 ancillary question is do you agree with the
14 characterization that everything that's in the
15 cease and desist order is on the books, has got a
16 schedule, they're following through on it?

17 MR. JOHNSON: Actually, I think that
18 that's the more relevant question here, and I don't
19 agree. The cease and desist order has sort of
20 broad narrative requirements. It does not spell
21 out exactly what is spelled out in this tentative
22 order, in this way.

23 Everything in the tentative order is an
24 outgrowth of the cease and desist order. I mean in
25 their efforts to comply with the cease and desist

1 order this is what they've put forth that they will
2 do. And so in that sense, these are the actions
3 that comply with the cease and desist order.

4 I just don't want you to be confused into
5 thinking that the exact list that is in Table 5 is
6 the same as a list that is in the cease and desist
7 order that we just pulled it over. It is more
8 specific than what's in the cease and desist order.

9 BOARD MEMBER AJAMI: But can we add some
10 of this to the existing cease and desist order?
11 Like keep them under one --

12 MR. JOHNSON: You would have to do that
13 through a separate action to amend the cease and
14 desist order for them.

15 MR. WOLFE: And do remember that the cease
16 and desist order was driven by sanitary sewer
17 overflows.

18 BOARD MEMBER AJAMI: Right.

19 MR. WOLFE: This action here is driven by
20 the need to justify that all appropriate measures
21 are being taken so that the Board can accept the
22 bypasses.

23 BOARD MEMBER KISSINGER: Well, but if all
24 those things are being done under the rubric of a
25 cease and desist order, and maybe that's an open

1 question whether all those things are being done,
2 for purposes of finding the justification to say,
3 you know, that all feasible actions have been
4 undertaken, with regard to District No. 1 the
5 answer would be, yes. If, in fact, under the
6 rubric of the cease and desist order all of those
7 things are being undertaken, right?

8 BOARD MEMBER AJAMI: Almost all of them.

9 MR. JOHNSON: I think that you could make
10 that case. I mean that's one way of putting. I
11 mean I think that maybe you have other reasons for
12 treating all of these collection system agencies
13 the same. I mean that is one difference between
14 them, but I think there are other things that make
15 them all the same in that they are all, you know,
16 parties to the JPA for instance. They are all
17 major portions of the collection systems.

18 So, in naming them in the permit it levels
19 the playing field across those three collection
20 systems.

21 BOARD MEMBER AJAMI: So, what if -- sorry,
22 just a follow up to that question. So, what about
23 the other comment that was maybe putting everyone
24 under the cease and desist order? Would that
25 change their acts to the way they would approach

1 these problems? Such as, are they right now cannot
2 necessarily do asset management or access more
3 funding because they're a part -- I was just not a
4 hundred percent sure. You know, I sort of know
5 why, but I'm just trying to figure out would that
6 change their flexibility to come up with solutions
7 and access money?

8 That was sort of my impression from what
9 Mr. Norby was saying. That because we did a cease
10 and desist order they were able to go and, you
11 know, do asset management and come up with a better
12 way of addressing their WDR requirements, and then
13 that way they also were able to go back and raise
14 their rates in a gradual manner to address some of
15 these issues. Do you see the --

16 MR. JOHNSON: Well, I think it's because
17 of the way that the cease and desist order was
18 worded. There's nothing special about a cease and
19 desist order versus an NPDES Permit that restricts
20 you from wording things one way or another.

21 BOARD MEMBER AJAMI: Okay.

22 MR. JOHNSON: I think what they're saying
23 is that they like the way that the cease and desist
24 order was worded because it provided more
25 flexibility.

1 And I think that what we're trying to say
2 is that right here, in this NPDES Permit, we're
3 trying to provide a justification that there are no
4 feasible alternates. That they're implementing all
5 the feasible alternatives.

6 That's a standard that's not currently in
7 the cease and desist order and I'm not sure that
8 we'd have a clear basis for driving that in a cease
9 and desist order because it wouldn't be linked to
10 this bypass prohibition approval.

11 BOARD MEMBER AJAMI: Right.

12 MR. JOHNSON: So, one could word things
13 with more flexibility in the NPDES Permit, than we
14 have. But again, we're trying to be very specific
15 so that you can make that finding with confidence
16 that there are no feasible alternatives that
17 haven't been implemented.

18 BOARD MEMBER AJAMI: Would we want the
19 districts, who have not done the -- the other two,
20 who have not done asset management -- maybe they
21 are doing it, I just don't know -- to do asset
22 management and we'll figure out what is the best
23 way of improving their system?

24 MR. JOHNSON: Well, I think that -- I
25 think under the Statewide Waste Discharge

1 requirements they're already required to do a
2 planning effort to properly maintain their system.
3 So, I think that, you know, one could argue that
4 that's already a requirement.

5 I don't know that asset management is --
6 that we need the NPDES Permit necessarily to drive
7 that. I'm not sure if I'm answering that question.

8 BOARD MEMBER AJAMI: I'm just trying to
9 see is it better for them to kind of do asset
10 management and realize what are the solutions that
11 they need to be addressing right away, rather than
12 we tell them what they need to be doing?

13 You know, so the idea of asset management
14 is they would sort of look at their system as a
15 whole, identify the sort of breaking points, right?
16 Rather than going from street to street, to street
17 trying to figure out what are the red zones, what
18 are the orange zones, what are the green zones so
19 they basically have a strategic way of addressing
20 these, sort of replacing their system. That,
21 arguably, is a more effective way of spending
22 capital because, you know, it helps you to be more
23 effective in addressing the issues.

24 So, I'm wondering is that something we
25 want them to do rather than just, you know, have a

1 list and go through it?

2 MR. JOHNSON: Well, I guess my assumption
3 is that they've done a lot of that work already.
4 That's why they came up with this list. We did not
5 make up the list of tasks here, they came from
6 them.

7 BOARD MEMBER AJAMI: Right.

8 MR. JOHNSON: So, presumably, these were
9 the things that through their analysis they thought
10 was their appropriate point.

11 BOARD MEMBER AJAMI: So, they have done
12 something like that, similar to Ross Valley and
13 that's why they have this list. So, if you're just
14 telling them how to --

15 MR. JOHNSON: We're basically saying do
16 what you've already decided is the most appropriate
17 thing for you to do. And that's what we're saying
18 right now is what's feasible for them to do.

19 Because you have to revisit this issue
20 every five years, if a discharger wishes to
21 continue getting an approval for the bypass, then
22 it would need to submit a new, no-feasible-
23 alternatives analysis. So, again, that's just
24 another way of looking at a system and saying what
25 really is it that's feasible for us to do in the

1 next five years? You know, spell out what that is
2 and then we would incorporate it as a condition of
3 the permit.

4 Again, trying to provide some language to
5 provide some flexibility, you know, because stuff
6 does change over the course of five years.

7 VICE CHAIR MCGRATH: Okay, let me --

8 BOARD MEMBER AJAMI: Yeah.

9 VICE CHAIR MCGRATH: Do you have comments,
10 questions?

11 BOARD MEMBER OGBU: I just had one quick
12 question about one of the other alternatives you'd
13 suggested, which was allowing the collection
14 agencies to do the rehab work on a similar amount
15 of, you know, length of the system, but not the
16 exact same places and giving them flexibility.
17 That way, I guess what assurances would we have
18 that that would be as effective as the specific
19 tasks, the specific areas identified?

20 And I know they identified those areas.
21 So, that's just my only question about that.

22 MR. JOHNSON: I guess we wouldn't
23 necessarily have the assurances except they would
24 be explained to us in annual reports why they're
25 doing what they're doing. And I think we would

1 generally trust the dischargers to put their
2 resources in the smartest places. And I'm not sure
3 I want to be in a position of second guessing that.

4 BOARD MEMBER OGBU: Yes. Okay.

5 VICE CHAIR MCGRATH: Board Member Battey?

6 BOARD MEMBER BATTEY: Yeah, I have a few
7 things. Just first of all thank you to the staff
8 and everybody who came to comment and participate.
9 This is a complex situation and so appreciate all
10 the hard work that's gone on.

11 When I read through this, in preparation
12 for the meeting, I was surprised to see how
13 specific some of the mitigation was. And so, I'm
14 glad we're talking about that now. And I, in
15 general, am hoping that we can, as we've been
16 doing, be more performance-based than prescriptive.

17 Like my Chair, or Vice Chair today, I have
18 a lot of experience in construction and everything
19 can and does go wrong.

20 (Laughter)

21 BOARD MEMBER BATTEY: And also that you
22 learn things along the way and you make changes.
23 And so, I'm sort of wondering whether then like
24 just changing out the dates, taking out the dates
25 or anything like that, that there is in each one of

1 these tasks, like the last one says identify
2 feasible actions for the next permit term. I would
3 personally be more comfortable -- I mean I'm
4 convinced that the collection agencies should be in
5 this. I understand the sort of trying to get the
6 whole process together.

7 But I would be -- I just wonder if it
8 would be possible to think about language that
9 isn't prescriptive that says that the collection
10 agencies will submit their own plans on what will
11 be done, in what timeline, for the permit period,
12 which they may just reference their cease and
13 desist order and turn that in. But rather than
14 having this level of detail at all in the permit,
15 I'm just curious about that.

16 And the only other last thing I'll say is
17 that whether that's a possibility. The only other
18 thing I'll say is that it does strike me a little
19 strange, just in general, that it's some of the
20 collection agencies, but not all of them. Just as
21 a sort of general overview statement. Like it
22 seems like it would be even if they're small, that
23 you'd either be in or out in this permit. So, just
24 my impression.

25 VICE CHAIR MCGRATH: Board Member

1 Lefkovits?

2 BOARD MEMBER LEFKOVITS: You know, I don't
3 think I have anything substantive to add. You
4 know, I really like in general the collaborative
5 good faith relationship between agencies. And so,
6 anything we can do to further that is really
7 valuable. And I'm really heartened by all of the
8 stretching and reaching to try to find ways to
9 provide flexibility and performance-based outcomes,
10 and to think holistically about what our shared
11 goals are in this discussion. So, I think the time
12 has been well spent.

13 But beyond that, I'm not sure that there's
14 anything that I'm going to add. Rehashing some of
15 the arguments and discussion that we've had, but I
16 just think that this has been a very good process
17 and I really appreciate everyone's participation in
18 it.

19 VICE CHAIR MCGRATH: All right, I'm going
20 to make some comments. Many years ago Mel Nutter,
21 who was at that time Chairman of the Coastal
22 Commission and I was staff, asked me for more light
23 and less heat. And it's something that obviously
24 I've remembered for decades. There is, I think, a
25 bit of a tempest in a teapot here.

1 First of all, we have a very well-run
2 sewage treatment plant and I appreciate that. I
3 always thank people who run a sewage treatment
4 plant really well.

5 I've been around in this business since
6 the Construction Grant Program at EPA, where I
7 started my career. And not everybody does. And I
8 appreciate that.

9 The increase in loadings due to bypass,
10 while they're not trivial, they don't represent the
11 highest priority that I can see in terms of
12 enforcement action for this. And that governs my
13 approach to this.

14 I think a modest level of improvement in
15 I&I will be reasonable further progress. So, you
16 know, I want to downplay the concerns over third-
17 party litigation because I don't think it's
18 warranted in anybody's mind. It may make you
19 difficult.

20 Second, when I was first appointed to this
21 Board I sat down with Alexis Strauss, who was
22 Division Director of the Water Division at EPA. I
23 had started my career at EPA. I knew Alexis well
24 and I asked her for her ideas, and I did that on
25 two different occasions.

1 Alexis was very specific about enforcement
2 and particularly about wet weather problems. And a
3 lot of that was based on the problems in Northern
4 Marin County where there had been huge problems and
5 EPA, rather than the Regional Board, had led the
6 way on enforcement. And she wanted us to do more
7 on enforcement. She also recognized, and this was
8 very clear with the litigation that went on over
9 the wet weather bypasses in the East Bay MUD
10 system, that there was a change in acceptability of
11 wet weather bypasses. It wasn't going to happen.
12 There had to be a change in what we were doing. We
13 had to do that at a reasonable pace, but this is
14 not new.

15 Third, I&I control is certainly not new,
16 since I go back to the 1972 Clean Water Act and the
17 Construction Grant Program, I know that there was
18 an infiltration, inflow and infiltration
19 requirement associated with every single grant.
20 So, you guys have all been aware of that for
21 decades.

22 The question is reasonable level of
23 progress and I think one of the reasons that we're
24 focusing on it now is that progress hasn't been
25 good enough. And that's not unique to yours.

1 And, certainly, when I look at this and
2 this is why I had questions, this level is not
3 reasonable. I know that my job as a Board Member
4 is to be prepared to second guess staff, and I know
5 it rains harder in Marin County. But when I looked
6 at the Table F-3, I wrote my first note, you know,
7 this was largely during the drought, wasn't it?
8 And then, I wanted to be sure.

9 And I have to put all of this stuff on the
10 record. So, I began to say, well, how hard did it
11 really rain and how much on the drought was it.

12 So, fortunately, the UC Cooperative
13 Extension, the Agricultural Extension Service has
14 rainfall records for Black Point, Novato, and for
15 Point San Pedro, in San Rafael. And the rainfall
16 totals for December 2016, at Black Point 3.97
17 inches, 27 Point San Pedro, 2.24 inches. This was
18 still during the drought.

19 When you have overflow rates that are four
20 times the Bay Area records, you need to do more.
21 It really is that simple. And that's pretty clear.
22 It's been on the record for a long time. And if
23 you were doing more and it was reasonable rate of
24 progress, we wouldn't have either overflows, or
25 bypasses. And so, the question becomes the

1 mechanism to do that at a rate that's increasing.

2 Now, finally, this is not reaching inside
3 the sewage treatment plant. I heard that comment,
4 I read that comment. All of these come from
5 analyses by the Districts themselves about what
6 needs to be done. And the analytical requirement
7 for smoke testing is kind of the starting point for
8 trying to figure out where the most leaks are.

9 And so, if you had alternatives that you
10 had identified that said we're going to put in
11 storage upstream so that we don't have to bypass,
12 and we don't pop manholes, there could be physical
13 treatment anywhere in the watershed system. I
14 think the record at the moment indicates that there
15 isn't the room down at the sewage treatment plant.
16 But that would then trigger in the court case that
17 has happened, where you're not treating, but you're
18 treating with a different mechanism.

19 I've seen systems like that. I think I
20 may have even given grants to systems like that,
21 when I was a young pup. So, it's not reaching
22 inside the sewage treatment plant and I want to
23 make sure that the record is very clear on that.
24 This is, rather, taking the ideas that you have.
25 Like, I think I felt fairly clear in the Board we

1 want some flexibility.

2 And to Marnie's comment, because the
3 question of bypass would be helped by a not
4 tremendous amount of I&I reduction. That a
5 reasonable rate of reduction, as long as it
6 provides an equivalent rate of reduction would, I
7 think, provide the necessary flexibility.

8 I don't want to have anybody suing these
9 people. I want them doing their projects. I never
10 want money spent on attorneys, if we could spend it
11 on infrastructure just, you know.

12 BOARD MEMBER KISSINGER: I'm not
13 comfortable with that.

14 (Laughter)

15 BOARD MEMBER AJAMI: I second that.

16 VICE CHAIR MCGRATH: So, that completes.
17 If anyone has any other comments, otherwise we'll
18 ask for a staff recommendation.

19 Newsha, I did bypass you the second time.

20 BOARD MEMBER AJAMI: I have no questions.

21 VICE CHAIR MCGRATH: Anything further?

22 BOARD MEMBER KISSINGER: No. I mean I
23 agree with your observations, Jim. You know, I'm
24 troubled by the, you know, additional bureaucratic
25 overlay. That if a company's doing this, I don't

1 know what -- you know, it's rate that you have a
2 party that comes in and says, you know, give us a
3 cease and desist order. But I don't feel able to
4 really second guess the staff's judgment about the
5 complexities around doing that.

6 I guess one question that I haven't -- I
7 think I know the answer, but I'll ask it. This
8 permit expires in March and so it needs to be
9 replaced by March, is that right?

10 MR. JOHNSON: Because the discharger in
11 this case, Central Marin, submitted its application
12 for permit reissuance in a timely manner, it's
13 permit has been administratively extended
14 automatically until this Board acts to reissue the
15 permit. So, even though there is an expiration
16 date, that the expiration date is only in force if
17 they apply in a timely manner with a complete
18 application.

19 BOARD MEMBER KISSINGER: I know this is a
20 comment, but I can't help asking another question.
21 The notion of issuing this permit without the
22 collection systems and engaging in an effort,
23 through an alternate mechanism, to in effect impose
24 the same I&I avoidance issues the concern would be
25 that you feel that the Board would not have the

1 legal authority in that scenario, where the
2 discussions are ongoing, to make the feasibility
3 finding to allow the bypasses? Is that the reason
4 why that path is not a workable one?

5 MR. JOHNSON: I think that that's a good
6 way of putting it. That, you know, the permit is
7 written with an approval for bypass and it's based
8 on there being no feasible alternatives to
9 bypassing. And the basis for that conclusion is
10 pointing to the conditions that are set forth right
11 here in the permit, so it's nice and tidy.

12 So, in order to go in the direction that
13 you're going, you would have to make some findings
14 on some other basis for why all the feasible
15 actions were taken.

16 MS. AUSTIN: And just to add the legal
17 spin on that, the concern your counsel would have
18 is that the type of finding you would have to make
19 in the permit is to say, for example, in a future
20 session of this Board we will adopt a CDO. And, of
21 course, that's then prejudging a future CDO that is
22 not before you. And so, we would not recommend
23 including language along those lines.

24 BOARD MEMBER KISSINGER: I mean I'm
25 mindful of EPA's support of this path. I guess I'm

1 interested to hear, you'd mentioned you had some
2 ideas to put forward. I don't know what the
3 appropriate moment is. Maybe other comments need
4 to be made by Board members. But I'd be interested
5 to hear what those additional ideas that you have
6 in mind, in addition to collapsing the deadlines
7 for various activities, in terms of single dates or
8 years.

9 VICE CHAIR MCGRATH: I think at this time
10 it is appropriate to ask for a staff
11 recommendation. And I think they've heard clearly
12 the Board doesn't want to create a Draconian --

13 BOARD MEMBER KISSINGER: Right.

14 VICE CHAIR MCGRATH: -- new liability and
15 wants some more flexibility. So, let's see what
16 they've got to suggest.

17 MR. WOLFE: Do you have some --

18 MR. JOHNSON: So, I've got two things that
19 I'm going to propose. The first is to add a
20 footnote to Table 5, adding basically a Footnote 1
21 where it says "Task". And the footnote would say
22 that, "The dischargers may propose to rehabilitate
23 an equivalent amount of sewer pipe in a different
24 location than that specified." So, that would be
25 revision number one.

1 The second revision would relate to the
2 dates that are in Table 5, and Robert will speak to
3 that.

4 MR. SCHLIPF: So, the idea here would be
5 to collapse the compliance dates into one annual
6 date. So, we would propose for Tasks 1 through 5
7 that the date just be February 1, 2019, instead of
8 all those separate dates.

9 For Tasks 6 through 10 it could be
10 February 1, 2020.

11 For Tasks 11 through 15, the compliance
12 date could be February 1, 2021.

13 And for Tasks 16 and 17, the compliance
14 date would be February 1, 2022.

15 Moving on to Sanitary District No. 1, for
16 Tasks 21 through 25, the compliance date would be
17 February 1, 2019.

18 For Tasks 26 and 27, the compliance date
19 would be February 1, 2020.

20 And for Tasks 28 and 29, the compliance
21 date would be February 1, 2021.

22 And moving on to Sanitary District No. 2,
23 the compliance date for Task 32 would be February
24 1, 2020.

25 For Task 33, it would be February 1, 2021.

1 For Task 34, it would be February 1, 2022.

2 And, finally, for Task 35 it would be
3 February 1, 2023.

4 VICE CHAIR MCGRATH: I'd like Marnie to
5 comment on the specificity questions here. I have
6 my own view. But this does not, I believe, vest
7 overly discretion within the Executive Officer's
8 part.

9 MR. MUMLEY: Might I? Actually, we had a
10 clarification that we wanted to make in Bill's
11 recommendation.

12 VICE CHAIR MCGRATH: Okay.

13 MR. JOHNSON: All right, I'm going to try
14 that footnote again. This way, I'm replacing the
15 word "proposed" with "implement". So, now it reads
16 --

17 MS. AJELLO: Bill, could you say where
18 you're putting this footnote again? Sorry, I
19 missed that.

20 MR. JOHNSON: I'm inserting Footnote 1,
21 where it says "Task" in Table 5. At the header, so
22 it applied to the entire table.

23 MS. AJELLO: Okay.

24 MR. JOHNSON: Yes, so, all right, I'm
25 going to try this one more time.

1 Because in the permit we've actually
2 spelled out the collection system agencies each
3 time, instead of broadly using the term
4 "discharger", even though I've got it in different
5 places here.

6 So, the footnote, which would be Footnote
7 1, and it would go on the word "Task" at the
8 beginning of Table 5, would be, "The San Rafael
9 Sanitation District, Sanitary District No. 1 of
10 Marin County, and Sanitary District No. 2 of Marin
11 County may implement rehabilitation" -- I'm sorry.
12 "Those parties may rehabilitate an equivalent
13 amount of sewer pipe in a different location than
14 that specified."

15 BOARD MEMBER AJAMI: That's a footnote or
16 that's part of it?

17 MR. JOHNSON: That's a footnote. So, I'll
18 try it again.

19 "The San Rafael Sanitation District,
20 Sanitary District No. 1 of Marin County, and
21 Sanitary District No. 2 of Marin County may
22 rehabilitate an equivalent amount of sewer pipe in
23 a different location than that specified."

24 BOARD MEMBER AJAMI: Sorry, I have a
25 question, Robert. Do we also need to change the

1 dates for the Table 6, since we already sort of
2 collapsed those? Does that go also for Table 6 or
3 do we keep the Table 6?

4 MR. SCHLIPF: These were dates for Central
5 Marin Sanitation Agency, so it's just going to
6 propose to keep them.

7 BOARD MEMBER AJAMI: But would that impact
8 these tasks at all in a way, or aren't they
9 supposed to be an input to what's going to happen
10 with the blending process?

11 You're trying to have them to take care of
12 some of the water upstream.

13 MR. SCHLIPF: Uh-hum.

14 BOARD MEMBER AJAMI: And it doesn't -- it
15 would reduce the blending.

16 MR. JOHNSON: The table definitely relates
17 to the bypass in the same way that the other one
18 does. But in this case, it's Central Marin is
19 coming out of the no-feasible-alternatives analysis
20 that they gave us, I believe.

21 BOARD MEMBER AJAMI: And they're fine with
22 the table?

23 MR. JOHNSON: And the tasks here, for the
24 most part, are actually fairly simple and specific
25 because Central Marin isn't really in control of

1 the collection systems and the I&I. So, these
2 tasks are pretty simple. They're replacing flow
3 meters and they can do that by these particular
4 dates.

5 And other than that they're job is to
6 compile the information that the collection system
7 agencies are giving them.

8 BOARD MEMBER AJAMI: Got it.

9 MR. JOHNSON: And prepare the utility
10 analysis.

11 BOARD MEMBER AJAMI: Sure.

12 BOARD MEMBER KISSINGER: Bill, with regard
13 to your footnote just now, you limited it to
14 Districts No. 1 and 2, but you didn't include the
15 San Rafael Sanitation District. Was that
16 deliberate?

17 VICE CHAIR MCGRATH: Oh, yeah.

18 BOARD MEMBER AJAMI: No, he did.

19 BOARD MEMBER KISSINGER: Oh, he did. Oh,
20 I missed it. Okay, sorry.

21 MR. JOHNSON: Yeah.

22 VICE CHAIR MCGRATH: So, Marine, with the
23 factual understanding that relatively modest
24 increases in infiltration and inflow would both
25 enable us to reduce the kind of bypassing that

1 actually resulted in a violation, and the primary
2 mechanism that we're concerned about as well is
3 actual overflows, and some reliance on what we have
4 in the record already as identifying what we know
5 at this time as the most feasible projects, would
6 you believe that we have sufficiently provided
7 specificity to not violate the section of the Act
8 that you were concerned about?

9 MS. AJELLO: Yes, I think the footnote is
10 acceptable. I would advise you that the footnote
11 would be acceptable, as well as collapsing the
12 dates, also.

13 VICE CHAIR MCGRATH: All right. So, I
14 hesitate to ask the discharger for comments. It's
15 been a rather long hearing. I think you all hear
16 that the Board has asked the staff, and the staff
17 has agreed to provide some relaxation on
18 requirements, and also to provide the flexibility.

19 I don't want you working on the wrong
20 pipes, if you've got a broken one. I'm pretty sure
21 we're all in that boat.

22 So, we have a recommendation before us.
23 Can I have a --

24 MR. WOLFE: Well, I wanted to just
25 summarize where we are on this. I think when I

1 make the staff recommendations I default to how do
2 we best achieve our mission of protecting and
3 restoring water quality. And to me, in this
4 instance there's two aspects of how we do that.

5 One, how do we ensure Central Marin
6 Sanitation Agency is able to best operate its
7 plant? My concern here is that while Central Marin
8 has been able to minimize violations while
9 bypassing, that's not the same as saying there are
10 no water quality impacts from bypassing.

11 Any time biological treatment units are
12 bypassed, you're not getting full treatment of
13 pollutants such as nutrients, and constituents of
14 emerging concern.

15 Further, any time the bio treatment units
16 are operated at capacity you're playing with fire.
17 You're risking operational upset. And it's to
18 their credit there hasn't been that here. But,
19 still, that's the reality of it.

20 So, I view this revised tentative order as
21 providing both the means for us to justify
22 bypassing, but also the means for us to push these
23 agencies to make sure this publicly-owned treatment
24 works is operated efficiently, and that I&I is
25 minimized to the maximum extent it can be.

1 The second point is how do we most
2 efficiently permit waste discharges to protect and
3 restore water quality? As I noted earlier today,
4 relative to Measure AA, we're looking at ways to be
5 more efficient. And I think in this case by
6 pulling together all the agency requirements into
7 this revised tentative order, we feel we're doing
8 that.

9 We note that there is the offer to assist
10 us on preparing alternative actions, but we've
11 found over the years that even when we do get that
12 assistance, staff still needs to invest significant
13 time in bringing those proposed actions to you.

14 I'd say any time staff spends time
15 developing separate actions, when we can take
16 consolidated actions, that we are not being fully
17 protective in restoring water quality because staff
18 is doing things that it doesn't otherwise need to
19 do.

20 So, I don't recommend adopting a different
21 permit than that before you. But I do recommend
22 that we take the revisions that Robert and Bill
23 have recommended, and incorporate that into the
24 revised tentative order.

25 With that, I recommend adoption of the

1 revised tentative order.

2 VICE CHAIR MCGRATH: Is there a motion?

3 BOARD MEMBER AJAMI: I'll move.

4 BOARD MEMBER LEFKOVITS: I'll second.

5 BOARD MEMBER AJAMI: The recommended
6 changes. Do I need to say that? Yeah. With the
7 recommended changes.

8 VICE CHAIR MCGRATH: And a second?

9 BOARD MEMBER LEFKOVITS: I'll second.

10 VICE CHAIR MCGRATH: Any further comment?
11 Can you call the roll, please?

12 MS. STONE: Board Member Ogbu?

13 BOARD MEMBER OGBU: Aye.

14 MS. STONE: Board Member Lefkovits?:

15 BOARD MEMBER LEFKOVITS: Aye.

16 MS. STONE: Board Member Ajami?

17 BOARD MEMBER AJAMI: Aye.

18 MS. STONE: Board Member Kissinger?

19 BOARD MEMBER KISSINGER: Aye.

20 MS. STONE: Board Member Battey?

21 BOARD MEMBER BATTEY: Aye.

22 MS. STONE: Vice Chair McGrath?

23 VICE CHAIR MCGRATH: Aye.

24 I thank the Board. This was a really nice
25 discussion and in an effort to reach consensus

1 among the Board Members.

2 I think we need to take a break.

3 MR. WOLFE: So, the question would be we
4 have the information item by staff on the
5 Sustainable Groundwater Management Program. I
6 estimate that will take, you know, 20 minutes to a
7 half-an-hour, and we do have a closed session.

8 So, there's either the option to take a
9 brief pee break or to do a break for lunch. We
10 have not asked you to order the lunch. That would
11 take a moment or two. If you wanted to take a
12 short break to run down the hall, and then either
13 proceed to see if we can complete our actions, you
14 know, activity by about one o'clock or so?

15 VICE CHAIR MCGRATH: Well, I knew if Terry
16 was here, we would power on through. I will ask
17 for the other Board Members, I'm willing to -- our
18 attorneys say that it will be a short Executive
19 Session, but I do think we need to go down the
20 hall. A desire on lunch?

21 BOARD MEMBER AJAMI: Should we do sort of
22 like a quick, grab your lunch, and then have the
23 closed session and then afterward do the
24 groundwater?

25 BOARD MEMBER KISSINGER: That makes sense

1 to me.

2 VICE CHAIR MCGRATH: All right. So, we're
3 going to take about a 20-minute break so we can
4 grab lunch, and then we will do the Groundwater
5 Report and the Executive Session.

6 BOARD MEMBER LEFKOVITS: But if we come
7 back into Executive Session, then we can give
8 everyone else an hour for lunch and then come back
9 for the Groundwater Report.

10 BOARD MEMBER AJAMI: I think that's a
11 better idea, yeah.

12 VICE CHAIR MCGRATH: So ordered.

13 (Off the record for a lunch break and
14 Closed Session at 11:59 a.m.)

15 (On the record and resume Public Hearing
16 at 1:01 p.m.)

17 VICE CHAIR MCGRATH: Are we ready to be on
18 the record up there?

19 MS. AUSTIN: Okay, is this working? So,
20 to clarify, we did have a closed session and we
21 should put on the record that the closed session
22 was pursuant to Government Code Section 11126(e).
23 And the purpose of the closed session was to
24 discuss the case of John D. Sweeny and Point
25 Buckler Club, which is no longer pending in Solano

1 County, which has the final decision.

2 There's nothing to report out from the
3 closed session, however.

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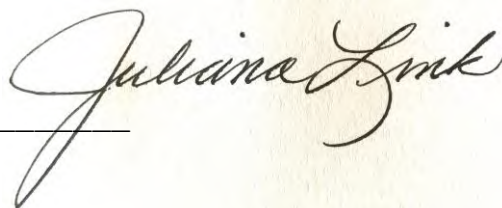
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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of January, 2018.

A handwritten signature in black ink, reading "Juliana Link", is written over a horizontal line. The signature is cursive and elegant.

Juliana Link
CER-830

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of January, 2018.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520

EXHIBIT E

September 19, 2017

VIA EMAIL

Bruce Wolfe, Executive Officer
Dyan Whyte, Asst. Executive Officer
Bill Johnson, NPDES Wastewater Program Manager
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Central Marin Sanitary Agency (CMSA) Tentative Order
Client-Matter No. 44417.00001

Dear Mssrs. Wolfe and Johnson, and Ms. Whyte:

On August 11, 2017, my client Ross Valley Sanitation District (RVSD), attended a meeting with Regional Water Board staff. This was really the first time that RVSD and the other related collection system agencies were notified of potentially being included for the first time on a National Pollutant Discharge Elimination System (NPDES) permit. RVSD and the other collection entities never filed a Report of Waste Discharge (ROWD) or requested being added onto the NPDES permit. The justification for adding the collection systems was ostensibly to include blending reduction provisions applicable to the collection system agencies.

The initial focus of that August 11th meeting was on removing Marin County and the State of California's San Quentin State Prison from the permit provisions, which was subsequently done and reflected in the Administrative Draft Order. Each remaining collection system was instructed to bring a list of potential actions for the collection agencies to take to assist with reduction of influent flows to the CMSA plant. However, this discussion appeared to be somewhat secondary, and was only refined later when inserted into the Admin Draft. The meeting contained no discussion of the significant change that becoming an NPDES co-permittee represented to the legal position of the collection systems, and the collection systems had not had an opportunity to speak with legal counsel or the individual collection system Boards about potential concerns with new and expanded regulatory requirements and substantial new federal legal exposure from the proposed move to the NPDES permit. Since 2006, when collection systems were required to have permit coverage statewide, these collection systems have solely been regulated by Waste Discharge Requirements (WDRs).

The Administrative Draft was sent to CMSA and the collection systems for review on August 18th, which was not enough time for RVSD to calendar a discussion with its Board since 72 hours' notice is required to place items on the agenda for discussion. RVSD's next Board meeting is tomorrow, September 20th, and this topic is on the agenda for discussion.

On September 5th, the internal deadline set by Regional Board staff, a consultant for CMSA sent comments mostly related to CMSA and its concerns. The collection systems were unable to get Board direction in this compressed time period. Although CMSA had had more than 6 months knowledge that the permit was to be issued and would be regulating CMSA's discharges and activities, the collection systems had less than one month to digest and understand the ramifications of this substantial and unprecedented change.

In early September, after consulting with legal counsel, RVSD and the other collection systems began to wonder if there were other options available to reach a similar end point of reducing satellite flows. Hearing that the draft Tentative Order was to be issued publicly on September 15th, we requested a meeting with Regional Board staff to discuss other options. That meeting was held on September 18th, and the collection systems provided a list of concerns over expanded liability under the NPDES permit, and presented a list of other options that should be considered in lieu of having the collection systems included as co-permittees on CMSA's NPDES permit. These options included:

1. Supplemental WDRs to add additional specified actions to be taken under the SSO WDR;
2. A binding contract or other commitment of the JPA agencies to take actions to reduce flows to the CMSA plant;
3. A Time Schedule Order (TSO) adopted alongside the NPDES permit for those entities not already under an enforcement order, which includes the tasks to be undertaken by the collection systems to support reduced flows and presumably reduced need for blending;
4. A Cease and Desist Order (CDO) for those entities not already under one.

NOTE: RVSD is already under a CDO (Order No. R2-2013-0020) requiring a comprehensive Infrastructure Asset Management Plan (IAMP) with collection system rehabilitation, operation, and maintenance improvements potentially through 2021, financial performance targets that have been met, and the adoption and implementation of a Private Sewer Lateral Program, which is currently active and being well utilized. The projects proposed for inclusion in the NPDES permit's table for RVSD duplicate projects committed to be completed under the CDO so there is no need for duplicative regulation.

5. (Individual NPDES permits. This option was rejected as too time consuming, requiring additional fees, and because there is no discharge to waters of the United States that these permits would be permitting.)

The collection systems offered to assist with the drafting of any of the needed orders since the parties understood that resources are scarce at the Regional Boards.

At the end of the meeting on September 18th, Regional Board staff stated that although the deadline for releasing the Tentative Order was not until September 29th, Regional Board staff anticipated releasing a draft by Friday, September 22nd, unless management gave instructions otherwise. Regional Board staff also gave the collection systems until Wednesday to provide any proposed changes to the NPDES permit.

We have now heard that no changes to the timeline are expected and the Tentative Permit will be released as planned this Friday.

Although we have no direction from our Board as to whether RVSD will accept being a co-permittee on the proposed NPDES permit, and these comments should in no way be construed as conceding to accept an NPDES even if these changes are made, RVSD provides the following attached comments requesting changes to the proposed NPDES permit that will reduce, yet not eliminate all risk of, liability to RVSD and the other satellite collection systems proposed to be included on the permit.

Respectfully submitted,

DOWNEY BRAND LLP



Melissa Thorme
Special Counsel to RVSD

cc: Greg Norby and Board members, RVSD
Jason Dow, Manager, CMSA
Doris Toy, Manager, San Rafael Sanitation District
David Bracken, Manager, Marin Sanitation District #2

Attachment

1495575.1

ATTACHMENT A
**REQUESTED MODIFICATIONS TO CMSA NPDES PERMIT
TO ADDRESS COLLECTION SYSTEM ISSUES¹**

1. The Proposed Permit must make clear that CMSA is the only “Discharger” for which the permit authorizes discharges of treated municipal wastewater to waters of the United States. We understand that changes have been made to change the word “Discharger” to CMSA in most cases (although we have not seen those changes). We request that the only “Discharger” be specified as CMSA because the satellite collection systems are not discharging directly to waters of the United States.
2. The Permit must recognize that satellite collection systems are more akin to indirect dischargers since they are owned and operated by legally distinct entities. A “satellite collection system” is “the portion, if any, of a sanitary sewer system owned and operated by a different public agency than the agency that owns and operates the wastewater treatment facility to which the sanitary sewer is tributary.” (*See Sanitary Sewer System Waste Discharge Requirements (SSS WDR - SWRCB Order No. 2006-00003-DWQ and WQ 2013-0058-EXEC) at A.6.*)

As specified by the SSS WDR Fact Sheet, “Satellite sewer collection systems (i.e., systems not owned or operated by the POTW have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements. (Fact Sheet for Order No. 2006-0003 at p. 4.) The SSS WDR also states:

“Comments were received that argued every collection system leading to a POTW that is subject to an NPDES permit should also be permitted based upon the USEPA definition of POTW. Under this theory, all current POTW NPDES permits could be expanded to include all satellite sewer collection systems, or alternatively, the satellite owners and operators could be permitted separately. However, this interpretation is not widely accepted and USEPA has no official guidance to this fact.” (Fact Sheet for Order No. 2006-0003 at p. 4 (emphasis added); *see also referenced Waterkeeper Alliance v. United States Environmental Protection Agency* (2005) 399 F.3d 486, 504-506 (appellate court held that USEPA can only require permits for where there the entity has an actual addition of pollutants to waters of the United States).)

Thus, all of the Discharge Prohibitions in Section III should apply only to CMSA as the Discharger.

3. A prohibition on Sanitary Sewer Spills to waters of the United States (Discharge Prohibition III.E.) applicable to the collection systems is not necessary as such spills are already prohibited by Section 301(a) of the Clean Water Act (33 U.S.C. §1311(a), and are already prohibited under the SSS WDR at Prohibition C.1. (page 7 of 20).

¹ Submission of these comments should not be construed as acceptance by the collection systems to be a co-permittee on the proposed tentative NPDES permit.

4. Provision VI.C.4.c. should be removed from the Proposed Permit as CMSA is not subject to the SSS WDR and CMSA has no collection system. The collection system agencies are *separately and independently* required to comply with the SSS WDR, so there is no need to reference this separate legal obligation in this permit. As it currently reads, the requirements of the SSO WDR are set forth as NPDES Permit requirements (“shall comply with”), improperly transforming these state only requirements into federal obligations.

The State Water Board intended for the SSS WDR to “be the primary regulatory mechanism for sanitary sewer systems statewide.” (Fact Sheet for Order No. 2006-0003 at p. 9.) If Regional Boards wanted to impose more stringent or prescriptive requirements, then the more stringent WDRs or NPDES permit was intended to supersede the SSS WDR. The proposed permit is a hybrid approach that should not impose additional federal liability on the collection systems by purporting to incorporate the SSS WDR provisions without superseding that separate permit, making the agencies unnecessarily liable for the same issues under 2 different permits.

5. Tables 5, 6, and 7 should be moved to the end of the permit, instead of being intertwined with obligations of CMSA, or to an Appendix. Language has been proposed to make these requirements State law only, as supplemental obligations related to the SSS WDR.
6. The Permit should expressly state that the collection agencies are not subject to the Standard Provisions since they are not a discharger.
7. The Permit should expressly state that there is no joint and several liability between the different entities listed on the permit, and that there is only one fee charged to CMSA.
8. The Permit must include the legal justification for including satellite collection systems. Although USEPA has several times proposed rules regulating satellites under the NPDES permit program, none of those has been finally promulgated. Similarly, the 2005 Draft Guidance on blending from USEPA, interpreting the bypass regulations, is not a final rule and cannot be used as such to justify incorporating the collection systems into the permit.

Requested wording changes to implement above comments:

(p.4) **C. Provisions and Requirements Implementing State Law.** Provision VI.C.6 of this Order and Appendix XX, Tables 5, 6, and 7 [These should probably be renamed] implements State law only. It is not required or authorized under the federal CWA; consequently, a violation of this provision is subject to enforcement remedies available under the Porter-Cologne Water Quality Control Act.

(p.5) **IT IS HEREBY ORDERED** that in order to assist CMSA with its obligations under this permit, San Rafael Sanitation District, Sanitary District No. 1 of Marin County (aka Ross Valley Sanitary District), and Sanitary District No. 2 of Marin County shall comply with the supplemental Waste Discharge Requirements (WDR) tasks set forth in ~~Discharge Prohibition III.E. and Provisions VI.C.4.e and VI.C.5.a.~~ Tables 5, 6, and 7 respectively, as set forth in Appendix XX, which supplement the requirements of the Sanitary Sewer System Waste Discharge Requirements (“SSS WDR,” SWRCB Order No. 2006-00003-DWQ and WQ 2013-0058-EXEC).

(p.5) III. DISCHARGE PROHIBITIONS

CMSA shall comply with the following discharge prohibitions:

A.

(p.9) VI. Provisions

A. Standard Provisions

1. ~~The CMSA as the~~ Discharger shall comply with all “Standard Provisions” in Attachment D.
2. ~~The CMSA as the~~ Discharger shall comply with all applicable provisions of the “Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits” (Attachment G).

(p.13) *Remove Section VI.C.4.c as inapplicable to CMSA.*

If retained, modify as follows:

c. Collection System Management. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County are separately subject to the requirements of ~~, and shall comply with,~~ State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. 2013-0058-EXEC and any subsequent order updating these requirements. The provisions contained in Appendix XX, Tables 5, 6, and 7 applicable to these three collection system agencies supplement, but do not supersede, any other State law requirements contained in that separate permit, which is not incorporated by reference herein.

(p.14) *Move Section VI.C.5.a, Tables 5, 6, and 7 to end of permit or to an Appendix.*

Modify introductory text as follows:

a. Tasks to Reduce Blending for Collection System Agencies to Assist in Reducing the Need for CMSA to Blend. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall implement the following tasks to minimize wet weather diversions and reduce blending in accordance with the following time schedule:

(p. F-4) Modify text as follows:

A.

For 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. References to the Discharger apply solely to CMSA as the primary NPDES permit holder, who is responsible for paying any fees related to this NPDES permit. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County are not referenced as dischargers herein, but are included as responsible parties for their agency-specific tasks in Tables 5, 6, and 7.

The term “responsible parties” was used on pg. F-6 when stating that CDCR and San Quentin Village are not “responsible parties” so it would stand to reason that the other entities could be called by that name instead of dischargers.

(p. F-14) (B)....

Provision VI.C.5.a Tables 5, 6, and 7 requires the satellite collection systems to implement improvements to their collection systems to reduce inflow and infiltration in the hopes that these modifications will reduce the need for blending. The obligations set forth on these collection systems as responsible parties are not joint or several obligations and there is no joint and several liability for any violations thereof.

EXHIBIT F



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October 23, 2017

VIA EMAIL - VINCE.CHRISTIAN@WATERBOARDS.CA.GOV

Regional Water Quality Control Board Members
Bruce Wolfe, Executive Officer - Bruce.Wolfe@waterboards.ca.gov
Thomas Mumley, Asst. Executive Officer - Thomas.Mumley@waterboards.ca.gov
Vince Christian, NPDES Permit Division
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: **Central Marin Sanitary Agency (CMSA) Tentative Order – R2-2017-00XX**
Request to Remove Collection Systems from Permit

Dear Board Members, Mr. Wolfe, Mr. Mumley, and Mr. Christian:

Ross Valley Sanitary District (RVSD) and San Rafael Sanitation District (SRSD) were not included in the National Pollutant Discharge Elimination System (NPDES) permit for Central Marin Sanitation Agency (CMSA) for the last two permits (Order Nos. R2-2007-0007 and R2-2012-0051). Neither RVSD nor SRSD requested to be on and do not wish to be co-permittees on the proposed Tentative Permit (Order No. R2-2017-00XX) scheduled for adoption on December 13, 2017. Both RVSD's and SRSD's collection systems are appropriately permitted by the statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ (SSS WDR), as amended by Order No WQ 2008-0002-EXEC). Nevertheless, RVSD and SRSD were included on the Tentative Permit as co-permittees.

RVSD and SRSD request that the Tentative Permit not be adopted as proposed with the collection systems included as co-permittees. The justification for including the collection systems is based on an outdated legal theory that blending constitutes a prohibited "bypass," and inadequate legal justification has been provided as to why the NPDES permit is the appropriate or only option for encouraging and maintaining adequate Inflow and Infiltration (I/I) reduction activities by the collection systems tributary to the CMSA Plant. (Cal. Water Code §13263; 40 C.F.R. §124.8(b)(4); §123.25(a)(27).)

CMSA is the only permitted discharger authorized as a point source to discharge pollutants to a water of the United States and, therefore, subject to an NPDES discharge under section 402 of the Clean Water Act. (33 U.S.C. §1342.) CMSA does not own any of the satellite sewer systems that feed into the treatment plant.

The satellite sewer collection systems are owned by separate entities:

- RVSD (also known as Sanitary District No. 1 of Marin County) owns and operates about 200 miles of sewer lines serving Larkspur, Ross, San Anselmo and nearby unincorporated areas (Kentfield, Greenbrae).
- SRSD owns and operates about 150 miles of sewer lines serving the City of San Rafael.
- Sanitary District No. 2 of Marin County owns and operates about 45 miles of sewer lines serving the Town of Corte Madera.
- California Department of Corrections owns and operates a sewer collection system serving the San Quentin Prison.
- The County of Marin owns and operates a sewer collection system serving San Quentin Village, which flows into the lines owned by the prison, and owns the Murray Park system, which feeds into RVSD's sewer system.

The Tentative Permit proposes to add the first three entities listed above to the NPDES permit for CMSA even though the permit does not authorize any discharges to waters of the United States directly from these entities, only through CMSA, which is already an NPDES permit holder. Because of the lesser flows, the Tentative Permit did not include the smaller satellite collections systems as co-permittees even though they also contribute flows to CMSA.

The above described collection systems are already regulated by the SSS WDR (except for the portions owned by the California Department of Corrections, the County of Marin, and CMSA's force mains, which are each less than 1 mile each in length). Although the State Water Resources Control Board had the option to adopt this statewide collection system order as an NPDES permit, it chose not to do so, opting instead for a Waste Discharge Requirements (WDR) under State law, which was not subject to citizen enforcement. "WDRs under Porter-Cologne can address both protection of water quality as well as the prevention of public nuisance associated with waste disposal." (*See* Fact Sheet for SSS WDR at p. 3 *citing* Cal. Water Code §13263.) It was the State Water Board's "intent to have one statewide regulatory mechanism that lays out the foundation for consistent collection system management requirements..." (*Id.* at p. 8.)

Under the SSS WDR, spills into waters of the United States are prohibited and Enrollees are required to:

- Properly operate, manage, and maintain all parts of the sewer system
- Ensure system operators are knowledgeable and adequately trained
- Allocate adequate resources for operation, maintenance, and repair of the system

- Provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events
- Design capacity must meet or exceed design criteria in the Enrollee's System Evaluation and Capacity Assurance Plan (SECAP)
- Develop and implement a Sewer System Management Plan (SSMP)
- Must contain, control, and mitigate sanitary sewer overflows, including reduction, prevention, and control of infiltration and inflow (I/I).

Although CMSA filed its Report of Waste Discharge (ROWD) in early 2017, RVSD and SRSD did not hear anything about being included on CMSA's NPDES permit until late July or early August. On August 11, 2017, RVSD and SRSD were called to and attended a meeting with Regional Water Board staff. This was the first formal notification that RVSD, SRSD, and the other related collection system agency were given of potentially being included on CMSA's NPDES permit. None of the collection entities ever filed a ROWD or requested having or being added onto an NPDES permit.

The justification for adding the collection systems was ostensibly to include blending reduction provisions applicable to the collection system agencies. To that end, the collection system agencies were instructed to bring a list of projects that could reduce I/I in their systems to the meeting. At the August 11th meeting, discussion ensued about each collection system's lists of potential actions to be required on a set and enforceable time schedule. These lists were included as part of the "Collection System Agency Tasks to Reduce Blending" section of the Tentative Permit (Section VI.C.5.a., Table 5).

The meeting contained no discussion of the significant change or increased liability that becoming an NPDES co-permittee represented to the legal position of the collection systems. Further, the collection systems had not had an opportunity to speak with legal counsel or the individual collection system Boards about potential concerns with new and expanded regulatory requirements and substantial new federal legal exposure from the proposed move to the NPDES permit. After 2006, when collection systems were required to have permit coverage statewide, these collection systems have been regulated by the SSS WDR.

An Administrative Draft of the new permit was sent to CMSA and the collection systems for review on August 18th, which was not enough time for RVSD or SRSD to calendar a discussion of the proposed permit with their Boards. The first opportunity RVSD had to discuss this topic with its Board was its meeting on September 20th, where this topic was placed on the agenda for discussion. SRSD had a Board meeting to have a similar discussion two days later, on September 22nd.

On September 5th, an internal deadline set by Regional Board staff, a consultant for CMSA sent comments to the Regional Board staff, mostly related to CMSA and its concerns. The collection systems were unable to get Board direction in this compressed time period. Although CMSA had had more than 8 months knowledge that the NPDES permit was to be issued and would be

regulating CMSA's discharges and activities, the collection systems had less than one month to digest and understand the ramifications of this substantial change.

In early September, after consulting with legal counsel, the collection system agencies began to wonder if there were other options available to reach a similar end point of reducing satellite flows to the CMSA Plant. Hearing that the draft Tentative Order was to be issued publicly on September 15th, RVSD requested a meeting with Regional Board staff to discuss other options. That meeting was held the next business day, on September 18th, with CMSA and representatives from the three main collection system agencies.

At that meeting, the collection systems provided a list of concerns over expanded liability under the NPDES permit, and presented a list of other options that should be considered in lieu of having the collection systems included as co-permittees on CMSA's NPDES permit. These options included:

1. Supplemental or individual WDRs to add additional specified actions to be taken under the SSS WDR;
2. A binding contract or other commitment of the JPA agencies to take actions to reduce flows to the CMSA plant;
3. A Time Schedule Order (TSO) adopted alongside the NPDES permit for those entities not already under an enforcement order, which includes the tasks to be undertaken by the collection systems to support reduced flows and presumably reduce the need for blending;
4. A Cease and Desist Order (CDO) for those entities not already under one.

NOTE: RVSD is already under a CDO (Order No. R2-2013-0020) requiring a comprehensive Infrastructure Asset Management Plan (IAMP) with collection system rehabilitation, operation, and maintenance improvements potentially through 2021, financial performance targets that have been met, and the adoption and implementation of a Private Sewer Lateral Program, which is currently active and being well utilized. The projects proposed for inclusion in the NPDES permit's table for RVSD duplicate projects committed to be completed under the CDO so there is no need for duplicative regulation.

5. Individual NPDES permits. (This option was rejected by Regional Board staff as too time consuming, requiring additional fees, and because there is no discharge to waters of the United States that these permits would be permitting.)

The collection systems offered to assist with the drafting of any of the needed orders since the parties understood that resources are scarce at the Regional Boards.

At the end of the meeting on September 18th, despite the concerns raised by the collection agencies and a request to delay the permit temporarily, Regional Board staff stated that, although the deadline for releasing the Tentative Order was not until September 29th, a draft would be released by Friday, September 22nd, unless management gave instructions otherwise. Regional Board staff also gave the collection systems until Wednesday, September 20th to provide any proposed changes to the Administrative Draft of the permit.

Despite the very short timeline for proposed changes, RVSD timely proposed changes to reduce potential liability, while stating that its comments should in no way be construed as conceding to accept an NPDES permit even if these changes were made. Changes to the proposed NPDES permit were requested that would reduce, yet not eliminate all risk of, liability to the satellite collection systems proposed to be included on the permit. The other collection systems supported these suggested changes.

Not only were the proposed changes not made, the permit was made even more stringent, subjecting the collection systems to even more liability than had they not meet with Regional Board staff or commented at all. The initially submitted comments on the Administrative Draft are included in **Attachment A**. A document showing the modifications making the permit requirements more stringent is found in **Attachment B**.

A. Applicability of NPDES Permits to Collection System

The CMSA Tentative Permit does not permit any discharges from the collection systems to waters of the United States. In fact, even though sanitary sewer spills to waters of the United States are already prohibited by federal and state law and by the SSS WDR, the Tentative Permit adds new prohibitions, making the collection systems subject to potentially three separate legal claims for violations for each spill. This increased liability incurred by placing the collection systems on the NPDES permit is not only unnecessary, it is also not authorized by federal law.

“[I]n the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, no statutory obligation of point sources to comply with EPA regulations for point source discharges, and no statutory obligation of point sources to seek or obtain an NPDES permit in the first instance.” (*Waterkeeper Alliance, Inc. v. USEPA*, 399 F.3d 486, 505-06 (2nd Cir. 2005); *see also Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F.Supp.2d 803, 826-27 (N.D. Cal. 2007) (following *Waterkeeper*); *Cnty. Ass'n for Restoration of Env't v. Nelson Faria Dairy, Inc.*, 2011 WL 61882, at *2-3 (E.D. Wash. Jan. 7, 2011) (defendant did not have a duty to obtain an NPDES permit); *Puget Soundkeeper All. v. Whitley Mfg. Co. Inc.*, 145 F.Supp.3d 1054, 1057 (W.D. Wash. 2015) (Under the CWA, “the obligation to obtain an NPDES permit is triggered only where a pollutant is discharged from a point source.”); *Alt v. USEPA*, 2013 WL 4520030, at *6 (N.D. W. Va. Aug. 22, 2013) (“without an actual discharge the EPA has no authority and there can be no duty to apply for a NPDES permit.”).)

The State Water Board recognized this legal principle when adopting the SSS WDR as a state law only permit, instead of as an NPDES permit. (SSS WDR Fact Sheet at pp. 3-4.) The State Water Board also recognized that “Satellite sewer collection systems (i.e., systems not owned and operated by the POTW) have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements.” (*Id.* at p. 4.)

Besides being beyond the legal authority of the Water Boards under the Clean Water Act, placing the collection systems as co-permittees on the CMSA NPDES permit substantially increases the potential liability of the collection systems. RVSD has already suffered through two citizen suits in 2005 and 2009. (*Garrill Page v. Sanitary District No. 1 of Marin County*, Northern District Court Case No. C:05-4358 and in a private settlement with California River Watch.) SRSD also suffered a citizen suit in 2009 from River Watch, which was settled.

Although the collection systems may still have potential liability for any spills to waters of the United States, they do not currently have the additional liability that comes with being a co-permittee on an NPDES permit (e.g., additional duplicative prohibitions, additional liability for operation and maintenance under federal law, additional liability for compliance with the SSS WDR now incorporated by reference into the Tentative Permit, and increased exposure to citizen suits).

RVSD and SRSD strive to have well-maintained and fully compliant sewer systems at all times, and have been working towards reducing spills out of and I/I into their systems. These activities are already being undertaken through the same or similar tasks to those requirements in the Tentative Permit, and will continue to occur without adding the collection systems to the NPDES permit. Other mechanisms to ensure projects continue at a high level, besides an NPDES permit, should be considered.

B. Blending Is Not Unlawful Bypass.

The stated reason for including the collection system agencies in the Tentative Permit is to address “blending” by CMSA at the Plant. RVSD and SRSD cannot understand why the Regional Board proposes to take such a harsh approach on the blending issue in the Tentative Permit, when federal courts have ruled that blending is not an illegal bypass subject to the bypass prohibitions and rules.

1. History of Blending Regulation

POTWs, like CMSA, typically move incoming flows (influent) through a primary treatment process and then through a secondary treatment process. Most secondary treatment processes are biological-based, but the secondary treatment regulations do not “specify the type of treatment process to be used to meet secondary treatment requirements nor do they preclude the use of

non-biological facilities.”¹ (68 Fed.Reg. 63,042, 63,046 (Nov. 7, 2003).) At many POTWs, and at CMSA, primary treatment capacity exceeds secondary treatment capacity. Biological-based processes in particular are sensitive to deviations in volume of flow and pollutant levels. Correspondingly, during periods of heavy rain, large influxes of storm water can overwhelm a facility’s standard biological secondary treatment processes, potentially rendering them inoperable. (*Id.*) Blending can prevent this, by channeling a portion of “peak wet weather flows” around biological secondary treatment units and through non-biological units, recombining that flow with its counterpart that traveled through the biological units, and then discharging the combined stream. (*Id.* at 63,045.) Just like non-blended streams, the combined output must still comply with all applicable effluent limitations, including the water quality levels specified in the secondary treatment regulations. (*Id.* at 63,047.) As previously stated, CMSA’s discharges comply with the permitted limits except for a single instance of non-compliance in the last 13 years (which is better than many POTWs that do not blend).

All NPDES permits must comply with federal regulations regarding “bypass,” which regulates the “intentional diversion of waste streams from any portion of a treatment facility.” (40 C.F.R. §122.41(m)(1).) Bypass is generally prohibited unless there are “no feasible alternatives.” (40 C.F.R. §122.41(m)(4).) The bypass rule “is not itself an effluent standard,” but instead “merely ‘piggybacks’ existing requirements.” (53 Fed.Reg. 40,562, 40,609 (Oct. 17, 1988).) The rule’s purpose was to “ensure that users properly operate and maintain their treatment facilities ... [pursuant to applicable] underlying technology-based standards,” by requiring incoming flows to move through the facility as it was designed to be operated. (*Id.*) Like the more general secondary treatment regulations, the bypass rule does not require the use of any particular treatment method or technology. (*Id.*; see also *NRDC v. EPA*, 822 F.2d 104, 123 (D.C.Cir.1987).) Thus, if the treatment plant was designed to blend, as was CMSA’s, then the bypass regulation does not apply to blending. Further, even if bypass did arguably apply, a “no feasible alternatives analysis” is complete once no feasible alternatives are identified, as was the case here by CMSA. Going beyond the treatment plant to the collection system is not feasible when the satellite systems are owned by different and distinct legal entities.

On January 19, 2001, EPA issued its *Current [Draft] Thinking on Peak Flows at POTWs*. EPA correspondence indicated that blending was permissible. EPA stated that “NPDES authorities have considerable flexibility through the permitting process to account for different peak flow scenarios that are consistent with generally accepted good engineering practices.” Permits can allow a POTW to discharge effluent routed around biological treatment units that are blended with effluent from the units if all of the following principles are met:

- (1) The final discharge meets effluent limits for secondary treatment and/or any more stringent water quality-based effluent limits.

¹ Biological-based systems use microorganisms to treat incoming flows. A facility can be designed to use non-biological treatment processes, such as chemical additives or physical filtration equipment, instead of or in conjunction with biological facilities. Washing out of the microorganisms during high flows would cause severe property damage and cause the system to become inoperable.

(2) The NPDES permit application for the POTW provides notice of, and the permit specifically recognizes, the treatment scheme that will be used for peak flow management. The treatment scheme, including designed capacity of various units, should be consistent with generally accepted practices and design criteria and designed to meet applicable effluent limits.

(3) Alternative flow routing scenarios are only used when flows exceed the capacity of storage/equalization units and biological treatment units based on generally accepted good engineering practices and criteria.

(4) During peak flow conditions, the treatment system chosen by the permittee is operated as it is designed to be operated and in accordance with permit conditions.

(5) The permit contains appropriate requirements for the collection system, including, at a minimum, that the permittee properly design, operate, and maintain *its* collection system.

In 2003, EPA offered “a proposed interpretation of the bypass provision” (40 CFR §122.41(m)) as applied to blending. (68 Fed.Reg. at 63,049.) Prior to this proposal, EPA stated that it had “not established a national policy (either through rulemaking or through non-binding guidance to assist in the interpretation of the bypass regulation) regarding whether and under what circumstances wet weather blending at a POTW plant would not constitute a bypass.” (*Id.* at 63,052.) The 2003 proposed policy would have “provide[d] guidance to EPA Regional and State permitting authorities ... on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions related to discharges from POTWs where peak wet weather flow is routed around biological treatment units and then blended with the effluent from the biological units prior to discharge.” (*Id.* at 63,051.) Going forward, blending “would not be a prohibited bypass and could be authorized in an NPDES permit” so long as certain enumerated conditions were met. (*Id.* at 63,049-50.) These conditions primarily focused on ensuring that the discharge met all applicable effluent limitations and water quality standards, that it passed through a primary treatment unit prior to discharge, and that a “portion of the flow [w]ould only be routed around a biological or advanced treatment unit when the capacity of the treatment unit is being fully utilized.” (*Id.*) EPA posted the proposed policy on its website and declared its consistency with the CWA. Implicitly, the 2003 policy seemed to view the secondary treatment phase as encompassing both traditional biological secondary treatment units and auxiliary non-biological treatments for peak wet weather flows. The focus was on whether the water quality of the resulting combined discharge at the end of the secondary treatment phase met all applicable effluent limitations.

Two years later, EPA abandoned the previous policies and 2003 proposal. (70 Fed.Reg. 76,013, 76,015 (Dec. 22, 2005).) EPA acknowledged recent “confusion regarding the regulatory status of peak wet weather flow diversions around secondary treatment units at POTW treatment plants” and observed that blending was treated only intermittently as a “bypass.” (*Id.* at 76,015.) The 2005 policy announced that this type of “diversion” was now to be considered a bypass and would be allowed only if there were “no feasible alternatives.” (*Id.* at 76,016.) The Tentative

Permit references this 2005 *Draft* EPA rule, which was never finalized and cannot be relied upon as binding.² The 2005 draft policy has never been finalized or otherwise officially adopted. As late as June of 2010, the EPA continued to solicit input on the 2005 policy through notices in the Federal Register. (*See* 75 Fed.Reg. 30,395, 30,401 (June 1, 2010).)

2. Illegality of EPA's 2005 Blending Policy under Federal Law

Regulating blending as a "bypass" effectively dictates treatment design despite EPA's acknowledgment that the bypass rule and secondary treatment regulations do not allow for such regulation inside the treatment plant, and effectively applies secondary treatment effluent limitations within a treatment facility (e.g., to the individual streams exiting peak flow treatment units), instead of at the end of the pipe.

EPA contends that its 2005 draft policy simply reflects an interpretation of the bypass rule. (*See* 70 Fed.Reg. at 76,015 (describing the 2005 policy as "the Agency's interpretation" of the bypass rule).) However, EPA's blending policy represents a legislative rule because it is irreconcilable with both the secondary treatment rule and the bypass rule. (*See Nat'l Family Planning & Reprod. Health Ass'n*, 979 F.2d 227, 235 (D.C.Cir. 1992) ("If a second rule repudiates or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative." (alteration in original) (*quoting* Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 Duke L.J. 381, 396 (1985)).)

Prior to 2005, EPA had not viewed the use of blending as an inevitable trigger of a no-feasible-alternatives requirement, which is why blending requirements first appeared in CMSA's permit in 2007. (*See* Order No. R2-2007-0007 at 25, section 6 ("Corrective Measures to Minimize Blending Events") and at F-15 to F-16 and F-43 (Section 6 "based on 40 CFR 122.41(m). It requires that the Discharger [CMSA] implement feasible alternatives to reduce the need to blend during this permit cycle." Section 5.c. (No Feasible Alternatives and Implementation Schedule) is also "based on 40 CFR 122.41(m). It requires that the Discharger [CMSA] reevaluate prior to the next permit issuance that it has explored every feasible alternative to eliminate blending."))

The 2005 draft Policy characterized itself as "significantly different" from the EPA's 2003 proposal on blending. (70 Fed.Reg. at 76,014.) The 2003 proposal, in turn, corresponded to the reality on the ground: widespread use by POTWs nationwide of blending peak wet weather flows. The 2005 draft Policy acknowledged that blending previously had been "permitted at [POTWs] without consideration of the bypass regulation criteria." (70 Fed.Reg. at 76,015.) In a response to a 2002 Freedom of Information Act ("FOIA") request, EPA admitted to "the use of federal funds under the Construction Grants Program to build facilities that were designed to blend effluent from primary treatment processes with effluent from biological treatment

² This 2005 proposed policy is cited in the Tentative Permit as justifying the blending reduction requirements. *See* Tentative Permit at p. 17, Table 6, Task 7 (citing "U.S. EPA's proposed peak wet weather policy"); p. F-30 at Section 5.c.

processes during peak wet weather events.” In a 2004 report to Congress, EPA praised the use of blending processes to deal with peak wet weather flows with no reference to a no-feasible-alternatives requirement. California approved many POTW permits — with no objection from the EPA and no imposition of a no-feasible-alternatives requirement — allowing municipalities to blend utilizing non-biological peak flow secondary treatment processes prior to 2001, when this issue first arose in California permits.

Municipalities chose to use blending as an exercise of their discretion under the secondary treatment rule (see 48 Fed.Reg. at 52,259), to select the particular technologies they deemed best suited to achieving the applicable secondary treatment requirements. (*See also* Cal. Water Code §13360(a).) After 2005, if a POTW utilizes a secondary treatment process that routes a portion of the incoming flow around secondary treatment to avoid washout of the microorganisms, then this will be viewed as a prohibited bypass, regardless of whether the end of pipe output ultimately meets the secondary treatment regulations.

This interpretation of the bypass provisions of federal law conflicts with the secondary treatment regulations. (*See* 40 C.F.R. § 133.100-102.) EPA does not receive deference when its interpretation of its own regulations is “plainly erroneous or inconsistent with the regulation.” (*See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012) (internal quotation marks omitted).) Further, EPA cannot adopt wildly inconsistent interpretations “under the guise of interpreting a regulation, to create *de facto* a new regulation” without notice and comment rulemaking procedures required under the Administrative Procedure Act (APA). (*See Christensen v. Harris County*, 529 U.S. 576, 588 (2000).)

The Eighth Circuit Court of Appeals has held that blending of flows around traditional biological secondary treatment processes “would not need to meet the restrictive no-feasible-alternatives requirement.” (*Iowa League of Cities v. EPA*, 711 F.3d 844, 876 (8th Cir. 2013).) In other words, if POTWs separate incoming flows into different streams during the secondary treatment phase, the EPA would apply the effluent limitations of the secondary treatment regulations to each individual stream, rather than at the end of the pipe where the streams are recombined and discharged. This new approach and rule related to blending, as set forth in the 2005 draft policy, was vacated because EPA violated the Administrative Procedure Act’s procedural requirements by not using notice and comment procedures — “without observance of procedure required by law.” (*Id. citing* 5 U.S.C. §706(2)(D).)

Since this 2013 decision was issued *after* the last CMSA permit was issued in 2012, the Tentative Permit should be revised to remove the unlawful interpretation that blending represents a prohibited “bypass.” (*See e.g.*, Tentative Permit at p. 5, Section III.C. (blending “approved under the bypass conditions stated in 40 C.F.R. section 122.41(m)(4)...”); p. 16, Table 5, Task 31 (“seeks to continue bypassing peak wet weather flows around secondary treatment units”); p. F-30, Section VI.C.5.a. (“to eliminate wet weather bypasses”).)

3. Illegality of Regulating Blending Beyond Through Effluent Limitations

Regulating the inner workings of a treatment plant, or upstream entities, is not sanctioned by state or federal law so long as effluent limitations are met end of pipe (or outside an allowed mixing zone). *See* Water Code §13360(a) (“No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.”)(emphasis added). A California Court of Appeals decision in *Tahoe-Sierra Preservation Council v. State Water Resources Control Board, et al*, 210 Cal. App. 3d 1421 (1989) opined the purpose of Water Code §13360(a) as follows:

“Section 13360 says that the Water Board may not prescribe the manner in which compliance may be achieved with a discharge standard. That is to say, the Water Board may identify the disease and command that it be cured but not dictate the cure...

Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to the waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.”

Id. at 1438 (emphasis added). Thus, the Regional Board can impose secondary treatment effluent limits, but may not prescribe the treatment methods or control strategies needed to meet those limits end of pipe, such as those set forth in Tables 5 and 6 of the Tentative Permit.

A federal Court of Appeals in *American Iron and Steel Institute v. EPA*, 115 F.3d 979 (D.C. Cir. 1997) specifically determined that a permitting authority may not go beyond the imposition of effluent limits to regulating the internal processes of a plant, and held as follows:

“The statute is clear: The EPA [or a designated State] may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United States through a ‘point source’; it is not authorized to regulate the pollutant levels in a facility’s internal waste stream.

We are apprised of nothing in the policy underlying the CWA that undercuts the plain meaning of the statutory text. To the contrary, by authorizing the EPA [or a designated State] to impose effluent limitations only at the point source, the Congress clearly intended to allow the permittee to choose its own control strategy.... the statute does not permit this sort of meddling inside a facility.”

Id. at 996 (emphasis added); *see also* 33 U.S.C. §1284(d)(requiring certification that the treatment works meet the design specifications for the plant and effluent limitations for the plant contained in the NPDES permit).

“[E]ffluent limitations are restricted to regulations governing ‘discharges from point sources into navigable waters.’ . . . The EPA would like to apply effluent limitations to the discharge of flows from one internal treatment unit to another. We cannot reasonably conclude that it has the statutory authority to do so . . . Therefore, insofar as the blending rule imposes secondary treatment regulations on flows within facilities, we vacate it as exceeding the EPA’s statutory authority.”) (*Iowa League of Cities*, 711 F.3d at 877, *citing Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997)) (internal citations omitted).)

For these reasons, the Regional Board should not regulate the inner workings of the plant or collection systems to regulate blending. The Regional Board’s main focus is and should be on maintaining and improving water quality. If CMSA is meeting all of its effluent limitations, both technology-based and water quality-based, then water quality in the San Francisco Bay is maintained regardless of whether blending occurs or not.

By including the collection systems on the Tentative Permit in order to reduce I/I and also blending, the Regional Board is regulating upstream and internal waste streams and the inner workings of CMSA’s plant by essentially imposing secondary treatment requirements inside the plant *prior to* discharge. Nothing in the Clean Water Act or state law requires this. Secondary treatment requirements must only be met upon discharge into a navigable waters. (33 U.S.C. §1311(a) and (b)(1)(B).) The Regional Water Board must ensure its actions to implement the CWA are consistent with any applicable provisions of the CWA and its implementing regulations. (Cal. Water Code §13372.)

CMSA has met all of the secondary treatment requirements for all blending events over the last 13 years, except for a single instance of not meeting 85% removal for CBOD₅ on February 28, 2017, “during extreme wet weather.” (Tentative Permit at p. F-7.)³ This rare instance of non-compliance with secondary treatment or other effluent limitation requirements should be subject to enforcement and mandatory minimum penalties (MMPs), not additional requirements on reducing blending or by pulling collection systems into the CMSA NPDES permit.

4. The Requirements for Reducing Blending Go Far Beyond Other Dischargers

Even if requirements to address blending were lawful, the requirements of the CMSA Tentative Permit are more than is required of other dischargers. The 2015 Permit for East Bay Municipal Utility District (Order No. R2-2015-0018) included a single task requirement, as follows:

6. Measures to Minimize Blending

The Discharger shall comply with the following tasks and deadlines to minimize blending:

³ CMSA objected to and petitioned the 85% removal requirements in the 2007 permit. CMSA’s petition for review to the SWRCB asked to modify Order No. R2-2007-0007 by adopting lower percent removal requirements for CBOD₅ and TSS. (SWRCB/OCC Appeal No. A-1828.)

Table 7. Requirements to Minimize	Compliance Deadline
1. <i>Report Annual Status of Storage Basin Standard Operation Procedure (SOP)</i>. The Discharger shall provide a description of all blending events over the course of each calendar year and how they were managed. Specifically, this description shall include, for each blending event, the volume of wastewater that received secondary treatment, the volume that received primary treatment, and how the Discharger managed its storage basin to minimize the duration and magnitude of blending events (this evaluation shall also include blending events that were avoided because of the storage basin SOP). Finally, the Discharger shall evaluate and report on the progress of further enhancements to its operation of the storage basin SOP to maximize stored flow volume to reduce blending during wet weather.	February 1 of each year with the Annual Self-Monitoring Report required pursuant to Attachment E, Section XI.B.2

CMSA's Tentative Permit includes 7 different tasks for CMSA *plus* 38 individual tasks for the three collection system agencies, all on set time schedules, which cannot be easily changed. These lists micromanage the activities of CMSA and the collection system agencies in a manner not authorized by law, including requirements for lateral ordinances to be adopted when the collection system does not own the sewer laterals. (Cal. Water Code §13360(a); *Tahoe-Sierra Preservation Council*, 210 Cal. App. 3d at 1438.) In addition, new projects might arise within the 5 year term of the permit that could be more conducive to I/I reduction, but since the NPDES permit cannot be easily or quickly modified without a formal notice and comment period and a hearing by the Regional Board, better projects may not get done in order to meet the stated requirements of the permit.

Under the SSS WDR, collection systems are given the ability to create their own Sewer System Management Programs (SSMPs) and Capital Improvement Programs (CIP), which can be updated on a more rapid timeline. By mandating particular projects, particularly where resources are limited, the Tentative Permit restricts the ability to be nimble and address issues on the ground in a prioritized manner, and fails to allow for schedules to be modified in the case of strike, emergency, or other situation that could arise.

RVSD and SRSD ask that the Tentative Permit not be adopted as proposed with the collection systems included as co-permittees. Instead, the Regional Board staff should remove the collection systems from the Tentative Permit and instruct staff to work with CMSA and its collection agencies to come up with another approach (as was previously suggested) that addresses and achieves everyone's goals of reducing blending, protecting water quality, and recognizing and properly allocating limited public resources, while protecting the collection systems from unnecessary liability as we work together to accomplish these laudable goals.

Respectfully submitted,



GREG NORBY
RVSD GENERAL MANAGER



DORIS TOY
SRSD GENERAL MANAGER

ATTACHMENTS

cc: Melissa Thorne and Nicole Granquist, Downey Brand LLP
Jason Dow, Manager, CMSA
David Bracken, Manager, Marin Sanitation District #2

ATTACHMENT A
**REQUESTED MODIFICATIONS TO CMSA NPDES PERMIT
TO ADDRESS COLLECTION SYSTEM ISSUES¹**

1. The Proposed Permit must make clear that CMSA is the only “Discharger” for which the permit authorizes discharges of treated municipal wastewater to waters of the United States. We understand that changes have been made to change the word “Discharger” to CMSA in most cases (although we have not seen those changes). We request that the only “Discharger” be specified as CMSA because the satellite collection systems are not discharging directly to waters of the United States.
2. The Permit must recognize that satellite collection systems are more akin to indirect dischargers since they are owned and operated by legally distinct entities. A “satellite collection system” is “the portion, if any, of a sanitary sewer system owned and operated by a different public agency than the agency that owns and operates the wastewater treatment facility to which the sanitary sewer is tributary.” (See Sanitary Sewer System Waste Discharge Requirements (SSS WDR - SWRCB Order No. 2006-00003-DWQ and WQ 2013-0058-EXEC) at A.6.)

As specified by the SSS WDR Fact Sheet, “Satellite sewer collection systems (i.e., systems not owned or operated by the POTW have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements. (Fact Sheet for Order No. 2006-0003 at p. 4.) The SSS WDR also states:

“Comments were received that argued every collection system leading to a POTW that is subject to an NPDES permit should also be permitted based upon the USEPA definition of POTW. Under this theory, all current POTW NPDES permits could be expanded to include all satellite sewer collection systems, or alternatively, the satellite owners and operators could be permitted separately. However, this interpretation is not widely accepted and USEPA has no official guidance to this fact.” (Fact Sheet for Order No. 2006-0003 at p. 4 (emphasis added); *see also referenced Waterkeeper Alliance v. United States Environmental Protection Agency* (2005) 399 F.3d 486, 504-506 (appellate court held that USEPA can only require permits for where there the entity has an actual addition of pollutants to waters of the United States).)

Thus, all of the Discharge Prohibitions in Section III should apply only to CMSA as the Discharger.

3. A prohibition on Sanitary Sewer Spills to waters of the United States (Discharge Prohibition III.E.) applicable to the collection systems is not necessary as such spills are already prohibited by Section 301(a) of the Clean Water Act (33 U.S.C. §1311(a), and are already prohibited under the SSS WDR at Prohibition C.1. (page 7 of 20).

¹ Submission of these comments should not be construed as acceptance by the collection systems to be a co-permittee on the proposed tentative NPDES permit.

4. Provision VI.C.4.c. should be removed from the Proposed Permit as CMSA is not subject to the SSS WDR and CMSA has no collection system. The collection system agencies are *separately and independently* required to comply with the SSS WDR, so there is no need to reference this separate legal obligation in this permit. As it currently reads, the requirements of the SSO WDR are set forth as NPDES Permit requirements (“shall comply with”), improperly transforming these state only requirements into federal obligations.

The State Water Board intended for the SSS WDR to “be the primary regulatory mechanism for sanitary sewer systems statewide.” (Fact Sheet for Order No. 2006-0003 at p. 9.) If Regional Boards wanted to impose more stringent or prescriptive requirements, then the more stringent WDRs or NPDES permit was intended to supersede the SSS WDR. The proposed permit is a hybrid approach that should not impose additional federal liability on the collection systems by purporting to incorporate the SSS WDR provisions without superseding that separate permit, making the agencies unnecessarily liable for the same issues under 2 different permits.

5. Tables 5, 6, and 7 should be moved to the end of the permit, instead of being intertwined with obligations of CMSA, or to an Appendix. Language has been proposed to make these requirements State law only, as supplemental obligations related to the SSS WDR.
6. The Permit should expressly state that the collection agencies are not subject to the Standard Provisions since they are not a discharger.
7. The Permit should expressly state that there is no joint and several liability between the different entities listed on the permit, and that there is only one fee charged to CMSA.
8. The Permit must include the legal justification for including satellite collection systems. Although USEPA has several times proposed rules regulating satellites under the NPDES permit program, none of those has been finally promulgated. Similarly, the 2005 Draft Guidance on blending from USEPA, interpreting the bypass regulations, is not a final rule and cannot be used as such to justify incorporating the collection systems into the permit.

Requested wording changes to implement above comments:

(p.4) C. Provisions and Requirements Implementing State Law. Provision VI.C.6 of this Order and Appendix XX, Tables 5, 6, and 7 [These should probably be renamed] implements State law only. It is not required or authorized under the federal CWA; consequently, a violation of this provision is subject to enforcement remedies available under the Porter-Cologne Water Quality Control Act.

(p.5) **IT IS HEREBY ORDERED** that in order to assist CMSA with its obligations under this permit, San Rafael Sanitation District, Sanitary District No. 1 of Marin County (aka Ross Valley Sanitary District), and Sanitary District No. 2 of Marin County shall comply with the supplemental Waste Discharge Requirements (WDR) tasks set forth in Discharge Prohibition III.E. and Provisions VI.C.4.c and VI.C.5.a. Tables 5, 6, and 7 respectively, as set forth in Appendix XX, which supplement the requirements of the Sanitary Sewer System Waste Discharge Requirements (“SSS WDR,” SWRCB Order No. 2006-00003-DWQ and WQ 2013-0058-EXEC).

(p.5) III. DISCHARGE PROHIBITIONS

CMSA shall comply with the following discharge prohibitions:

A.

(p.9) VI. Provisions

A. Standard Provisions

1. ~~The CMSA as the~~ Discharger shall comply with all “Standard Provisions” in Attachment D.
2. ~~The CMSA as the~~ Discharger shall comply with all applicable provisions of the “Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits” (Attachment G).

(p.13) *Remove Section VI.C.4.c as inapplicable to CMSA.*

If retained, modify as follows:

c. Collection System Management. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County are separately subject to the requirements of ~~, and shall comply with,~~ State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. 2013-0058-EXEC and any subsequent order updating these requirements. The provisions contained in Appendix XX, Tables 5, 6, and 7 applicable to these three collection system agencies supplement, but do not supersede, any other State law requirements contained in that separate permit, which is not incorporated by reference herein.

(p.14) *Move Section VI.C.5.a, Tables 5, 6, and 7 to end of permit or to an Appendix.*

Modify introductory text as follows:

a. Tasks to Reduce Blending for Collection System Agencies to Assist in Reducing the Need for CMSA to Blend. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall implement the following tasks to minimize wet weather diversions and reduce blending in accordance with the following time schedule:

(p. F-4) Modify text as follows:

A.

For 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. References to the Discharger apply solely to CMSA as the primary NPDES permit holder, who is responsible for paying any fees related to this NPDES permit. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County are not referenced as dischargers herein, but are included as responsible parties for their agency-specific tasks in Tables 5, 6, and 7.

The term “responsible parties” was used on pg. F-6 when stating that CDCR and San Quentin Village are not “responsible parties” so it would stand to reason that the other entities could be called by that name instead of dischargers.

(p. F-14) (B)....

Provision VI.C.5.a Tables 5, 6, and 7 requires the satellite collection systems to implement improvements to their collection systems to reduce inflow and infiltration in the hopes that these modifications will reduce the need for blending. The obligations set forth on these collection systems as responsible parties are not joint or several obligations and there is no joint and several liability for any violations thereof.

ATTACHMENT B

REQUESTED MODIFICATIONS TO CMSA NPDES PERMIT TO ADDRESS COLLECTION SYSTEM ISSUES (in italics) and Modifications Made

Requested Change 1. *The Proposed Permit must make clear that CMSA is the only “Discharger” for which the permit authorizes discharges of treated municipal wastewater to waters of the United States. We understand that changes have been made to change the word “Discharger” to CMSA in most cases (although we have not seen those changes). We request that the only “Discharger” be specified as CMSA because the satellite collection systems are not discharging directly to waters of the United States.*

Instead of clarifying the term “Discharger” as requested, all three collection agencies were more clearly identified as Dischargers even though the Tentative Permit does not authorize any direct point source discharges to waters of the United States from any of the collection systems. Footnote [1] on page 1 now states “this Order identifies the collection management system agencies as Dischargers (see Table F-1).”

Requested Change 2. *The Permit must recognize that satellite collection systems are more akin to indirect dischargers since they are owned and operated by legally distinct entities. ... Thus, all of the Discharge Prohibitions in Section III should apply only to CMSA as the Discharger.*

Instead of making the Discharge Prohibitions applicable only to CMSA, the Tentative Permit added an additional prohibition that was *not in the Administrative Draft*. The Tentative Permit added an additional discharge prohibition to the collection systems - **Discharge Prohibition III.A.** (Discharge of treated wastewater at a location or in a manner different than described in this Order is prohibited.). This prohibition makes no sense in relation to a collection system because none of that wastewater is treated.

Requested Change 3. *A prohibition on Sanitary Sewer Spills to waters of the United States (Discharge Prohibition III.E.) applicable to the collection systems is not necessary as such spills are already prohibited by Section 301(a) of the Clean Water Act (33 U.S.C. §1311(a), and are already prohibited under the SSS WDR at Prohibition C.1. (page 7 of 20).*

In the Administrative Draft on page 4, the only applicable prohibition to collection systems was Prohibition III.E (prohibition of sanitary sewer overflows to waters of the United States). This prohibition is unnecessary because such spills are already prohibited by federal and state law, and under the SSS WDR. No change was made even though this now puts the collection systems in jeopardy for three alleged potential violations for a single spill event.

Requested Change 4. *Provision VI.C.4.c. should be removed from the Proposed Permit as CMSA is not subject to the SSS WDR and CMSA has no collection system. The collection system agencies are separately and independently required to comply with the SSS WDR, so there is no need to reference this separate legal obligation in this permit. As it currently reads, the requirements of the SSO WDR are set forth as NPDES Permit requirements (“shall comply with”), improperly transforming these state only requirements into federal obligations.*

The State Water Board intended for the SSS WDR to “be the primary regulatory mechanism for sanitary sewer systems statewide.” (Fact Sheet for Order No. 2006-0003 at p. 9.) If Regional Boards wanted to impose more stringent or prescriptive requirements, then the more stringent WDRs or NPDES permit was intended to supersede the SSS WDR. The proposed permit is a hybrid approach that should not impose additional federal liability on the collection systems by purporting to incorporate the SSS WDR provisions without superseding that separate permit, making the agencies unnecessarily liable for the same issues under 2 different permits.

If retained, modify as follows:

c. Collection System Management. *San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County are separately subject to the requirements of, and shall comply with, State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. 2013-0058-EXEC and any subsequent order updating these requirements. The provisions contained in Appendix XX, Tables 5, 6, and 7 applicable to these three collection system agencies supplement, but do not supersede, any other State law requirements contained in that separate permit, which is not incorporated by reference herein.*

Not only were the requested changes not made, they made it even more clear that the collection systems were subject to the proper operation and maintenance requirements, and were liable under both the SSS WDR and the NPDES permit as follows (with redline/strikeout changes shown):

Collection System Management. San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County ~~are subject to the requirements of, and shall comply with, State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, and any subsequent order updating these requirements.~~ shall properly operate and maintain their respective collection systems (see Attachments D and G, section I.D), report any noncompliance with respect to their respective systems (see Attachments D and G, sections V.E.1 and

V.E.2), and mitigate any discharges in violation of this Order associated with their respective systems (see Attachments D and G, section I.C).

State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply with both the statewide WDRs and this Order, the statewide WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.

Incorporating by reference a state permit could arguably and unnecessarily transform those state law requirements into federal requirements. This is inconsistent with the language in other regional permits, such as the North Coast region (see Order No. R1-2017-0005, which states (emphasis added):

5. Special Provisions for Municipal Facilities (POTWs Only)

a. Wastewater Collection Systems

i. Statewide General WDRs for Sanitary Sewer Systems

The Permittee has coverage under, and is separately subject to, the requirements of State Water Board Order No. 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems, as amended by Order No. WQ 2013-0058-EXEC. As such, the Permittee provides notification and reporting of SSOs in accordance with the requirements of Order Nos. 2006-0003-DWQ and WQ 2013-0058-EXEC and any revisions thereto for operation of its wastewater collection system.

Requested Change 5. *Tables 5, 6, and 7 should be moved to the end of the permit, instead of being intertwined with obligations of CMSA, or to an Appendix. Language has been proposed to make these requirements State law only, as supplemental obligations related to the SSS WDR.*

This comment was ignored.

Requested Change 6. *The Permit should expressly state that the collection agencies are not subject to the Standard Provisions since they are not a discharger.*

The Tentative Permit did exactly the opposite of what was requested, by adding Provision VIA. as being applicable to the collection system agencies.

Provision VI.A – A. Standard Provisions. 1. The Dischargers shall comply with all “Standard Provisions” in Attachment D. 2. The Dischargers shall comply with all applicable provisions of the “Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits” (Attachment G).

This addition was unneeded since the next 2 were already called out in the Administrative Draft, which we requested to be deleted as to the collection systems:

Attachment D – Federal Standard Provisions

[This attachment includes proper operation and maintenance provisions that we called out to Regional Board staff as being problematic and which duplicate the requirements of the SSS WDR]

Attachment G – Regional Standard Provisions

[These are state law only provisions not recognized in Finding III.C., where many overlap federal ones (creating duplicate liability) or don’t apply well to collection systems]

Requested Change 7. *The Permit should expressly state that there is no joint and several liability between the different entities listed on the permit, and that there is only one fee charged to CMSA.*

Comment was ignored.

Requested Change 8. *The Permit must include the legal justification for including satellite collection systems. Although USEPA has several times proposed rules regulating satellites under the NPDES permit program, none of those has been finally promulgated. Similarly, the 2005 Draft Guidance on blending from USEPA, interpreting the bypass regulations, is not a final rule and cannot be used as such to justify incorporating the collection systems into the permit.*

Adequate justification was not added. The Tentative Permit provides no authority to add the collection systems, which are not owned or operated by CMSA.

Requested Change 9. *All other requested wording changes were not made.*

EXHIBIT G

San Francisco Bay Regional Water Quality Control Board

REVISED TENTATIVE ORDER No. R2-2018-00XX NPDES No. CA0038628

The following Dischargers are subject to waste discharge requirements (WDRs) set forth in this Order:

Table 1. Discharger Information

Dischargers	Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County ^[1]
Facility Names	Central Marin Sanitation Agency Wastewater Treatment Plant, San Rafael Sanitation District wastewater collection system, Sanitary District No. 1 of Marin County wastewater collection system, and Sanitary District No. 2 of Marin County wastewater collection system
Treatment Plant Address	1301 Andersen Drive San Rafael, CA 94901 Marin County
CIWQS Place Number	213889

^[1] While this Order identifies the collection system management agencies as Dischargers (see Table F-1), these agencies are only responsible for complying with Discharge Prohibition III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order. Central Marin Sanitation Agency is responsible for complying with all requirements in this Order, except Provisions VI.C.4.c and VI.C.5.a.

Table 2. Discharge Location

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	Secondary Treated Municipal Wastewater	37.948333°	-122.456389°	Central San Francisco Bay

Table 3. Administrative Information

This Order was adopted on:	<Date>
This Order shall become effective on:	March 1, 2018
This Order shall expire on:	February 28, 2023
CIWQS Regulatory Measure Number	<Regulatory Number>
The Dischargers shall file a Report of Waste Discharge for updated WDRs in accordance with California Code of Regulations, title 23, and as an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than:	May 1, 2022
The U.S. Environmental Protection Agency (U.S. EPA) and the California Regional Water Quality Control Board, San Francisco Bay Region, have classified this discharge as follows:	Major

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

Bruce H. Wolfe, Executive Officer

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I. FACILITY INFORMATION

Table 1 and Fact Sheet (Attachment F) sections I and II summarize information describing the Central Marin Sanitation Agency (CMSA) Wastewater Treatment Plant and the collection systems operated by the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County.

II. FINDINGS

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

- A. Legal Authorities.** This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve as a National Pollutant Discharge Elimination System (NPDES) permit authorizing the Dischargers to discharge into waters of the United States as listed in Table 2 subject to the WDRs in this Order.
- B. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information the Dischargers submitted as part of their application, information obtained through monitoring and reporting programs, and other available information. The Fact Sheet contains background information and rationale for the requirements in this Order and is hereby incorporated into and constitutes findings for this Order. Attachments A through E, G, and H are also incorporated into this Order.
- C. Provisions and Requirements Implementing State Law.** Provision VI.C.6 of this Order implements State law only. It is not required or authorized under the federal CWA; consequently, a violation of this provision is subject to enforcement remedies available under the Porter-Cologne Water Quality Control Act.
- D. Notification of Interested Parties.** The Regional Water Board notified the Dischargers and interested agencies and persons of its intent to prescribe these WDRs and provided an opportunity to submit written comments and recommendations. The Fact Sheet provides details regarding the notification.
- E. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. The Fact Sheet provides details regarding the public hearing.

THEREFORE, IT IS HEREBY ORDERED that Order No. R2-2012-0051 (previous order) is rescinded upon the effective date of this Order, except for enforcement purposes, and, in order to meet the provisions of Water Code division 7 (commencing with § 13000) and regulations adopted thereunder and the provisions of the CWA and regulations and guidelines adopted thereunder, CMSA shall comply with the requirements in this Order, except Provisions VI.C.4.c and VI.C.5.a. This action in no way prevents the Regional Water Board from taking enforcement action for past violations of the previous order.

IT IS HEREBY FURTHER ORDERED that the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall comply with Discharge Prohibition III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order.

III. DISCHARGE PROHIBITIONS

- A.** Discharge of treated wastewater at a location or in a manner different than described in this Order is prohibited.
- B.** Discharge at Discharge Point No. 001 is prohibited when treated wastewater does not receive an initial dilution of at least 43:1. Compliance shall be achieved by proper operation and maintenance of the discharge outfall to ensure that it (or its replacement, in whole or part) is in good working order and is consistent with, or can achieve better mixing than, that described in the Fact Sheet section IV.C.4.a. CMSA shall address measures taken to ensure this in its application for permit reissuance.
- C.** Bypass of untreated or partially-treated wastewater to waters of the United States is prohibited, except as provided for in Attachment D section I.G.

Blended wastewater is biologically-treated wastewater blended with wastewater diverted around biological treatment units or advanced treatment units. Such discharges are approved under the bypass conditions stated in 40 C.F.R. section 122.41(m)(4) when (1) CMSA's peak wet weather influent flow exceeds the capacity of the secondary treatment units of 30 MGD, and (2) the discharge complies with the effluent and receiving water limitations contained in this Order. Furthermore, CMSA shall operate its facility as designed and in accordance with the Operation and Maintenance Manual for the facility. This means it shall optimize storage and use of equalization units and shall fully utilize the biological treatment units. This also means that CMSA must fully use the capacity of its facilities to maximize treatment. CMSA shall report incidents of blended effluent discharges in routine monitoring reports and shall monitor this discharge as specified in the attached Monitoring and Reporting Program (MRP) (Attachment E) and Attachment G.

- D.** Average dry weather effluent flow in excess of 10 MGD is prohibited. Average dry weather effluent flow shall be determined from three consecutive dry weather months each year, with compliance measured at Monitoring Location EFF-001 as described in the MRP.
- E.** Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

- A. Effluent Limitations.** CMSA shall comply with the following effluent limitations at Discharge Point No. 001, with compliance measured at Monitoring Locations EFF-001, EFF-002, or EFF-002b as described in the MRP:

Table 4. Effluent Limitations

Parameter	Units	Effluent Limitations					
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	Monthly Geometric Mean
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	25	40	---	---	---	---
Total Suspended Solids	mg/L	30	45	---	---	---	---
Oil and Grease	mg/L	10	---	20	---	---	---
pH ^[1]	standard units	---	---	---	6.0	9.0	---
Chlorine, Total Residual	mg/L	---	---	---	---	0.0	---
Enterococcus Bacteria	MPN/100 mL	---	---	---	---	---	35
Total Coliform Bacteria	MPN/100 mL	---	---	10,000	---	---	240
Copper	µg/L	49	---	84	---	---	---
Cyanide	µg/L	21	---	37	---	---	---
Dioxin TEQ	µg/L	1.4 x 10 ⁻⁸	---	2.8 x 10 ⁻⁸	---	---	---
Total Ammonia	mg/L as N	60	---	120	---	---	---

Unit Abbreviations:

mg/L = milligrams per liter
 mg/L as N = milligrams per liter as nitrogen
 µg/L = micrograms per liter
 MPN/100 mL = most probable number per 100 milliliters

Footnote:

^[1] If CMSA monitors pH continuously, pursuant to 40 C.F.R. section 401.17 CMSA shall be in compliance with this pH limitation provided that both of the following conditions are satisfied: (i) the total time during which the pH is outside the required range shall not exceed 7 hours and 26 minutes in any calendar month; and (ii) no individual excursion from the required pH range shall exceed 60 minutes.

B. Percent Removal. The average monthly carbonaceous biochemical oxygen demand (5-day @ 20°C) (CBOD₅) and total suspended solids (TSS) percent removal at Discharge Point No. 001 shall not be less than 85 percent (i.e., in each calendar month, the arithmetic mean of CBOD₅ and TSS, by concentration, for effluent samples collected at Monitoring Location EFF-002 as described in the MRP, shall not exceed 15 percent of the arithmetic mean of CBOD₅ and TSS, by concentration, for influent samples collected at Monitoring Location INF-001 as described in the MRP at approximately the same times during the same period). For a calendar month in which CMSA discharges blended effluent at Discharge Point No. 001, the CBOD₅ and TSS monthly arithmetic mean and percent removal shall include results of blended effluent samples collected at Monitoring Location EFF-002b flow-weighted with effluent samples collected at Monitoring Location EFF-002.

C. Acute Toxicity. The discharge at Discharge Point No. 001 shall meet the following acute toxicity effluent limitations, with compliance measured at Monitoring Location EFF-002 as described in the MRP:

1. An 11-sample median of not less than 90 percent survival; and
2. An 11-sample 90th percentile of not less than 70 percent survival.

These acute toxicity limitations are defined as follows:

- **11-sample median.** A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit if five or more of the past ten or fewer bioassay tests also show less than 90 percent survival.
- **11-sample 90th percentile.** A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit if one or more of the past ten or fewer bioassay tests also show less than 70 percent survival.

If CMSA can demonstrate that toxicity exceeding the levels cited above is caused by ammonia and that the ammonia in the discharge complies with the ammonia effluent limits in Table 4 of this Order, then such toxicity shall not constitute a violation of this effluent limitation.

V. RECEIVING WATER LIMITATIONS

- A. The discharge shall not cause the following conditions to exist in receiving waters at any place:
1. Floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;
 2. Alteration of suspended sediment in such a manner as to cause nuisance or adversely affect beneficial uses or detrimental increase in the concentrations of toxic pollutants in sediments or aquatic life;
 3. Suspended material in concentrations that cause nuisance or adversely affect beneficial uses;
 4. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 5. Alteration of temperature beyond present natural background levels unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses;
 6. Changes in turbidity that cause nuisance or adversely affect beneficial uses or cause increases from normal background light penetration or turbidity greater than 10 percent in areas where natural turbidity is greater than 50 nephelometric turbidity units;
 7. Coloration that causes nuisance or adversely affects beneficial uses;
 8. Visible, floating, suspended, or deposited oil or other products of petroleum origin; or
 9. Toxic or other deleterious substances in concentrations or quantities that cause deleterious effects on wildlife, waterfowl, or other aquatic biota or render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
- B. The discharge shall not cause the following limits to be exceeded in receiving waters at any place within one foot of the water surface:
1. Dissolved Oxygen 5.0 mg/L, minimum

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

2. Dissolved Sulfide Natural background levels
3. pH The pH shall not be depressed below 6.5 or raised above 8.5. The discharge shall not cause changes greater than 0.5 pH units in normal ambient pH levels.
4. Nutrients Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

- C. The discharge shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or State Water Resources Control Board (State Water Board) as required by the CWA and regulations adopted thereunder (outside any mixing zone established as described in Fact Sheet section IV.C). If more stringent water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board may revise or modify this Order in accordance with the more stringent standards.

VI. PROVISIONS

A. Standard Provisions

1. The Dischargers shall comply with all “Standard Provisions” in Attachment D.
2. The Dischargers shall comply with all applicable provisions of the “Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits” (Attachment G).

B. Monitoring and Reporting

CMSA shall comply with the MRP (Attachment E), and future revisions thereto, and applicable sampling and reporting requirements in Attachments D and G.

C. Special Provisions

1. Reopener Provisions

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

- a. If present or future investigations demonstrate that the discharges governed by this Order have or will have, or will cease to have, a reasonable potential to cause or contribute to adverse impacts on water quality or beneficial uses of the receiving waters.

- b. If new or revised water quality objectives or total maximum daily loads (TMDLs) come into effect for San Francisco Bay or contiguous water bodies (whether statewide, regional, or site-specific). In such cases, effluent limitations in this Order may be modified as necessary to reflect the updated water quality objectives and wasteload allocations in the TMDLs. Adoption of the effluent limitations in this Order is not intended to restrict in any way future modifications based on legally-adopted water quality objectives or TMDLs or as otherwise permitted under federal regulations governing NPDES permit modifications.
- c. If translator, dilution, or other water quality studies provide a basis for determining that a permit condition should be modified.
- d. If State Water Board precedential decisions, new policies, new laws, or new regulations are adopted.
- e. If an administrative or judicial decision on a separate NPDES permit or WDRs addresses requirements similar to this discharge.
- f. If any Discharger requests adjustments in effluent limits due to the implementation of stormwater diversion as a stormwater pollutant control strategy.
- g. Or as otherwise authorized by law.

A Discharger may request a permit modification based on any of the circumstances above. With any such request, the Discharger shall include antidegradation and anti-backsliding analyses as appropriate.

2. Effluent Characterization Study and Report

- a. **Study Elements.** CMSA shall continue to characterize and evaluate the discharge from the following discharge point to verify that the “no” or “unknown” reasonable potential analysis conclusions of this Order remain valid and to inform the next permit reissuance. CMSA shall collect representative samples at the monitoring station set forth below, as defined in the MRP, at no less than the frequency specified below:

<u>Discharge Point</u>	<u>Monitoring Location</u>	<u>Minimum Frequency</u>
001	EFF-001 or EFF-002	1/Year

CMSA shall analyze the samples for the priority pollutants listed in Attachment G, Table C, except for those pollutants with effluent limitations where the MRP already requires more frequent monitoring and except for those pollutants for which there are no water quality criteria (see Fact Sheet Table F-8). Compliance with this requirement shall be achieved in accordance with the specifications of Attachment G sections III.A.1 and III.A.2.

CMSA shall evaluate on an annual basis if concentrations of any of these pollutants significantly increase over past performance. CMSA shall investigate the cause of any such increase. The investigation may include, but need not be limited to, an increase in monitoring frequency, monitoring of internal process streams, and monitoring of influent sources. CMSA shall establish remedial measures addressing any increase resulting in

reasonable potential to cause or contribute to an excursion above applicable water quality objectives. This requirement may be satisfied through identification of the constituent as a “pollutant of concern” in CMSA’s Pollutant Minimization Program, described in Provision VI.C.3.

b. Reporting Requirements

- i. Routine Reporting.** CMSA shall report the following in the transmittal letter for the self-monitoring report associated with the month in which the samples were collected:
 - (a)** Indication that a sample for this characterization study was collected; and
 - (b)** Identity of pollutants detected at or above applicable water quality criteria (see Fact Sheet Table F-8 for the criteria) and the detected concentrations of those pollutants.
- ii. Annual Reporting.** CMSA shall summarize the annual data evaluation and source investigation in the annual self-monitoring report.
- iii. Final Report.** CMSA shall submit a final report that presents all these data with the application for permit reissuance.

3. Pollutant Minimization Program

- a.** CMSA shall continue to improve its existing Pollutant Minimization Program to promote minimization of pollutant loadings to its treatment plant and therefore to the receiving waters.
- b.** CMSA shall submit an annual report no later than February 28 each year. Each annual report shall include at least the following information:
 - i. Brief description of treatment plant.** The description shall include the service area and treatment plant processes.
 - ii. Discussion of current pollutants of concern.** Periodically, CMSA shall analyze its circumstances to determine which pollutants are currently a problem and which pollutants may be potential future problems. This discussion shall include the reasons for choosing the pollutants.
 - iii. Identification of sources for pollutants of concern.** This discussion shall include how CMSA intends to estimate and identify pollutant sources. CMSA shall include sources or potential sources not directly within the ability or authority of CMSA to control, such as pollutants in the potable water supply and air deposition.
 - iv. Identification of tasks to reduce the sources of pollutants of concern.** This discussion shall identify and prioritize tasks to address CMSA’s pollutants of concern. CMSA may implement the tasks by itself or participate in group, regional, or national tasks that address its pollutants of concern. CMSA is strongly encouraged to participate in group, regional, or national tasks that address its pollutants of

concern whenever it is efficient and appropriate to do so. An implementation timeline shall be included for each task.

- v. Outreach to employees.** CMSA shall inform employees about the pollutants of concern, potential sources, and how they might be able to help reduce the discharge of these pollutants of concern into the treatment facilities. CMSA may provide a forum for employees to provide input.
- vi. Continuation of Public Outreach Program.** CMSA shall prepare a pollution prevention public outreach program for its service area. Outreach may include participation in existing community events, such as county fairs; initiating new community events, such as displays and contests during Pollution Prevention Week; conducting school outreach programs; conducting treatment plant tours; and providing public information in newspaper articles or advertisements, radio or television stories or spots, newsletters, utility bill inserts, or web sites. Information shall be specific to target audiences. CMSA shall coordinate with other Dischargers and agencies as appropriate.
- vii. Discussion of criteria used to measure Pollutant Minimization Program and task effectiveness.** CMSA shall establish criteria to evaluate the effectiveness of its Pollutant Minimization Program. This discussion shall identify the specific criteria used to measure the effectiveness of each task in Provisions VI.C.3.b.iii, iv, v, and vi.
- viii. Documentation of efforts and progress.** This discussion shall detail all of CMSA's Pollutant Minimization Program activities during the reporting year.
- ix. Evaluation of Pollutant Minimization Program and task effectiveness.** CMSA shall use the criteria established in Provision VI.C.3.b.vii to evaluate the program and task effectiveness.
- x. Identification of specific tasks and timelines for future efforts.** Based on the evaluation, CMSA shall explain how it intends to continue or change its tasks to more effectively reduce the amount of pollutants flowing to its treatment plant and subsequently in its effluent.
- c.** CMSA shall develop and conduct a Pollutant Minimization Program as further described below when there is evidence that a priority pollutant is present in the effluent above an effluent limitation (e.g., sample results reported as detected but not quantified [DNQ] when the effluent limitation is less than the method detection limit [MDL], sample results from analytical methods more sensitive than those methods required by this Order, presence of whole effluent toxicity, health advisories for fish consumption, or results of benthic or aquatic organism tissue sampling) and either:

 - i.** A sample result is reported as DNQ and the effluent limitation is less than the Reporting Level (RL); or
 - ii.** A sample result is reported as not detected (ND) and the effluent limitation is less than the MDL, using definitions in Attachment A and reporting protocols described in the MRP.

- d. If triggered by the reasons set forth in Provision VI.C.3.c, above, CMSA's Pollutant Minimization Program shall include, but not be limited to, the following actions and submittals:
 - i. Annual review and semi-annual monitoring of potential sources of the reportable priority pollutants, which may include fish tissue monitoring and other bio-uptake sampling, or alternative measures when source monitoring is unlikely to produce useful analytical data;
 - ii. Quarterly monitoring for the reportable priority pollutants in the influent to the treatment plant. The Executive Officer may approve alternative measures when influent monitoring is unlikely to produce useful analytical data;
 - iii. Submittal of a control strategy designed to proceed toward the goal of maintaining concentrations of the reportable priority pollutants in the effluent at or below the effluent limitation;
 - iv. Implementation of appropriate cost-effective control measures for the reportable priority pollutants, consistent with the control strategy; and
 - v. Inclusion of the following specific items within the annual report required by Provision VI.C.3.b above:
 - (a) All Pollutant Minimization Program monitoring results for the previous year;
 - (b) List of potential sources of the reportable priority pollutants;
 - (c) Summary of all actions undertaken pursuant to the control strategy; and
 - (d) Description of actions to be taken in the following year.

4. Special Provisions for Publicly-Owned Treatment Works (POTWs)

- a. **Pretreatment Program.** CMSA shall implement and enforce its approved pretreatment program in accordance with federal pretreatment regulations (40 C.F.R. part 403); pretreatment standards promulgated under CWA sections 307(b), 307(c), and 307(d); pretreatment requirements specified at 40 C.F.R. section 122.44 (j); and the requirements in Attachment H, *Pretreatment Requirements*. CMSA's responsibilities include, but are not limited to, the following:
 - i. Enforcement of National Pretreatment Standards established at 40 C.F.R. sections 403.5 and 403.6;
 - ii. Implementation of its pretreatment program in accordance with legal authorities, policies, procedures, and financial provisions described in the National Pretreatment Standards (40 C.F.R. part 403);
 - iii. Submission of reports to the State Water Board and the Regional Water Board, as described in Attachment H; and

- iv. Evaluate the need to revise local limits pursuant to 40 C.F.R. section 403.5(c)(1) and, within 180 days following the effective date of this Order, submission of a report describing the changes, with a plan and schedule for implementation.
- b. Sludge and Biosolids Management**
- i. Sludge and biosolids treatment and storage shall not create a nuisance, such as objectionable odors or flies, or result in groundwater contamination.
 - ii. Sludge and biosolids treatment and storage facilities shall be adequate to divert surface runoff from adjacent areas, to protect site boundaries from erosion, and to prevent conditions that would cause drainage from stored materials. Adequate protection is defined as protection from at least a 100-year storm and the highest possible tidal state that may occur.
 - iii. This Order does not authorize permanent onsite sludge or biosolids storage or disposal. A Report of Waste Discharge shall be filed and the site brought into compliance with applicable regulations prior to commencement of any such activity.
- c. Collection System Management.** The San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall properly operate and maintain their respective collection systems (see Attachments D and G, section I.D), report any noncompliance with respect to their respective systems (see Attachments D and G, sections V.E.1 and V.E.2), and mitigate any discharges in violation of this Order associated with their respective systems (see Attachments D and G, section I.C).

State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply with both the statewide WDRs and this Order, the statewide WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.

5. Other Special Provisions

- a. Collection System Agency Tasks to Reduce Blending.** The San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall implement the following tasks to minimize wet weather bypasses in accordance with the following time schedule:

Table 5. Collection System Agency Tasks to Reduce Blending

Task	Compliance Date
The San Rafael Sanitation District	
1. Conduct Planning for Woodland and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the planning phase of the Woodland and Octavia Project, which involves replacing sewer mains and lower laterals.	March 31, 2018
2. Construct 2017/18 Sewer Pipe Repair and Replacement San Rafael Sanitation District shall install spot pipe repairs and pipe replacement of about 880 feet at various locations in its sanitary sewer system.	May 31, 2018
3. Construct La Crescenta Way, Loma Linda Road, and Marina Boulevard Sewer Improvement Project San Rafael Sanitation District shall replace about 955 feet of sewer mains and lower laterals in the La Crescenta Way, Loma Linda Road, and Marina Boulevard areas.	May 31, 2018
4. Conduct Construction Phase of 2017 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising at least 10 miles of sewer mains.	October 31, 2018
5. Complete Design for 2018 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the design to televise approximately 10 miles of sewer mains.	October 31, 2018
6. Complete Design for Woodland and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the Woodland and Octavia Project, which involves replacing sewer mains and lower laterals.	March 31, 2019
7. Conduct Planning for Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the planning phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing sewer mains and lower laterals.	March 31, 2019
8. Complete Design for El Cerrito and Forbes Ave Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the El Cerrito and Forbes Ave Sewer Improvement Project, which involves replacing sewer mains and lower laterals.	June 30, 2019
9. Conduct Construction Phase of 2018 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising approximately 10 miles of sewer mains.	October 31, 2019
10. Complete Design for 2019 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the design of televising approximately 10 miles of sewer mains.	October 31, 2019
11. Complete Design for Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the design phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing sewer mains and lower laterals.	March 31, 2020
12. Construct Woodland Pl/Ave and Octavia Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of the Woodland Pl/Ave and Octavia Sewer Improvement Project, which involves replacing about 3,300 feet of sewer mains and lower laterals.	August 31, 2020
13. Construct El Cerrito and Forbes Ave Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of this project, which involves replacing about 3,900 feet of sewer mains and lower laterals.	June 30, 2020
14. Complete Design for Miramar and Miraflores Sewer Improvement Project San Rafael Sanitation District shall complete the design phase of the Miramar and Miraflores Sewer Improvement Project, which involves replacing sewer mains and lower laterals.	June 30, 2020

Task	Compliance Date
15. Conduct Construction Phase of 2019 Sanitary Sewer Televising Project San Rafael Sanitation District shall complete the construction phase of televising approximately 10 miles of sewer mains.	October 31, 2020
16. Construct the Beach Sewers-Bayside Acres Rehabilitation Project San Rafael Sanitation District shall complete the construction phase of the Beach Sewers-Bayside Acres Rehabilitation Project, which involves replacing about 1,000 feet of sewer mains and lower laterals.	June 30, 2021
17. Construct Miramar and Miraflores Sewer Improvement Project San Rafael Sanitation District shall complete the construction phase of the Miramar and Miraflores Sewer Improvement Project, which involves replacing about 1,600 feet of sewer mains and lower laterals.	June 30, 2021
18. Propose Lateral Ordinances San Rafael Sanitation District shall review the ordinances of Bay Area communities that have successfully adopted measures requiring inspection of private sewer laterals (e.g., upon ownership change), shall develop a lateral inspection ordinance appropriate for its service area and present it to its governing board for consideration, and shall notify the Regional Water Board at least 30 days prior to presenting the proposal.	May 1, 2019
19. Submit Annual Progress Report San Rafael Sanitation District shall submit an annual report documenting the progress or completion of tasks 1 through 18. San Rafael Sanitation District shall also provide an update on its efforts to improve its rehabilitation rate to meet its long-term goal of replacing gravity sewers on an 80-year cycle as described in its <i>Sewer System Management Plan</i> , dated October 2015.	February 1 each year
20. Identify Feasible Actions for Next Permit Term San Rafael Sanitation District shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022
Sanitary District No. 1 of Marin County	
21. Construct FY2015-16 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the continuing construction to rehabilitate or replace approximately 6.7 miles of gravity sanitary sewers.	June 1, 2018
22. Construct Large Diameter Gravity Sewer Rehabilitation Project II-1 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 6,000 feet of 18- to 36-inch trunk lines.	June 1, 2018
23. Construct Large Diameter Gravity Sewer Rehabilitation Project II-2 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 5,000 feet of 18- to 36-inch trunk lines.	June 1, 2018
24. Conduct Smoke Testing for Selected I/I Sub-basins Sanitary District No. 1 of Marin County shall complete smoke testing of approximately 45 miles of gravity sewer lines with high inflow/infiltration rates, as identified by a 2013-14 Flow Study.	October 1, 2018
25. Construct FY2016-17 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the rehabilitation or replacement of approximately 8.4 miles of gravity sanitary sewers.	January 1, 2019
26. Construct Large Diameter Gravity Sewer Rehabilitation Project II-3 Sanitary District No. 1 of Marin County shall complete the construction to rehabilitate approximately 3,000 feet of 18- to 36-inch trunk lines.	June 1, 2019

Task	Compliance Date
27. Conduct Manhole Rehabilitation Sanitary District No. 1 of Marin County shall complete a manhole condition assessment for approximately 3,000 manholes and shall rehabilitate manholes located in the 10-year flood zone by applying various manhole rehabilitation methods (e.g., epoxy lining, jet grouting).	October 1, 2019
28. Complete Design of FY2016-17 Gravity Sewer Improvement Projects Sanitary District No. 1 of Marin County shall complete the replacement of or capacity improvements for approximately 1.8 miles of gravity sanitary sewers.	June 1, 2020
29. Complete Planning for FY 2018-19 Gravity Sewer Rehabilitation Projects Sanitary District No. 1 of Marin County shall complete the planning of projects intended to rehabilitate or replace approximately 4 miles of gravity sanitary sewers.	June 1, 2020
30. Submit Annual Progress Report Sanitary District No. 1 of Marin County shall submit an annual report documenting the progress or completion of tasks 21 through 29.	February 1 each year
31. Identify Feasible Actions for Next Permit Term Sanitary District No. 1 of Marin County shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022
Sanitary District No. 2 of Marin County	
32. Design Harbor Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall design the replacement of about 5,000 feet of sanitary sewer system main lines and about 130 laterals.	June 30, 2019
33. Construct Harbor Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall construct the replacement of the sanitary sewer system main lines and laterals in Task 32.	June 30, 2020
34. Design El Camino Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall design the replacement of about 9,000 feet of sanitary sewer system main lines and about 200 laterals.	June 30, 2021
35. Construct El Camino Drive Sewer Rehabilitation Sanitary District No. 2 of Marin County shall construct the replacement of the sanitary sewer system main lines and laterals in Task 34.	June 30, 2022
36. Propose Lateral Ordinances Sanitary District No. 2 of Marin County shall review the ordinances of Bay Area communities that have successfully adopted measures requiring inspection of private sewer laterals (e.g., upon ownership change), shall develop a lateral inspection ordinance appropriate for its service area and present it to its governing board for consideration, and shall notify the Regional Water Board at least 30 days prior to presenting the proposal.	May 1, 2019
37. Submit Annual Progress Report Sanitary District No. 2 of Marin County shall submit an annual report documenting the progress or completion of tasks 32 through 36.	February 1 each year
38. Identify Feasible Actions for Next Permit Term Sanitary District No. 2 of Marin County shall submit a report identifying all feasible actions it can do to reduce inflow and infiltration during the next permit term. CMSA should include such information in its Utility Analysis (Table 6, Task 7) if it seeks to continue bypassing peak wet weather flows around secondary treatment units.	January 1, 2022

- b. CMSA Tasks to Reduce Blending.** CMSA shall implement the following tasks to minimize wet weather bypasses and reduce blending in accordance with the following time schedule:

Table 6. Central Marin Sanitation Agency Tasks to Reduce Blending

Task	Compliance Date
1. Replace Collection System Flow Meter at San Quentin Prison CMSA shall replace the 12-inch magnetic flow meter that measures flow from San Quentin Prison and the San Quentin Village Sewer Maintenance District to obtain more accurate inflow/infiltration flows from these tributary agencies.	June 30, 2018
2. Coordinate with Collection System Agencies in the Replacement of Flow Meter for Sanitary District No. 2 of Marin County CMSA shall purchase a new 12-inch flow meter and coordinate with Sanitary District No.1 of Marin County and Sanitary District No. 2 of Marin County in the installation of the new meter to more accurately measure inflow/infiltration flows from Sanitary District No.2 of Marin County.	December 1, 2019
3. Replace Collection System Flow Meter for the San Rafael Sanitation District CMSA shall replace the ultrasonic flow meter in the 45-inch interceptor that measures flow from the San Rafael Sanitation District collection system to obtain more accurate inflow/infiltration flows from this tributary agency.	June 30, 2018
4. Report Progress on Flow Meter Installations CMSA shall report on the progress of each of the flow meter installations described above in tasks 1, 2, and 3, and describe the status and schedule.	Annually, with Annual Self-Monitoring Report due February 1
5. Summarize Effect of New Flow Meters After data have been collected from the new meters to measure inflow/infiltration flows from the tributary agencies, CMSA shall analyze the data and describe how the new meters are improving CMSA's understanding of inflow/infiltration flows from the tributary agencies.	With Report of Waste Discharge due March 1, 2022
6. Implement Public Notification Protocol CMSA shall continue to implement its August 30, 2012, <i>Public Notification Protocol</i> , as updated, to alert the public of blending events.	January 1, 2018
7. Prepare Utility Analysis If seeking to continue bypassing peak wet weather flows around the secondary treatment units based on 40 C.F.R. 122.41(m)(4)(i)(A)-(C), CMSA shall complete a utility analysis that contains all elements described in part 1 of the No Feasible Alternatives Analysis Process in U.S. EPA's proposed peak wet weather policy (<i>National Pollutant Discharge Elimination System Permit Requirements for Peak Wet Weather Discharges from Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems</i> , Fed. Reg. Vol. 70, No. 245, pages 76013-76018, December 22, 2005) and demonstrate that CMSA has met the requirements for Regional Water Board approval pursuant to Attachment D section I.G.3. The submittal shall list and describe all feasible actions CMSA could implement during the next permit term. It shall also list and describe all feasible actions the collection system agencies could implement as determined and provided by the collection system agencies.	With Report of Waste Discharge due March 1, 2022

- c. Copper Action Plan.** CMSA shall implement pretreatment, source control, and pollution prevention for copper in accordance with the following tasks and time schedule:

Table 7. Copper Action Plan

Task	Compliance Date
1. Implement Copper Control Program Continue implementing the existing program described in CMSA's Pollution Prevention Report dated February 24, 2017, to reduce identified copper sources, including, as applicable, taking the following actions:	Implementation shall be ongoing

Task	Compliance Date
a. Providing education and outreach to the public (e.g., focusing on proper pool and spa maintenance and plumbers' roles in reducing corrosion); b. If corrosion is a significant copper source, working cooperatively with local water purveyors to reduce and control water corrosivity, as appropriate, and ensuring that local plumbing contractors implement best management practices to reduce corrosion in pipes; and c. Educating plumbers, designers, and maintenance contractors for pools and spas to encourage best management practices that minimize copper discharges.	
2. Implement Additional Actions If the Regional Water Board notifies CMSA that the three-year rolling mean dissolved copper concentration in the Central Bay exceeds 2.2 µg/L, then within 90 days of the notification, evaluate the effluent copper concentration trend and, if it is increasing, develop and begin implementation of additional measures to control copper discharges. Report the conclusion of the trend analysis and provide a schedule for any new actions to be taken within the next 12 months.	With next annual pollution prevention report due February 28 (at least 90 days following notification)
3. Report Status Submit an annual report documenting copper control program implementation that evaluates the effectiveness of the actions taken, including any additional actions required by Task 2 above, and provides a schedule for actions to be taken within the next 12 months.	With annual pollution prevention report due February 28 each year

- d. Cyanide Action Plan.** CMSA shall implement monitoring and surveillance, pretreatment, source control, and pollution prevention for cyanide in accordance with the following tasks and time schedule:

Table 8. Cyanide Action Plan

Task	Compliance Date
1. Review Potential Cyanide Sources Submit an up-to-date inventory of potential cyanide sources. If no cyanide source is identified, tasks 2 and 3, below, are not required unless CMSA receives a request to discharge detectable levels of cyanide to the sewer. In this case, notify the Executive Officer and implement tasks 2 and 3.	With annual pollution prevention report due February 28, 2018
2. Implement Cyanide Control Program Implement a control program to minimize cyanide discharges consisting, at a minimum, of the following elements: a. Inspect each potential source to assess the need to include that source in the control program. b. Inspect sources included in the control program annually. Inspection elements may be based on U.S. EPA guidance, such as <i>Industrial User Inspection and Sampling Manual for POTWs</i> (EPA 831-B-94-01). c. Develop and distribute educational materials regarding the need to prevent cyanide discharges to sources included in the control program. d. Prepare an emergency monitoring and response plan to be implemented if a significant cyanide discharge occurs. If the treatment plant's influent cyanide concentration exceeds 10 µg/L, CMSA shall collect a followup sample within 5 days of becoming aware of the laboratory results. If the results of the followup sample also exceed 10 µg/L, then a "significant cyanide discharge" is occurring.	Implementation shall be ongoing

Task	Compliance Date
3. Implement Additional Measures If the Regional Water Board notifies CMSA that ambient monitoring shows cyanide concentrations are 1.0 µg/L or higher in the main body of San Francisco Bay, then within 90 days of the notification, commence actions to identify and abate cyanide sources responsible for the elevated ambient concentrations, report on the progress and effectiveness of the actions taken, and provide a schedule for actions to be taken within the next 12 months.	With next annual pollution prevention report due February 28 (at least 90 days following notification)
4. Report Status of Cyanide Control Program Submit an annual report documenting cyanide control program implementation and addressing the effectiveness of actions taken, including any additional cyanide controls required by Task 3, above, and provide a schedule for actions to be taken within the next 12 months.	With annual pollution prevention report due February 28 each year

6. Anaerobically-Digestible Material

CMSA shall continue to implement its Standard Operating Procedures for processing anaerobically-digestible material that it collects from offsite sources. The Standard Operating Procedures shall be evaluated annually and updated as appropriate. Any updates shall be documented in CMSA's Annual Self-Monitoring Report. The Standard Operating Procedures shall address material handling, including unloading, screening, or other processing prior to anaerobic digestion; transportation; spill prevention; spill response; avoidance of the introduction of materials that could cause interference, pass through, or upset of the treatment processes; avoidance of prohibited material; vector control; odor control; operation and maintenance; and the disposition of any solid waste segregated from introduction to the digester. CMSA shall train its staff on the Standard Operating Procedures and maintain records for a minimum of three years for each load received, describing the hauler, waste type, and quantity received. In addition, CMSA shall maintain records for a minimum of three years for the disposition, location, and quantity of cumulative pre-digestion segregated solid waste hauled offsite.

ATTACHMENT A – DEFINITIONS

Arithmetic Mean (μ)

Also called the average, the sum of measured values divided by the number of samples. For ambient water concentrations, the arithmetic mean is calculated as follows:

$$\text{Arithmetic mean} = \mu = \Sigma x / n \quad \text{where: } \Sigma x \text{ is the sum of the measured ambient water concentrations, and } n \text{ is the number of samples.}$$

Average Monthly Effluent Limitation (AMEL)

The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Effluent Limitation (AWEL)

The highest allowable average of daily discharges over a calendar week (Sunday through Saturday), calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Bioaccumulative

Taken up by an organism from its surrounding medium through gill membranes, epithelial tissue, or from food and subsequently concentrated and retained in the body of the organism.

Carcinogenic

Known to cause cancer in living organisms.

Coefficient of Variation

Measure of data variability calculated as the estimated standard deviation divided by the arithmetic mean of the observed values.

Daily Discharge

Either: (1) the total mass of the constituent discharged over the calendar day (12:00 am through 11:59 pm) or any 24-hour period that reasonably represents a calendar day for purposes of sampling (as specified in the permit) for a constituent with limitations expressed in units of mass; or (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g., concentration).

The daily discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day or other 24-hour period defined as a day) or by the arithmetic mean of analytical results from one or more grab samples taken over the course of the day.

For composite sampling, if 1 day is defined as a 24-hour period other than a calendar day, the analytical result for the 24-hour period is considered the result for the calendar day in which the 24-hour period ends.

Detected, but Not Quantified (DNQ)

Sample result less than the RL, but greater than or equal to the laboratory's MDL. Sample results reported as DNQ are estimated concentrations.

Dilution Credit

Amount of dilution granted to a discharge in the calculation of a water quality-based effluent limitation, based on the allowance of a specified mixing zone. It is calculated from the dilution ratio or determined by conducting a mixing zone study or modeling the discharge and receiving water.

Effluent Concentration Allowance (ECA)

Value derived from the water quality criterion/objective, dilution credit, and ambient background concentration that is used, in conjunction with the CV for the effluent monitoring data, to calculate a long-term average (LTA) discharge concentration. The ECA has the same meaning as wasteload allocation (WLA) as used in U.S. EPA guidance (*Technical Support Document For Water Quality-based Toxics Control*, March 1991, second printing, EPA/505/2-90-001).

Enclosed Bay

Indentation along the coast that encloses an area of oceanic water within a distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. Enclosed bays do not include inland surface waters or ocean waters.

Estimated Chemical Concentration

Concentration that results from the confirmed detection of the substance below the ML value by the analytical method.

Estuaries

Waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars are considered estuaries. Estuarine waters are considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and seawater. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Water Code section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay rivers. Estuaries do not include inland surface waters or ocean waters.

Inland Surface Waters

All surface waters of the state that do not include the ocean, enclosed bays, or estuaries.

Instantaneous Maximum Effluent Limitation

Highest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous maximum limitation).

Instantaneous Minimum Effluent Limitation

Lowest allowable value for any single grab sample or aliquot (i.e., each grab sample or aliquot is independently compared to the instantaneous minimum limitation).

Maximum Daily Effluent Limitation (MDEL)

Highest allowable daily discharge of a pollutant, over a calendar day (or 24-hour period). For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Median

Middle measurement in a set of data. The median of a set of data is found by first arranging the measurements in order of magnitude (either increasing or decreasing order). If the number of measurements (n) is odd, then the median = $X_{(n+1)/2}$. If n is even, then the median = $(X_{n/2} + X_{(n/2)+1})/2$ (i.e., the midpoint between $n/2$ and $n/2+1$).

Method Detection Limit (MDL)

Minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 C.F.R. part 136, Attachment B, revised as of July 3, 1999.

Minimum Level (ML)

Concentration at which the entire analytical system gives a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

Mixing Zone

Limited volume of receiving water allocated for mixing with a wastewater discharge where water quality criteria can be exceeded without causing adverse effects to the overall water body.

Not Detected (ND)

Sample results less than the laboratory's MDL.

Persistent Pollutants

Substances for which degradation or decomposition in the environment is nonexistent or very slow.

Pollutant Minimization Program

Program of waste minimization and pollution prevention actions that include, but are not limited to, product substitution, waste stream recycling, alternative waste management methods, and education of the public and businesses. The goal of the Pollutant Minimization Program is to reduce all potential sources of a priority pollutant through pollutant minimization (control) strategies, including pollution prevention measures as appropriate, to maintain the effluent concentration at or below the water quality-based effluent limitation. Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. Cost effectiveness may be considered when establishing the requirements of a Pollutant Minimization Program. The completion and implementation of a Pollution Prevention Plan, if required pursuant to Water Code section 13263.3(d), is considered to fulfill Pollutant Minimization Program requirements.

Pollution Prevention

Any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes, but is not limited to, input change, operational improvement, production process change, and product reformulation (as defined in Water Code section 13263.3). Pollution prevention does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the State Water Board or Regional Water Board.

Reporting Level (RL)

ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order, including an additional factor if applicable as discussed herein. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Regional Water Board either from SIP Appendix 4 in accordance with SIP section 2.4.2 or established in accordance with SIP section 2.4.3. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.

Source of Drinking Water

Any water designated as having a municipal or domestic supply (MUN) beneficial use.

Standard Deviation (σ)

Measure of variability calculated as follows:

$$\sigma = (\sum[(x - \mu)^2]/(n - 1))^{0.5}$$

where:

x is the observed value;

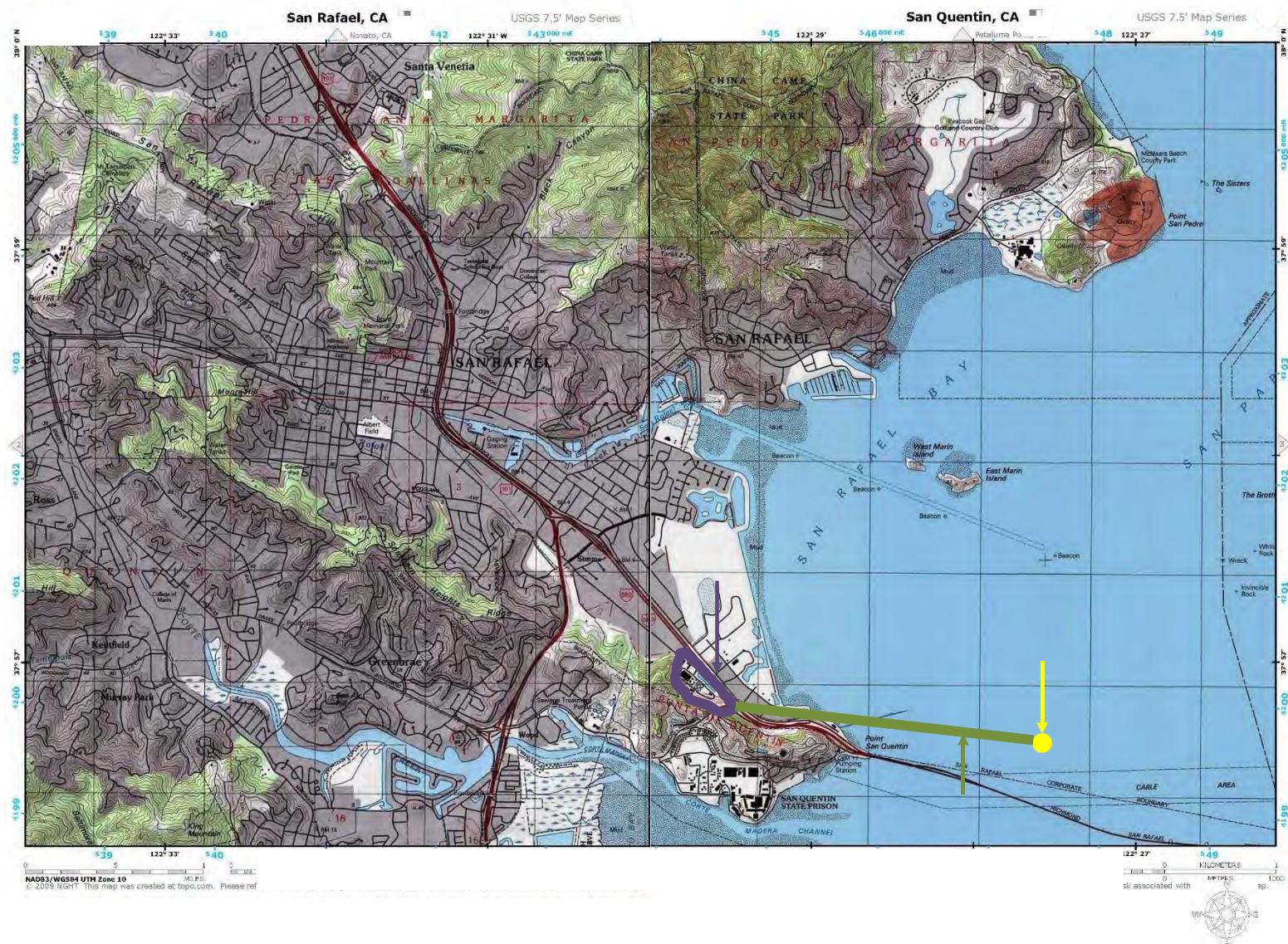
μ is the arithmetic mean of the observed values; and

n is the number of samples.

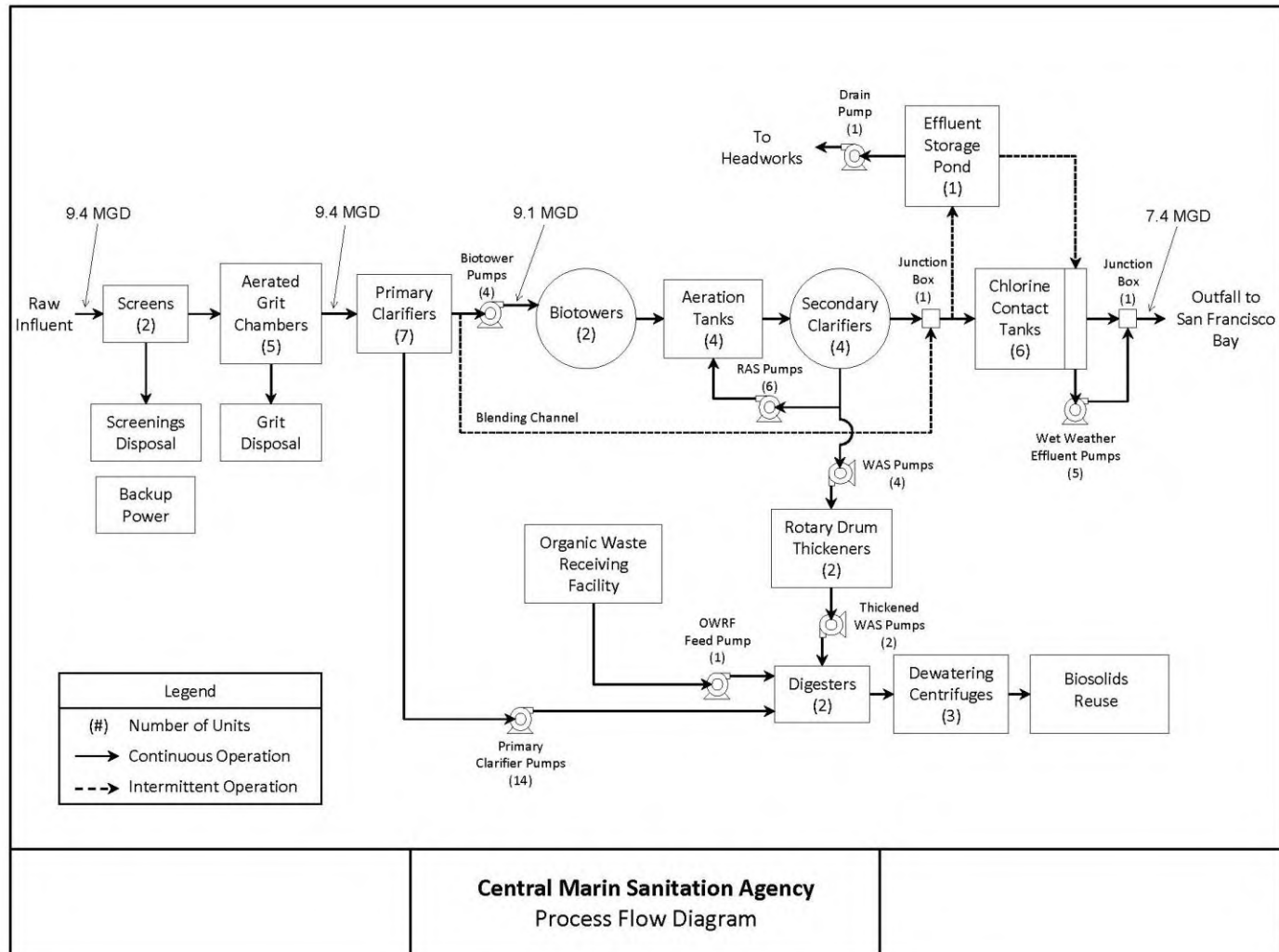
Toxicity Reduction Evaluation (TRE)

Study conducted in a step-wise process designed to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. The first steps of the TRE consist of the collection of data relevant to the toxicity, including additional toxicity testing, and an evaluation of facility operations and maintenance practices, and best management practices. A Toxicity Identification Evaluation (TIE) may be required as part of the TRE, if appropriate. A TIE is a set of procedures to identify the specific chemicals responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

ATTACHMENT B – FACILITY MAP



ATTACHMENT C – PROCESS FLOW DIAGRAM



Note: Blending Channel is not part of the treatment process. It is subject to federal Standard Provision (Attachment D) Section I.G.

ATTACHMENT D –STANDARD PROVISIONS

I. STANDARD PROVISIONS—PERMIT COMPLIANCE

A. Duty to Comply

1. The Discharger must comply with all of the terms, requirements, and 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; or a combination thereof. (40 C.F.R. § 122.41(a); Wat. Code §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)
2. The Discharger shall comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants 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 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, U.S. EPA, 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 (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); Wat. Code, §§ 13267, 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 (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); Wat. Code, §§ 13267, 13383);
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); Wat. Code, §§ 13267, 13383);
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); Wat. Code, §§ 13267, 13383); 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. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); Wat. Code, 13267, 13383.)

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. **Approval.** 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 prior notice, if possible at least 10 days before the date of the bypass. The notice shall be sent to the Regional Water Board. As of December 21, 2020, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(i).)
- b. **Unanticipated bypass.** The Discharger shall submit a notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). The notice shall be sent to the Regional Water Board. As of December 21, 2020, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (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 must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. chapter 1, subchapter N. Monitoring must be conducted according to sufficiently sensitive test methods approved under 40 C.F.R. part 136 for the analysis of pollutants or pollutant parameters or required under 40 C.F.R. chapter 1, subchapter N. For the purposes of this paragraph, a method is sufficiently sensitive when:
 - 1.** The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter, and either (a) the method ML is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter, or (b) the method ML is above the applicable water quality criterion but the amount of the pollutant or pollutant parameter in a facility's discharge is

high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

2. The method has the lowest ML of the analytical methods approved under 40 C.F.R. part 136 or required under 40 C.F.R. chapter 1, subchapter N, for the measured pollutant or pollutant parameter.

In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. chapter 1, subchapter N, monitoring must be conducted according to a test procedure specified in this Order for such pollutants or pollutant parameters. (40 C.F.R. §§ 122.21(e)(3), 122.41(j)(4), 122.44(i)(1)(iv).)

IV. STANDARD PROVISIONS—RECORDS

- A. 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 the following:
 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) the 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 U.S. EPA within a reasonable time, any information which the Regional Water Board, State Water Board, or U.S. EPA 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 U.S. EPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, §§ 13267, 13383.)

B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Standard Provisions—Reporting V.B.2, V.B.3, V.B.4, V.B.5, and V.B.6 below. (40 C.F.R. § 122.41(k).)
2. For a corporation, all permit applications shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. (40 C.F.R. § 122.22(a)(1).)

For a partnership or sole proprietorship, all permit applications shall be signed by a general partner or the proprietor, respectively. (40 C.F.R. § 122.22(a)(2).)

For a municipality, State, federal, or other public agency, 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 U.S. EPA). (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 U.S. EPA 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 (40 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).)
6. Any person providing the electronic signature for documents described in Standard Provisions – V.B.1, V.B.2, or V.B.3 that are submitted electronically shall meet all relevant requirements of Standard Provisions – Reporting V.B, and shall ensure that all relevant requirements of 40 C.F.R. part 3 (Cross-Media Electronic Reporting) and 40 C.F.R. part 127 (NPDES Electronic Reporting Requirements) are met for that submission. (40 C.F.R § 122.22(e).)

C. Monitoring Reports

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program 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. As of December 21, 2016, all reports and forms must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J and comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (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 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. chapter 1, subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Regional Water Board or State 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 report shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The report 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.

For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (i.e., combined sewer overflow, sanitary sewer overflow, or bypass event), type of overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volume untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the event, and whether the noncompliance was related to wet weather.

As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events must be submitted to the Regional Water Board and must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting V.J. The reports shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours:
 - 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 40 C.F.R. 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. (Alternatively, for an existing manufacturing, commercial, mining, or silvicultural discharge as referenced in 40 C.F.R. section 122.42(a), this notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under 40 C.F.R. 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 this Order's 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. For noncompliance related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in Standard Provision – Reporting V.E and the applicable required data in appendix A to 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (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 U.S. EPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

J. Initial Recipient for Electronic Reporting Data

The owner, operator, or duly authorized representative is required to electronically submit NPDES information specified in appendix A to 40 C.F.R. part 127 to the initial recipient defined in 40 C.F.R. section 127.2(b). U.S. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by state and by NPDES data group [see 40 C.F.R. § 127.2(c)]. U.S. EPA will update and maintain this list. (40 C.F.R. § 122.41(l)(9).)

VI. STANDARD PROVISIONS—ENFORCEMENT

- A. The Regional Water Board is authorized to enforce the terms of this Order under several provisions of the Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.

VII. ADDITIONAL PROVISIONS—NOTIFICATION LEVELS

A. Non-Municipal Facilities

Existing manufacturing, commercial, mining, and silvicultural Dischargers shall notify the Regional Water Board as soon as they know or have reason to believe (40 C.F.R. § 122.42(a)):

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following “notification levels” (40 C.F.R. § 122.42(a)(1)):
 - a. 100 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(1)(i));
 - b. 200 µg/L for acrolein and acrylonitrile; 500 µg/L for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(1)(ii));
 - c. Five (5) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(1)(iii)); or
 - d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(1)(iv).)
2. That any activity has occurred or will occur that would result in the discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in this Order, if that discharge will exceed the highest of the following “notification levels” (40 C.F.R. § 122.42(a)(2)):
 - a. 500 micrograms per liter (µg/L) (40 C.F.R. § 122.42(a)(2)(i));
 - b. 1 milligram per liter (mg/L) for antimony (40 C.F.R. § 122.42(a)(2)(ii));
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the Report of Waste Discharge (40 C.F.R. § 122.42(a)(2)(iii)); or
 - d. The level established by the Regional Water Board in accordance with section 122.44(f). (40 C.F.R. § 122.42(a)(2)(iv).)

B. 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 CWA sections 301 or 306 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 this 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 E – MONITORING AND REPORTING PROGRAM (MRP)

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ATTACHMENT E – MONITORING AND REPORTING PROGRAM (MRP)

This MRP establishes monitoring, reporting, and recordkeeping requirements that implement federal and State laws and regulations.

I. GENERAL MONITORING PROVISIONS

- A. CMSA shall comply with this MRP. The Executive Officer may amend this MRP pursuant to 40 C.F.R. sections 122.62, 122.63, and 124.5. If any discrepancies exist between this MRP and the “Regional Standard Provisions, and Monitoring and Reporting Requirements (Supplement to Attachment D) for NPDES Wastewater Discharge Permits” (Attachment G), this MRP shall prevail.
- B. CMSA shall conduct all monitoring in accordance with Attachment D, section III, as supplemented by Attachment G. Equivalent test methods must be more sensitive than those specified in 40 C.F.R. part 136 and must be specified in this permit.
- C. CMSA shall ensure that results of the Discharge Monitoring Report-Quality Assurance (DMR-QA) Study or most recent Water Pollution Performance Evaluation Study are submitted annually to the State Water Board at the following address:

State Water Resources Control Board
Quality Assurance Program Officer
Office of Information Management and Analysis
1001 I Street, Sacramento, CA 95814

II. MONITORING LOCATIONS

CMSA shall establish the following monitoring locations to demonstrate compliance with the effluent limitations, discharge specifications, and other requirements in this Order:

Table E-1. Monitoring Locations

Sampling Location Type	Monitoring Location Name	Monitoring Location Description ^[1]
Influent	INF-001	A point at the treatment plant headworks at which all waste tributary to the treatment system is present and preceding any phase of treatment. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-001	A point at the treatment plant between the point of discharge and the point at which all waste tributary to the outfall is present. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-002	A point at the treatment plant following dechlorination. <i>Latitude 37.950658 Longitude -122.496994</i>
Effluent	EFF-002b	A point at the treatment plant at which all blended fully-treated and primary-treated waste tributary to the discharge outfall is present (may be the same location as Monitoring Location EFF-001 or EFF-002) <i>Latitude 37.950658 Longitude -122.496994</i>
Biosolids	BIO-001	Biosolids (treated sludge)

Footnote:

^[1] Latitude and longitude are approximate for administrative purposes.

III. INFLUENT MONITORING REQUIREMENTS

CMSA shall monitor treatment plant influent at Monitoring Location INF-001 as follows:

Table E-2. Influent Monitoring

Parameter	Units	Sample Type	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅) ^[2]	mg/L	C-24	1/Week
Total Suspended Solids (TSS) ^[2]	mg/L	C-24	1/Week
Cyanide, Total ^[3]	µg/L	Grab	1/Month

Unit Abbreviations:

MGD = million gallons per day
mg/L = milligrams per liter
µg/L = micrograms per liter

Sampling Types and Frequencies:

C-24 = 24-hour composite sample
Grab = grab sample
Continuous = measured continuously
Continuous/D = measured continuously, and recorded and reported daily
1/Week = once per week
1/Month = once per month

Footnote:

^[1] The following flow information shall be reported in monthly self-monitoring reports:

- daily average flow (MGD)
- total monthly flow (MG)

^[2] CBOD₅ and TSS samples shall be collected concurrently with effluent samples.

^[3] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

IV. EFFLUENT MONITORING REQUIREMENTS

A. Effluent Monitoring at Monitoring Location EFF-001

Except during blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-001 as follows:

Table E-3. Effluent Monitoring at Monitoring Location EFF-001

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Enterococcus Bacteria ^[3]	MPN/100mL ^[2]	Grab	1/Quarter
Total Coliform Bacteria ^[3]	MPN/100mL	Grab	3/Week

Unit Abbreviations:

MGD = million gallons per day
MPN/100 mL = most probable number per 100 milliliters

Sampling Types and Frequencies:

Continuous = measured continuously
Continuous/D = measured continuously, and recorded and reported daily
3/Week = three times per week
1/Quarter = once per quarter

Footnotes:

^[1] The following flow information shall be reported in monthly self-monitoring reports:

- daily average flow (MGD)
- total monthly flow (MG)

[2] Results may be reported as Colony Forming Units (CFU)/100 mL if the laboratory method used provides results in CFU/100 mL.

[3] Samples for enterococcus bacteria or total coliform bacteria must be dechlorinated immediately after collection.

B. Effluent Monitoring at Monitoring Location EFF-002

Except during blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-002 as follows:

Table E-4. Effluent Monitoring at Monitoring Location EFF-002

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
pH ^[1]	s.u.	Grab	1/Day or Continuous/D
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅)	mg/L	C-24	1/Week ^[2]
Total Suspended Solids (TSS)	mg/L	C-24	2/Week ^[2]
Total Residual Chlorine ^[3]	mg/L	Continuous	Continuous/D
Ammonia, Total	mg/L as N	C-24	1/Month
Copper, Total Recoverable	µg/L	C-24	1/Month
Cyanide, Total ^[4]	µg/L	Grab	1/Month
Acute Toxicity ^[5]	% survival	Continuous	1/Month
Chronic Toxicity ^[6]	TU _c	C-24	1/Quarter
Oil and Grease	mg/L	Grab	2/Year
Dioxin-TEQ	µg/L	Grab	2/Year

Unit Abbreviations:

MGD = million gallons per day
s.u. = standard units
mg/L = milligrams per liter
µg/L = micrograms per liter
TU_c = chronic toxicity units

Sampling Types and Frequencies:

C-24 = 24-hour Composite
Continuous = measured continuously
Continuous/D = measured continuously, and recorded and reported daily
1/Day = once per day
2/Week = two times per week
1/Month = once per month
1/Quarter = once per quarter
2/Year = twice per year

Footnotes:

[1] If pH is monitored continuously, the minimum and maximum for each day shall be reported in monthly self-monitoring reports.

[2] CBOD₅ and TSS samples shall be collected concurrently with influent samples at least once per week. Weekly CBOD₅ and TSS percent removal shall be reported for each month in accordance with section VIII of the Order.

[3] Effluent residual chlorine concentrations shall be monitored continuously or, at a minimum, every hour. CMSA shall describe all excursions of the chlorine limit in the transmittal letter of self-monitoring reports as required by Attachment G section V.C.1.a. If monitoring continuously, CMSA shall report through data upload to CIWQS, from discrete readings of the continuous monitoring every hour on the hour, the maximum for each day and any other discrete hourly reading that exceed the effluent limit, and, for the purpose of mandatory minimum penalties required by Water Code section 13385(i), compliance shall be based only on these discrete readings. CMSA shall retain continuous monitoring readings for at least three years. The Regional Water Board reserves the right to use all continuous monitoring data for discretionary enforcement.

CMSA may elect to use a continuous on-line monitoring system for measuring or determining that residual dechlorinating agent is present. This monitoring system may be used to prove that anomalous residual chlorine exceedances measured by on-line chlorine analyzers are false positives and are not valid total residual chlorine detections because it is chemically improbable to have chlorine

present in the presence of sodium bisulfite. If Regional Water Board staff finds convincing evidence that chlorine residual exceedances are false positives, the exceedances are not violations of this Order's total chlorine residual limit.

- [4] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.
- [5] Acute bioassay tests shall be performed in accordance with MRP section V.A.
- [6] Chronic toxicity tests shall be performed in accordance with MRP section V.B.

C. Effluent Monitoring at Monitoring Location EFF-002b

During blending, CMSA shall monitor treatment plant effluent at Monitoring Location EFF-002b as follows:

Table E-5. Effluent Monitoring at Monitoring Location EFF-002b

Parameter	Units	Sample Type ^[2]	Minimum Sampling Frequency
Flow ^[1]	MGD	Continuous	Continuous/D
Volume of partially-treated wastewater	MG	Calculated	1/Blending Event
Duration of blending event ^[2]	hours	Calculated	1/Blending Event
pH ^[3]	s.u.	Grab or Continuous	1/Day or Continuous/D
Total Residual Chlorine ^[4]	mg/L	Grab or Continuous	Continuous/D
Total Suspended Solids (TSS)	mg/L	C-24	1/Day
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C (CBOD ₅)	mg/L	C-24	1/Year ^[5]
Enterococcus Bacteria	MPN/100mL ^[6]	Grab	1/Day
Total Coliform Bacteria	MPN/100mL	Grab	1/Day
Ammonia, Total	mg/L as N	C-24	1/Year ^[5]
Copper, Total Recoverable	µg/L	C-24	1/Year ^[5]
Cyanide, Total ^[7]	µg/L	Grab	1/Year ^[5]

Unit Abbreviations:

MGD = million gallons per day
 MG = million gallons
 s.u. = standard units
 mg/L = milligrams per liter
 µg/L = micrograms per liter
 MPN/100 mL = most probable number per 100 milliliters

Sampling Types and Frequencies:

1/Blending Event = once per blending event
 C-24 = 24-hour Composite
 Continuous = measured continuously
 Continuous/D = measured continuously, and recorded and reported daily
 1/Day = once per day
 1/Year = once per year

Footnotes:

- [1] The following flow information shall be reported in monthly self-monitoring reports:
- daily average flow (MGD)
 - maximum daily flow (MGD)
- [2] For each blending event, report the date and time each event starts and ends.
- [3] If pH is monitored continuously, the minimum and maximum for each day shall be reported in monthly self-monitoring reports.
- [4] Effluent residual chlorine concentrations shall be monitored continuously or, at a minimum, every hour. CMSA shall describe all excursions of the chlorine limit in the transmittal letter of self-monitoring reports as required by Attachment G section V.C.1.a. If monitoring continuously, CMSA shall report through data upload to CIWQS, from discrete readings of the continuous monitoring every hour on the hour, the maximum for each day and any other discrete hourly reading that exceed the effluent limit, and, for the purpose of mandatory minimum penalties required by Water Code section 13385(i), compliance shall be based only on these discrete

readings. CMSA shall retain continuous monitoring readings for at least three years. The Regional Water Board reserves the right to use all continuous monitoring data for discretionary enforcement.

CMSA may elect to use a continuous on-line monitoring system for measuring or determining that residual dechlorinating agent is present. This monitoring system may be used to prove that anomalous residual chlorine exceedances measured by on-line chlorine analyzers are false positives and are not valid total residual chlorine detections because it is chemically improbable to have chlorine present in the presence of sodium bisulfite. If Regional Water Board staff finds convincing evidence that chlorine residual exceedances are false positives, the exceedances are not violations of this Order's total chlorine residual limit.

- [5] If a TSS sample collected on the same day exceeds 45 mg/L, the frequency shall be once per day.
- [6] Results may be reported as Colony Forming Units (CFU)/100 mL if the laboratory method used provides results in CFU/100 mL.
- [7] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

V. TOXICITY TESTING REQUIREMENTS

A. Acute Toxicity

1. Compliance with the acute toxicity effluent limitations shall be evaluated at Monitoring Location EFF-002 by measuring survival of test organisms exposed to 96-hour continuous flow-through bioassays.
2. Test organisms shall be rainbow trout (*Oncorhynchus mykiss*). Alternatively, the Executive Officer may specify a more sensitive organism or, if testing a particular organism proves unworkable, the most sensitive organism available.
3. All bioassays shall be performed according to the most up-to-date protocols in 40 C.F.R. part 136, currently *Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms*, 5th Edition (EPA-821-R-02-012). If these protocols prove unworkable, the Executive Officer and the Environmental Laboratory Accreditation Program may grant exceptions in writing upon CMSA's request with justification.
4. If CMSA demonstrates that specific identifiable substances in the discharge are rapidly rendered harmless upon discharge to the receiving water, compliance with the acute toxicity limit may be determined after test samples are adjusted to remove the influence of those substances. Written acknowledgement that the Executive Officer concurs with CMSA's demonstration and that the adjustment will not remove the influence of other substances must be obtained prior to any such adjustment. CMSA may manually adjust the pH of acute toxicity samples prior to performing bioassays to minimize ammonia toxicity interference.
5. Bioassay water monitoring shall include, on a daily basis, pH, dissolved oxygen, ammonia (if toxicity is observed), temperature, hardness, and alkalinity. These results shall be reported. If final or intermediate results of an acute bioassay test indicate a violation or threatened violation (e.g., the percentage of surviving test organisms is less than 70 percent), CMSA shall initiate a new test as soon as practical and shall investigate the cause of the mortalities and report its findings in the next self-monitoring report. CMSA shall repeat the test until a test fish survival rate of 90 percent or greater is observed. If the control fish survival rate is less than 90 percent, the bioassay test shall be restarted with new fish and shall continue as soon as practical until an acceptable test is completed (i.e., control fish survival rate is 90 percent or greater).

B. Chronic Toxicity

1. Monitoring Requirements

- a. **Sampling.** CMSA shall collect 24-hour composite samples of the effluent at Monitoring Location EFF-002 for critical life stage toxicity testing as indicated below. For toxicity tests requiring renewals, 24-hour composite samples shall be collected on consecutive or alternating days.
- b. **Test Species.** The test species shall be mysid shrimp (*Americamysis bahia*) unless a more sensitive species is identified. If using this species proves unworkable, the Executive Officer may specify a different species in writing upon CMSA's request with justification. CMSA shall conduct a chronic toxicity screening test as described in Appendix E-1, or as described in applicable State Water Board plan provisions that become effective after adoption of this Order, following any significant change in the nature of the effluent. If there is no significant change in the nature of the effluent, CMSA shall conduct a screening test and submit the results with its application for permit reissuance. Upon completion of the chronic toxicity screening, CMSA shall use the most sensitive species to conduct subsequent monitoring.
- c. **Frequency.** Chronic toxicity monitoring shall be as specified below:
 - i. CMSA shall monitor routinely once per quarter.
 - ii. CMSA shall accelerate monitoring to monthly after exceeding a three-sample median of 10 TUC or a single-sample maximum of 20 TUC. Based on the TUC results, the Executive Officer may specify a different frequency for accelerated monitoring to ensure that accelerated monitoring provides useful information.
 - iii. CMSA shall return to routine monitoring if accelerated monitoring does not exceed the triggers in ii, above.
 - iv. If accelerated monitoring confirms consistent toxicity in excess of the triggers in ii, above, CMSA shall continue accelerated monitoring and initiate toxicity reduction evaluation (TRE) procedures in accordance with section V.B.3, below.
 - v. CMSA shall return to routine monitoring after implementing appropriate elements of the TRE and either the toxicity drops below the triggers in ii, above, or, based on the TRE results, the Executive Officer determines that accelerated monitoring would no longer provide useful information.

Monitoring conducted pursuant to a TRE shall satisfy the requirements for routine and accelerated monitoring while the TRE is underway.

- d. **Methodology.** Sample collection, handling, and preservation shall be in accordance with U.S. EPA protocols. In addition, bioassays shall be conducted in compliance with the most recently promulgated test methods, as shown in Appendix E-2. These are *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, currently third edition (EPA-821-R-02-014). If these

protocols prove unworkable, the Executive Officer and the Environmental Laboratory Accreditation Program may grant exceptions in writing upon CMSA's request with justification.

If CMSA demonstrates that specific identifiable substances in the discharge are rapidly rendered harmless upon discharge to the receiving water, compliance with the chronic toxicity trigger may be determined after test samples are adjusted to remove the influence of those substances. Written acknowledgement that the Executive Officer concurs with CMSA's demonstration and that the adjustment will not remove the influence of other substances must be obtained prior to any such adjustment.

- e. Dilution Series.** CMSA shall conduct tests at 40%, 20%, 10%, 5%, and 2.5%. The “%” represents percent effluent as discharged. Test sample pH may be controlled to the level of the effluent sample as received prior to being salted up.

2. Reporting Requirements

- a.** CMSA shall provide toxicity test results with self-monitoring reports and shall include the following, at a minimum, for each test:
 - i.** Sample date
 - ii.** Test initiation date
 - iii.** Test species
 - iv.** End point values for each dilution (e.g., number of young, growth rate, percent survival)
 - v.** No Observable Effect Level (NOEL) values in percent effluent. The NOEL shall equal the IC₂₅ or EC₂₅ (see MRP Appendix E-1). If the IC₂₅ or EC₂₅ cannot be statistically determined, the NOEL shall equal to the No Observable Effect Concentration (NOEC) derived using hypothesis testing. The NOEC is the maximum percent effluent concentration that causes no observable effect on test organisms based on a critical life stage toxicity test.
 - vi.** IC₁₅, IC₂₅, IC₄₀, and IC₅₀ values (or EC₁₅, EC₂₅ ... etc.) as percent effluent
 - vii.** TU_c values (100/NOEL) and upper and lower confidence intervals
 - viii.** Mean percent mortality (±s.d.) after 96 hours in 100% effluent (if applicable)
 - ix.** IC₅₀ or EC₅₀ values for reference toxicant tests
 - x.** Available water quality measurements for each test (pH, dissolved oxygen, temperature, conductivity, hardness, salinity, ammonia)
- b.** CMSA shall provide the results of the most recent three chronic toxicity tests and the three-sample median in self-monitoring reports at TU_c's.

3. Toxicity Reduction Evaluation (TRE)

- a.** CMSA shall prepare a generic TRE work plan within 90 days of the effective date of this Order to be ready to respond to toxicity events. CMSA shall review and update the work plan as necessary so that it remains current and applicable to the discharge and discharge facilities.
- b.** Within 30 days of exceeding a chronic toxicity trigger in section V.B.1.c.ii, CMSA shall submit a TRE work plan, which shall be the generic work plan revised as appropriate for this toxicity event after consideration of available discharge data.
- c.** Within 30 days of completing an accelerated monitoring test observed to exceed a trigger in section V.B.1.c.ii, CMSA shall initiate a TRE in accordance with a TRE work plan that incorporates any and all Executive Officer comments.
- d.** The TRE shall be specific to the discharge and be prepared in accordance with current technical guidance and reference materials, including U.S. EPA guidance materials. The TRE shall be conducted as a tiered evaluation process, as summarized below:
 - i.** Tier 1 shall consist of basic data collection (routine and accelerated monitoring).
 - ii.** Tier 2 shall consist of evaluation of optimization of the treatment process, including operation practices and in-plant process chemicals.
 - iii.** Tier 3 shall consist of a toxicity identification evaluation (TIE).
 - iv.** Tier 4 shall consist of a toxicity source evaluation.
 - v.** Tier 5 shall consist of a toxicity control evaluation, including options for modifications of in-plant treatment processes.
 - vi.** Tier 6 shall consist of implementation of selected toxicity control measures, and follow-up monitoring and confirmation of implementation success.
- e.** The TIE or TRE may be ended at any stage if monitoring finds there is no longer consistent toxicity (i.e., compliance with the triggers in section V.B.1.c.ii).
- f.** The objective of the TIE shall be to identify the substance or combination of substances causing the observed toxicity. CMSA shall employ all reasonable efforts using currently available TIE methodologies.
- g.** As toxic substances are identified or characterized, CMSA shall continue the TRE by determining the sources and evaluating alternative strategies for reducing or eliminating the toxic substances from the discharge. CMSA shall take all reasonable steps to reduce toxicity to levels below the chronic toxicity trigger.
- h.** Many recommended TRE elements parallel required or recommended efforts related to source control, pollution prevention, and stormwater control programs. TRE efforts should be coordinated with such efforts. To prevent duplication of efforts, evidence of

complying with requirements or recommended efforts of such programs may be acceptable to demonstrate compliance with TRE requirements.

VI. RECEIVING WATER MONITORING REQUIREMENTS

CMSA shall continue to participate in the Regional Monitoring Program, which collects data on pollutants and toxicity in San Francisco Bay water, sediment, and biota.

VII. PRETREATMENT AND BIOSOLIDS MONITORING REQUIREMENTS

CMSA shall comply with the pretreatment requirements for influent at Monitoring Location INF-001, effluent at Monitoring Location EFF-002, and biosolids at Monitoring Location BIO-001. CMSA shall report summaries of analytical results in annual and semi-annual pretreatment reports in accordance with Attachment H. If instructed to do so, CMSA shall report biosolids analytical results with its electronic self-monitoring reports by manual entry, by EDF/CDF, or as an attached file.

Table E-6. Pretreatment and Biosolids Monitoring

Constituents	Sampling Frequency			Sample Type	
	Influent INF-001 ^[6]	Effluent EFF-002 ^[6]	Biosolids BIO-001 ^[7]	Influent and Effluent	Biosolids ^[7]
VOC ^[1]	2/Year	2/Year	2/Year	Grab	Grab
BNA ^[2]	2/Year	2/Year	2/Year	Grab	Grab
Metals and Other Elements ^[3]	1/Month	1/Month	2/Year	C-24 ^[8]	Grab
Hexavalent Chromium ^[4]	1/Month	1/Month	2/Year	Grab	Grab
Mercury ^[5]	1/Month	1/Month	2/Year	Grab or C-24 ^[8]	Grab
Cyanide, Total ^[9]	1/Month	1/Month	2/Year	Grab	Grab

Sample Types:

C-24 = 24-hour composite

Grab = grab sample

Sampling Frequencies:

1/Month = once per month

2/Year = twice per year

Footnotes:

^[1] VOC: volatile organic compounds

^[2] BNA: base/neutrals and acid extractable organic compounds

^[3] Metals and other elements are arsenic, cadmium, copper, lead, nickel, selenium, silver, and zinc.

^[4] CMSA may choose to monitor and report total chromium instead of hexavalent chromium. Samples collected for total chromium measurements may be 24-hour composites.

^[5] CMSA shall use ultra-clean sampling (U.S. EPA Method 1669) and ultra-clean analytical methods (U.S. EPA Method 1631) for mercury monitoring, except when levels are expected to exceed 10 µg/L, in which case use of ultra-clean sampling and analysis shall be optional.

^[6] Influent and effluent monitoring conducted in accordance with MRP Tables E-2 and E-3 may be used to satisfy these pretreatment monitoring requirements.

^[7] The biosolids sample shall be a composite of the biosolids to be disposed. Biosolids collection and monitoring shall comply with the requirements specified in Attachment H, Appendix H-4.

^[8] If an automatic compositor is used, CMSA shall obtain 24-hour composite samples through flow-proportioned composite sampling. Alternatively, 24-hour composite samples may consist of discrete grab samples combined (volumetrically flow-weighted) prior to analysis or mathematically flow-weighted.

^[9] CMSA may, at its option, analyze for cyanide as weak acid dissociable cyanide using protocols specified in Standard Method Part 4500-CN-I, U.S. EPA Method OI 1677, or an equivalent method in the latest Standard Method edition.

VIII. REPORTING REQUIREMENTS

A. General Monitoring and Reporting Requirements

CMSA shall comply with all Standard Provisions (Attachments D and G) related to monitoring, reporting, and recordkeeping, with modifications shown in MRP sections IX and X, below.

B. Self-Monitoring Reports (SMRs)

1. **SMR Format.** CMSA shall electronically submit SMRs using the State Water Board's California Integrated Water Quality System (CIWQS) website (http://www.waterboards.ca.gov/water_issues/programs/ciwqs). The CIWQS website will provide additional information for SMR submittal in the event of a planned service interruption for electronic submittal.
2. **SMR Due Dates and Contents.** CMSA shall submit SMRs by the due dates, and with the contents, specified below:
 - a. **Monthly SMRs.** Monthly SMRs shall be due 30 days after the end of each calendar month, covering that calendar month. The monthly SMR shall contain the applicable items described in sections V.B and V.C of both Attachments D and G of this Order. See Provision VI.C.2 (Effluent Characterization Study and Report) of this Order for information that must also be reported with monthly SMRs.

Monthly SMRs shall include all new monitoring results obtained since the last SMR was submitted. If CMSA monitors any pollutant more frequently than required by this Order, CMSA shall include the results of such monitoring in the calculations and reporting for the SMR.

- b. **Annual SMR.** Annual SMRs shall be due February 1 each year, covering the previous calendar year. The annual SMR shall contain the items described in sections V.C.1.f of Attachment G. See also Provision VI.C.2 (Effluent Characterization Study and Report), Provision VI.C.5.b (Blending Reduction Tasks), and Provision VI.C.6 (Anaerobically Digestible Material) of the Order for requirements to submit reports with the annual SMR.

3. **Specifications for Submitting SMRs to CIWQS.** CMSA shall submit analytical results and other information using one of the following methods:

Table E-7. CIWQS Reporting

Parameter	Method of Reporting	
	EDF/CDF data upload or manual entry	Attached File
All parameters identified in influent, effluent, and receiving water monitoring tables (except Dissolved Oxygen and Temperature)	Required for all results	
Dissolved Oxygen Temperature	Required for monthly maximum and minimum results only ^[1]	CMSA may use this method for all results or keep records

Parameter		Method of Reporting	
		EDF/CDF data upload or manual entry	Attached File
Antimony Arsenic Beryllium Cadmium Chromium Copper Cyanide Lead Mercury Nickel Selenium	Silver Thallium Zinc Dioxins & Furans (by U.S. EPA Method 1613) Other Pollutants (by U.S. EPA methods 601, 602, 608, 610, 614, 624, and 625)	Required for all results ^[2]	
Volume and Duration of Blended Discharge		Required for all blended effluent discharges	
Analytical Method		Not required (CMSA may select "data unavailable") ^[1]	
Collection Time Analysis Time		Not required (CMSA may select "0:00") ^[1]	

Footnotes:

- ^[1] CMSA shall continue to monitor at the minimum frequency specified in this MRP, keep records of the measurements, and make the records available upon request.
- ^[2] These parameters require EDF/CDF data upload or manual entry regardless of whether monitoring is required by this MRP or other provisions of this Order (except for biosolids, sludge, or ash provisions).

CMSA shall arrange all reported data in a tabular format and summarize the data to clearly illustrate whether the treatment plant is operating in compliance with the effluent limitations. CMSA is not required to duplicate the submittal of data entered in a tabular format within CIWQS. When electronic submittal of data is required and CIWQS does not provide for entry into a tabular format, CMSA shall electronically submit the data in a tabular format as an attachment.

4. Monitoring Periods. Monitoring periods for all required monitoring shall be as set forth below unless otherwise specified:

Table E-8. Monitoring Periods

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period
Continuous	Order effective date	All times
1/Day	Order effective date	Every 24-hour period, beginning at midnight and continuing through 11:59 p.m. (or any 24-hour period that reasonably represents a calendar day for purposes of sampling)
1/Week, or 2/Week	First Sunday following or on Order effective date	Sunday through Saturday
1/Month	First day of calendar month following or on permit effective date	First day of calendar month through last day of calendar month
1/Quarter	Closest January 1, April 1, July 1, October 1 before or after permit effective date ^[1]	January 1 through March 31 April 1 through June 30 July 1 through September 30 October 1 through December 31

Sampling Frequency	Monitoring Period Begins On...	Monitoring Period
1/Year	Closest January 1 before or after permit effective date ^[1]	January 1 through December 31
2/Year	Closest of January 1 or July 1 before or after permit effective date ^[1]	January 1 through June 30 July 1 through December 31

Footnote:

^[1] Monitoring performed during the previous order term may be used to satisfy monitoring required by this Order.

5. RL and MDL Reporting. CMSA shall report with each sample result the Reporting Level (RL) and Method Detection Limit (MDL) as determined by the procedure in 40 C.F.R. part 136. CMSA shall report the results of analytical determinations for the presence of chemical constituents in a sample using the following reporting protocols:

- a. Sample results greater than or equal to the RL shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample).
- b. Sample results less than the RL, but greater than or equal to the laboratory's MDL, shall be reported as "Detected, but Not Quantified," or DNQ. The estimated chemical concentration of the sample shall also be reported.

For purposes of data collection, the laboratory shall write the estimated chemical concentration next to DNQ. The laboratory may, if such information is available, include numerical estimates of the data quality for the reported result. Numerical estimates of data quality may be percent accuracy (+/- a percentage of the reported value), numerical ranges (low to high), or any other means the laboratory considers appropriate.

- c. Sample results less than the laboratory's MDL shall be reported as "Not Detected", or ND.
- d. CMSA shall instruct laboratories to establish calibration standards so that the minimum level (ML) value (or its equivalent if there is differential treatment of samples relative to calibration standards) is the lowest calibration standard. At no time is CMSA to use analytical data derived from extrapolation beyond the lowest point of the calibration curve.

6. Compliance Determination. Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined above and in the Fact Sheet and Attachments A, D, and G. For purposes of reporting and administrative enforcement by the Regional Water Board and State Water Board, CMSA shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the RL.

C. Discharge Monitoring Reports (DMRs)

DMRs are U.S. EPA reporting requirements. CMSA shall electronically certify and submit DMRs together with SMRs using the Electronic Self-Monitoring Reports module eSMR 2.5 or the latest upgraded version. Electronic DMR submittal shall be in addition to electronic SMR submittal. Information about electronic DMR submittal is available at the DMR website at http://www.waterboards.ca.gov/water_issues/programs/discharge_monitoring.

APPENDIX E-1
CHRONIC TOXICITY
DEFINITION OF TERMS AND SCREENING PHASE REQUIREMENTS

I. Definition of Terms

- A. No observed effect level (NOEL) for compliance determination is equal to IC₂₅ or EC₂₅. If the IC₂₅ or EC₂₅ cannot be statistically determined, the NOEL shall be equal to the NOEC derived using hypothesis testing.
- B. Effective concentration (EC) is a point estimate of the toxicant concentration that would cause an adverse effect on a quantal, “all or nothing,” response (such as death, immobilization, or serious incapacitation) in a given percent of the test organisms. If the effect is death or immobility, the term lethal concentration (LC) may be used. EC values may be calculated using point estimation techniques such as probit, logit, and Spearman-Kärber. EC₂₅ is the concentration of toxicant (in percent effluent) that causes a response in 25 percent of the test organisms.
- C. Inhibition concentration (IC) is a point estimate of the toxicant concentration that would cause a given percent reduction in a nonlethal, nonquantal biological measurement, such as growth. For example, an IC₂₅ is the estimated concentration of toxicant that would cause a 25 percent reduction in average young per female or growth. IC values may be calculated using a linear interpolation method such as U.S. EPA's Bootstrap Procedure.
- D. No observed effect concentration (NOEC) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specific time of observation. It is determined using hypothesis testing.

II. Chronic Toxicity Screening Phase Requirements

- A. CMSA shall perform screening phase monitoring:
 - 1. Subsequent to any significant change in the nature of the effluent discharged through changes in sources or treatment, except those changes resulting from reductions in pollutant concentrations attributable to source control efforts, or
 - 2. Prior to permit reissuance. Screening phase monitoring data shall be included in the NPDES permit application for reissuance. The information shall be as recent as possible, but may be based on screening phase monitoring conducted within five years before the permit expiration date.
- B. Design of the screening phase shall, at a minimum, consist of the following elements:
 - 1. Use of test species specified in Appendix E-2, attached, and use of the protocols referenced in those tables.

2. Two stages:
 - a. Stage 1 shall consist of a minimum of one battery of tests conducted concurrently. Selection of the type of test species and minimum number of tests shall be based on Appendix E-2 (attached).
 - b. Stage 2 shall consist of a minimum of two test batteries conducted at a monthly frequency using the three most sensitive species based on the Stage 1 test results.
 3. Appropriate controls.
 4. Concurrent reference toxicant tests.
 5. Dilution series of 100%, 50%, 25%, 12.5%, 6.25%, and 0%, where “%” is percent effluent as discharged, or as otherwise approved by the Executive Officer if different dilution ratios are needed to reflect discharge conditions.
- C. CMSA shall submit a screening phase proposal. The proposal shall address each of the elements listed above. If within 30 days, the Executive Officer does not comment, CMSA shall commence with screening phase monitoring.

APPENDIX E-2 SUMMARY OF TOXICITY TEST SPECIES REQUIREMENTS

Table AE-1. Critical Life Stage Toxicity Tests for Estuarine Waters

Species	(Scientific Name)	Effect	Test Duration	Reference
Alga	<i>(Skeletonema costatum)</i> <i>(Thalassiosira pseudonana)</i>	Growth rate	4 days	1
Red alga	<i>(Champia parvula)</i>	Number of cystocarps	7–9 days	3
Giant kelp	<i>(Macrocystis pyrifera)</i>	Percent germination; germ tube length	48 hours	2
Abalone	<i>(Haliotis rufescens)</i>	Abnormal shell development	48 hours	2
Oyster Mussel	<i>(Crassostrea gigas)</i> <i>(Mytilus edulis)</i>	Abnormal shell development; percent survival	48 hours	2
Echinoderms - Urchins Sand dollar	<i>(Strongylocentrotus</i> <i>purpuratus, S. franciscanus)</i> <i>(Dendraster excentricus)</i>	Percent fertilization or larval development	1 hour or 72 hours	2
Shrimp	<i>(Americamysis bahia)</i>	Percent survival; growth	7 days	3
Shrimp	<i>(Holmesimysis costata)</i>	Percent survival; growth	7 days	2
Topsmelt	<i>(Atherinops affinis)</i>	Percent survival; growth	7 days	2
Silversides	<i>(Menidia beryllina)</i>	Larval growth rate; percent survival	7 days	3

Toxicity Test References:

1. American Society for Testing Materials (ASTM). 1990. Standard Guide for Conducting Static 96-Hour Toxicity Tests with Microalgae. Procedure E 1218-90. ASTM, Philadelphia, PA.
2. Short-term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine and Estuarine Organisms. EPA/600/R-95/136. August 1995.
3. Short-term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to Marine and Estuarine Organisms. EPA/821/R-02/014. October 2002.

Table AE-2. Critical Life Stage Toxicity Tests for Fresh Waters

Species	(Scientific Name)	Effect	Test Duration	Reference
Fathead minnow	<i>(Pimephales promelas)</i>	Survival; growth rate	7 days	4
Water flea	<i>(Ceriodaphnia dubia)</i>	Survival; number of young	7 days	4
Alga	<i>(Selenastrum capricornutum)</i>	Final cell density	4 days	4

Toxicity Test Reference:

4. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, fourth Edition Chronic manual (EPA-821-R-02-013, October 2002).

Table AE-3. Toxicity Test Requirements for Stage One Screening Phase

Requirements	Receiving Water Characteristics		
	Discharges to Coast	Discharges to San Francisco Bay ^[1]	
	Ocean	Marine/Estuarine	Freshwater
Taxonomic diversity	1 plant 1 invertebrate 1 fish	1 plant 1 invertebrate 1 fish	1 plant 1 invertebrate 1 fish
Number of tests of each salinity type: Freshwater ^[2]	0	1 or 2	3
Marine/Estuarine	4	3 or 4	0
Total number of tests	4	5	3

Footnotes:

- ^[1] (a) Marine refers to receiving water salinities greater than 10 part per thousand (ppt) at least 95 percent of the time during a normal water year.
 (b) Freshwater refers to receiving water with salinities less than 1 ppt at least 95 percent of the time during a normal water year.
 (c) Estuarine refers to receiving water salinities that fall between those of marine and freshwater, as described above.
- ^[2] The freshwater species may be substituted with marine species if:
 - (a) The salinity of the effluent is above 1 ppt greater than 95 percent of the time, or
 - (b) The ionic strength (TDS or conductivity) of the effluent at the test concentration used to determine compliance is documented to be toxic to the test species.

ATTACHMENT F - FACT SHEET

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ATTACHMENT F – FACT SHEET

This Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order. As described in section II.B of the Order, the Regional Water Board incorporates this Fact Sheet as findings supporting the issuance of the Order.

I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility:

Table F-1. Facility Information

WDID	2 215116001
CIWQS Place ID	213889
Dischargers	Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County
Facility Names	Central Marin Sanitation Agency Wastewater Treatment Plant, San Rafael Sanitation District wastewater collection system, Sanitary District No. 1 of Marin County wastewater collection system, and Sanitary District No. 2 of Marin County wastewater collection system
Treatment Plant Address	1301 Andersen Drive San Rafael, CA 94901 Marin County
Treatment Plant Contact, Title, Phone	Chris Finton, Treatment Plant Manager, 415-459-1455
Person Authorized to Sign and Submit Reports	Same as treatment plant contact
Mailing Address	1301 Andersen Drive, San Rafael, CA 94901
Billing Address	Same as mailing address
Facility Type	Publicly-owned treatment works (POTW)
Major or Minor Facility	Major
Threat to Water Quality	2
Complexity	A
Pretreatment Program	Yes
Reclamation Requirements	None
Mercury and PCBs Requirements	NPDES Permit No. CA0038849
Nutrients Requirements	NPDES Permit No. CA0038873
Facility Permitted Flow	10 million gallons per day (MGD) – average dry weather design flow
Facility Design Flow	30 MGD – secondary capacity
Watershed	San Francisco Bay
Receiving Water	Central San Francisco Bay
Receiving Water Type	Estuarine
Collection System Agency Addresses and Contacts	- San Rafael Sanitation District 111 Morphew Street, San Rafael 94901 Doris Toy, Doris.Toy@cityofsanrafael.org, 415-485-3484 - Sanitary District No. 1 of Marin County (a.k.a. Ross Valley Sanitary District) 2960 Kerner Boulevard, San Rafael 94901 Greg Norby, gnorby@rvsd.org, 415-259-2949 - Sanitary District No. 2 of Marin County (subsidiary of Town of Corte Madera) 300 Tamalpais Drive, Corte Madera 94925 David Bracken, dbracken@tcmmail.org, 415-971-5050

- A.** Central Marin Sanitation Agency (CMSA) owns and operates the Central Marin Sanitation Agency Wastewater Treatment Plant. CMSA was formed in 1979 by a Joint Exercise of Powers Agreement by three of the collection agencies that route waste to the treatment plant: the San Rafael Sanitation District, Sanitary District No. 1 of Marin County (also known as Ross Valley Sanitary District), and Sanitary District No. 2 of Marin County (a subsidiary of the Town of Corte Madera). The Joint Exercise of Powers Agreement also includes the City of Larkspur, but Larkspur does not own or operate its collection system. Its collection system is owned and operated by Sanitary District No.1 of Marin County. CMSA is governed by a board that includes the three satellite collection system agencies and the City of Larkspur. CMSA does not have authority over any of the collection system agencies in the Joint Exercise of Powers Agreement that governs CMSA.

CMSA owns and operates the treatment plant. Each collection system agency owns and operates a portion of the collection system, including the force mains. The treatment plant provides secondary treatment of wastewater collected from its service area and discharges to Central San Francisco Bay.

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 Dischargers herein.

- B.** CMSA, not the collection system agencies, has been regulated pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038628. CMSA was previously subject to Order No. R2-2012-0051 (previous order). Order No. R2-2016-0008 amended Order No. R2-2012-0051 to provide for an alternate monitoring program and remains in effect with this Order. CMSA filed a Report of Waste Discharge and submitted an application for reissuance of its Waste Discharge Requirements (WDRs) and NPDES permit on January 31, 2017. This Order adds the collection system agencies as dischargers under NPDES Permit No. CA0038628.

The Dischargers are authorized to discharge subject to WDRs in this Order at the discharge location described in Table 2 of this Order. Regulations at 40 C.F.R. section 122.46 limit the duration of NPDES permits to a fixed term not to exceed five years. Accordingly, Table 3 of this Order limits the effective period for the discharge authorization. Pursuant to California Code of Regulations, title 23, section 2235.4, the terms and conditions of an expired permit are automatically continued pending reissuance of the permit if the Dischargers comply with all federal NPDES regulations for continuation of expired permits.

- C.** The discharge is also regulated under NPDES Permit Nos. CA0038849 and CA0038873, which establish requirements on mercury, polychlorinated biphenyls (PCBs), and nutrients from wastewater discharges to San Francisco Bay. This Order does not affect those permits.
- D.** When applicable, State law requires dischargers to file a petition with the State Water Resources Control Board (State Water Board), Division of Water Rights, and receive approval for any change in the point of discharge, place of use, or purpose of use of treated wastewater that decreases the flow in any portion of a watercourse. The State Water Board retains separate jurisdictional authority to enforce such requirements under Water Code section 1211. This is not an NPDES permit requirement.

II. FACILITY DESCRIPTION

A. Wastewater and Biosolids Treatment

- 1. Location and Service Area.** The wastewater treatment plant is located at 1301 Andersen Drive in San Rafael. It provides secondary treatment of domestic, commercial, and industrial wastewater for the City of San Rafael and its surrounding communities, including San Quentin Prison. CMSA regulates two significant industrial users that discharge to the Facility through its pretreatment program. The Facility serves a population of about 105,000. Attachment B shows a map of the area around the Facility.
- 2. Wastewater Treatment.** CMSA treats and discharges about 6.4 MGD during dry weather. CMSA treats its wastewater by screening, grit removal, primary clarification, secondary biological treatment, secondary clarification, disinfection by chlorine, and dechlorination by sodium bisulfite. The treatment plant uses an onsite storage basin to store up to 6.2-million gallons of effluent during wet weather diversions of the secondary treatment units. When flows subside, the stored wastewater is either sent to the chlorine disinfection units for discharge or routed back to the headworks for re-treatment (if needed). During wet weather periods, primary-treated wastewater above 30 MGD is routed around the secondary treatment processes and blended with the secondary-treated wastewater prior to disinfection. The process flow diagram is shown in Attachment C.
- 3. Collection System.** CMSA does not own any portion of the collection system. It operates the force mains, pump stations for Sanitary District No. 2 of Marin County, and the wastewater collection system for the San Quentin Village Sewer Maintenance District. All other portions of the collection system are owned, operated, and maintained by the five collection system agencies that route sewage to the treatment plant.

The San Rafael Sanitation District owns and operates about 150 miles of sewer lines serving the central and southern portion of the City of San Rafael. Sanitary District No. 1 of Marin County owns and operates about 200 miles of sewer lines serving Larkspur and nearby unincorporated areas (Kentfield, Greenbrae, Fairfax, Ross, and San Anselmo). Sanitary District No. 2 of Marin County owns and operates about 45 miles of sewer lines serving the town of Corte Madera and unincorporated areas of the Tiburon peninsula. The California Department of Corrections and the San Quentin Village Sewer Maintenance District (County of Marin) own and operate about 1.8 miles of sewer lines that serve San Quentin Prison and San Quentin Village. The prison is less than one mile from the treatment plant. The California Department of Corrections and the San Quentin Village Sewer Maintenance District collection systems contribute less than five percent of the total flow to the treatment plant.

This Order requires the three largest collection system agencies (Marin Sanitary Districts 1 & 2 and the San Rafael Sanitation District) to implement tasks to reduce infiltration into their collection systems (Provisions VI.C.5.a) and CMSA to assist the collection system agencies (Provision VI.C.5.b). With the exception of the collection system serving San Quentin Prison and San Quentin Village, the collection systems are covered by the statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order Nos. 2006-0003-DWQ and WQ-2013-0058-EXEC).

4. **Recycled Water.** When requested by the City of Larkspur, CMSA provides about 1.5 million gallons of recycled water annually to Remillard Park Pond during dry weather to provide habitat for native Western Pond Turtles, a species of special concern. CMSA constructed a truck filling station in December 2015 and has also supplied about 16,000 gallons of recycled water to date to flush sewer lines.
5. **Sludge and Biosolids Management.** CMSA processes its sludge by thickening with rotary drums, digesting, conditioning with polymer and ferric chloride, and dewatering with high-speed centrifuges. The processed solids are applied to land at Synagro's ranch sites in Sonoma and Solano counties, used for cover at Redwood Landfill and Recycling Center in Marin County, composted, or developed into fertilizer for agricultural use.
6. **Stormwater Management.** CMSA is covered under the State Water Board's statewide NPDES permit for stormwater discharges associated with industrial activities (NPDES General Permit CAS000001) for all parts of the treatment plant where stormwater runoff is not directed to the plant headworks for treatment. All stormwater flows in contact with equipment or wastewater at the treatment plant and pump stations serving the treatment plant are collected and directed to the headworks.

B. Discharge Point and Receiving Waters

Treated wastewater is discharged to Central San Francisco Bay through a submerged, multi-port diffuser, located approximately 8,000 feet offshore (Discharge Point No. 001) at a depth of about 12 to 28 feet. The diffuser is oriented about 145 degrees clockwise from north and has 176 ports fitted with duckbill diffuser valves to induce turbulent mixing. The valves reduce the effective open area of the ports as flow is reduced. The effluent receives an initial dilution of at least 43:1. CMSA hires a commercial diver annually to inspect and maintain the diffuser and to check for sedimentation. In 2017, the diver did not find a significant amount of material inside the outfall.

C. Previous Requirements and Monitoring Data

The table below presents the previous order effluent limitations and representative monitoring data from the previous order term:

Table F-2. Previous Effluent Limitations and Monitoring Data

Parameter	Units	Effluent Limitations			Monitoring Data (8/2012 – 11/2016)		
		Monthly Average	Weekly Average	Daily Maximum	Number of samples	Average ± standard deviation	Range
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	mg/L	25	40	---	546	5.8±1.9	2-14
Total Suspended Solids	mg/L	30	45	---	1860	5.1±2.1	0.8-26
Oil and Grease	mg/L	10	---	20	18	All samples were below the detection limit (5.5)	
pH	standard units	6.0 – 9.0			1583	7.5±0.2	6.7-8.0

Parameter	Units	Effluent Limitations			Monitoring Data (8/2012 – 11/2016)		
		Monthly Average	Weekly Average	Daily Maximum	Number of samples	Average ± standard deviation	Range
Enterococcus Bacteria	Colonies/100 mL	35 ^[1]	---	---	93	31±170	1-1600
Total Coliform	MPN/100 mL	240 ^[2]	---	10,000	705	13±47 ^[3]	2-900
Copper	µg/L	49	---	85	52	4.1±1.4	1.9-10
Cyanide	µg/L	21	---	41	52	All samples were below the detection limit (3.0)	
Dioxin-TEQ	µg/L	1.4 x 10 ⁻⁸	---	2.8 x 10 ⁻⁸	8	All samples were below the quantification limits	
Acute Toxicity	percent survival	Not less than 90% (11-sample median)			52	100±2.0	90-100
		Not less than 70% (11-sample 90 th percentile)					
Chronic Toxicity	TU _c	No chronic toxicity that would cause or contribute to toxicity in the receiving water			18	3.1±0.9 ^[4]	2.5-4.6
Ammonia, Total	mg/L as N	60	---	120	251	31±11	2.7-52

Unit Abbreviations:

mg/L = milligrams per liter
µg/L = micrograms per liter
Colonies/100 mL = colonies per 100 milliliters
MPN/100 mL = most probable number per 100 milliliters
TU_c = chronic toxicity units
mg/L as N = milligrams per liter as nitrogen

Footnotes:

- ^[1] The monthly geometric mean not to exceed 35 colonies per 100 mL.
^[2] The monthly geometric mean not to exceed 240 MPN per 100 mL.
^[3] 170 samples were below the detection limit (2.5 MPN/100 mL).
^[4] Nine samples were below the detection limit (2 TU_c).

D. Compliance Summary

- 1. Treatment Plant.** In February 2017, CMSA violated its requirement to remove at least 85 percent of the carbonaceous biochemical oxygen demand (CBOD). The CBOD removal was 82 percent that month. This was CMSA's first violation since December 2004. The violation happened during extreme wet weather when an excessive amount of stormwater infiltrated the collection system. Provisions VI.C.5.a and VI.C.5.b require the Dischargers to perform tasks that will reduce infiltration.
- 2. Collection Systems.** The table below shows the sanitary sewer overflow (SSO) rates (total SSOs per 100 miles of collection system) for the last five years for each of the collection system agencies, the length and age of the collection systems, and comparisons to systems in the San Francisco Bay Region. SSOs that reach waters of the United States violate Prohibition III.E of this Order.

Table F-3. Collection System and SSO Rates (SSO/100 miles)

(Values based on CIWQS data analysis completed in October 2016)^[1]

	Length (miles)	Average Age (years)	2012	2013	2014	2015	2016
San Rafael Sanitation District	143	69	20.3	27.3	21.7	11.9	16.1
Sanitary District No. 1 of Marin County	204	65	16.8	11.8	15.7	12.3	17.7
Sanitary District No. 2 of Marin County	50	38	2.0	14.3	4.1	2.0	10.0
San Quentin Prison	4	73	0	0	0	0	0
Marin County Systems (median)	11	43	7.2	4.4	4.8	5.4	6.5
San Francisco Bay Region Large Systems (Median) ^[2]	46	45	5.2	5.7	6.3	3.7	4.3
Annual Precipitation in San Rafael (inches)	---	---	36	6	39	10	41

Footnote:

^[1] The State Water Board's *Enrollee's Guide to the SSO Database* defines "Total number of SSOs per 100 miles of Sewer" as "...the number of SSOs, for which the reporting enrollee is responsible, for every 100 miles of pipe or sewer lines in an enrollee's sanitary sewer system. Due to the large variation in facility specific characteristics, this metric should only be viewed as a rough comparison of the operation and maintenance performance of enrollees and their sanitary sewer systems."

^[2] Large systems are greater than 100 miles.

The SSO rates are significantly higher for the San Rafael Sanitation District, Sanitary District No. 1, and Sanitary District No. 2 versus other Marin County and San Francisco Bay Region collection systems. Provision VI.C.5.a requires the collection system agencies to implement sewer improvement projects that will reduce infiltration into the collection systems. These projects are expected to reduce SSOs.

E. Planned Changes

In 2014, CMSA and the Marin Municipal Water District partnered to conduct a Recycled Water Feasibility Study. The study recommended a project to add tertiary treatment to the treatment plant to produce 168 acre-feet of recycled water for use at San Quentin Prison. CMSA and the Marin Municipal Water District are considering the project, but there are no current plans to build it.

F. Blending Summary

Subject to specific conditions (e.g., influent flows are above 30 MGD), the previous order approved CMSA bypasses of secondary treatment for the portion of the flow above 30 MGD. The bypassed flows were "blended" with secondary-treated effluent, disinfected, and discharged. During the previous order term, CMSA discharged blended effluent about 11 times per year, a greater than 50 percent reduction compared to the permit term before that, when CMSA blended about 24 times per year. This reduction can be attributed to significant treatment plant upgrades that allow CMSA to store and process more flow. This Order will further reduce blending by requiring the satellite collection systems to repair and replace their respective sewer lines (see Provision VI.C.5.a).

Table F-4. Historical Blending Summary

Year	Number of Blending Days	Annual Volume of Primary Portion of Blended Effluent (million gallons)	Annual Precipitation (inches)
2012	23	255	36

Year	Number of Blending Days	Annual Volume of Primary Portion of Blended Effluent (million gallons)	Annual Precipitation (inches)
2013	0	0	6
2014	17	141	39
2015	2	3.5	10
2016	14	145	41
Average	11	109	25

III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

A. Legal Authorities

This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260) for discharges to waters of the State. This Order is also issued pursuant to Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve as an NPDES permit authorizing the Dischargers to discharge into waters of the United States at the discharge location described in Table 2 subject to the WDRs in this Order.

B. California Environmental Quality Act

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code division 13, chapter 3 (commencing with § 21100). Provisions and requirements in this Order implementing State law only are further exempt from CEQA pursuant to the categorical exemption for existing facilities (Cal. Code Regs., tit. 40, § 15301)

C. State and Federal Regulations, Policies, and Plans

- 1. Water Quality Control Plan.** The Regional Water Board adopted the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan), which designates beneficial uses, establishes water quality objectives (WQOs), and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Requirements in this Order implement the Basin Plan. In addition, this Order implements State Water Board Resolution No. 88-63, which establishes State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply. Because of the marine influence on Central San Francisco Bay, total dissolved solids exceed 3,000 mg/L; therefore, Central San Francisco Bay meets an exception to State Water Board Resolution No. 88-63. Beneficial uses applicable to Central San Francisco Bay are as follows:

Table F-5. Beneficial Uses

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

2. **Sediment Quality.** The State Water Board adopted the *Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality* on September 16, 2008, and it became effective on August 25, 2009. This plan supersedes other narrative sediment quality objectives, and establishes new sediment quality objectives and related implementation provisions for specifically defined sediments in most bays and estuaries. This Order implements the sediment quality objectives of this plan.
3. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** U.S. EPA adopted the NTR on December 22, 1992, and amended it on May 4, 1995, and November 9, 1999. About 40 criteria in the NTR apply in California. On May 18, 2000, U.S. EPA adopted the CTR. The CTR promulgated new toxics criteria for California and incorporated the previously adopted NTR criteria that applied in the State. U.S. EPA amended the CTR on February 13, 2001. These rules contain federal water quality criteria for priority pollutants. (See Fact Sheet sections IV.C.2.b and IV.C.2.c.)
4. **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 U.S. EPA promulgated for California through the NTR and the priority pollutant objectives the Regional Water Board established in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria U.S. EPA promulgated through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives, and provisions for chronic toxicity control. Requirements of this Order implement the SIP.
5. **Antidegradation Policy.** Federal regulations at 40 C.F.R. section 131.12 require that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy through State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, which is deemed to incorporate 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 Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Permitted discharges must be consistent with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16. (See Fact Sheet section IV.D.2 Antidegradation.)

- 6. Anti-Backsliding Requirements.** CWA sections 402(o) and 303(d)(4) and 40 C.F.R. section 122.44(l) restrict backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. (See Fact Sheet section IV.D.1 Anti-Backsliding.)
- 7. Endangered Species Act Requirements.** 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 §§ 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect beneficial uses, including protecting rare, threatened, or endangered species. The Dischargers are responsible for meeting all Endangered Species Act requirements.
- 8. Sludge and Biosolids.** U.S. EPA administers 40 C.F.R. Part 503, Standards for the Use or Disposal of Sewage Sludge, which regulates the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a municipal wastewater treatment facility. This Order does not authorize any act that violates those requirements. CMSA is responsible for meeting all applicable requirements of 40 C.F.R. Part 503.
- 9. Recycled Water Policy.** The State Water Board adopted Resolution No. 2013-0003 on January 22, 2013, titled *Policy for Water Quality Control for Recycled Water*, which is intended to promote sustainable local water supplies by increasing the acceptance and promoting the use of recycled water. The policy sets a goal to increase the use of recycled water statewide by at least one million acre feet per year (afy) over the 2002 baseline-level by 2020 and by at least two million afy by 2030. Consistent with the policy, the Regional Water Board is to exercise its authority to the fullest extent possible to encourage the use of recycled water and to develop watershed-based salt and nutrient management plans to ensure use of recycled water does not degrade groundwater resources.

D. Impaired Waters on CWA 303(d) List

In July 2015, U.S. EPA approved a revised list of impaired waters prepared pursuant to CWA section 303(d), which requires 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. Where it has not done so already, the Regional Water Board plans to adopt total maximum daily loads (TMDLs) for pollutants on the 303(d) list. TMDLs establish wasteload allocations for point sources and load allocations for non-point sources and are established to achieve the water quality standards for the impaired waters.

Central San Francisco Bay is 303(d) listed as impaired by chlordane, DDT, dieldrin, dioxin compounds (including 2,3,7,8-TCDD), furan compounds, invasive species, mercury, PCBs, and

selenium. On February 12, 2008, U.S. EPA approved a TMDL for mercury in San Francisco Bay. On March 29, 2010, U.S. EPA approved a TMDL for PCBs in San Francisco Bay. The mercury and PCBs TMDLs apply to this discharge and are implemented through NPDES Permit No. CA0038849. On August 23, 2016, U.S. EPA approved a TMDL for selenium in North San Francisco Bay, which includes Central San Francisco Bay. The selenium TMDL does not require effluent limits for municipal wastewater dischargers because these discharges have an insignificant impact on North San Francisco Bay water quality.

As shown in Fact Sheet section IV.C.3, the discharge is not a significant source of chlordane, DDT, or dieldrin because these pollutants have not been detected in the discharge. The discharge is also not a source of invasive species because it is disinfected. It is an insignificant source of dioxins and furans; this Order contains dioxin-TEQ effluent limitations to ensure that dioxins and furans in effluent are kept below water quality objectives.

IV. RATIONALE FOR EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants discharged into waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in NPDES permits. There are two principal bases for effluent limitations: 40 C.F.R. section 122.44(a) requires that permits include applicable technology-based limitations and standards, and 40 C.F.R. section 122.44(d) requires that permits include water quality-based effluent limitations to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of receiving waters.

A. Discharge Prohibitions

- 1. Discharge Prohibition III.A (Discharge at a location or in a manner different than described):** This prohibition is based on 40 C.F.R. section 122.21(a) and Water Code section 13260, which require filing an application and Report of Waste Discharge before a discharge can occur. Discharges not described in the application and Report of Waste Discharge, and subsequently in this Order, are prohibited.
- 2. Discharge Prohibition III.B (Discharge not receiving initial dilution of 43:1):** The Order allows a dilution credit of 43:1 in the calculation of one or more water quality-based effluent limitations based on the initial dilution achieved at the outfall. Therefore, this prohibition is necessary to ensure that the assumptions used to derive the dilution credit remain substantially the same so the limitations are protective of water quality.
- 3. Discharge Prohibition III.C (Bypass of untreated or partially-treated wastewater):** This prohibition is based on 40 C.F.R. section 122.41(m) (see Attachment D section I.G). Bypasses are prohibited when flows to the treatment plant are below 30 MGD (the secondary treatment capability). When flows are above 30 MGD, this Order approves the bypass of secondary treatment for the portion above 30 MGD in accordance with Attachment D section I.G. This portion must be “blended” with the secondary-treated effluent and disinfected prior to discharge to San Francisco Bay. As discussed below, the Dischargers meet the three criteria to allow blending listed in Attachment D section I.G and 40 C.F.R. section 122.41(m)(4)(i)(A)-(C):

- a. *Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage.* With peak wet weather flows above 30 MGD, bypasses are unavoidable to prevent (i) backups and overflow of raw sewage into basements or onto city streets, which could result in severe property damage or personal injury, or (ii) overflows within the treatment plant that could flood and damage equipment and thus compromise CMSA's ability to treat wastewater long after the bypass ends.
- b. *There are no feasible alternatives to the bypass.* As part of CMSA's January 2017 Report of Waste Discharge, CMSA submitted a Utility Analysis that evaluated alternatives to reduce or eliminate bypasses. CMSA identified several storage and treatment alternatives that could reduce or eliminate bypasses, including the following:
 - i. Improve storage by (a) converting an existing secondary-treated effluent storage pond to a primary-treated effluent storage pond or (b) installing a new below-grade storage tank, and
 - ii. Expand secondary treatment by (a) modifying the biotowers and activated sludge units to run in parallel, (b) installing new high-rate aeration units with ballasted flocculation, or (c) expanding conventional treatment.

CMSA expanded its secondary treatment capacity during the previous order term. It can now treat wet weather flows about four times higher than dry weather flows. Because of this increased treatment capacity and the high cost of expanding storage or treatment further, CMSA deems the above options to be infeasible. To reduce or eliminate blending bypasses, Provision IV.C.5.b requires CMSA to work with the satellite collection system agencies to identify portions of the service area that most contribute to excessive wet weather flows. Provision IV.C.5.a requires the satellite collection system agencies to implement improvements to their collection systems to reduce inflow and infiltration.

- c. *The Dischargers provided notice at least ten days before the date of the bypass.* With its Report of Waste Discharge, CMSA notified the Regional Water Board of the need to blend when peak wet weather flows exceed 30 MGD.
4. **Discharge Prohibition III.D (Average dry weather effluent flow in excess of 10 MGD):** This prohibition is based on the treatment plant's design treatment capacity (i.e., the historic and tested reliability of the treatment plant). Exceeding the average dry weather flow design capacity of 10 MGD could lower the plant's reliability with respect to complying with this Order's requirements.
5. **Discharge Prohibition III.E (Sanitary sewer overflows):** This prohibition is based on Basin Plan Table 4-1 (Discharge Prohibition 15) and the CWA, which prohibit the discharge of wastewater to surface waters, except as authorized under an NPDES permit. Publicly-owned treatment works must achieve secondary treatment at a minimum and any more stringent limitations necessary to meet water quality standards (33 U.S.C. § 1311[b][1][B and C]). A sanitary sewer overflow that results in a surface water discharge of raw sewage or wastewater not meeting this Order's effluent limitations is therefore prohibited under the CWA and the Basin Plan. (See Fact Sheet section VI.C.4.b.)

B. Technology-Based Effluent Limitations

1. Scope and Authority

CWA section 301(b) and 40 C.F.R. section 122.44 require that permits include conditions meeting technology-based requirements, at a minimum, and any more stringent effluent limitations necessary to meet water quality standards. The discharges authorized by this Order must meet minimum federal technology-based requirements based on the Secondary Treatment Standards at 40 C.F.R. part 133 as summarized below. In addition, the 30-day average percent removal for BOD₅ (or carbonaceous biochemical oxygen demand, CBOD₅) and TSS, by concentration, is not to be less than 85 percent. The Basin Plan contains additional requirements for certain pollutants.

Table F-6. Secondary Treatment Standards

Parameter	Monthly Average	Weekly Average
Biochemical Oxygen Demand, 5-day @ 20°C ^[1,2]	30 mg/L	45 mg/L
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C ^[1,2]	25 mg/L	40 mg/L
Total Suspended Solids ^[2]	30 mg/L	45 mg/L
pH	6.0 – 9.0 standard units	

Unit Abbreviation:

mg/L= milligrams per liter

Footnotes:

^[1] CBOD₅ effluent limitations may be substituted for BOD₅ limitations.

^[2] The monthly average percent removal, by concentration, is also not to be less than 85 percent.

2. Effluent Limitations

- a. **CBOD₅ and TSS.** The weekly and average monthly limitations, including the 85 percent removal requirements, are based on the Secondary Treatment Standards and Basin Plan Table 4-2.
- b. **Oil and Grease.** The oil and grease effluent limitations are based on Basin Plan Table 4-2.
- c. **pH.** The pH effluent limitations are based on the Secondary Treatment Standards and Basin Plan Table 4-2.
- d. **Total Chlorine Residual.** The residual chlorine effluent limit is based on Basin Plan Table 4-2. The Monitoring and Reporting Program (MRP, Attachment E) provides for an allowance for determining false positive using continuous devices based on the fact that continuous instruments occasionally have anomalous spikes, and it is chemically improbable to have free chlorine present in the presence of sodium bisulfite. The allowance for using only on-the-hour measurements for mandatory minimum penalty assessment purposes under Water Code section 13385.1 is based on a 2004 strategy developed between the Regional Water Board and the Bay Area Clean Water Agencies.

- e. **Enterococcus Bacteria.** Enterococcus bacteria effluent limits are based on Basin Plan Table 4-2A, which requires this limitation for discharges to receiving waters with the water contact recreation beneficial use.
- f. **Total Coliform Organisms.** The total coliform effluent limits are based on Basin Plan Table 4-2A, which requires these limitations for discharges to receiving waters with the shellfish harvesting beneficial use.

C. Water Quality-Based Effluent Limitations (WQBELs)

1. Scope and Authority

This Order contains WQBELs that protect beneficial uses. CWA section 301(b) and 40 C.F.R. section 122.44(d) require that permits include limitations more stringent than federal technology-based requirements where necessary to achieve applicable water quality standards. According to 40 C.F.R. section 122.44(d)(1)(i), permits must include effluent limitations for all pollutants that are or may be discharged at levels that have a reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective, WQBELs must be established using (1) U.S. EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting a narrative criterion, supplemented with relevant information (40 C.F.R. § 122.44[d][1][vi]). The process for determining reasonable potential and calculating WQBELs is intended to achieve applicable water quality objectives and criteria and protect designated uses of receiving waters as specified in the Basin Plan.

2. Beneficial Uses and Water Quality Criteria and Objectives

Discharge Point No. 001 discharges to Central San Francisco Bay. Fact Sheet section III.C.1 identifies the beneficial uses of Central San Francisco Bay. Water quality criteria and objectives to protect these beneficial uses are described below:

- a. **Basin Plan Objectives.** The Basin Plan sets forth numerous water quality objectives, including numeric objectives for 10 priority pollutants and un-ionized ammonia, and narrative objectives for toxicity and bioaccumulation.
 - i. **Ammonia.** Basin Plan section 3.3.20 contains water quality objectives for un-ionized ammonia of 0.025 mg/L (as nitrogen) as an annual median and 0.16 mg/L (as nitrogen) as a maximum for Central San Francisco Bay and upstream waters. Effluent and receiving water data are available for total ammonia, but not un-ionized ammonia, because (1) sampling and laboratory methods are unavailable to analyze for un-ionized ammonia, and (2) the fraction of total ammonia that exists in the toxic un-ionized form depends on pH, salinity, and temperature of the receiving water.

To translate the un-ionized ammonia objectives into total ammonia criteria, pH, salinity, and temperature collected at the Region Monitoring Program Red Rock Station (BC60). The un-ionized fraction of the total ammonia was calculated using the following equation, which applies to waters with salinities greater than 10 parts

per thousand (*Ambient Water Quality Criteria for Ammonia (Saltwater)*–1989, EPA Publication 440/5-88-004, 1989):

$$\text{Fraction of NH}_3 = \frac{1}{1 + 10^{(pK - pH)}}$$

For salinity > 10 ppt:

$$pK = 9.245 + 0.116(I) + 0.0324 (298 - T) + \frac{0.0415(P)}{(T)}$$

where:

$$I = \text{Molal ionic strength of saltwater} = \frac{19.9273(S)}{(1,000 - 1.005109(S))}$$

S = Salinity (parts per thousand)

T = Temperature (Kelvin)

P = Pressure (one atmosphere)

The 90th percentile and median un-ionized ammonia fractions were then used to express the maximum and annual average un-ionized objectives as acute and chronic total ammonia criteria. This approach is consistent with U.S. EPA guidance on translating dissolved metal water quality objectives to total recoverable metal water quality objectives (USEPA, 1996, *The Metals Translator: Guidance for Calculating a Total Recoverable Limit from a Dissolved Criterion*, EPA Publication 823-B96-007). The equivalent acute and chronic total ammonia criteria are 5.3 mg/L and 1.4 mg/L (as nitrogen).

- ii. **Dioxin-TEQ.** The narrative bioaccumulation objective (Basin Plan section 3.3.2) states, “Many pollutants can accumulate on particulates, in sediments, or bioaccumulate in fish and other aquatic organisms. Controllable water quality factors shall not cause a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life. Effects on aquatic organisms, wildlife, and human health will be considered.” Because it is the consensus of the scientific community that dioxins and furans associate with particulates, accumulate in sediments, and bioaccumulate in the fatty tissue of fish and other organisms, the Basin Plan’s narrative bioaccumulation water quality objective applies to these pollutants. Elevated levels of dioxins and furans in San Francisco Bay fish tissue demonstrate that the narrative bioaccumulation water quality objective is not being met. U.S. EPA has therefore placed Central San Francisco Bay on its 303(d)-list of receiving waters where water quality objectives are not being met after imposition of applicable technology-based requirements.

When the CTR was promulgated, U.S. EPA stated its support for the regulation of dioxin and dioxin-like compounds through the use of toxicity equivalencies (TEQs). U.S. EPA stated, “For California waters, if the discharge of dioxin or dioxin-like compounds has reasonable potential to cause or contribute to a violation of a narrative criterion, numeric water quality-based effluent limits for dioxin or dioxin-like compounds should be included in NPDES permits and should be expressed using a

TEQ scheme” (Fed. Reg. Vol. 65, No. 97, pages 31695-31696, May 18, 2000). This Order uses a TEQ scheme based on a set of toxicity equivalency factors (TEFs) the World Health Organization developed in 1998, and a set of bioaccumulation equivalency factors (BEFs) U.S. EPA developed for the Great Lakes region (40 C.F.R. § 132, Appendix F) to convert the concentration of any congener of dioxin or furan into an equivalent concentration of 2,3,7,8-tetrachlorinated dibenzo-p-dioxin (2,3,7,8-TCDD). Although the 1998 World Health Organization scheme includes TEFs for dioxin-like PCBs, they are not included in this Order’s TEQ scheme. The CTR has established a specific water quality criterion for PCBs, and dioxin-like PCBs are included in the analysis of total PCBs.

The CTR establishes a numeric water quality objective for 2,3,7,8-TCDD of 1.4×10^{-8} µg/L for the protection of human health when aquatic organisms are consumed. This CTR criterion is used as a criterion for dioxin-TEQ because dioxin-TEQ represents a toxicity-weighted concentration equivalent to 2,3,7,8-TCDD, thus translating the narrative bioaccumulation objective into a numeric criterion.

- iii. Chronic Toxicity.** The narrative toxicity objective (Basin Plan section 3.3.18) states, “All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.... There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community. Attainment of this objective will be determined by analyses of indicator organisms, species diversity, population density, growth anomalies, or toxicity tests..., or other methods selected by the Water Board.”

For this Order, this narrative objective is translated into a numeric criterion of 1.0 chronic toxicity unit (TU_c). At 1.0 TU_c, there is no observable detrimental effect when the indicator organism is exposed to 100 percent effluent; therefore, 1.0 TU_c is a direct translation of the narrative objective into a number. Moreover, in U.S. EPA’s *Technical Support Document for Water Quality-based Toxics Control* (EPA/505/2-90-001; see section 3.3.3, “Step 3: Decision Criteria for Permit Limit Development”), U.S. EPA recommends that 1.0 TU_c be used as a criterion continuous concentration (typically a four-day average). It further states that reasonable potential is shown where an effluent is projected to cause an excursion above the criterion continuous concentration. This document applies here as guidance because it directly addresses effluent characterization for toxicity.

- b. CTR Criteria.** The CTR specifies numeric aquatic life and human health criteria for numerous priority pollutants. These criteria apply to inland surface waters and enclosed bays and estuaries. Some human health criteria are for consumption of “water and organisms” and others are for consumption of “organisms only.” The criteria applicable to “organisms only” apply to Central San Francisco Bay because it is not a source of drinking water.

- c. **NTR Criteria.** The NTR establishes numeric aquatic life and human health criteria for a number of toxic pollutants for San Francisco Bay waters upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. These NTR criteria apply to Central San Francisco Bay.
- d. **Sediment Quality Objectives.** The *Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1, Sediment Quality* contains a narrative water quality objective: “Pollutants in sediments shall not be present in quantities that, alone or in combination, are toxic to benthic communities in bays and estuaries of California.” This objective is to be implemented by integrating three lines of evidence: sediment toxicity, benthic community condition, and sediment chemistry. The policy requires that if the Regional Water Board determines that a discharge has reasonable potential to cause or contribute to an exceedance of this objective, it is to impose the objective as a receiving water limit.
- e. **Receiving Water Salinity.** Basin Plan section 4.6.2 (like the CTR and NTR) states that the salinity characteristics (i.e., freshwater vs. saltwater) of the receiving water are to be considered in determining the applicable water quality objectives. Freshwater criteria apply to discharges to waters with salinities equal to or less than one part per thousand (ppt) at least 95 percent of the time. Saltwater criteria apply to discharges to waters with salinities equal to or greater than 10 ppt at least 95 percent of the time in a normal water year. For discharges to waters with salinities between these two categories, or tidally-influenced freshwaters that support estuarine beneficial uses, the water quality objectives are the lower of the salt or freshwater objectives (the latter calculated based on ambient hardness) for each substance.

Central San Francisco Bay is an estuarine environment based on salinity data collected at the Regional Monitoring Program Red Rock Station (BC60) from February 1994 to August 2001 (when this station was last monitored). During that period, the salinity was never less than 1 ppt and greater than 10 ppt in 78 percent of the samples. Central San Francisco Bay is therefore classified as estuarine and the reasonable potential analysis and WQBELs in this Order are based on the more stringent of the freshwater and saltwater water quality objectives.

- f. **Receiving Water Hardness.** For hardness-dependent metals, a hardness value of 400 mg/L was used to determine those objectives. This is because the hardness values measured at the Regional Monitoring Program Red Rock Station have always been above 400 mg/L, and the CTR recommends capping the hardness value at 400 mg/L in such cases.
- g. **Metals Translators.** Effluent limitations for metals must be expressed as total recoverable metal (40 C.F.R. § 122.45[c]). Since the water quality objectives for metals are typically expressed as dissolved metals, translators must be used to convert metals concentrations from dissolved to total recoverable and vice versa. The CTR contains default translators; however, site-specific conditions, such as water temperature, pH, total suspended solids, and organic carbon may affect the form of metal (dissolved, non-filterable, or otherwise) present and therefore available to cause toxicity. In general, dissolved metals are more available and more toxic to aquatic life than other forms. Site-specific translators can account for site-specific conditions, thereby preventing overly stringent or under-protective water quality objectives.

CTR default translators were used for all metals other than copper and nickel. Basin Plan Table 7.2.1-2 sets forth site-specific copper translators. The Clean Estuary Partnership's *North of Dumbarton Bridge Copper and Nickel Development and Selection of Final Translators* (March 2005) contains site-specific nickel translators. These site-specific translators are listed in the table below:

Table F-7. Site-Specific Translators

Parameter	Site Specific Translators	
	Acute	Chronic
Copper	0.87	0.73
Nickel	0.85	0.65

3. Need for WQBELs (Reasonable Potential Analysis)

Assessing whether a pollutant has reasonable potential to exceed a water quality objective is the fundamental step in determining whether a WQBEL is required.

- a. Available Information.** The reasonable potential analysis for this Order is based on effluent monitoring data CMSA collected from April 2012 through April 2016 and ambient background data the Regional Monitoring Program collected at the Yerba Buena Station (BC10) from 1993 through 2015, supplemented by additional Bay Area Clean Water Agencies data from *San Francisco Bay Ambient Water Monitoring Interim Report* (2003) and *Ambient Water Monitoring: Final CTR Sampling Update* (2004). SIP section 1.4.3 requires that background water quality data be representative of the ambient receiving water that will mix with the discharge.

This Order does not contain WQBELs for constituents that do not demonstrate reasonable potential; however, Provision VI.C.2 of the Order requires monitoring for those pollutants. If concentrations are found to have increased significantly, Provision VI.C.2 of the Order requires CMSA to investigate the sources of the increases and implement remedial measures if the increases pose a threat to receiving water quality.

b. Priority Pollutants, Ammonia, and Dioxin-TEQ

- i. Methodology.** SIP section 1.3 sets forth the methodology used for this Order for assessing whether a priority pollutant has reasonable potential to exceed a water quality objective. For ammonia and dioxin-TEQ, SIP section 1.3 is used as guidance. The analysis begins with identifying the maximum effluent concentration (MEC) observed for each pollutant based on available effluent concentration data and the ambient background concentration (B). SIP section 1.4.3 states that ambient background concentrations are either the maximum ambient concentration observed or, for water quality objectives intended to protect human health, the arithmetic mean of observed concentrations. There are three triggers in determining reasonable potential:
- (a) Trigger 1** is activated if the maximum effluent concentration is greater than or equal to the lowest applicable water quality objective ($MEC \geq$ water quality objective).

(b) **Trigger 2** is activated if the ambient background concentration observed in the receiving water is greater than the lowest applicable water quality objective ($B > \text{water quality objective}$) *and* the pollutant is detected in any effluent sample.

(c) **Trigger 3** is activated if a review of other information indicates that a WQBEL is needed to protect beneficial uses.

ii. **Analysis.** The maximum effluent concentrations, most stringent applicable water quality criteria and objectives, and ambient background concentrations used in the analysis are presented in the following table, along with the reasonable potential analysis results (yes, no, or unknown) for each pollutant. Copper, cyanide, dioxin-TEQ, and ammonia exhibit reasonable potential. In addition, Basin Plan sections 7.2.1.2 and 4.7.2.2 require copper and cyanide WQBELs for all individual NPDES permits for municipal wastewater treatment facilities that discharge to San Francisco Bay.

Table F-8. Reasonable Potential Analysis

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) ^[1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
1	Antimony	4,300	0.3	1.8	No
2	Arsenic	36	0.55	2.8	No
3	Beryllium	No Criteria	<0.01	0.22	U
4	Cadmium	1.0	0.78	0.13	No
5a	Chromium (III)	190	---	4.4	U
5b	Chromium (VI)	11.4	0.95	4.4	No
6	Copper	8.2	10	2.5	Yes^[4]
7	Lead	8.5	0.36	0.8	No
8	Mercury ^[5]	---	---	---	^[5]
9	Nickel	13	5.7	3.7	No
10	Selenium ^[5]	---	---	---	^[5]
11	Silver	2.2	0.35	0.052	No
12	Thallium	6.3	0.45	0.21	No
13	Zinc	86	45	5.1	No
14	Cyanide	2.9	7.1	<0.4	Yes^[4]
15	Asbestos	No Criteria	Unavailable	Unavailable	U
16	2,3,7,8-TCDD	1.4E-08	<2.7E-08	8.2E-09	U
	Dioxin-TEQ	1.4E-08	<7.1E-08	5.3E-08	Yes
17	Acrolein	780	<1.7	<0.5	No
18	Acrylonitrile	0.66	<0.69	0.03	No
19	Benzene	71	<0.18	<0.05	No
20	Bromoform	360	<0.15	<0.5	No
21	Carbon Tetrachloride	4.4	<0.16	0.06	No
22	Chlorobenzene	21,000	<0.18	<0.5	No
23	Chlorodibromomethane	34	<0.17	<0.05	No
24	Chloroethane	No Criteria	<0.38	<0.5	U

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) [1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
25	2-Chloroethylvinyl ether	No Criteria	<0.28	<0.5	U
26	Chloroform	No Criteria		<0.5	U
27	Dichlorobromomethane	46	<0.16	<0.05	No
28	1,1-Dichloroethane	No Criteria	<0.19	<0.05	U
29	1,2-Dichloroethane	99	<0.18	0.04	No
30	1,1-Dichloroethylene	3.2	<0.21	<0.5	No
31	1,2-Dichloropropane	39	<0.18	<0.05	No
32	1,3-Dichloropropylene	1,700	<0.16	<0.5	No
33	Ethylbenzene	29,000	<0.26	<0.5	No
34	Methyl Bromide	4,000	<0.17	<0.5	No
35	Methyl Chloride	No Criteria	<0.23	<0.5	U
36	Methylene Chloride	1,600	<0.26	22	No
37	1,1,2,2-Tetrachloroethane	11	<0.20	<0.05	No
38	Tetrachloroethylene	8.9	<0.19	<0.05	No
39	Toluene	200,000		<0.3	No
40	1,2-Trans-Dichloroethylene	140,000	<0.22	<0.5	No
41	1,1,1-Trichloroethane	No Criteria	<0.19	<0.5	U
42	1,1,2-Trichloroethane	42	<0.16	<0.05	No
43	Trichloroethylene	81	<0.20	<0.5	No
44	Vinyl Chloride	525	<0.25	<0.5	No
45	2-Chlorophenol	400	<0.7	<1.2	No
46	2,4-Dichlorophenol	790	<1.0	<1.3	No
47	2,4-Dimethylphenol	2,300	<0.8	<1.3	No
48	2-Methyl- 4,6-Dinitrophenol	765	<0.4	<1.2	No
49	2,4-Dinitrophenol	14,000	<0.83	<0.7	No
50	2-Nitrophenol	No Criteria	<0.6	<1.3	U
51	4-Nitrophenol	No Criteria	<0.5	<1.6	U
52	3-Methyl 4-Chlorophenol	No Criteria	<0.8	<1.1	U
53	Pentachlorophenol	7.9	<0.5	<1	No
54	Phenol	4,600,000	<0.5	<1.3	No
55	2,4,6-Trichlorophenol	6.5	<0.97	<1.3	No
56	Acenaphthene	2,700	0.01	0.0019	No
57	Acenaphthylene	No Criteria	0.02	0.0013	U
58	Anthracene	110,000	<0.01	0.00059	No
59	Benzidine	0.00054	<5	<0.0015	U
60	Benzo(a)Anthracene	0.049	<0.02	0.0053	No
61	Benzo(a)Pyrene	0.049	<0.01	0.0033	No
62	Benzo(b)Fluoranthene	0.049	<0.01	0.0046	No
63	Benzo(ghi)Perylene	No Criteria	<0.02	0.0045	U
64	Benzo(k)Fluoranthene	0.049	<0.01	0.0018	No
65	Bis(2-Chloroethoxy)Methane	No Criteria	<0.9	<0.3	U
66	Bis(2-Chloroethyl)Ether	1.4	<0.7	<0.3	No
67	Bis(2-Chloroisopropyl)Ether	170,000	<0.6	<0.6	No

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) ^[1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
68	Bis(2-Ethylhexyl)Phthalate	5.9	<0.6	<0.7	No
69	4-Bromophenyl Phenyl Ether	No Criteria	<0.7	<0.23	U
70	Butylbenzyl Phthalate	5,200	<0.9	0.0056	No
71	2-Chloronaphthalene	4,300	<0.9	<0.3	No
72	4-Chlorophenyl Phenyl Ether	No Criteria	<0.01	<0.3	U
73	Chrysene	0.049	<0.02	0.0028	No
74	Dibenzo(a,h)Anthracene	0.049	<0.27	0.00064	No
75	1,2-Dichlorobenzene	17,000	<0.18	<0.3	No
76	1,3-Dichlorobenzene	2,600	<0.18	<0.3	No
77	1,4-Dichlorobenzene	2,600	<5	<0.3	No
78	3,3 Dichlorobenzidine	0.077	<0.86	<0.001	No
79	Diethyl Phthalate	120,000	<0.97	<0.21	No
80	Dimethyl Phthalate	2,900,000	<0.92	<0.21	No
81	Di-n-Butyl Phthalate	12000	<0.7	0.016	No
82	2,4-Dinitrotoluene	9.1	<0.7	<0.27	No
83	2,6-Dinitrotoluene	No Criteria	<0.5	<0.29	U
84	Di-n-Octyl Phthalate	No Criteria	<0.7	<0.38	U
85	1,2-Diphenylhydrazine	0.54	<0.03	0.0037	No
86	Fluoranthene	370	<0.01	0.011	No
87	Fluorene	14,000	<0.07	0.0021	No
88	Hexachlorobenzene	0.00077	<0.06	2.2E-05	No
89	Hexachlorobutadiene	50	<0.02	<0.3	No
90	Hexachlorocyclopentadiene	17,000	<0.93	<0.3	No
91	Hexachloroethane	8.9	<0.1	<0.2	No
92	Indeno(1,2,3-cd)Pyrene	0.049	<0.02	0.0040	No
93	Isophorone	600	<0.93	<0.3	No
94	Naphthalene	No Criteria	<0.02	0.013	U
95	Nitrobenzene	1,900	<0.95	<0.25	No
96	N-Nitrosodimethylamine	8.1	<0.5	<0.3	No
97	N-Nitrosodi-n-Propylamine	1.4	<0.01	<0.001	No
98	N-Nitrosodiphenylamine	16	<0.02	<0.001	No
99	Phenanthrene	No Criteria	<0.6	0.0095	U
100	Pyrene	11,000	<0.02	0.019	No
101	1,2,4-Trichlorobenzene	No Criteria	<0.6	<0.3	U
102	Aldrin	0.00014	<0.004	2.8E-06	U
103	Alpha-BHC	0.013	<0.005	0.00050	No
104	Beta-BHC	0.046	<0.004	0.00041	No
105	Gamma-BHC	0.063	<0.004	0.00070	No
106	Delta-BHC	No Criteria	<0.004	5.3E-05	U
107	Chlordane	0.00059	<0.02	0.00018	No
108	4,4'-DDT	0.00059	<0.004	0.00017	No
109	4,4'-DDE (linked to DDT)	0.00059	<0.003	0.00069	No
110	4,4'-DDD	0.00084	<0.004	0.00031	No

CTR No.	Priority Pollutants	C or Governing criterion or objective (µg/L)	MEC or Minimum DL (µg/L) ^[1,2]	B or Minimum DL (µg/L) ^[1,2]	RPA Results ^[3]
111	Dieldrin (303d listed)	0.00014	<0.004	0.00026	No
112	Alpha-Endosulfan	0.0087	<0.004	3.1E-05	No
113	Beta-Endosulfan	0.0087	<0.005	6.9E-05	No
114	Endosulfan Sulfate	240	<0.005	8.2E-05	No
115	Endrin	0.0023	<0.005	4.0E-05	No
116	Endrin Aldehyde	0.81	<0.005	<0.005	No
117	Heptachlor	0.00021	<0.005	1.9E-05	No
118	Heptachlor Epoxide	0.00011	<0.004	9.4E-05	No
119-125	PCBs sum ^[5]	---	---	---	[5]
126	Toxaphene	0.0002	<0.3	Unavailable	U
	Ammonia	1.4	52	0.26	Yes

Abbreviations:

MEC = maximum effluent concentration
B = background concentration
C = water quality criterion or objective
DL = detection level
µg/L = micrograms per liter
RPA = reasonable potential analysis

Footnotes:

- [1] The MEC and ambient background concentration are the actual detected concentrations unless preceded by a “<” sign, in which case the value shown is the minimum DL.
- [2] The MEC or ambient background concentration is “unavailable” when there are no monitoring data for the constituent.
- [3] RPA Results = Yes, if MEC ≥ WQC, B > WQC and MEC is detected, or Trigger 3
= No, if MEC and B are < WQC or all effluent data are undetected
= Unknown (U) if no criteria have been promulgated or data are insufficient.
- [4] Reasonable potential is based in whole or part on Basin Plan sections 7.2.1.2 and 4.7.2.1.
- [5] SIP section 1.3 excludes from its reasonable potential analysis procedure priority pollutants for which a TMDL has been developed. TMDLs have been developed for mercury and PCBs in San Francisco Bay. Mercury and PCBs from wastewater discharges are regulated by NPDES Permit No. CA0038849, which implements the San Francisco Bay Mercury and PCBs TMDLs. A TMDL has also been developed for selenium in North San Francisco Bay, which includes Central San Francisco Bay. Basin Plan section 7.2.4.5 finds that municipal wastewater dischargers have no reasonable potential to cause or contribute to the selenium impairment in San Francisco Bay segments and, therefore, are not required to have numeric effluent limitations.

- c. Acute Toxicity.** Basin Plan section 4.5.5.3.1 requires acute toxicity monitoring and limitations.
- d. Chronic Toxicity.** The *Technical Support Document for Water Quality-based Toxics Control* allows for dilution to be considered when conducting a reasonable potential analysis. This Order establishes a chronic toxicity dilution credit of 10:1 (D = 9) consistent with Basin Plan section 4.5.5.3.2, which allows chronic toxicity dilution credits “comparable to those allowed for numeric chemical-specific objectives.” Fact Sheet section IV.C.4.a.i establishes a comparable dilution credit of 10:1 for non-bioaccumulative pollutants.

CMSA conducted quarterly chronic toxicity tests during the previous order term. The average was 3.1±0.9 TU_c and the maximum was 4.6 TU_c. Accounting for the dilution credit of 10:1 (D = 9), the resulting toxicity is less than 1.0 TU_c, which is also less than

the translated chronic toxicity objective (1.0 TU_c). Therefore, there is no reasonable potential for chronic toxicity in the receiving water, and no WQBEL is required.

- e. **Sediment Quality.** Pollutants in some receiving water sediments may be present in quantities that alone or in combination are toxic to benthic communities. Efforts are underway to identify stressors causing such conditions. However, to date there is no evidence directly linking compromised sediment conditions to the discharges subject to this Order; therefore, the Regional Water Board cannot draw a conclusion about reasonable potential for these discharges to cause or contribute to exceedances of the sediment quality objectives. Nevertheless, CMSA continues to participate in the Regional Monitoring Program, which monitors San Francisco Bay sediment and seeks to identify stressors responsible for degraded sediment quality. Thus far, the monitoring has provided only limited information about potential stressors and sediment transport. The Regional Water Board is exploring options for obtaining additional information that may inform future analyses.

4. Effluent Limitations

WQBELs were developed for the pollutants determined to have reasonable potential to cause or contribute to exceedances of water quality objectives. With the exception of acute toxicity (discussed below), the WQBELs in this Order are based on the procedures in SIP section 1.4. Average monthly effluent limitations (AMELs) and maximum daily effluent limitations (MDELs) were calculated as shown in Table F-9, below.

- a. **Dilution Credits.** SIP section 1.4.2 allows dilution credits under certain circumstances. CMSA's September 2011 Mixing Zone Study Report for the Central Marin Sanitation Agency Outfall Diffuser to Central San Francisco Bay indicates that the minimum initial dilution at the outfall is 43:1 and occurs within 13 feet of the outfall.
- i. **Bioaccumulative Pollutants.** For certain bioaccumulative pollutants, dilution credit is significantly restricted or denied. Specifically, these pollutants include dioxin and furan compounds, which appear on the CWA section 303(d) list for Central San Francisco Bay because, based on available data on the concentrations of these pollutants in aquatic organisms, sediment, and the water column, they impair Central San Francisco Bay beneficial uses. The following factors suggest insufficient assimilative capacity in San Francisco Bay for these pollutants.

Tissue samples taken from San Francisco Bay fish show the presence of these pollutants at concentrations greater than screening levels (*Contaminant Concentrations in Fish from San Francisco Bay*, May 1997). The results of a 1994 San Francisco Bay pilot study, presented in *Contaminated Levels in Fish Tissue from San Francisco Bay* (Regional Water Board, 1994) also show elevated levels of chemical contaminants in fish tissues. The Office of Environmental Health and Hazard Assessment completed a preliminary review of the data in the 1994 report and in December 1994 issued an interim consumption advisory covering certain fish species in San Francisco Bay due to the levels of some of these pollutants. The Office of Environmental Health and Hazard Assessment updated this advisory in a May 2011 report, *Health Advisory and Safe Eating Guidelines for San Francisco Bay Fish and Shellfish*, which still suggests insufficient assimilative capacity in San

Francisco Bay for 303(d)-listed pollutants. Therefore, dilution credits are denied for bioaccumulative pollutants on the 303(d) list for which data are lacking on sources and significant uncertainty exists about how different sources contribute to bioaccumulation.

ii. Non-Bioaccumulative Pollutants (except ammonia). For non-bioaccumulative pollutants (except ammonia), a conservative dilution credit of 10:1 ($D=9$) has been assigned. The 10:1 dilution credit is based, in part, on Basin Plan Prohibition 1 (Table 4-1), which prohibits discharges with less than 10:1 dilution. SIP section 1.4.2 allows for limiting the dilution credit. The dilution credit is limited for the following reasons:

(a) San Francisco Bay is a complex estuarine system with highly variable and seasonal upstream freshwater inflows and diurnal tidal saltwater inputs. SIP section 1.4.3 allows background conditions to be determined on a discharge-by-discharge or water body-by-water body basis. A water body-by-water body approach is taken here due to inherent uncertainties in characterizing ambient background conditions in a complex estuarine system on a discharge-by-discharge basis.

(b) Because of the complex hydrology of San Francisco Bay, there are uncertainties in accurately determining an appropriate mixing zone. The models used to predict dilution do not consider the three dimensional nature of San Francisco Bay currents resulting from the interaction of tidal flushes and seasonal fresh water outflows. Being heavier and colder than fresh water, ocean salt water enters San Francisco Bay on a twice-daily tidal cycle, generally beneath the warmer fresh water that flows seaward. When these waters mix and interact, complex circulation patterns occur due to the varying densities of the fresh and ocean waters. The complex patterns occur throughout San Francisco Bay, but are most prevalent in San Pablo Bay, Carquinez Strait, and Suisun Bay. The locations of this mixing and interaction change depending on the strength of each tide. Additionally, sediment loads from the Central Valley change on a long-term basis, affecting the depth of different parts of San Francisco Bay, resulting in alteration of flow patterns, mixing, and dilution at the outfall.

iii. Ammonia. For ammonia, a conservative estimate of actual initial dilution (43:1) was used to calculate effluent limits. This is justified because ammonia, a non-persistent pollutant, quickly disperses and degrades to a non-toxic state, and cumulative toxicity is unlikely. As such, there is unlikely to be cumulative toxicity associated with discharges containing elevated ammonia concentrations. Therefore, granting full dilution credit based on the modeled initial dilution will protect water quality.

b. WQBEL Calculations. For pollutants with reasonable potential (except acute toxicity), average monthly effluent limitations (AMELs) and maximum daily effluent limitations (MDELs) were calculated as shown in the table below:

Table F-9. WQBEL Calculations

PRIORITY POLLUTANTS	Copper	Cyanide	Dioxin-TEQ	Total Ammonia (acute)	Total Ammonia (chronic)
Units	µg/L	µg/L	µg/L	mg/L N	mg/L N
Basis and Criteria type	CTR Aquatic Criteria	CTR Aquatic Criteria	Basin Plan Human Health	Basin Plan Aquatic Life	Basin Plan Aquatic Life
Criteria - Acute	-----	-----	-----	5.3	-----
Criteria - Chronic	-----	-----	-----	-----	1.4
Site-Specific Objective Criteria - Acute	3.9	9.4	-----	-----	-----
Site-Specific Objective Criteria - Chronic	2.5	2.9	-----	-----	-----
Water Effects ratio (WER)	2.4	1	1	1	1
Lowest WQO	8.2	2.9	1.4E-08	5.3	1.4
Site-Specific Translator - MDEL	0.87	-----	-----	-----	-----
Site-Specific Translator - AMEL	0.73	-----	-----	-----	-----
Dilution Factor (D)	9	9	0	42	42
No. of samples per month	4	4	4	4	30
Aquatic life criteria analysis required? (Y/N)	Y	Y	N	Y	Y
HH criteria analysis required? (Y/N)	N	Y	Y	N	N
Applicable Acute WQO	11	9.4	-----	5.3	-----
Applicable Chronic WQO	8.2	2.9	-----	-----	1.4
HH criteria	-----	2.2E+05	1.4E-08	-----	-----
Background (Maximum Conc for Aquatic Life calc)	2.5	0.4	-----	0.15	0.08
Background (Average Conc for Human Health calc)	-----	0.4	2.0E-08	-----	-----
Is the pollutant on the 303d list and/or bioaccumulative (Y/N)?	N	N	Y	N	N
ECA acute	85	90	-----	220	-----
ECA chronic	60	25	-----	-----	57
ECA HH	-----	2.2E+05	1.4E-08	-----	-----
No. of data points <10 or at least 80% of data reported non detect? (Y/N)	N	N	Y	N	N
Avg of effluent data points	4.1	1.4	-----	30	30
Std Dev of effluent data points	1.4	0.6	-----	11	11
CV calculated	0.34	0.40	N/A	0.37	0.37
CV (Selected) – Final	0.34	0.40	0.60	0.37	0.37
ECA acute mult99	0.49	0.44	-----	0.47	-----
ECA chronic mult99	0.68	0.64	-----	-----	0.96
LTA acute	42	40	-----	100	-----
LTA chronic	41	16	-----	-----	54

PRIORITY POLLUTANTS	Copper	Cyanide	Dioxin-TEQ	Total Ammonia (acute)	Total Ammonia (chronic)
Units	µg/L	µg/L	µg/L	mg/L N	mg/L N
minimum of LTAs	41	16	-----	100	54
AMEL mult95	1.3	1.4	1.55	1.3	1.1
MDEL mult99	2.0	2.3	3.11	2.1	2.1
AMEL (aquatic life)	53	22	-----	140	61
MDEL (aquatic life)	84	37	-----	220	120
MDEL/AMEL Multiplier	1.6	1.7	2.01	1.2	1.3
AMEL (human health)	-----	2.2E+05	1.4E-08	-----	-----
MDEL (human health)	-----	3.6E+05	2.8E-08	-----	-----
minimum of AMEL for Aq. life vs HH	53	22	1.4E-08	140	61
minimum of MDEL for Aq. Life vs HH	84	37	2.8E-08	220	120
Previous order limit - AMEL	49	21	1.4E-08	60	60
Previous order limit - MDEL	85	41	2.8E-08	120	120
Final limit - AMEL	49	21	1.4E-08	60	60
Final limit - MDEL	84	37	2.8E-08	120	120

- c. Acute Toxicity.** This Order includes acute toxicity effluent limitations based on Basin Plan Table 4-3, assuming monthly sampling as the MRP requires. Based on Basin Plan section 3.3.20, if CMSA can demonstrate that ammonia causes acute toxicity in excess of the acute toxicity limitations in this Order, and that the ammonia in the discharge complies with the ammonia effluent limitations in this Order, then such toxicity does not constitute a violation of the acute toxicity effluent limitations.

D. Discharge Requirement Considerations

- 1. Anti-backsliding.** This Order complies with the anti-backsliding provisions of CWA sections 402(o) and 303(d)(4) and 40 C.F.R. section 122.44(l), which generally require effluent limitations in a reissued permit to be as stringent as those in the previous permit. The requirements of this Order are at least as stringent as those in the previous order.
- 2. Antidegradation.** This Order complies with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16. It continues the status quo with respect to the level of discharge authorized in the previous order, which was adopted in accordance with antidegradation policies and thus serves as the baseline by which to measure whether degradation will occur. This Order does not allow for a flow increase, increased concentration, a reduced level of treatment, or an increase in effluent limitations relative to those in the previous order.

- 3. Stringency of Requirements for Individual Pollutants.** This Order contains both technology-based effluent limitations and WQBELs for individual pollutants. The technology-based requirements implement minimum, applicable federal technology-based requirements. In addition, this Order contains more stringent WQBELs as necessary to meet water quality standards. Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement CWA requirements.

This Order's WQBELs have been derived to implement water quality objectives that protect beneficial uses. The beneficial uses and water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. To the extent that WQBELs were derived from the CTR, the CTR is the applicable standard pursuant to 40 C.F.R. section 131.38. The procedures for calculating these WQBELs are based on the CTR, as implemented in accordance with the SIP, which U.S. EPA approved on May 18, 2000. U.S. EPA approved most Basin Plan beneficial uses and water quality objectives prior to May 30, 2000. Beneficial uses and water quality objectives submitted to U.S. EPA prior to May 30, 2000, but not approved by U.S. EPA before that date, are nonetheless "applicable water quality standards for purposes of the CWA" pursuant to 40 C.F.R. section 131.21(c)(1). U.S. EPA approved the remaining beneficial uses and water quality objectives so they are applicable water quality standards pursuant to 40 C.F.R. section 131.21(c)(2).

V. RATIONALE FOR RECEIVING WATER LIMITATIONS

The receiving water limitations in sections V.A and V.B of the Order are based on Basin Plan narrative and numeric water quality objectives. The receiving water limitation in section V.C of the Order requires compliance with federal and State water quality standards in accordance with the CWA and regulations adopted thereunder.

VI. RATIONALE FOR PROVISIONS

A. Standard Provisions

Attachment D contains standard provisions that apply to all NPDES permits in accordance with 40 C.F.R. section 122.41 and additional conditions applicable to specific categories of permits in accordance with 40 C.F.R. section 122.42. The Dischargers must comply with these provisions. The conditions set forth in 40 C.F.R. sections 122.41(a)(1) and (b) through (n) apply to all state-issued NPDES permits and must be incorporated into permits either expressly or by reference.

In accordance with 40 C.F.R. section 123.25(a)(12), states may omit or modify conditions to impose more stringent requirements. Attachment G contains standard provisions that supplement the federal standard provisions in Attachment D. This Order omits the federal conditions that address enforcement authority specified in 40 C.F.R. sections 122.41(j)(5) and (k)(2) because the State's enforcement authority under the Water Code is more stringent. In lieu of these conditions, this Order incorporates Water Code section 13387(e) by reference.

B. Monitoring and Reporting

CWA section 308 and 40 C.F.R. sections 122.41(h), 122.41(j)-(l), 122.44(i), and 122.48 require that NPDES permits specify monitoring and reporting requirements. Water Code sections 13267 and 13383 also authorize the Regional Water Board to establish monitoring, inspection, entry,

reporting, and recordkeeping requirements. The MRP establishes monitoring, reporting, and recordkeeping requirements that implement federal and State requirements. For more background regarding these requirements, see Fact Sheet section VII. Regional Water Board Order No. R2-2016-0008 allows CMSA to opt for certain alternate monitoring requirements.

C. Special Provisions

1. Reopener Provisions

These provisions are based on 40 C.F.R. sections 122.62 and 122.63 and allow modification of this Order and its effluent limitations as necessary in response to updated water quality objectives, regulations, or other new and relevant information that may become available in the future, and other circumstances as allowed by law.

2. Effluent Characterization Study and Report

This Order does not include effluent limitations for priority pollutants that do not demonstrate reasonable potential, but this provision requires CMSA to continue monitoring for these pollutants as described in the MRP and Attachment G. Monitoring data are necessary to verify that the “no” and “unknown” reasonable potential analysis conclusions of this Order remain valid. This requirement is authorized pursuant to Water Code section 13267 and is necessary to inform the next permit reissuance and to ensure that CMSA takes timely steps in response to any unanticipated change in effluent quality during the term of this Order.

3. Pollutant Minimization Program

This provision is based on Basin Plan section 4.13.2 and SIP section 2.4.5.

4. Special Provisions for Publicly-Owned Treatment Works (POTWs)

- a. Pretreatment Program.** This provision is based on 40 C.F.R. part 403. CMSA implements a pretreatment program due to the nature and volume of industrial influent to the treatment plant. This provision lists CMSA’s responsibilities regarding its pretreatment program and requires compliance with the provisions in Attachment H, “Pretreatment Requirements.”
- b. Sludge and Biosolids Management.** This provision is based on Basin Plan section 4.17. “Sludge” refers to the solid, semisolid, and liquid residue removed during primary, secondary, and advanced wastewater treatment processes. “Biosolids” refers to sludge that has been treated and may be beneficially reused.
- c. Collection System Management.** CMSA does not own or operate any part of the collection systems that are part of the Facility regulated through this Order. This Order regulates the collection systems for the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County. This provision requires compliance with Attachments D and G and states that these requirements may be satisfied by complying with State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by

State Water Board Order No. WQ 2013-0058-EXEC and any subsequent order updating these requirements. These statewide WDRs require public agencies that own or operate sanitary sewer systems with one or more miles of sewer lines to enroll for coverage and comply with requirements to develop sanitary sewer management plans and report sanitary sewer overflows, among other provisions and prohibitions. The statewide WDRs contain requirements for operation and maintenance of collection systems, and for reporting and mitigating sanitary sewer overflows, that are more extensive and, therefore, more stringent than the standard provisions in Attachments D and G.

5. Other Special Provisions

- a. **Collection System Agency Tasks to Reduce Blending.** Because excessive inflow and infiltration contributes to blending at CMSA's wastewater treatment plant, this provision is necessary to ensure that the satellite collection system agencies implement all feasible alternatives to eliminate wet weather bypasses consistent with Attachment D section I.G and 40 C.F.R. section 122.41(m) (see fact sheet section II.A.3). Specifically, this provision requires each satellite collection system agency to take all feasible actions to rehabilitate portions of their collection systems to reduce inflow and infiltration. These tasks include the development of point of sale ordinances that require homeowners to repair private sewer laterals prior to sale and the repair and replacement of main sewer lines as necessary. Sanitary District No. 1 of Marin County has already adopted a point of sale sewer lateral ordinance, which demonstrates that it is also feasible for the other collection system agencies.
- b. **CMSA Tasks to Reduce Blending.** Consistent with Attachment D section I.G and 40 C.F.R. section 122.41(m), CMSA submitted a No Feasible Alternatives Analysis with its permit reissuance application to determine whether any feasible alternatives are available to CMSA to reduce blending. The analysis indicated that there is very little that CMSA can do to reduce blending because it is infeasible to further expand its treatment plant capacity (CMSA recently completed a major treatment expansion) and because the primary cause of blending is due to inflow and infiltration of stormwater into the collection systems during wet weather. CMSA does not own the collection systems (see fact sheet section II.A.3), so Provision VI.C.5.a of this Order requires the collection system agencies to complete tasks to reduce blending. Provision VI.C.5.b of this Order requires CMSA to perform feasible tasks within its control and to assist the collection system agencies. The analysis and reporting requirements are based in part on U.S. EPA's proposed *Peak Wet Weather Policy* (December 2005).
- c. **Copper Action Plan.** This provision is based on Basin Plan section 7.2.1.2 and is necessary to ensure that use of copper site-specific objectives is consistent with antidegradation policies. CMSA submitted an inventory of potential copper sources with its Pollution Prevention Report dated February 24, 2017. This provision requires CMSA to implement pretreatment, source control, and pollution prevention for identified copper sources. Additional actions may be necessary depending on the three-year rolling mean copper concentration in Central San Francisco Bay. Data the San Francisco Estuary Institute compiled for 2011-2015 indicate no degradation of San Francisco Bay water quality with respect to copper (<http://www.sfei.org/pages/copper-site-specific-objective-3-year-rolling-averages-0>).

- d. Cyanide Action Plan.** This provision is based on Basin Plan section 4.7.2.2 and is necessary to ensure that use of cyanide site-specific objectives is consistent with antidegradation policies. The threshold for considering influent cyanide concentrations to indicate a possible “significant cyanide discharge” in CMSA’s service area is set at 10 µg/L, the maximum influent cyanide concentration from April 2012 through August 2016.

6. Anaerobically-Digestible Material

Standard Operating Procedures are required for dischargers that accept hauled waste food, fats, oil, and grease for injection into anaerobic digesters. The development and implementation of Standard Operating Procedures for management of these materials is intended to allow the California Department of Resources Recycling and Recovery to exempt operations from separate and redundant permitting programs. CMSA’s most recent update, dated May 2013, *Standard Operating Procedures for Anaerobically Digestible Materials*, describes how it manages high strength wastes for resource recovery.

Some POTWs choose to accept organic material, such as waste food, fats, oils, and grease, into their anaerobic digesters to increase production of methane and other biogas for energy production and to prevent such materials from being discharged into the collection system and potentially causing sanitary sewer overflows. This activity also results in landfill diversion and greenhouse gas reduction. The California Department of Resources Recycling and Recovery has proposed to exclude POTWs from Process Facility/Transfer Station permit requirements when the same activities are regulated under WDRs or NPDES permits. The proposed exclusion is restricted to anaerobically-digestible materials that have been prescreened, slurried, processed, and conveyed in a closed system for co-digestion with regular sewage sludge. The exclusion assumes that the facility has developed Standard Operating Procedures for proper handling, processing, tracking, and management.

VII. RATIONALE FOR MONITORING AND REPORTING PROGRAM (MRP)

Attachment E contains the MRP for this Order. It specifies sampling stations, pollutants to be monitored (including all parameters for which effluent limitations are specified), monitoring frequencies, and reporting requirements. The following provides the rationale for these requirements:

A. MRP Requirements Rationale

- 1. Influent Monitoring.** Influent monitoring at Monitoring Location INF-001 is necessary to understand Facility operations and to evaluate compliance with Prohibition III.D, which prohibits average dry weather influent flow greater than 10 MGD. Influent CBOD₅ and TSS monitoring is necessary to evaluate compliance with this Order’s 85 percent removal requirement. Basin Plan section 4.7.2.2 requires cyanide monitoring because this Order is based on site-specific cyanide water quality objectives.
- 2. Effluent Monitoring.** Effluent monitoring at Monitoring Locations EFF-001, EFF-002, and EFF-002b is necessary to understand Facility operations, to evaluate compliance with this Order’s effluent limitations, and to conduct future reasonable potential analyses. Bacteria

monitoring is allowed at Monitoring Location EFF-001 (prior to dechlorination) because bacteria could regrow between the point of dechlorination and the sampling location. Samples collected for bacteria analysis are immediately dechlorinated with sodium thiosulfate after the sample is collected.

3. **Toxicity Testing.** Acute toxicity tests are necessary to evaluate compliance with the acute toxicity effluent limitations and to conduct future reasonable potential analyses. Chronic toxicity tests are necessary to conduct future reasonable potential analyses and to evaluate whether chronic toxicity exceeds triggers for accelerated monitoring and Toxicity Reduction Evaluations based on Basin Plan sections 4.5.5.3.2 and 4.5.5.3.3 and Basin Plan Table 4-5. A chronic toxicity screening phase study, as described in MRP Appendix E-1, is needed following any significant change in the nature of the effluent and at least prior to permit reissuance to ensure that toxicity tests continue to be conducted with the most sensitive organism.

Because CMSA elected to participate in the *Alternate Monitoring and Reporting Requirements for Municipal Wastewater Dischargers for the Purpose of Adding Support to the San Francisco Bay Regional Monitoring Program* (Order No. R2-2016-0008), it did not conduct a chronic toxicity screening phase study for this permit reissuance. CMSA's previous chronic toxicity study, August 23, 2001, indicated that *Americamysis bahia* (mysid shrimp) was the most sensitive species.

4. **Receiving Water Monitoring.** CMSA is required to continue participating in the Regional Monitoring Program, which involves collecting data on pollutants and toxicity in San Francisco Bay water, sediment, and biota. This monitoring is necessary to characterize the receiving water and the effects of the discharge this Order authorizes.
5. **Pretreatment and Biosolids Monitoring.** The pretreatment and biosolids monitoring requirements for influent, effluent, and biosolids are necessary to evaluate compliance with pretreatment requirements.
6. **Other Monitoring Requirements.** Pursuant to CWA section 308, U.S. EPA requires dischargers to participate in a Discharge Monitoring Report-Quality Assurance (DMR-QA) Study Program. The program annually evaluates the analytical abilities of laboratories that perform or support NPDES permit-required monitoring. The program applies to discharger laboratories and contract laboratories. There are two options to comply: (1) dischargers can obtain and analyze DMR-QA samples, or (2) pursuant to a waiver U.S. EPA issued to the State Water Board, dischargers can submit results from the most recent Water Pollution Performance Evaluation Study. Dischargers must submit results annually to the State Water Board, which then forwards the results to U.S. EPA.

B. Monitoring Requirements Summary. The table below summarizes routine monitoring requirements. This table is for informational purposes only. The actual requirements are specified in the MRP and elsewhere in this Order.

Table F-10. Monitoring Requirements Summary

Parameter	Influent INF-001	Effluent EFF-001	Effluent EFF-002 (EFF-001 after dechlorination)	Effluent EFF-002b (during blending)	Biosolids BIO-001	Receiving Water
Flow	Continuous/ D	Continuous/D		Continuous/D	---	---
Volume of blended wastewater				1/Event		
Duration of blending event				1/Event		
Carbonaceous Biochemical Oxygen Demand, 5-day @ 20°C	1/Week	---	1/Week	1/Year	---	---
Total Suspended Solids	1/Week	---	2/Week	1/Day	---	---
Cyanide, Total	1/Month	---	1/Month	1/Year	2/Year	Support RMP
pH	---	---	1/Day or Continuous	1/Day or Continuous	---	Support RMP
Oil and Grease	---	---	2/Year		---	---
Enterococcus	---	1/Quarter	---	1/Day	---	---
Total Coliform		3/Week		1/Day		
Total Residual Chlorine	---	---	Continuous	Continuous	---	---
Acute Toxicity	---	---	1/Month		---	---
Chronic Toxicity	---	---	1/Quarter		---	---
Ammonia, Total	---	---	1/Month	1/Year	---	Support RMP
Copper, Total Recoverable	---	---	1/Month	1/Year	---	Support RMP
Dioxin-TEQ	---	---	2/Year		---	Support RMP
Priority Pollutants ^[1]	---	---	1/Year		---	Support RMP
VOC ^[2]	2/Year	---	2/Year		2/Year	---
BNA ^[3]	2/Year	---	2/Year		2/Year	---
Metals and Other Elements ^[4]	1/Month	---	1/Month		2/Year	---
Hexavalent Chromium or Total Chromium	1/Month	---	1/Month		2/Year	---
Mercury	1/Month	---	1/Month		2/Year	---
Metric tons/year	---	---	---	---	See Att. G § III.B.2	---
Paint filter test	---	---	---	---	See Att. G § III.B.2	---

Sampling Frequencies:

Continuous/D = measured continuously, and recorded and reported daily

1/Day = once per day

3/Week = three times per week

1/Month = once per month

1/Quarter = once per quarter

1/Year = once per year

2/Year = twice per year

Footnotes:

^[1] This monitoring is required by Provision VI.C.2 of the Order.

[2] VOC: volatile organic compounds

[3] BNA: base/neutrals and acid extractable organic compounds

[4] The metals and other elements are arsenic, cadmium, copper, lead, nickel, selenium, silver, and zinc.

VIII. PUBLIC PARTICIPATION

The Regional Water Board considered the issuance of WDRs that will serve as an NPDES permit for the Facility. As a step in the WDR adoption process, Regional Water Board staff developed tentative WDRs and encouraged public participation in the WDR adoption process.

A. Notification of Interested Parties. The Regional Water Board notified the Dischargers and interested agencies and persons of its intent to prescribe WDRs for the discharge and provided an opportunity to submit written comments and recommendations. Notification was provided through the *Marin Independent Journal*. The public had access to the agenda and any changes in dates and locations through the Regional Water Board's website at <http://www.waterboards.ca.gov/sanfranciscobay>.

B. Written Comments. Interested persons were invited to submit written comments concerning the tentative WDRs as explained through the notification process. Comments were to be submitted either in person or by mail to the Executive Officer at the Regional Water Board at 1515 Clay Street, Suite 1400, Oakland, California 94612, to the attention of Vincent Christian.

For full staff response and Regional Water Board consideration, the written comments were due at the Regional Water Board office by 5:00 p.m on **October 23, 2017**.

C. Public Hearing. The Regional Water Board held a public hearing on the tentative WDRs during its regular meeting at the following date and time, and at the following location:

Date: **January 10, 2018**
Time: 9:00 am
Location: Elihu Harris State Office Building
1515 Clay Street, 1st Floor Auditorium
Oakland, CA 94612

Contact: Vincent Christian, (510) 622-2336, vince.christian@waterboards.ca.gov .

Interested persons were invited to attend. At the public hearing, the Regional Water Board heard testimony pertinent to the discharge, WDRs, and permit. For accuracy of the record, important testimony was requested to be in writing.

Dates and venues change. The Regional Water Board web address is <http://www.waterboards.ca.gov/sanfranciscobay>, where one could access the current agenda for changes in dates and locations.

D. Reconsideration of Waste Discharge Requirements. Any aggrieved person may petition the State Water Board to review the Regional Water Board decision regarding the final WDRs. The State Water Board must receive the petition at the following address within 30 calendar days of the Regional Water Board action:

State Water Resources Control Board
Office of Chief Counsel

P.O. Box 100, 1001 I Street
Sacramento, CA 95812-0100

For instructions on how to file a petition for review, see
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml.

- E. Information and Copying.** The Report of Waste Discharge, related supporting documents, and comments received are on file and may be inspected at the address above at any time between 9:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged 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 the 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 Vincent Christian, at (510) 622-2336, or vince.christian@waterboards.ca.gov.

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

ATTACHMENT G

**REGIONAL STANDARD PROVISIONS, AND
MONITORING AND REPORTING REQUIREMENTS
(SUPPLEMENT TO ATTACHMENT D)**

November 2017

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REGIONAL STANDARD PROVISIONS, AND MONITORING AND REPORTING REQUIREMENTS

APPLICABILITY

This document supplements the requirements of Federal Standard Provisions (Attachment D). For clarity, these provisions are arranged using to the same headings as those used in Attachment D.

I. STANDARD PROVISIONS - PERMIT COMPLIANCE

A. Duty to Comply – Not Supplemented

B. Need to Halt or Reduce Activity Not a Defense – Not Supplemented

C. Duty to Mitigate – Supplement to Attachment D, Provision I.C.

- 1. Contingency Plan.** The Discharger shall maintain a Contingency Plan as prudent in accordance with current facility emergency planning. The Contingency Plan shall describe procedures to ensure that existing facilities remain in, or are rapidly returned to, operation in the event of a process failure or emergency incident, such as employee strike, strike by suppliers of chemicals or maintenance services, power outage, vandalism, earthquake, or fire. The Discharger may combine the Contingency Plan and Spill Prevention Plan (see Provision I.C.2, below) into one document. In accordance with Regional Water Board Resolution No. 74-10, discharge in violation of the permit where the Discharger has failed to develop and implement a Contingency Plan as described below may be the basis for considering the discharge a willful and negligent violation of the permit pursuant to California Water Code section 13387. The Contingency Plan shall, at a minimum, provide for the following:
 - a. Sufficient personnel for continued facility operation and maintenance during employee strikes or strikes against contractors providing services;
 - b. Maintenance of adequate chemicals or other supplies, and spare parts necessary for continued facility operations;
 - c. Emergency standby power;
 - d. Protection against vandalism;
 - e. Expeditious action to repair failures of, or damage to, equipment, including any sewer lines;
 - f. Reporting of spills and discharges of untreated or inadequately treated wastes, including measures taken to clean up the effects of such discharges; and
 - g. Maintenance, replacement, and surveillance of physical condition of equipment and facilities, including any sewer lines.

2. **Spill Prevention Plan.** The Discharger shall maintain a Spill Prevention Plan to prevent accidental discharges and to minimize the effects of any such discharges. The Spill Prevention Plan shall do the following:
 - a. Identify the possible sources of accidental discharge, untreated or partially-treated waste bypass, and polluted drainage;
 - b. State when current facilities and procedures became operational and evaluate their effectiveness; and
 - c. Predict the effectiveness of any proposed facilities and procedures and provide an implementation schedule with interim and final dates when the proposed facilities and procedures will be constructed, implemented, or operational.

D. Proper Operation and Maintenance – Supplement to Attachment D, Provision I.D

1. **Operation and Maintenance Manual.** The Discharger shall maintain an Operation and Maintenance Manual to provide the plant and regulatory personnel with a source of information describing all equipment, recommended operational strategies, process control monitoring, and maintenance activities. To remain a useful and relevant document, the Operation and Maintenance Manual shall be kept updated to reflect significant changes in treatment facility equipment and operational practices. The Operation and Maintenance Manual shall be maintained in usable condition and be available for reference and use by all relevant personnel and Regional Water Board staff.
2. **Wastewater Facilities Status Report.** The Discharger shall maintain a Wastewater Facilities Status Report and regularly review, revise, or update it, as necessary. This report shall document how the Discharger operates and maintains its wastewater collection, treatment, and disposal facilities to ensure that all facilities are adequately staffed, supervised, financed, operated, maintained, repaired, and upgraded as necessary to provide adequate and reliable transport, treatment, and disposal of all wastewater from both existing and planned future wastewater sources under the Discharger's service responsibilities.
3. **Proper Supervision and Operation of Publicly-Owned Treatment Works (POTWs).** POTWs shall be supervised and operated by persons possessing certificates of appropriate grade pursuant to Title 23, section 3680, of the California Code of Regulations.

E. Property Rights – Not Supplemented

F. Inspection and Entry – Not Supplemented

G. Bypass – Not Supplemented

H. Upset – Not Supplemented

I. Other – Addition to Attachment D

1. Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code section 13050.
2. Collection, treatment, storage, and disposal systems shall be operated in a manner that precludes public contact with wastewater. If public contact with wastewater could reasonably occur on public property, warning signs shall be posted.
3. If the Discharger submits a timely and complete Report of Waste Discharge for permit reissuance, this permit shall continue in force and effect until the permit is reissued or the Regional Water Board rescinds the permit.

II. STANDARD PROVISIONS – PERMIT ACTION – Not Supplemented

III. STANDARD PROVISIONS – MONITORING

A. Sampling and Analyses – Supplement to Attachment D, Provisions III.A and III.B

1. **Certified Laboratories.** Water and waste analyses shall be performed by a laboratory certified for these analyses in accordance with California Water Code section 13176.
2. **Minimum Levels.** For the 126 priority pollutants, the Discharger should use the analytical methods listed in Table B unless the Monitoring and Reporting Program (MRP, Attachment E) requires a particular method or minimum level (ML). All monitoring instruments and equipment shall be properly calibrated and maintained to ensure accuracy of measurements.
3. **Monitoring Frequency.** The MRP specifies the minimum sampling and analysis schedule.
 - a. **Sample Collection Timing**
 - i. The Discharger shall collect influent samples on varying days selected at random and shall not include any plant recirculation or other sidestream wastes, unless otherwise stipulated in the MRP. The Executive Officer may approve an alternative influent sampling plan if it is representative of plant influent and complies with all other permit requirements.
 - ii. The Discharger shall collect effluent samples on days coincident with influent sampling, unless otherwise stipulated by the MRP. If influent sampling is not required, the Discharger shall collect effluent samples on varying days selected at random, unless otherwise stipulated in the MRP. The Executive Officer may approve an alternative effluent sampling plan if it is representative of plant discharge and in compliance with all other permit requirements.
 - iii. The Discharger shall collect effluent grab samples during periods of daytime maximum peak flows (or peak flows through secondary treatment units for facilities that recycle effluent).

- iv. Effluent sampling for conventional pollutants shall occur on at least one day of any multiple-day bioassay the MRP requires. During the course of the bioassay, on at least one day, the Discharger shall collect and retain samples of the discharge. In the event that a bioassay result does not comply with effluent limitations, the Discharger shall analyze the retained samples for pollutants that could be toxic to aquatic life and for which it has effluent limitations.
 - (a) The Discharger shall perform bioassays on final effluent samples; when chlorine is used for disinfection, bioassays shall be performed on effluent after chlorination and dechlorination; and
 - (b) The Discharger shall analyze for total ammonia nitrogen and calculate the amount of un-ionized ammonia whenever test results fail to meet effluent limitations.

b. Conditions Triggering Accelerated Monitoring

- i. **Average Monthly Effluent Limitation Exceedance.** If the results from two consecutive samples of a constituent monitored in a particular month exceed the average monthly effluent limitation for any parameter (or if the required sampling frequency is once per month or less and the monthly sample exceeds the average monthly effluent limitation), the Discharger shall, within 24 hours after the results are received, increase its sampling frequency to daily until the results from the additional sampling show that the parameter complies with the average monthly effluent limitation.
- ii. **Maximum Daily Effluent Limitation Exceedance.** If a sample result exceeds a maximum daily effluent limitation, the Discharger shall, within 24 hours after the result is received, increase its sampling frequency to daily until the results from two samples collected on consecutive days show compliance with the maximum daily effluent limitation.
- iii. **Acute Toxicity.** If final or intermediate results of an acute bioassay indicate a violation or threatened violation (e.g., the percentage of surviving test organisms of any single acute bioassay is less than 70 percent), the Discharger shall initiate a new test as soon as practical or as described in applicable State Water Board plan provisions that become effective after adoption of these Regional Standard Provisions. The Discharger shall investigate the cause of the mortalities and report its findings in the next self-monitoring report.
- iv. **Chlorine.** The Discharger shall calibrate chlorine residual analyzers against grab samples as frequently as necessary to maintain accurate control and reliable operation. If an effluent violation is detected, the Discharger shall collect grab samples at least every 30 minutes until compliance with the limitation is achieved, unless the Discharger monitors chlorine residual continuously. In such cases, the Discharger shall continue to conduct continuous monitoring.
- v. **Bypass.** Except as indicated below, if a Discharger bypasses any portion of its treatment facility, it shall monitor flows and collect samples at affected discharge

points and analyze samples for all constituents with effluent limitations on a daily basis for the duration of the bypass. The Discharger need not accelerate chronic toxicity monitoring. The Discharger also need not collect and analyze samples for mercury, dioxin-TEQ, and PCBs after the first day of the bypass. The Discharger may satisfy the accelerated acute toxicity monitoring requirement by conducting a flow-through test or static renewal test that captures the duration of the bypass (regardless of the method specified in the MRP). If bypassing disinfection units only, the Discharger shall only monitor bacteria indicators daily.

(a) Bypass for Essential Maintenance. If a Discharger bypasses a treatment unit for essential maintenance pursuant to Attachment D section I.G.2, the Executive Officer may reduce the accelerated monitoring requirements above if the Discharger (i) monitors effluent at affected discharge points on the first day of the bypass for all constituents with effluent limitations, except chronic toxicity; and (ii) identifies and implements measures to ensure that the bypass will continue to comply with effluent limitations.

(b) Approved Wet Weather Bypasses. If a Discharger bypasses a treatment unit or permitted outfall during wet weather with Executive Officer approval pursuant to Attachment D section I.G.4, the Discharger shall monitor flows and collect and retain samples for affected discharge points on a daily basis for the duration of the bypass. The Discharger shall analyze daily for TSS using 24-hour composites (or more frequent increments) and for bacteria indicators with effluent limitations using grab samples. If TSS exceeds 45 mg/L in any composite sample, the Discharger shall also analyze daily the retained samples for all other constituents with effluent limitations, except oil and grease, mercury, PCBs, dioxin-TEQ, and acute and chronic toxicity. Additionally, at least once each year, the Discharger shall analyze the retained samples for one approved bypass for all other constituents with effluent limitations, except oil and grease, mercury, PCBs, dioxin-TEQ, and acute and chronic toxicity. This monitoring shall be in addition to the minimum monitoring specified in the MRP.

B. Standard Observations – Addition to Attachment D

- 1. Receiving Water Observations.** The following requirements only apply when the MRP requires standard observations of receiving waters. Standard observations shall include the following:
 - a. Floating and Suspended Materials** (e.g., oil, grease, algae, and other microscopic particulate matter) — presence or absence, source, and size of affected area.
 - b. Discoloration and Turbidity** — color, source, and size of affected area.
 - c. Odor** — presence or absence, characterization, source, and distance of travel.
 - d. Beneficial Water Use** — estimated number of water-associated waterfowl or wildlife, fisherpeople, and other recreational activities.

- e. Hydrographic Condition** — time and height of high and low tides (corrected to nearest National Oceanic and Atmospheric Administration location for the sampling date and time).
 - f. Weather Conditions** — wind direction, air temperature, and total precipitation during five days prior to observation.
- 2. Wastewater Effluent Observations.** The following requirements only apply when the MRP requires standard observations of wastewater effluent. Standard observations shall include the following:
 - a. Floating and Suspended Material of Wastewater Origin** (e.g., oil, grease, algae, and other microscopic particulate matter) — presence or absence.
 - b. Odor** — presence or absence, characterization, source, distance of travel, and wind direction.
- 3. Beach and Shoreline Observations.** The following requirements only apply when the MRP requires standard observations of beaches or shorelines. Standard observations shall include the following:
 - a. Material of Wastewater Origin** — presence or absence, description of material, estimated size of affected area, and source.
 - b. Beneficial Use** — estimate of number of people participating in recreational water contact, non-water contact, and fishing activities.
- 4. Waste Treatment and/or Disposal Facility Periphery Observations.** The following requirements only apply when the MRP requires standard observations of the periphery of waste treatment or disposal facilities. Standard observations shall include the following:
 - a. Odor** — presence or absence, characterization, source, and distance of travel.
 - b. Weather Conditions** — wind direction and estimated velocity.

IV. STANDARD PROVISIONS – RECORDS

A. Records to be Maintained – Supplement to Attachment D, Provision IV.A

The Discharger shall maintain records in a manner and at a location (e.g., the wastewater treatment plant or the Discharger's offices) such that the records are accessible to Regional Water Board staff. The minimum retention period specified in Attachment D, Provision IV, shall be extended during the course of any unresolved litigation regarding permit-related discharges, or when requested by Regional Water Board or U.S. EPA, Region IX, staff.

A copy of the permit shall be maintained at the discharge facility and be available at all times to operating personnel.

B. Records of Monitoring – Supplement to Attachment D, Provision IV.B

Monitoring records shall include the following:

- 1. Analytical Information.** Records shall include analytical method detection limits, minimum levels, reporting levels, and related quantification parameters.
- 2. Disinfection Process.** For the disinfection process, records shall include the following:
 - a.** For bacteriological analyses:
 - i.** Wastewater flow rate at the time of sample collection; and
 - ii.** Required statistical parameters for cumulative bacterial values (e.g., moving median or geometric mean for the number of samples or sampling period identified in the MRP).
 - b.** For the chlorination process (when chlorine is used for disinfection), at least daily average values for the following:
 - i.** Chlorine residual of treated wastewater as it enters the chlorine contact basin (mg/L);
 - ii.** Chlorine dosage (kg/day); and
 - iii.** Dechlorination chemical dosage (kg/day).
- 3. Wastewater Treatment Process Solids.** For each treatment unit process that involves solids removal from the wastewater stream, records shall include the following:
 - a.** Total volume or mass of solids removed from each collection unit (e.g., grit, skimmings, undigested biosolids, or combination) for each calendar month or other time period as appropriate, but not to exceed annually; and
 - b.** Final disposition of such solids (e.g., landfill, other subsequent treatment unit).
- 4. Treatment Process Bypasses.** For all treatment process bypasses, including wet weather blending, records shall include the following:
 - a.** Chronological log of treatment process bypasses;
 - b.** Identification of treatment processes bypassed;
 - c.** Beginning and ending dates and times of bypasses;
 - d.** Bypass durations;
 - e.** Estimated bypass volumes; and
 - f.** Description of, or reference to other reports describing, the bypasses, their cause, the corrective actions taken (except for wet weather blending explicitly approved within the permit and in compliance with any related permit conditions), and any additional monitoring conducted.

- 5. Treatment Plant Overflows.** The Discharger shall retain a chronological log of overflows at the treatment plant, including the headworks and all units and appurtenances downstream, and records supporting the information provided in accordance with Provision V.E.2, below.

C. Claims of Confidentiality – Not Supplemented

V. STANDARD PROVISIONS – REPORTING

A. Duty to Provide Information – Not Supplemented

B. Signatory and Certification Requirements – Not Supplemented

C. Monitoring Reports – Supplement to Attachment D, Provision V.C

- 1. Self-Monitoring Reports.** For each reporting period established in the MRP, the Discharger shall submit a self-monitoring report to the Regional Water Board in accordance with the requirements listed in the MRP and below:
 - a. Transmittal Letter.** Each self-monitoring report shall be submitted with a transmittal letter that includes the following:
 - i.** Identification of all violations of effluent limitations or other waste discharge requirements found during the reporting period;
 - ii.** Details regarding the violations, such as parameters, magnitude, test results, frequency, and dates;
 - iii.** Causes of the violations;
 - iv.** Corrective actions taken or planned to resolve violations and prevent recurrences, and dates or time schedules for implementation (the Discharger may refer to previously submitted reports that address the corrective actions);
 - v.** Explanation for any data invalidation. Data should not be submitted in a self-monitoring report if it does not meet quality assurance/quality control standards. However, if the Discharger wishes to invalidate a measurement after submitting it in a self-monitoring report, the Discharger shall identify the measurement suspected to be invalid and state the Discharger's intent to submit, within 60 days, a formal request to invalidate the measurement. The formal request shall include the original measurement in question, the reason for invalidating the measurement, all relevant documentation that supports invalidation (e.g., laboratory sheet, log entry, test results), and a discussion of the corrective actions taken or planned (with a time schedule for completion) to prevent recurrence of the sampling or measurement problem;
 - vi.** Description of blending, if any. If the Discharger blends, it shall describe the duration of blending events and certify whether the blending complied with all conditions for blending;

- Attachment G
Regional Standard Provisions, and Monitoring and Reporting Requirements (March 2010)

- iv. Dioxin-TEQ.** The Discharger shall report for each dioxin and furan congener the analytical results of effluent monitoring, including the reporting level, the method detection limit, and the measured concentration. The Discharger shall report all measured values of individual congeners, including data qualifiers. When calculating dioxin-TEQ, the Discharger shall set congener concentrations below the minimum levels (MLs) to zero. The Discharger shall calculate and report dioxin-TEQ using the following formula, where the MLs, toxicity equivalency factors (TEFs), and bioaccumulation equivalency factors (BEFs) are as provided in Table A:

$$\text{Dioxin-TEQ} = \sum (C_x \times \text{TEF}_x \times \text{BEF}_x)$$

where: C_x = measured or estimated concentration of congener x
 TEF_x = toxicity equivalency factor for congener x
 BEF_x = bioaccumulation equivalency factor for congener x

Table A
Minimum Levels, Toxicity Equivalency Factors,
and Bioaccumulation Equivalency Factors

Dioxin or Furan Congener	Minimum Level (pg/L)	2005 Toxicity Equivalency Factor (TEF)	Bioaccumulation Equivalency Factor (BEF)
2,3,7,8-TCDD	10	1.0	1.0
1,2,3,7,8-PeCDD	50	1.0	0.9
1,2,3,4,7,8-HxCDD	50	0.1	0.3
1,2,3,6,7,8-HxCDD	50	0.1	0.1
1,2,3,7,8,9-HxCDD	50	0.1	0.1
1,2,3,4,6,7,8-HpCDD	50	0.01	0.05
OCDD	100	0.0003	0.01
2,3,7,8-TCDF	10	0.1	0.8
1,2,3,7,8-PeCDF	50	0.03	0.2
2,3,4,7,8-PeCDF	50	0.3	1.6
1,2,3,4,7,8-HxCDF	50	0.1	0.08
1,2,3,6,7,8-HxCDF	50	0.1	0.2
1,2,3,7,8,9-HxCDF	50	0.1	0.6
2,3,4,6,7,8-HxCDF	50	0.1	0.7
1,2,3,4,6,7,8-HpCDF	50	0.01	0.01
1,2,3,4,7,8,9-HpCDF	50	0.01	0.4
OCDF	100	0.0003	0.02

- e. Results Not Yet Available.** The Discharger shall make all reasonable efforts to obtain analytical data for required parameter sampling in a timely manner. Certain analyses may require additional time to complete analytical processes and report results. In these cases, the Discharger shall describe the circumstances in the self-monitoring report and include the data for these parameters and relevant discussions of any violations in the next self-monitoring report due after the results are available.

- f. Annual Self-Monitoring Reports.** By the date specified in the MRP, the Discharger shall submit an annual self-monitoring report covering the previous calendar year. The report shall contain the following:
- i.** Comprehensive discussion of treatment plant performance, including documentation of any blending or other bypass events, and compliance with the permit. This discussion shall include any corrective actions taken or planned, such as changes to facility equipment or operation practices that may be needed to achieve compliance, and any other actions taken or planned that are intended to improve the performance and reliability of wastewater collection, treatment, or disposal practices;
 - ii.** List of approved analyses, including the following:
 - (a)** List of analyses for which the Discharger is certified;
 - (b)** List of analyses performed for the Discharger by a separate certified laboratory (copies of reports signed by the laboratory director of that laboratory need not be submitted but shall be retained onsite); and
 - (c)** List of “waived” analyses, as approved;
 - iii.** Plan view drawing or map showing the Discharger’s facility, flow routing, and sampling and observation station locations; and
 - iv.** Results of facility report reviews. The Discharger shall regularly review, revise, and update, as necessary, the Operation and Maintenance Manual, Contingency Plan, Spill Prevention Plan, and Wastewater Facilities Status Report so these documents remain useful and relevant to current practices. At a minimum, reviews shall be conducted annually. The Discharger shall describe or summarize its review and evaluation procedures, recommended or planned actions, and estimated time schedule for implementing these actions. The Discharger shall complete changes to these documents to ensure that they remain up-to-date.

D. Compliance Schedules – Not supplemented

E. Twenty-Four Hour Reporting – Supplement to Attachment D, Provision V.E

1. Oil or Other Hazardous Material Spills

- a.** Within 24 hours of becoming aware of a spill of oil or other hazardous material not contained onsite and completely cleaned up, the Discharger shall report as follows:
 - i.** If the spill exceeds reportable quantities for hazardous materials listed in 40 C.F.R. part 302. The Discharger shall call the California Office of Emergency Services (800-852-7550).
 - ii.** If the spill does not exceed reportable quantities for hazardous materials listed in 40 C.F.R., part 302, the Discharger shall call the Regional Water Board (510-622-2369).

- b.** The Discharger shall submit a written report to the Regional Water Board within five working days following either of the above telephone notifications unless directed otherwise by Regional Water Board staff. A report submitted electronically is acceptable. The written report shall include the following:
 - i.** Date and time of spill, and duration if known;
 - ii.** Location of spill (street address or description of location);
 - iii.** Nature of material spilled;
 - iv.** Quantity of material spilled;
 - v.** Receiving water body affected, if any;
 - vi.** Cause of spill;
 - vii.** Estimated size of affected area;
 - viii.** Observed impacts to receiving waters (e.g., oil sheen, fish kill, water discoloration);
 - ix.** Corrective actions taken to contain, minimize, or clean up the spill;
 - x.** Future corrective actions planned to prevent recurrence, and implementation schedule; and
 - xi.** Persons or agencies notified.

2. Unauthorized Municipal Wastewater Treatment Plant Discharges¹

- a. Two-Hour Notification.** For any unauthorized discharge that enters a drainage channel or surface water, the Discharger shall, as soon as possible, but not later than two hours after becoming aware of the discharge, notify the California Office of Emergency Services (800-852-7550) and the local health officer or director of environmental health with jurisdiction over the affected water body. Notification shall include the following:
 - i.** Incident description and cause;
 - ii.** Location of threatened or involved waterways or storm drains;
 - iii.** Date and time that the unauthorized discharge started;
 - iv.** Estimated quantity and duration of the unauthorized discharge (to the extent known), and estimated amount recovered;

¹ California Code of Regulations, Title 23, section 2250(b), defines an unauthorized discharge 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.

- v. Level of treatment prior to discharge (e.g., raw wastewater, primary-treated wastewater, or undisinfected secondary-treated wastewater); and
 - vi. Identity of person reporting the unauthorized discharge.
- b. Five-Day Written Report.** Within five business days following the two-hour notification, the Discharger shall submit a written report that includes, in addition to the information listed in Provision V.E.2.a, above, the following:
 - i. Methods used to delineate the geographical extent of the unauthorized discharge within receiving waters;
 - ii. Efforts implemented to minimize public exposure to the unauthorized discharge;
 - iii. Visual observations of the impacts (if any) noted in the receiving waters (e.g., fish kill, discoloration of receiving water) and extent of sampling if conducted;
 - iv. Corrective measures taken to minimize the impact of the unauthorized discharge;
 - v. Measures to be taken to minimize the potential for a similar unauthorized discharge in the future;
 - vi. Summary of Spill Prevention Plan or Operation and Maintenance Manual modifications to be made, if necessary, to minimize the potential for future unauthorized discharges; and
 - vii. Quantity and duration of the unauthorized discharge, and the amount recovered.

F. Planned Changes – Not supplemented

G. Anticipated Noncompliance – Not supplemented

H. Other Noncompliance – Not supplemented

I. Other Information – Not supplemented

VI. STANDARD PROVISION – ENFORCEMENT – Not Supplemented

VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS – Not Supplemented

VIII. DEFINITIONS – Addition to Attachment D

More definitions can be found in Attachment A of this NPDES Permit.

A. Arithmetic Calculations –

- 1. Geometric Mean.** The antilog of the log mean or the back-transformed mean of the logarithmically transformed variables, which is equivalent to the multiplication of the antilogarithms. The geometric mean can be calculated with either of the following equations:

$$\text{Geometric Mean} = \text{Antilog} \left(\frac{1}{N} \sum_{i=1}^N \text{Log}(C_i) \right)$$

or

$$\text{Geometric Mean} = (C_1 \times C_2 \times \dots \times C_N)^{1/N}$$

Where “N” is the number of data points for the period analyzed and “C” is the concentration for each of the “N” data points.

- 2. Mass Emission Rate.** The rate of discharge expressed in mass. The mass emission rate is obtained from the following calculation for any calendar day:

$$\text{Mass emission rate (lb/day)} = \frac{8.345}{N} \sum_{i=1}^N Q_i C_i$$

$$\text{Mass emission rate (kg/day)} = \frac{3.785}{N} \sum_{i=1}^N Q_i C_i$$

In which “N” is the number of samples analyzed in any calendar day and “Q_i” and “C_i” are the flow rate (MGD) and the constituent concentration (mg/L) associated with each of the “N” grab samples that may be taken in any calendar day. If a composite sample is taken, “C_i” is the concentration measured in the composite sample and “Q_i” is the average flow rate occurring during the period over which the samples are composited. The daily concentration of a constituent measured over any calendar day shall be determined from the flow-weighted average of the same constituent in the combined waste streams as follows:

$$C_d = \text{Average daily concentration} = \frac{1}{Q_t} \sum_{i=1}^N Q_i C_i$$

In which “N” is the number of component waste streams and “Q” and “C” are the flow rate (MGD) and the constituent concentration (mg/L) associated with each of the “N” waste streams. “Q_t” is the total flow rate of the combined waste streams.

- 3. Removal Efficiency.** The ratio of pollutants removed by the treatment facilities to pollutants entering the treatment facilities (expressed as a percentage). The Discharger shall determine removal efficiencies using monthly averages (by calendar month unless otherwise specified)

of pollutant concentration of influent and effluent samples collected at about the same time and using the following equation (or its equivalent):

$$\text{Removal Efficiency (\%)} = 100 \times [1 - (\text{Effluent Concentration} / \text{Influent Concentration})]$$

- B. Blending** – the practice of bypassing biological treatment units and recombining the bypass wastewater with biologically-treated wastewater.
- C. Composite Sample** – a sample composed of individual grab samples collected manually or by an automatic sampling device on the basis of time or flow as specified in the MRP. For flow-based composites, the proportion of each grab sample included in the composite sample shall be within plus or minus five percent (+/-5%) of the representative flow of the waste stream being measured at the time of grab sample collection. Alternatively, equal volume grab samples may be individually analyzed with the flow-weighted average calculated by averaging flow-weighted ratios of each grab sample analytical result. Grab samples comprising time-based composite samples shall be collected at intervals not greater than those specified in the MRP. The quantity of each grab sample comprising a time-based composite sample shall be a set of flow proportional volumes as specified in the MRP. If a particular time-based or flow-based composite sampling protocol is not specified in the MRP, the Discharger shall determine and implement the most representative protocol.
- D. Duplicate Sample** – a second sample taken from the same source and at the same time as an initial sample (such samples are typically analyzed identically to measure analytical variability).
- E. Grab Sample** – an individual sample collected during a short period not exceeding 15 minutes. Grab samples represent only the condition that exists at the time the sample is collected.
- F. Overflow** – the intentional or unintentional spilling or forcing out of untreated or partially-treated waste from a transport system (e.g., through manholes, at pump stations, or at collection points) upstream of the treatment plant headworks or from any part of a treatment plant.
- G. Priority Pollutants** – those constituents referred to in 40 C.F.R. part 122 as promulgated in the Federal Register, Vol. 65, No. 97, Thursday, May 18, 2000, also known as the California Toxics Rule.
- H. Untreated waste** – raw wastewater.

Table B
List of Monitoring Parameters and Analytical Methods

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVAA	DCP
1	Antimony	204.2					10	5	50	0.5	5	0.5		1000
2	Arsenic	206.3				20		2	10	2	2	1		1000
3	Beryllium						20	0.5	2	0.5	1			1000
4	Cadmium	200 or 213					10	0.5	10	0.25	0.5			1000
5a	Chromium (III)	SM 3500												
5b	Chromium (VI)	SM 3500				10	5							1000
	Chromium (total) ⁴	SM 3500					50	2	10	0.5	1			1000
6	Copper	200.9					25	5	10	0.5	2			1000
7	Lead	200.9					20	5	5	0.5	2			10,000
8	Mercury	1631 (note) ⁵												
9	Nickel	249.2					50	5	20	1	5			1000
10	Selenium	200.8 or SM 3114B or C						5	10	2	5	1		1000
11	Silver	272.2					10	1	10	0.25	2			1000
12	Thallium	279.2					10	2	10	1	5			1000
13	Zinc	200 or 289					20		20	1	10			
14	Cyanide	SM 4500 CN ⁻ C or I				5								
15	Asbestos (only required for dischargers to MUN waters) ⁶	0100.2 ⁷												
16	2,3,7,8-TCDD and 17 congeners (Dioxin)	1613												
17	Acrolein	603	2.0	5										
18	Acrylonitrile	603	2.0	2										
19	Benzene	602	0.5	2										
33	Ethylbenzene	602	0.5	2										
39	Toluene	602	0.5	2										
20	Bromoform	601	0.5	2										
21	Carbon Tetrachloride	601	0.5	2										
22	Chlorobenzene	601	0.5	2										
23	Chlorodibromomethane	601	0.5	2										
24	Chloroethane	601	0.5	2										
25	2-Chloroethylvinyl Ether	601	1	1										
26	Chloroform	601	0.5	2										
75	1,2-Dichlorobenzene	601	0.5	2										

² The suggested method is the U.S. EPA Method unless otherwise specified (SM = Standard Methods). The Discharger may use another U.S. EPA-approved or recognized method if that method has a level of quantification below the applicable water quality objective. Where no method is suggested, the Discharger has the discretion to use any standard method.

³ Minimum levels are from the *State Implementation Policy*. They are the concentration of the lowest calibration standard for that technique based on a survey of contract laboratories. Laboratory techniques are defined as follows: GC = Gas Chromatography; GCMS = Gas Chromatography/Mass Spectrometry; LC = High Pressure Liquid Chromatography; Color = Colorimetric; FAA = Flame Atomic Absorption; GFAA = Graphite Furnace Atomic Absorption; ICP = Inductively Coupled Plasma; ICPMS = Inductively Coupled Plasma/Mass Spectrometry; SPGFAA = Stabilized Platform Graphite Furnace Atomic Absorption (i.e., U.S. EPA 200.9); Hydride = Gaseous Hydride Atomic Absorption; CVAA = Cold Vapor Atomic Absorption; DCP = Direct Current Plasma.

⁴ Analysis for total chromium may be substituted for analysis of chromium (III) and chromium (VI) if the concentration measured is below the lowest hexavalent chromium criterion (11 µg/l).

⁵ The Discharger shall use ultra-clean sampling (U.S. EPA Method 1669) and ultra-clean analytical methods (U.S. EPA Method 1631) for mercury monitoring. The minimum level for mercury is 2 ng/l (or 0.002 µg/l).

⁶ MUN = Municipal and Domestic Supply. This designation, if applicable, is in the Findings of the permit.

⁷ Determination of Asbestos Structures over 10 [micrometers] in Length in Drinking Water Using MCE Filters, U.S. EPA 600/R-94-134, June 1994.

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVAA	DCP
76	1,3-Dichlorobenzene	601	0.5	2										
77	1,4-Dichlorobenzene	601	0.5	2										
27	Dichlorobromomethane	601	0.5	2										
28	1,1-Dichloroethane	601	0.5	1										
29	1,2-Dichloroethane	601	0.5	2										
30	1,1-Dichloroethylene or 1,1-Dichloroethene	601	0.5	2										
31	1,2-Dichloropropane	601	0.5	1										
32	1,3-Dichloropropylene or 1,3-Dichloropropene	601	0.5	2										
34	Methyl Bromide or Bromomethane	601	1.0	2										
35	Methyl Chloride or Chloromethane	601	0.5	2										
36	Methylene Chloride or Dichloromethane	601	0.5	2										
37	1,1,2,2-Tetrachloroethane	601	0.5	1										
38	Tetrachloroethylene	601	0.5	2										
40	1,2-Trans-Dichloroethylene	601	0.5	1										
41	1,1,1-Trichloroethane	601	0.5	2										
42	1,1,2-Trichloroethane	601	0.5	2										
43	Trichloroethene	601	0.5	2										
44	Vinyl Chloride	601	0.5	2										
45	2-Chlorophenol	604	2	5										
46	2,4-Dichlorophenol	604	1	5										
47	2,4-Dimethylphenol	604	1	2										
48	2-Methyl-4,6-Dinitrophenol or Dinitro-2-methylphenol	604	10	5										
49	2,4-Dinitrophenol	604	5	5										
50	2-Nitrophenol	604		10										
51	4-Nitrophenol	604	5	10										
52	3-Methyl-4-Chlorophenol	604	5	1										
53	Pentachlorophenol	604	1	5										
54	Phenol	604	1	1		50								
55	2,4,6-Trichlorophenol	604	10	10										
56	Acenaphthene	610 HPLC	1	1	0.5									
57	Acenaphthylene	610 HPLC		10	0.2									
58	Anthracene	610 HPLC		10	2									
60	Benzo(a)Anthracene or 1,2 Benzanthracene	610 HPLC	10	5										
61	Benzo(a)Pyrene	610 HPLC		10	2									
62	Benzo(b)Fluoranthene or 3,4 Benzo(b)fluoranthene	610 HPLC		10	10									
63	Benzo(ghi)Perylene	610 HPLC		5	0.1									
64	Benzo(k)Fluoranthene	610 HPLC		10	2									
74	Dibenzo(a,h)Anthracene	610 HPLC		10	0.1									
86	Fluoranthene	610 HPLC	10	1	0.05									
87	Fluorene	610 HPLC		10	0.1									
92	Indeno(1,2,3-cd) Pyrene	610 HPLC		10	0.05									
100	Pyrene	610 HPLC		10	0.05									
68	Bis(2-Ethylhexyl)Phthalate	606 or 625	10	5										
70	Butylbenzyl Phthalate	606 or 625	10	10										
79	Diethyl Phthalate	606 or 625	10	2										
80	Dimethyl Phthalate	606 or 625	10	2										
81	Di-n-Butyl Phthalate	606 or 625		10										

CTR No.	Pollutant/Parameter	Analytical Method ²	Minimum Levels ³ (µg/l)											
			GC	GCMS	LC	Color	FAA	GFAA	ICP	ICP MS	SPGFAA	HYD RIDE	CVAA	DCP
84	Di-n-Octyl Phthalate	606 or 625		10										
59	Benzidine	625		5										
65	Bis(2-Chloroethoxy)Methane	625		5										
66	Bis(2-Chloroethyl)Ether	625	10	1										
67	Bis(2-Chloroisopropyl)Ether	625	10	2										
69	4-Bromophenyl Phenyl Ether	625	10	5										
71	2-Chloronaphthalene	625		10										
72	4-Chlorophenyl Phenyl Ether	625		5										
73	Chrysene	625		10	5									
78	3,3'-Dichlorobenzidine	625		5										
82	2,4-Dinitrotoluene	625	10	5										
83	2,6-Dinitrotoluene	625		5										
85	1,2-Diphenylhydrazine (note) ⁸	625		1										
88	Hexachlorobenzene	625	5	1										
89	Hexachlorobutadiene	625	5	1										
90	Hexachlorocyclopentadiene	625	5	5										
91	Hexachloroethane	625	5	1										
93	Isophorone	625	10	1										
94	Naphthalene	625	10	1	0.2									
95	Nitrobenzene	625	10	1										
96	N-Nitrosodimethylamine	625	10	5										
97	N-Nitrosodi-n-Propylamine	625	10	5										
98	N-Nitrosodiphenylamine	625	10	1										
99	Phenanthrene	625		5	0.05									
101	1,2,4-Trichlorobenzene	625	1	5										
102	Aldrin	608	0.005											
103	α-BHC	608	0.01											
104	β-BHC	608	0.005											
105	γ-BHC (Lindane)	608	0.02											
106	δ-BHC	608	0.005											
107	Chlordane	608	0.1											
108	4,4'-DDT	608	0.01											
109	4,4'-DDE	608	0.05											
110	4,4'-DDD	608	0.05											
111	Dieldrin	608	0.01											
112	Endosulfan (alpha)	608	0.02											
113	Endosulfan (beta)	608	0.01											
114	Endosulfan Sulfate	608	0.05											
115	Endrin	608	0.01											
116	Endrin Aldehyde	608	0.01											
117	Heptachlor	608	0.01											
118	Heptachlor Epoxide	608	0.01											
119-125	PCBs: Aroclors 1016, 1221, 1232, 1242, 1248, 1254, 1260	608	0.5											
126	Toxaphene	608	0.5											

⁸ Measurement for 1,2-Diphenylhydrazine may use azobenzene as a screen: if azobenzene is measured at >1 ug/l, then the Discharger shall analyze for 1,2-Diphenylhydrazine.

ATTACHMENT H – PRETREATMENT REQUIREMENTS

CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD
SAN FRANCISCO BAY REGION

ATTACHMENT H
PRETREATMENT PROGRAM PROVISIONS
For
NPDES POTW WASTEWATER DISCHARGE PERMITS

March 2011
(Corrected May 2011)

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Attachment H: Pretreatment Program Provisions

- A.** The Discharger shall be responsible and liable for the performance of all Control Authority pretreatment requirements contained in 40 CFR 403, including any regulatory revisions to Part 403. Where a Part 403 revision is promulgated after the effective date of the Discharger's permit and places mandatory actions upon the Discharger as Control Authority but does not specify a timetable for completion of the actions, the Discharger shall complete the required actions within six months from the issuance date of this permit or six months from the effective date of the Part 403 revisions, whichever comes later.

(If the Discharger cannot complete the required actions within the above six-month period due to the need to process local adoption of sewer use ordinance modifications or other substantial pretreatment program modifications, the Discharger shall notify the Executive Officer in writing at least 60 days prior to the six-month deadline. The written notification shall include a summary of completed required actions, an explanation for why the six month deadline cannot be met, and a proposed timeframe to complete the rest of the required actions as soon as practical but not later than within twelve months of the issuance date of this permit or twelve months of the effective date of the Part 403 revisions, whichever comes later. The Executive Officer will notify the Discharger in writing within 30 days of receiving the request if the extension is not approved.)

The United States Environmental Protection Agency (U.S. EPA), the State and/or other appropriate parties may initiate enforcement action against a nondomestic user for noncompliance with applicable standards and requirements as provided in the Clean Water Act (Act).

- B.** The Discharger shall enforce the requirements promulgated under Sections 307(b), 307(c), 307(d) and 402(b) of the Act with timely, appropriate and effective enforcement actions. The Discharger shall cause nondomestic users subject to Federal Categorical Standards to achieve compliance no later than the date specified in those requirements or, in the case of a new nondomestic user, upon commencement of the discharge.
- C.** The Discharger shall perform the pretreatment functions as required in 40 CFR 403 and amendments or modifications thereto including, but not limited to:
- 1.** Implement the necessary legal authorities to fully implement the pretreatment regulations as provided in 40 CFR 403.8(f)(1);
 - 2.** Implement the programmatic functions as provided in 40 CFR 403.8(f)(2);
 - 3.** Publish an annual list of nondomestic users in significant noncompliance as provided per 40 CFR 403.8(f)(2)(viii);
 - 4.** Provide for the requisite funding and personnel to implement the pretreatment program as provided in 40 CFR 403.8(f)(3); and

5. Enforce the national pretreatment standards for prohibited discharges and categorical standards as provided in 40 CFR 403.5 and 403.6, respectively.
- D.** The Discharger shall submit annually a report to U.S. EPA Region 9, the State Water Board and the Regional Water Board describing its pretreatment program activities over the previous calendar year. In the event that the Discharger is not in compliance with any conditions or requirements of the Pretreatment Program, the Discharger shall also include the reasons for noncompliance and a plan and schedule for achieving compliance. The report shall contain, but is not limited to, the information specified in Appendix H-1 entitled, “Requirements for Pretreatment Annual Reports.” The annual report is due each year on February 28.
- E.** The Discharger shall submit a pretreatment semiannual report to U.S. EPA Region 9, the State Water Board and the Regional Water Board describing the status of its significant industrial users (SIUs). The report shall contain, but is not limited to, information specified in Appendix H-2 entitled, “Requirements for Pretreatment Semiannual Reports.” The semiannual report is due July 31 for the period January through June. The information for the period July through December of each year shall be included in the Annual Report identified in Appendix H-1. The Executive Officer may exempt the Discharger from the semiannual reporting requirements on a case by case basis subject to State Water Board and U.S. EPA’s comment and approval.
- F.** The Discharger shall conduct the monitoring of its treatment plant’s influent, effluent, and sludge (biosolids) as described in Appendix H-4 entitled, “Requirements for Influent, Effluent and Sludge (Biosolids) Monitoring.” (The term “biosolids,” as used in this Attachment, shall have the same meaning as wastewater treatment plant “sludge” and will be used from this point forward.) The Discharger shall evaluate the results of the sampling and analysis during the preparation of the semiannual and annual reports to identify any trends. Signing the certification statement used to transmit the reports shall be deemed to certify the Discharger has completed this data evaluation. A tabulation of the data shall be included in the pretreatment annual report as specified in Appendix H-4. The Executive Officer may require more or less frequent monitoring on a case by case basis.

APPENDIX H-1

REQUIREMENTS FOR PRETREATMENT ANNUAL REPORTS

The Pretreatment Annual Report is due each year on February 28 and shall contain activities conducted during the previous calendar year. The purpose of the Annual Report is to:

- Describe the status of the Discharger's pretreatment program; and
- Report on the effectiveness of the program, as determined by comparing the results of the preceding year's program implementation.

The report shall contain, at a minimum, the following information:

A. Cover Sheet

The cover sheet shall include:

1. The name(s) and National Pollutant Discharge Elimination System (NPDES) permit number(s) of the Discharger(s) that is part of the Pretreatment Program;
2. The name, address and telephone number of a pretreatment contact person;
3. The period covered in the report;
4. A statement of truthfulness; and
5. The dated signature of a principal executive officer, ranking elected official, or other duly authorized employee who is responsible for overall operation of the Publicly Owned Treatment Works (POTW) (40 CFR 403.12(m)).

B. Introduction

This section shall include:

1. Any pertinent background information related to the Discharger and/or the nondomestic user base of the area;
2. List of applicable interagency agreements used to implement the Discharger's pretreatment program (e.g., Memoranda of Understanding (MOU) with satellite sanitary sewer collection systems); and
3. A status summary of the tasks required by a Pretreatment Compliance Inspection (PCI), Pretreatment Compliance Audit (PCA), Cleanup and Abatement Order (CAO), or other pretreatment-related enforcement actions required by the Regional Water Board or the U.S. EPA. A more detailed discussion can be referenced and included in the section entitled, "Program Changes," if needed.

C. Definitions

This section shall include a list of key terms and their definitions that the Discharger uses to describe or characterize elements of its pretreatment program, or the Discharger may provide a reference to its website if the applicable definitions are available on-line.

D. Discussion of Upset, Interference and Pass Through

This section shall include a discussion of Upset, Interference or Pass Through incidents, if any, at the Discharger's treatment plant(s) that the Discharger knows of or suspects were caused by nondomestic user discharges. Each incident shall be described, at a minimum, consisting of the following information:

1. A description of what occurred;
2. A description of what was done to identify the source;
3. The name and address of the nondomestic user responsible;
4. The reason(s) why the incident occurred;
5. A description of the corrective actions taken; and
6. An examination of the local and federal discharge limits and requirements for the purposes of determining whether any additional limits or changes to existing requirements may be necessary to prevent other Upset, Interference or Pass Through incidents.

E. Influent, Effluent and Biosolids Monitoring Results

The Discharger shall evaluate the influent, effluent and biosolids monitoring results as specified in Appendix H-4 in preparation of this report. The Discharger shall retain the analytical laboratory reports with the Quality Assurance and Quality Control (QA/QC) data validation and make these reports available upon request.

This section shall include:

1. Description of the sampling procedures and an analysis of the results (see Appendix H-4 for specific requirements);
2. Tabular summary of the compounds detected (compounds measured above the detection limit for the analytical method used) for the monitoring data generated during the reporting year as specified in Appendix H-4;
3. Discussion of the investigation findings into any contributing sources of the compounds that exceed NPDES limits; and
4. Graphical representation of the influent and effluent metal monitoring data for the past five years with a discussion of any trends.

F. Inspection, Sampling and Enforcement Programs

This section shall include at a minimum the following information:

1. Inspections: Summary of the inspection program (e.g., criteria for determining the frequency of inspections and inspection procedures);
2. Sampling Events: Summary of the sampling program (e.g., criteria for determining the frequency of sampling and chain of custody procedures); and
3. Enforcement: Summary of Enforcement Response Plan (ERP) implementation including dates for adoption, last revision and submission to the Regional Water Board.

G. Updated List of Regulated SIUs

This section shall contain a list of all of the federal categories that apply to SIUs regulated by the Discharger. The specific categories shall be listed including the applicable 40 CFR subpart and section, and pretreatment standards (both maximum and average limits). Local limits developed by the Discharger shall be presented in a table including the applicability of the local limits to SIUs. If local limits do not apply uniformly to SIUs, specify the applicability in the tables listing the categorical industrial users (CIUs) and non-categorical SIUs. Tables developed in Sections 7A and 7B can be used to present or reference this information.

1. CIUs - Include a table that alphabetically lists the CIUs regulated by the Discharger as of the end of the reporting period. This list shall include:
 - a. Name;
 - b. Address;
 - c. Applicable federal category(ies);
 - d. Reference to the location where the applicable Federal Categorical Standards are presented in the report;
 - e. Identify all deletions and additions keyed to the list submitted in the previous annual report. All deletions shall be briefly explained (e.g., closure, name change, ownership change, reclassification, declassification); and
 - f. Information, calculations and data used to determine the limits for those CIUs for which a combined waste stream formula is applied.
2. Non-categorical SIUs - Include a table that alphabetically lists the SIUs not subject to any federal categorical standards that were regulated by the Discharger as of the end of the reporting period. This list shall include:
 - a. Name;

- b. Address;
- c. A brief description of the type of business;
- d. Identify all deletions and additions keyed to the list submitted in the previous annual report. All deletions shall be briefly explained (e.g., closure, name change, ownership change, reclassification, declassification); and
- e. Indicate the applicable discharge limits (e.g., different from local limits) to which the SIUs are subject and reference to the location where the applicable limits (e.g., local discharge limits) are presented in the report.

H. SIU (categorical and non-categorical) Compliance Activities

The information required in this section may be combined in the table developed in Section 7 above.

- 1. Inspection and Sampling Summary:** This section shall contain a summary of all the SIU inspections and sampling activities conducted by the Discharger and sampling activities conducted by the SIU over the reporting year to gather information and data regarding SIU compliance. The summary shall include:
 - a. The number of inspections and sampling events conducted for each SIU by the Discharger;
 - b. The number of sampling events conducted by the SIU. Identify SIUs that are operating under an approved Total Toxic Organic Management Plan;
 - c. The quarters in which the above activities were conducted; and
 - d. The compliance status of each SIU, delineated by quarter, and characterized using all applicable descriptions as given below:
 - (1) Consistent compliance;
 - (2) Inconsistent compliance;
 - (3) Significant noncompliance;
 - (4) On a compliance schedule to achieve compliance (include the date final compliance is required);
 - (5) Not in compliance and not on a compliance schedule; and
 - (6) Compliance status unknown, and why not.
- 2. Enforcement Summary:** This section shall contain a summary of SIU compliance and enforcement activities during the reporting year. The summary may be included in the summary table developed in section 8A and shall include the names and addresses of all SIUs affected by

the actions identified below. For each notice specified in enforcement action “i” through “iv,” indicate whether it was for an infraction of a federal or local standard/limit or requirement.

- a. Warning letters or notices of violations regarding SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- b. Administrative Orders regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- c. Civil actions regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- d. Criminal actions regarding the SIUs’ apparent noncompliance with or violation of any federal pretreatment categorical standards and/or requirements, or local limits and/or requirements;
- e. Assessment of monetary penalties. Identify the amount of penalty in each case and reason for assessing the penalty;
- f. Order to restrict/suspend discharge to the Discharger; and
- g. Order to disconnect the discharge from entering the Discharger.

3. July-December Semiannual Data: For SIU violations/noncompliance during the semiannual reporting period from July 1 through December 31, provide the following information:

- a. Name and facility address of the SIU;
- b. Indicate if the SIU is subject to Federal Categorical Standards; if so, specify the category including the subpart that applies;
- c. For SIUs subject to Federal Categorical Standards, indicate if the violation is of a categorical or local standard;
- d. Indicate the compliance status of the SIU for the two quarters of the reporting period; and
- e. For violations/noncompliance identified in the reporting period, provide:
 - (1) The date(s) of violation(s);
 - (2) The parameters and corresponding concentrations exceeding the limits and the discharge limits for these parameters; and
 - (3) A brief summary of the noncompliant event(s) and the steps that are being taken to achieve compliance.

I. Baseline Monitoring Report Update

This section shall provide a list of CIUs added to the pretreatment program since the last annual report. This list of new CIUs shall summarize the status of the respective Baseline Monitoring Reports (BMR). The BMR must contain the information specified in 40 CFR 403.12(b). For each new CIU, the summary shall indicate when the BMR was due; when the CIU was notified by the Discharger of this requirement; when the CIU submitted the report; and/or when the report is due.

J. Pretreatment Program Changes

This section shall contain a description of any significant changes in the Pretreatment Program during the past year including, but not limited to:

1. Legal authority;
2. Local limits;
3. Monitoring/ inspection program and frequency;
4. Enforcement protocol;
5. Program's administrative structure;
6. Staffing level;
7. Resource requirements;
8. Funding mechanism;
9. If the manager of the Discharger's pretreatment program changed, a revised organizational chart shall be included; and
10. If any element(s) of the program is in the process of being modified, this intention shall also be indicated.

K. Pretreatment Program Budget

This section shall present the budget spent on the Pretreatment Program. The budget, either by the calendar or fiscal year, shall show the total expenses required to implement the pretreatment program. A brief discussion of the source(s) of funding shall be provided. In addition, the Discharger shall make available upon request specific details on its pretreatment program expense amounts such as for personnel, equipment, and chemical analyses.

L. Public Participation Summary

This section shall include a copy of the public notice as required in 40 CFR 403.8(f)(2)(viii). If a notice was not published, the reason shall be stated.

M. Biosolids Storage and Disposal Practice

This section shall describe how treated biosolids are stored and ultimately disposed. If a biosolids storage area is used, it shall be described in detail including its location, containment features and biosolids handling procedures.

N. Other Pollutant Reduction Activities

This section shall include a brief description of any programs the Discharger implements to reduce pollutants from nondomestic users that are not classified as SIUs. If the Discharger submits any of this program information in an Annual Pollution Prevention Report, reference to this other report shall satisfy this reporting requirement.

O. Other Subjects

Other information related to the Pretreatment Program that does not fit into any of the above categories should be included in this section.

P. Permit Compliance System (PCS) Data Entry Form

The annual report shall include the PCS Data Entry Form. This form shall summarize the enforcement actions taken against SIUs in the past year. This form shall include the following information:

1. Discharger's name,
2. NPDES Permit number,
3. Period covered by the report,
4. Number of SIUs in significant noncompliance (SNC) that are on a pretreatment compliance schedule,
5. Number of notices of violation and administrative Orders issued against SIUs,
6. Number of civil and criminal judicial actions against SIUs,
7. Number of SIUs that have been published as a result of being in SNC, and
8. Number of SIUs from which penalties have been collected.

APPENDIX H-2

REQUIREMENTS FOR JANUARY-JUNE PRETREATMENT SEMIANNUAL REPORT

The pretreatment semiannual report is due on July 31 for pretreatment program activities conducted from January through June unless an exception has been granted by the Regional Water Board's Executive Officer (e.g., pretreatment programs without any SIUs may qualify for an exception to the pretreatment semiannual report). Pretreatment activities conducted from July through December of each year shall be included in the Pretreatment Annual Report as specified in Appendix H-1. The pretreatment semiannual report shall contain, at a minimum the following information:

A. Influent, Effluent and Biosolids Monitoring

The influent, effluent and biosolids monitoring results shall be evaluated in preparation of this report. The Discharger shall retain analytical laboratory reports with the QA/QC data validation and make these reports available upon request. The Discharger shall also make available upon request a description of its influent, effluent and biosolids sampling procedures. Violations of any parameter that exceed NPDES limits shall be identified and reported. The contributing source(s) of the parameters that exceed NPDES limits shall be investigated and discussed.

B. Significant Industrial User Compliance Status

This section shall contain a list of all SIUs that were not in consistent compliance with all pretreatment standards/limits or requirements for the reporting period. For the reported SIUs, the compliance status for the previous semiannual reporting period shall be included. Once the SIU has determined to be out of compliance, the SIU shall be included in subsequent reports until consistent compliance has been achieved. A brief description detailing the actions that the SIU undertook to come back into compliance shall be provided.

For each SIU on the list, the following information shall be provided:

1. Name and facility address of the SIU;
2. Indicate if the SIU is subject to Federal Categorical Standards; if so, specify the category including the subpart that applies;
3. For SIUs subject to Federal Categorical Standards, indicate if the violation is of a categorical or local standard;
4. Indicate the compliance status of the SIU for the two quarters of the reporting period; and
5. For violations/noncompliance identified in the reporting period, provide:
 - a. The date(s) of violation(s);
 - b. The parameters and corresponding concentrations exceeding the limits and the discharge limits for these parameters; and

- c. A brief summary of the noncompliant event(s) and the steps that are being taken to achieve compliance.

C. Discharger's Compliance with Pretreatment Program Requirements

This section shall contain a discussion of the Discharger's compliance status with the Pretreatment Program Requirements as indicated in the latest Pretreatment Compliance Audit (PCA) Report or Pretreatment Compliance Inspection (PCI) Report. It shall contain a summary of the following information:

1. Date of latest PCA or PCI report;
2. Date of the Discharger's response;
3. List of unresolved issues; and
4. Plan(s) and schedule for resolving the remaining issues.

APPENDIX H-3

SIGNATURE REQUIREMENTS FOR PRETREATMENT ANNUAL AND SEMIANNUAL REPORTS

The pretreatment annual and semiannual reports shall be signed by a principal executive officer, ranking elected official, or other duly authorized employee who is responsible for the overall operation of the Discharger (POTW 40 CFR section 403.12[m]). Signed copies of the reports shall be submitted to the State Water Board and the Regional Water Board through the electronic self-monitoring report (eSMR) module of the California Integrated Water Quality System (CIWQS). Signed copies of the reports shall also be submitted electronically to U.S. EPA at R9Pretreatment@epa.gov or as instructed otherwise.

Pretreatment Program Reports
Clean Water Act Compliance Office (WTR-7)
Water Division
Pacific Southwest Region
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105-3901

Submit electronic copies only to State and Regional Water Boards:

Pretreatment Program Manager
Regulatory Unit
State Water Resources Control Board
Division of Water Quality-15th Floor
1001 I Street
Sacramento, CA 95814
DMR@waterboards.ca.gov
NPDES_Wastewater@waterboards.ca.gov

Pretreatment Coordinator
NPDES Wastewater Division
SF Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

(Submit the report as a single Portable Document Format (PDF) file to the Pretreatment Coordinator's folder in the Regional Water Board's File Transfer Protocol (FTP) site. The instructions for using the FTP site can be found at the following internet address:

http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/FTP_Discharger_Guide-12-2010.pdf.)

APPENDIX H-4

REQUIREMENTS FOR INFLUENT, EFFLUENT AND BIOSOLIDS MONITORING

The Discharger shall conduct sampling of its treatment plant's influent, effluent and biosolids at the frequency shown in **the pretreatment requirements table** of the Monitoring and Reporting Program (MRP, Attachment E). When sampling periods coincide, one set of test results, reported separately, may be used for those parameters that are required to be monitored by both the influent and effluent monitoring requirements of the MRP and the Pretreatment Program. The Pretreatment Program monitoring reports as required in Appendices H-1 and H-2 shall be transmitted to the Pretreatment Program Coordinator.

A. Reduction of Monitoring Frequency

The minimum frequency of Pretreatment Program influent, effluent, and biosolids monitoring shall be dependent on the number of SIUs identified in the Discharger's Pretreatment Program as indicated in Table H-1.

Table H-1: Minimum Frequency of Pretreatment Program Monitoring	
Number of SIUs	Minimum Frequency
< 5	Once every five years
> 5 and < 50	Once every year
> 50	Twice per year

If the Discharger's required monitoring frequency is greater than the minimum specified in Table H-1, the Discharger may request a reduced monitoring frequency for that constituent(s) as part of its application for permit reissuance if it meets the following criteria:

The monitoring data for the constituent(s) consistently show non-detect (ND) levels for the effluent monitoring and very low (i.e., near ND) levels for influent and biosolids monitoring for a minimum of eight previous years' worth of data.

The Discharger's request shall include tabular summaries of the data and a description of the trends in the industrial, commercial, and residential customers in the Discharger's service area that demonstrate control over the sources of the constituent(s). The Regional Water Board may grant a reduced monitoring frequency in the reissued permit after considering the information provided by the Discharger and any other relevant information.

B. Influent and Effluent Monitoring

The Discharger shall monitor for the parameters using the required sampling and test methods listed in **the pretreatment table** of the MRP. Any test method substitutions must have received prior written Executive Officer approval. Influent and effluent sampling locations shall be the same as those sites specified in the MRP.

The influent and effluent samples should be taken at staggered times to account for treatment plant detention time. Appropriately staggered sampling is considered consistent with the requirement for collection of effluent samples coincident with influent samples in Section III.A.3.a(2) of

Attachment G. All samples must be representative of daily operations. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. For effluent monitoring, the reporting limits for the individual parameters shall be at or below the minimum levels (MLs) as stated in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (2000) [also known as the State Implementation Policy (SIP)]; any revisions to the MLs shall be adhered to. If a parameter does not have a stated ML, then the Discharger shall conduct the analysis using the lowest commercially available and reasonably achievable detection levels.

The following report elements should be used to submit the influent and effluent monitoring results. A similarly structured format may be used but will be subject to Regional Water Board approval. The monitoring reports shall be submitted with the Pretreatment Annual Report identified in Appendix H-1.

1. Sampling Procedures, Sample Dechlorination, Sample Compositing, and Data Validation (applicable quality assurance/quality control) shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. The Discharger shall make available upon request its sampling procedures including methods of dechlorination, compositing, and data validation.
2. A tabulation of the test results for the detected parameters shall be provided.
3. Discussion of Results – The report shall include a complete discussion of the test results for the detected parameters. If any pollutants are detected in sufficient concentration to upset, interfere or pass through plant operations, the type of pollutant(s) and potential source(s) shall be noted, along with a plan of action to control, eliminate, and/or monitor the pollutant(s). Any apparent generation and/or destruction of pollutants attributable to chlorination/dechlorination sampling and analysis practices shall be noted.

C. Biosolids Monitoring

Biosolids should be sampled in a manner that will be representative of the biosolids generated from the influent and effluent monitoring events except as noted in (3. below. The same parameters required for influent and effluent analysis shall be included in the biosolids analysis. The biosolids analyzed shall be a composite sample of the biosolids for final disposal consisting of:

1. Biosolids lagoons – 20 grab samples collected at representative equidistant intervals (grid pattern) and composited as a single grab, or
2. Dried stockpile – 20 grab samples collected at various representative locations and depths and composited as a single grab, or
3. Dewatered biosolids - daily composite of 4 representative grab samples each day for 5 days taken at equal intervals during the daily operating shift taken from a) the dewatering units or b) each truckload, and shall be combined into a single 5- day composite.

The U.S. EPA manual, POTW Sludge Sampling and Analysis Guidance Document, August 1989, containing detailed sampling protocols specific to biosolids is recommended as a guidance for sampling procedures. The U.S. EPA manual Analytical Methods of the National Sewage Sludge

Survey, September 1990, containing detailed analytical protocols specific to biosolids, is recommended as a guidance for analytical methods.

In determining if the biosolids are a hazardous waste, the Discharger shall adhere to Article 2, "Criteria for Identifying the Characteristics of Hazardous Waste," and Article 3, "Characteristics of Hazardous Waste," of Title 22, California Code of Regulations, sections 66261.10 to 66261.24 and all amendments thereto.

The following report elements should be used to submit the biosolids monitoring results. A similarly structured form may be used but will be subject to Regional Water Board approval. The results shall be submitted with the Pretreatment Annual Report identified in Appendix H-1.

- Sampling Procedures and Data Validation (applicable quality assurance/quality control) shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. The Discharger shall make available upon request its biosolids sampling procedures and data validation methods.
- Test Results – Tabulate the test results for the detected parameters and include the percent solids.
- Discussion of Results – Include a complete discussion of test results for the detected parameters. If the detected pollutant(s) is reasonably deemed to have an adverse effect on biosolids disposal, a plan of action to control, eliminate, and/or monitor the pollutant(s) and the known or potential source(s) shall be included. Any apparent generation and/or destruction of pollutants attributable to chlorination/dechlorination sampling and analysis practices shall be noted.

The Discharger shall also provide a summary table presenting any influent, effluent or biosolids monitoring data for non-priority pollutants that the Discharger believes may be causing or contributing to interference, pass through or adversely impacting biosolids quality.

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

RESPONSE TO WRITTEN COMMENTS

On the Tentative Order for
Central Marin Sanitation Agency, San Rafael Sanitation District,
Sanitary District No. 1 of Marin County,
and Sanitary District No. 2 of Marin County,
San Rafael, Marin County

The Regional Water Board received written comments on a tentative order distributed on September 22, 2017, for public comment from the following:

1. Central Marin Sanitation Agency (CMSA) – October 18, 2017
2. Sanitary District No. 1 of Marin County (a.k.a. Ross Valley Sanitary District) and San Rafael Sanitation District (Districts) – October 23, 2017
3. Bay Area Clean Water Agencies, California Association of Sanitation Agencies, and the Southern California Alliance of POTWs (Associations) – October 23, 2017

Regional Water Board staff has summarized the comments as shown below in *italics* (paraphrased for brevity) and followed each comment with staff's response. Please refer to the comment letters for the full context and legal references.

All revisions to the tentative order are shown with underline text for additions and strikethrough ~~text~~ for deletions. This document also contains staff-initiated revisions.

CMSA's Comments

CMSA Comment 1: *CMSA appreciates acknowledgement in the tentative order that the collection systems are owned by independent public agencies that it does not control. CMSA only controls activities at the wastewater treatment plant.*

Response: We agree. The tentative order names the collection system agencies because CMSA has no control over their operations.

CMSA Comment 2: *CMSA requests that we change "Primary Facility Address" to "Treatment Plant Address."*

Response: We agree. We revised Table 1 of the tentative order as follows:

Table 1. Discharger Information

Dischargers	Central Marin Sanitation Agency, San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County ^[1]
Facility Names	Central Marin Sanitation Agency Wastewater Treatment Plant, San Rafael Sanitation District wastewater collection system, Sanitary District No. 1 of Marin County wastewater collection system, and Sanitary District No. 2 of Marin County wastewater collection system

Primary Facility Treatment Plant Address	1301 Andersen Drive San Rafael, CA 94901 Marin County
CIWQS Place Number	213889

CMSA Comment 3: *Because CMSA does not control the satellite collection systems, it requests that we include language to ensure that CMSA is not liable for the collection system agencies' actions.*

Response: We disagree. The proposed revision is unnecessary because the tentative order is already clear about which entity is responsible for which permit provisions.

CMSA Comment 4: *CMSA indicates that the tentative order includes mixing zones for certain constituents. To account for the mixing zones, CMSA proposes revising the receiving water limitations.*

Response: We agree. We revised section V.C of the tentative order as follows:

The discharge shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or State Water Resources Control Board (State Water Board) as required by the CWA and regulations adopted thereunder (outside any mixing zone established as described in Fact Sheet section IV.C). If more stringent water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board may revise or modify this Order in accordance with the more stringent standards.

CMSA Comment 5: *CMSA requests that we revise the utility analysis requirement to reflect that CMSA can only provide information about feasible actions by the collection system agencies if those agencies provide that information to CMSA.*

Response: We agree. We revised the final sentence of Task 7 on Table 6 of the tentative order as follows:

It shall also list and describe all feasible actions the collection system agencies could implement as determined and provided by the collection system agencies.

To allow time for CMSA to assemble and summarize information from the collection system agencies, we also revised the dates for the collection system agencies to submit their feasible actions (Table 5, tasks 20, 31, and 38) from March 1, 2022, to January 1, 2022.

CMSA Comment 6: *CMSA requests that we acknowledge the extreme climactic conditions under which the February 2017 permit violation occurred.*

Response: We disagree. Fact Sheet section II.D.1 already recognizes the extreme wet weather at the time of the February 2017 violation. The additional information is unnecessary.

CMSA Comment 7: *CMSA requests changes to Fact Sheet Table F-10 (Monitoring Requirements Summary) to be consistent with other parts of the tentative order. Specifically, it suggests adding many footnotes from the Monitoring and Reporting Program (MRP).*

Response: We disagree. Fact Sheet Table F-10 simply summarizes requirements. As stated in Fact Sheet section VII.B, the table is for informational purposes only; the actual requirements (including the footnotes) are in the MRP and elsewhere.

CMSA Comment 8: *CMSA requests that we correct typographical errors in the tentative order.*

Response: We agree. We revised the tentative order as requested.

Districts' Comments

Districts Comment 1: *The Districts point out that the last two orders reissuing the CMSA NPDES permit (Order Nos. R2-2007-0007 and R2-2012-0051) did not include them. The Districts assert that, since the statewide General Waste Discharge Requirements (statewide WDRs) for Sanitary Sewer Systems (Order No. 2006-0003-DWQ, as amended by Order No. WQ 2008-0002-EXEC), regulate the Districts, the Regional Water Board should not name them as co-permittees in this NPDES permit.*

Response: We disagree. The tentative order names the Districts as co-permittees because they own and operate most of the collection systems that feed CMSA's wastewater treatment plant. During wet weather, stormwater inflow and infiltration into the Districts' collection systems and sewer laterals via cross-connections, cracks, and other imperfections in system pipes, joints, and manholes can increase the wastewater volume that reaches the treatment plant tenfold. The treatment plant can fully treat up to 30 MGD (about four times its dry-weather flow), but wet weather flows often substantially exceed this capacity. According to 40 C.F.R. section 133.103(d), if treatment plant flows sometimes exceed 275 gallons per capita per day, inflow and infiltration is excessive. Based on CMSA's service area population of 105,000, its flow can be as high as about 285 gallons per capita per day.

When wet weather flows exceed the treatment capacity of CMSA's treatment plant, CMSA must route the excess flow around its biological treatment process to prevent washing out the microorganisms necessary to operate these treatment units. This type of bypass is called "blending." Federal regulations at 40 C.F.R. section 122.41(m)(4)(i) prohibit bypasses, including blending. However, the Regional Water Board may approve them (and not take enforcement for them) if (1) they are unavoidable to prevent loss of life, personal injury, or severe property damage; (2) there are no feasible alternatives; and (3) the Regional Water Board receives notification (see Attachment D section I.G of the tentative order).

CMSA evaluated its alternatives to reduce wet weather bypasses and concluded that there is little it can do. CMSA recently upgraded most of its treatment units to handle more flow, but it has limited capacity to expand biological treatment units. Furthermore, because these units rely on microorganisms to metabolize pollutants in the wastewater, they need a minimum concentration of microorganisms to be effective. Rapid flow increases dilute microorganism concentrations, making biological or "secondary" treatment less effective. The most feasible alternative available to reduce wet weather bypasses at the treatment plant is to reduce wet weather influent flows, but CMSA does not own or operate the collection systems. Therefore, we named the three major satellite collection system agencies as co-permittees and added provisions requiring them to maintain their collection systems to reduce inflow and infiltration. Implementing these feasible actions provides a basis for the Regional Water Board to approve wet weather bypasses at CMSA's treatment plant.

We recognize that the satellite collection system agencies are regulated by the statewide WDRs, but the statewide WDRs focus on preventing sanitary sewer overflows (SSOs), not reducing wet weather flows transported to treatment plants. The statewide WDRs recognize this limitation, too (see Finding 11 of the statewide WDRs), and state that Regional Water Boards may issue NPDES permits

that are more stringent than the statewide WDRs. The provisions of the tentative order focus specifically on reducing wet weather flows to CMSA's treatment plant to reduce wet weather bypasses.

Districts Comment 2: *The Districts request that we remove them from the tentative order, arguing that the justification for including them is based on the notion that blending constitutes a prohibited bypass. The Districts assert that we have not provided adequate legal justification regarding why the NPDES permit is the appropriate or only option for requiring inflow and infiltration reduction.*

The Districts argue that CMSA is the only discharger named in the tentative order that is authorized as a point source to discharge pollutants to a water of the United States and, therefore, subject to NPDES permitting under Clean Water Act section 402. The tentative order proposes to include the Districts even though the NPDES permit does not authorize any discharges to waters of the United States directly from these three satellite collection systems.

Response: We disagree. Naming the collection system agencies is justified because their actions contribute to blending at CMSA's treatment plant, and blending is a bypass subject to 40 C.F.R. section 122.41(m) (see response to Districts Comments 12 and 13). Furthermore, including the collection system agencies as co-permittees is appropriate to address the serious operational challenges caused by wet weather inflow and infiltration. (See *In re Charles River Pollution Control District* (2015) NPDES Appeal No. 14-01, at pp. 6-7.) Along with the treatment plant, the satellite collection systems are part of the Publicly-Owned Treatment Works (POTW) that discharges to waters of the United States. (see 33 U.S.C. § 1292(2)(A); 40 C.F.R. §§ 122.2, 403.3(q); and *In re Charles River Pollution Control Dist.* (2015) NPDES Appeal No. 14-01, at p. 10 ["municipal satellite sewer collection systems *together with* the treatment plant comprise the POTW"] [emphasis in original]). Because excessive inflow and infiltration from the collection systems cause wet weather bypasses at this POTW, it is necessary to regulate the collection systems within this NPDES permit to ensure that all feasible alternatives to reduce bypasses will be implemented.

The Regional Water Board may also name the collection system agencies as co-permittees because of their potential to discharge directly to waters of the United States through SSOs. All three districts have had several SSOs in recent years and have SSO rates higher than the average within the Region.

The Regional Water Board has regularly named collection system agencies as co-permittees in NPDES permits before. For example, the San Jose/Santa Clara Water Pollution Control Plant NPDES permit (Order No. R2-2014-0034) is analogous to the proposed tentative order. It names the joint powers authority (the San Jose/Santa Clara Water Pollution Control Plant) that owns the treatment plant and the two cities (San Jose and Santa Clara) that operate most of the collection system feeding the plant. Like the CMSA case, the San Jose/Santa Clara Water Pollution Control Plant is a joint powers authority comprised of the two collection system agencies (the cities). Another example is the East Bay Dischargers Authority NPDES permit (Order No. R2-2017-0016).

Districts Comment 3: *The Districts point out that the State Water Board chose to adopt WDRs under State law instead of an NPDES permit that could be subject to citizen enforcement. The Districts indicate that the State Water Board intended to have one statewide regulatory mechanism for consistent collection system management. Furthermore, the Districts point out that the statewide WDRs prohibit spills into waters of the U.S. and require that the satellite collection systems properly operate, manage, and maintain all parts of their collection systems; ensure there is adequate capacity; and control and mitigate sanitary sewer overflows, including reducing, preventing and controlling inflow and infiltration.*

Response: The statewide WDRs do not preclude regulation of inflow and infiltration under the Clean Water Act. (Cf. *In re Charles River Pollution Dist.* (2015) NPDES App. No. 14-01, at p. 12.) The statewide WDRs focus on preventing sanitary sewer overflows from sanitary sewer collection systems, not reducing wet weather flows transported to treatment plants. As stated in response to Districts Comment 1, the statewide WDRs recognize this limitation and acknowledge that Regional Water Boards may also regulate collection systems through NPDES permits. The tentative order requires measures specifically focused on reducing wet weather flows to CMSA's treatment plant to reduce wet weather bypasses.

Districts Comment 4: *The Districts point out that neither of them applied for an NPDES permit by submitting a Report of Waste Discharge and that we notified them of our intent to include them within the tentative order at an August 11, 2017, meeting. The Districts assert that the significance of this change and the increased liability associated with becoming NPDES permittees were not discussed at that meeting. The Districts say they did not have time to consult with legal counsel or their boards to provide meaningful comments on an administrative draft of the tentative order provided to them. Discussions between the Districts and their boards occurred September 20, 2017, and September 22, 2017.*

Response: CMSA's report of waste discharge (ROWD) included sufficient information to justify naming the Districts, particularly since their collection systems are part of the same POTW. (See *In re Charles River Pollution Control District* (2015) NPDES Appeal No. 14-01, at p. 16). While the Districts did not submit their own ROWDs, they cannot avoid permit coverage by failing to submit applications. We met with CMSA and the collection system agencies prior to sharing an administrative draft of the tentative order with them to inform them that we intended to name them as co-permittees. After they had had approximately 30 days to review the administrative draft, we met again before we released the tentative order for formal public comment. We provided at least 30 days for public comment on the tentative order as required by statute. (See Wat. Code § 13167.5.) The extensive comments the Districts provided show that they were not surprised by the decision to name them and took advantage of the opportunity to provide meaningful feedback during the public comment period. As described herein, we propose some changes and clarifications to the tentative order in response to their comments. The Districts and the public will have a further opportunity to provide oral comments at the January 10, 2018, Board meeting.

Districts Comment 5: *The Districts state that they met with us regarding their concerns about the increased liability associated with being named in an NPDES permit. They point out that they proposed several options for reducing inflow and infiltration that would not involve this NPDES permit:*

1. *Individual WDRs that supplement the statewide WDRs;*
2. *Binding contract between CMSA and the collection system agencies;*
3. *Time Schedule Orders for collection system agencies not already under an enforcement order (the Ross Valley Sanitation District is subject to Cease and Desist Order No. R2-2013-0020);*
4. *Cease and Desist Orders for collection system agencies not already under an enforcement order; and*
5. *Individual NPDES permits.*

Response: The Regional Water Board does not typically base its permitting decisions on whether there could be third-party liability. Nonetheless, in this case, we do not agree that the Districts' liability would be much greater if they were regulated under this NPDES permit versus solely under the

statewide WDRs, which are not subject to third-party enforcement. Third parties may already sue to enforce the Clean Water Act anytime a sanitary sewer overflow occurs. The potential liability for sanitary sewer overflows is no greater with an NPDES permit. However, the tentative order does include new requirements to complete projects to reduce inflow and infiltration (see Provision V.C.5.a of the tentative order). Because the Districts identified these projects themselves as projects they are committed to implementing, we do not anticipate any need for enforcement by either the Regional Water Board or a third party.

The options the Districts put forward to reduce inflow and infiltration do not address our primary reason for naming them in the tentative order (i.e., they do not provide a basis for approving bypasses of biological treatment during wet weather):

1. *Individual WDRs.* Regulating the collection systems separately through supplemental WDRs would not link CMSA's wet weather bypasses to any feasible actions CMSA could take to justify the Regional Water Board's approval of CMSA's wet weather bypasses. Including the collection system agencies in this tentative order will link their actions to the bypass approval and also help them coordinate their control actions with those of CMSA. Moreover, regulation under one order will optimize administrative efficiencies for both the permittees and Regional Water Board staff.
2. *Binding contract.* The Regional Water Board would not be a party to any contract between CMSA and the collection systems agencies; therefore, it would have no means to ensure that CMSA and the collection system agencies would abide by such a contract. Moreover, the Regional Water Board cannot compel the collection system agencies to enter into a contract with CMSA, particularly if they are not subject to a Regional Water Board order, such as this permit.
3. *Time Schedule Orders.* Time Schedule Orders would have the same deficiencies as individual WDRs (see #1 above). They would not link CMSA's wet weather bypasses to feasible actions dischargers could take to justify the approval of CMSA's wet weather bypasses. Moreover, Time Schedule Orders enforce existing or threatened violations. In this case, it is unclear what violations the Regional Water Board might enforce through any Time Schedule Orders. The Regional Water Board could not use Time Schedule Orders to enforce this permit unless the collection system agencies were co-permittees.
4. *Cease and Desist Orders.* Cease and Desist Orders would have the same deficiencies as Time Schedule Orders (see #3 above).
5. *Individual NPDES permits.* Individual NPDES permits would have the same deficiencies and inefficiencies as individual WDRs (see #1 above). Moreover, individual NPDES permits would not provide the collection system agencies any more or less protection from third-party enforcement, and their requirements would probably not differ from those proposed in this tentative order. Individual permits would, however, be more burdensome for everyone.

Districts Comment 6: *The Districts say we gave the collection system agencies until September 20 to suggest changes to an administrative draft of the tentative order. The Ross Valley Sanitation District suggested changes to reduce its potential liability. The Districts note that we did not make the changes and contend that we instead made some requirements more stringent. The Districts attached the proposed changes and a statement explaining where they believe we made the tentative order more stringent.*

Response: As stated in our response to Districts Comment 4, we met with the Districts both before and after circulating an administrative draft of the tentative order and provided opportunities for comment on the administrative draft and during the formal public comment period for the tentative order. We disagree that changes made to the tentative order made it more stringent. Instead, the changes clarified the responsibilities of each co-permittee. Our response to each requested change follows:

1. *The Ross Valley Sanitation District proposed that CMSA be the only “Discharger” the permit authorizes to discharge treated wastewater to waters of the United States because the satellite collection systems do not discharge directly to waters of the United States. The Districts contend that we responded by more clearly identifying the collection system agencies as dischargers.*

Response: We revised the administrative draft to be as clear as possible. As stated in response to Districts Comment 2, above, the collection system agencies and CMSA are part of the same POTW and are therefore all properly considered dischargers. Naming collection system agencies as dischargers is necessary to make them legally responsible for complying with the permit requirements that apply to them. Nevertheless, throughout the tentative order, we also specify which discharger is responsible for each permit requirement by assigning the requirements specifically to CMSA, the collection system agencies, or all dischargers.

2. *The Ross Valley Sanitation District asked that all discharge prohibitions (section III of the tentative order) apply only to CMSA. The Districts point specifically to the addition of Discharge Prohibition III.A, which would prohibit discharges of treated wastewater at a location or in a manner different than described.*

Response: We agree that Discharge Prohibition III.A should not apply to the collection system agencies because it relates to treated wastewater discharges. Since only CMSA treats wastewater, we revised footnote 1 of Table 1 of the tentative order as follows:

While this Order identifies the collection system management agencies as Dischargers (see Table F-1), these agencies are only responsible for complying with Discharge Prohibitions ~~III.A and~~ III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order. Central Marin Sanitation Agency is responsible for complying with all requirements in this Order, except Provisions VI.C.4.c and VI.C.5.a.

We also revised the tentative order (page 5) as follows:

IT IS HEREBY FURTHER ORDERED that the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall comply with Discharge Prohibitions ~~III.A and~~ III.E; Provisions VI.A, VI.C.4.c, and VI.C.5.a; and Attachments D and G of this Order.

3. *The Ross Valley Sanitation District claimed Discharge Prohibition III.E, which would prohibit sanitary sewer overflows, is unnecessary because Clean Water Act section 301(a) and the statewide WDRs already prohibit these spills. The Districts claim this prohibition would increase the number of possible violations that could be alleged for any single spill.*

Response: Discharge Prohibition III.E appropriately applies to the collection system agencies because it prohibits sanitary sewer overflows. This is consistent with other NPDES permits in our Region that regulate collection systems. For example, Order Nos. R2-2017-0016, R2-2017-0017, and R2-2017-0018 address the collection systems of multiple East Bay communities that discharge

through the East Bay Dischargers Authority's common outfall. Also, Order No. R2-2014-0034 includes the San Jose and Santa Clara collection systems, Order No. R2-2014-0012 includes the South San Francisco and San Bruno collection systems, and Order No. R2-2013-0006 includes the San Mateo and Foster City collection systems. This prohibition does not significantly affect potential liabilities for the collection system agencies (see response to Districts Comment 4).

4. *The Ross Valley Sanitation District sought to remove Provision VI.C.4.c of the tentative order, which relates to collection system operations and maintenance. The Districts contend that the tentative order incorporates the statewide WDRs by reference, thereby transforming the statewide WDR requirements into federal obligations. The Districts object to subjecting the collection systems to both the statewide WDRs and this NPDES permit. They say this is inconsistent with NPDES permits issued by the North Coast Regional Water Board.*

Response: Most NPDES permits the Regional Water Board has adopted recently incorporate the statewide WDRs by reference within such requirements. However, in response to the concern expressed, and contrary to the Districts' comment, we revised the administrative draft to remove the incorporation by reference in the tentative order. Provision VI.C.4.c simply requires that the collection systems be properly operated and maintained. It points to compliance with the statewide WDRs as one way the collection system agencies may demonstrate compliance with the NPDES permit requirement.

5. *The Ross Valley Sanitation District requested that we move the tables listing collection system agency requirements to the end of the tentative order to better distinguish the requirements from CMSA's obligations. The Districts contend that we ignored this request and assert that these requirements are based on State law only.*

Response: We did not move the tables because the collection system agency requirements (Table 5 of the tentative order) are already clearly distinguished from CMSA's obligations (Table 6 of the tentative order). We see no confusion with CMSA's obligations. The collection system agency requirements are essential to conclude that the dischargers, collectively, will implement all feasible measures to reduce inflow and infiltration and thereby eliminate wet weather bypasses. The Regional Water Board's approval for CMSA to bypass biological treatment units during wet weather is conditioned on the collection system agencies complying with the requirements assigned to them. None of these provisions are State-only requirements because the basis for them is firmly rooted in federal regulation (i.e., 40 C.F.R. § 122.41[m]).

6. *The Ross Valley Sanitation District asked that the satellite collection agencies not be subject to standard provisions since they are not dischargers. The Districts further assert that the regional standard provisions in Attachment G are based solely on State law.*

Response: As explained in Fact Sheet section VI.A, Attachment D contains standard provisions that apply to all NPDES permits in accordance with 40 C.F.R. section 122.41 and additional conditions applicable to specific categories of permits in accordance with 40 C.F.R. section 122.42. All dischargers must comply with these provisions. Federal regulations provide no exceptions. The conditions set forth in 40 C.F.R. sections 122.41(a)(1) and (b) through (n) apply to all state-issued NPDES permits and must be incorporated into permits either expressly or by reference. Because the tentative order names the collection systems agencies as dischargers, they must comply with the federal standard provisions.

Most Attachment G provisions are based on the federal Clean Water Act and its implementing regulations. In accordance with 40 C.F.R. section 123.25(a)(12), states may omit or modify the Attachment D provisions to impose more stringent requirements.

7. *The Ross Valley Sanitation District requested that the permit state there is no joint and several liability among the co-permittees, and only one fee will be charged to CMSA.*

Response: This request is unnecessary because the tentative order clearly identifies the specific requirements for each co-permittee. Because there is only one permit, only one fee is required. We leave it to the dischargers to determine how to pay the fee.

8. *The Ross Valley Sanitation District found insufficient legal justification for including the collection system agencies within the NPDES permit. The Districts reiterate this claim.*

Response: The justification for naming the collection system agencies is clear and sufficient. See response to Districts Comments 1 and 2.

9. *The Ross Valley Sanitation District requested wording changes, and the Districts point out that we did not make them.*

Response: We did not incorporate the suggested changes because they all related to items #1 through #8 above and were unnecessary or inappropriate.

Districts Comment 7: *The Districts say the tentative order contains new prohibitions that make the collection system agencies potentially subject to three separate legal claims for each spill (federal and State law, statewide WDRs, and the NPDES permit). The Districts say this is unnecessary and not authorized by federal law because there is no point source discharge. The Districts explain that under the Clean Water Act, the obligation to obtain an NPDES permit is triggered only where a pollutant is discharged from a point source.*

Response: We disagree. The tentative order would not significantly increase collection system agency liabilities (see response to Districts Comment 4). The collection systems are part of the POTW, which undisputedly discharges to waters of the United States. (See *In re Charles River Pollution Control District* (2015) NPDES Appeal No. 14-01, at p. 9.) Similarly, the satellite collection systems have a history of SSOs to waters of the United States, which are also point source discharges. As stated above, it is necessary to name the satellite collection system agencies as co-permittees in the tentative order to document that all feasible alternatives will be implemented to reduce wet weather bypasses. Similarly, naming the collection system agencies will advance the overarching Clean Water Act goal of eliminating discharges of pollutants altogether. (See 33 U.S.C. § 1251(a)(1).) The actions that the collection system agencies take to reduce inflow and infiltration will reduce wet weather bypasses at CMSA's treatment plant, which increase pollutant loading to San Francisco Bay.

Districts Comment 8: *The Districts say that the State Water Board recognized that collection systems are not point sources when it adopted the statewide WDRs as a State-law-only permit, instead of as an NPDES permit. The Districts refer to a State Water Board finding that satellite collection systems (i.e., systems not owned and operated by a POTW) have not typically been subject to NPDES permit requirements.*

Response: We agree that the State Water Board intended to regulate most collection systems through the statewide WDRs, but we disagree that it intended to exclude all collection systems from regulation under NPDES permits. The quoted language from the statewide WDRs recognizes the Regional Water Boards' authority to regulate collection systems under NPDES permits (see response to Districts

Comment 1). This Regional Water Board has regularly named collection systems in other permits for wastewater treatment plants (see response to Districts Comment 6, item #3). As stated in the response to Districts Comments 2 and 7, above, collection systems may be point sources on their own (e.g., in the event of an SSO that discharges to waters of the United States or as part of the POTW).

Districts Comment 9: *The Districts reiterate their contention that the Regional Water Board cannot legally include the satellite collection systems as co-permittees and that doing so substantially increases their potential liabilities. They note that the Ross Valley Sanitation District settled two citizen suits with Riverwatch in 2005 and 2009, and the San Rafael Sanitary District settled a citizen suit with Riverwatch in 2009. They state that they are already undertaking actions to maintain their systems and reduce infiltration and inflow and object to the tentative order incorporating the statewide WDRs by reference.*

Response: We do not agree that the NPDES permit appreciably increases the Districts' potential legal risks (see response to Districts Comment 4). Ross Valley Sanitary District was sued in 2005 when it was named as a discharger in the NPDES permit and again in 2009 when it was not named as a discharger in the NPDES permit. We have received no documentation that Ross Valley Sanitary District was subject to additional liability in 2005 versus 2009 because it was subject to NPDES permit requirements at that time.

We recognize that the collection system agencies are taking actions to reduce infiltration and inflow. However, the Regional Water Board cannot find that the "discharger" is implementing these measures to reduce wet weather bypasses if the "discharger" is only CMSA and does not include these agencies. If the Regional Water Board cannot make this finding, it cannot approve wet weather bypasses.

As for incorporating the statewide WDRs by reference, see response to Districts Comment 6, item #4.

Districts Comment 10: *The Districts say federal courts have ruled that blending is not an illegal bypass subject to the bypass prohibition and provide a history of blending regulations and guidance. The Districts say the bypass rule is not itself an effluent standard but merely piggybacks existing requirements. Its purpose is to ensure that dischargers properly operate and maintain their treatment facilities, and meet technology-based standards by requiring wastewater to move through the facility as designed. The bypass rule does not require any particular treatment method or technology; thus, if a treatment facility is designed to blend, as is CMSA's, the Districts conclude that the bypass regulation does not apply. Even if the bypass rule did apply, the Districts argue that CMSA's no feasible alternatives analysis is complete because CMSA concluded that CMSA cannot implement any additional feasible measures to reduce blending. CMSA cannot feasibly regulate the collection systems because they are owned by different and distinct legal entities. The Districts add that CMSA discharges have complied with all effluent limits for the last 13 years except for one instance of noncompliance.*

Response: We disagree. Federal regulations at 40 C.F.R. section 122.41(m) are clear that the intentional diversion of waste streams from any portion of a treatment facility is a bypass. This means routing flows around CMSA's biological treatment process is a bypass even if CMSA designed its facility to do so. CMSA's NPDES permit never unconditionally allowed wet weather bypasses (see Order Nos. 80-056, 85-118, 91-003, 96-034, 01-105, R2-2007-0007, and R2-2012-0051). In previous orders, the Regional Water Board found there were no feasible alternatives to wet weather bypasses and re-evaluated this conclusion with each permit reissuance. If we were to accept the Districts' argument that routing wastewater around CMSA's biological treatment process is not a bypass because the facility was designed to operate this way, nothing would prevent any POTW from designing its

treatment system to route as little wastewater through its biological treatment process as possible as long as it could still comply with effluent limits.

We agree that CMSA cannot implement any additional meaningful measures to reduce blending. This is why we included the collection system agencies in the tentative order. The collection system agencies can implement meaningful measures to reduce blending.

Regarding federal court rulings related to blending, see response to Districts Comment 13.

Districts Comment 11: *The Districts expand on the history of blending regulations and guidance. In 2001, U.S. EPA's draft guidance allowed blending provided the discharge met effluent limits, the permit application and permit recognized blending consistent with generally accepted practices and design criteria, alternative flow routing occurred only when flows exceeded the capacity for storage and biological treatment, the treatment system was operated as designed, and the permit contained requirements for collection system design, operation, and maintenance. In 2003, U.S. EPA proposed a policy that would have allowed blending provided that the discharge met effluent limitations and water quality standards, that it passed through a primary treatment unit prior to discharge, and that wastewater was only routed around biological treatment units if the units were operating at capacity. In 2005, U.S. EPA abandoned the previous proposals, concluding in a draft rule that blending is a bypass and may only be allowed when there are no feasible alternatives. The Districts claim the tentative order is based on this draft rule.*

Response: We disagree. The tentative order is not based on U.S. EPA's 2005 draft policy; it refers to the policy only as guidance for evaluating feasible alternatives to bypassing. The basis for the tentative order prohibiting bypasses is the bypass rule set forth in 40 C.F.R. section 122.41(m) (see Attachment D section I.G). The regulation itself lists equipment maintenance (such as the maintenance the tentative order requires of the collection agencies) as an example of a "feasible alternative." (See 40 C.F.R. section 122.41(m)(4)(i)(B).)

Districts Comment 12: *The Districts claim our interpretation of the bypass rule conflicts with secondary treatment regulations. They contend that regulating blending as a bypass effectively dictates treatment design and that a 2013 decision in the Eighth Circuit makes the tentative order's analysis of the blending provisions unlawful.*

The Districts say that, until 2005, U.S. EPA had not viewed blending as a bypass that triggers the need for a no-feasible-alternatives analysis. They say that is why blending requirements first appeared in CMSA's NPDES permit in 2007. They point to a 2004 report to Congress in which U.S. EPA praised the use of blending processes to deal with peak wet weather flows and made no reference to a no-feasible-alternatives requirement. They note that California has issued many permits that allowed blending with no U.S. EPA objection.

Response: We disagree. The Districts conflate the bypass requirements with the secondary treatment standards. The bypass prohibition and secondary treatment standards apply independent of one another. The tentative order implements the secondary treatment standards by imposing the carbonaceous biochemical oxygen demand, total suspended solids, and pH effluent limitations listed in Table 4 of the tentative order. The tentative order does not specify the manner of compliance with these effluent limits.

The tentative order separately implements the bypass rule by incorporating federally-required standard provisions (40 C.F.R. § 122.41[m]) within Attachment D section I.G. If the bypass provision did not

exist, CMSA would have little incentive not to bypass some flows around its biological treatment units and possibly its primary treatment units as long as it could still meet its effluent limits (i.e., by using treated wastewater to dilute untreated or partially-treated wastewater). This would be contrary to the national Clean Water Act goal of eliminating the discharge of all pollutants and ensuring proper operation and maintenance of all treatment facilities. While California has issued many permits that approve blending bypasses, blending is only approved in accordance with the conditions set forth in 40 C.F.R. section 122.41(m) (see Attachment D section I.G).

The Districts mischaracterize the Eighth Circuit's decision in *Iowa League of Cities*. First, that decision is not precedential or otherwise binding in California. More to the point, the circumstances of that case are different than the circumstances here. That case involved re-routing wastewater to a physical treatment process in lieu of biological treatment; it did not involve re-routing wastewater around biological treatment and providing no further treatment. The case also invalidated a 2011 U.S. EPA determination that the 2005 blending policy applied to situations in which wastewater was re-routed through physical, not biological, treatment processes. In the case of this tentative order, we are not relying on the 2005 draft policy, much less the 2011 determination. (See *Iowa League of Cities* (2013) 711 F.3d 844, 875-877.)

Districts Comment 13: *The Districts claim that the Eighth Circuit Court of Appeals has held that blending flows around biological treatment does not need to meet the no-feasible-alternatives requirement. The Court also held that U.S. EPA could not implement its 2005 draft policy because it had not adopted the policy pursuant to the Administrative Procedures Act. Since this decision was issued after the previous CMSA permit issuance in 2012, the Districts claim the tentative order should be revised to remove what they consider an unlawful interpretation that blending represents a prohibited bypass.*

Response: We disagree. As stated above in the response to Districts Comment 12, the Eighth Circuit opinion has little relevance to the permitting issues of this case because it is not precedential or otherwise binding in California; it did not address blending that circumvents secondary treatment altogether, such as that at CMSA's treatment plant; and the Regional Water Board's findings are not based on U.S. EPA's 2011 blending interpretation or U.S. EPA's 2005 draft policy. We refer to the draft policy only as guidance for evaluating feasible alternatives. The basis for prohibiting bypasses is firmly grounded in federal regulation (i.e., 40 C.F.R. § 122.41[m]).

The Districts wrongly conflate the bypass requirements with the secondary treatment standards, which are separate and independent rules. As the Districts point out in Districts Comment 10, "The bypass rule 'is not itself an effluent standard,' but instead 'merely "piggybacks" existing requirements.'" ... "The rule's purpose was to 'ensure that users properly operate and maintain their treatment facilities...'." (See *Iowa League of Cities v. EPA* (2013) 744 F.3d 844, 859 [citing Fed. Reg. 40562, 40609 (Oct. 17, 1988)]; see also response to Districts Comments 12 and 14.) The tentative order correctly implements the secondary treatment standards end-of-pipe, without dictating the manner of compliance with those standards. It also requires the dischargers to evaluate all feasible alternatives (including reducing inflow and infiltration) before bypassing biological treatment units during wet weather.

Districts Comment 14: *The Districts point out that State and federal law do not allow the Regional Water Board to specify the method or means of compliance (see Water Code § 13360[a]). It can impose effluent limits based on the secondary treatment standards, but may not prescribe the treatment methods or control strategies employed to meet those limits. The Districts point to case law*

determining that permitting authorities may not go beyond the imposition of effluent limits to regulate the internal processes of a treatment plant.

For these reasons, the Districts say the Regional Water Board should not regulate the inner workings of the treatment plant and collection systems to regulate blending. The Districts opine that, if CMSA meets all of its technology-based and water quality-based effluent limits, then receiving water quality is maintained regardless of whether blending occurs. The Districts argue that regulating the treatment plant and satellite collection systems to reduce inflow and infiltration is essentially regulating the inner workings of the facility and imposing secondary treatment standards inside the plant prior to discharge.

Response: We disagree. The tentative order correctly implements the secondary treatment standards end-of-pipe, without dictating the manner of compliance with those standards. The tentative order does not regulate the internal processes of the treatment plant, nor does it apply the secondary treatment standards to the collection systems. Instead, it requires all wastewater to pass through all treatment units. If the Regional Water Board is to approve (i.e., not enforce against) circumstances whereby some wastewater does not pass through all treatment units, it may do so if (1) the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; (2) there are no feasible alternatives; and (3) the Regional Water Board receives notification (see Attachment D section I.G of the tentative order). See response to Districts Comment 12.

Districts Comment 15: *The Districts reiterate that CMSA met all secondary treatment requirements during all blending events over the last 13 years, except for one instance in February 2017. The Districts say this rare noncompliance should not result in additional requirements to reduce blending.*

Response: We agree with the Districts' assessment of CMSA's compliance record. The proposal to name the collection system agencies in the tentative order and impose requirements to minimize inflow and infiltration, and thus blending, is not based on CMSA's compliance record. It is based on 40 C.F.R. section 122.41(m). We note, however, that requiring satellite collection agencies to address inflow and infiltration will help to avoid exceedances of the secondary treatment standards, such as occurred in February 2017.

Districts Comment 16: *The Districts claim the tentative order requires more than what the Regional Water Board has required of other dischargers. It points out, for example, that the NPDES permit for the East Bay Municipal Utility District only requires one wet-weather-related task—management of a storage basin to minimize blending events. In contrast, the Districts point to 7 tasks for CMSA and 38 tasks for the collection system agencies, all on set time schedules that cannot be easily changed. The Districts contend that this restrictiveness does not allow the pursuit of other projects that may reduce inflow and infiltration more. The Districts point out that the statewide WDRs provide collection system agencies with the ability to create their own Sewer System Management Programs and Capital Improvement Programs, which can be updated as necessary.*

Response: We disagree. Our approach for this tentative order is consistent with our approach for the 12 other permits issued to treatment plants in this Region that bypass biological treatment units during wet weather (35 treatment plants in the Region do not bypass biological treatment units during wet weather). All of these permits have blending-reduction requirements similar to those in the tentative order, and many require considerably more repair or replacement of collection system sewer infrastructure.

We agree that the wet weather requirements in the East Bay Municipal Utility District NPDES permit are limited. However, requiring the East Bay Municipal Utility District to maintain and operate a

storage basin to minimize blending is far more than CMSA has proposed to do. We also regulate the satellite collection systems that route wastewater to East Bay Municipal Utility District's treatment plant under separate NPDES permits. Due to excessive inflow and infiltration, the Regional Water Board and U.S. EPA required the East Bay collection system agencies to adopt private sewer lateral ordinances and replace sewer pipes at annual rates greater than those proposed in this tentative order. These requirements are set forth in a federal consent decree. (See *United States v. East Bay Municipal Utility District*, Case Numbers C09-00186-RS and C09-05684-RS.)

While the statewide WDRs provide collection system agencies with the flexibility to propose their own capital improvement projects, this flexibility does not ensure that all feasible measures to avoid bypasses will be implemented. There is no guarantee that collection system agencies will complete their proposed projects. They can just as easily revise their plans. For example, the San Rafael Sanitation District's *Sewer System Management Plan*, dated October 2015, includes a long-term goal for preventative maintenance to replace all of its gravity sewers on an 80-year cycle. This equates to a replacement rate of 1.25 percent per year. However, this rate may be infeasible for the San Rafael Sanitation District. The tentative order requires the San Rafael Sanitation District to replace about 0.4 percent per year, which is certainly feasible. Because the San Rafael Sanitation District's proposed sewer rehabilitation rate is much lower than the other two collection systems, we revised Table 5 (task 19) of the tentative order as follows:

San Rafael Sanitation District shall submit an annual report documenting the progress or completion of tasks 1 through 18. San Rafael Sanitation District shall also provide an update on its efforts to improve its rehabilitation rate to meet its long-term goal of replacing gravity sewers on an 80-year cycle as described in its *Sewer System Management Plan*, dated October 2015.

Districts Comment 17: *The Districts ask to be removed as co-permittees and ask us to work with CMSA and the collection system agencies to develop another approach that reduces blending, protects water quality, and recognizes and properly allocates limited public resources, while protecting the collection system agencies from unnecessary liability.*

Response: As explained in responses to Districts Comments 1, 3, and 16, above, naming the collection system agencies is necessary to ensure that all feasible measures to reduce wet weather bypasses are being implemented, which in turn is necessary to allow the Regional Water Board to conditionally approve wet weather bypasses in accordance with 40 C.F.R. section 122.41(m). As explained in response to Districts Comment 5, other approaches the Districts have suggested would not achieve the same outcome.

Association's Comments

Association Comment 1: *The Bay Area Clean Water Agencies, California Association of Sanitation Agencies, and the Southern California Alliance of POTWs (Associations) support addressing inflow and infiltration as the primary means to reduce wet weather bypasses but do not support including requirements for collection systems in an NPDES permit. The Associations note that statewide WDRs already regulate the collection systems, including provisions for controlling inflow and infiltration. They contend that the State Water Board rejected the idea of NPDES coverage for satellite collection systems.*

The Associations suggest issuing supplemental WDRs to require the collection system agencies to implement inflow and infiltration reduction tasks as a means to require infrastructure improvements without exposing the collection system agencies to additional federal liability.

Response: We disagree. See responses to District Comments 1, 2, 3, 5, and 17.

Association Comment 2: *The Associations say the tentative order incorporates the statewide WDRs by reference, which exposes the permittees to federal liability for requirements to which they are already subject. If the collection system agencies must remain in the tentative order, the Associations recommend the following change to Provision VI.C.4.c of the tentative order:*

Collection System Management. *San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County shall properly operate and maintain their respective collection systems (see Attachments D and G, section I.D), report any noncompliance with respect to their respective systems (see Attachments D and G, sections V.E.1 and V.E.2), and mitigate any discharges in violation of this Order associated with their respective systems (see Attachments D and G, section I.C).*

State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, as amended by State Water Board Order No. WQ 2013-0058-EXEC, contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply with both the statewide WDRs and this Order, the statewide WDRs more clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. ~~Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.~~

Response: We disagree. Unlike many recently re-issued permits, the tentative order does not incorporate the statewide WDRs by reference. See response to Districts Comment 6. We did not revise Provision VI.C.4.c as suggested because, as written, it provides assurance to the collection system agencies that they will not be subject to federal liability if they comply with the statewide WDRs.

Staff-Initiated Changes

In addition to making minor editorial and formatting changes, we revised the tentative order as follows:

1. In Table 3, we changed the effective date, the expiration date, and the date to submit the permit reissuance application, as follows:

Table 3. Administrative Information

This Order was adopted on:	<Date>
This Order shall become effective on:	~~February~~ <u>March</u> 1, 2018
This Order shall expire on:	~~January 31~~ <u>February 28</u> , 2023
CIWQS Regulatory Measure Number	<Regulatory Number>
The Dischargers shall file a Report of Waste Discharge for updated WDRs in accordance with California Code of Regulations, title 23, and as an application for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit no later than:	~~March~~ <u>May</u> 1, 2022
The U.S. Environmental Protection Agency (U.S. EPA) and the California Regional Water Quality Control Board, San Francisco Bay Region, have classified this discharge as follows:	Major

2. We deleted Monitoring and Reporting Program section IX (Modifications to Attachment G).
3. We deleted Monitoring and Reporting Program section X (Modifications to Attachment H).
4. We replaced Attachment G, *Regional Standard Provisions, and Monitoring and Reporting Requirements (Supplemental to Attachment D)*, with the version the Regional Water Board adopted in November 2017 through Order No. R2-2017-0042. The new version removes stormwater and biosolids provisions that do not apply to this facility, revises accelerated monitoring requirements for bypasses during essential maintenance, clarifies how to report duplicate sample results, and updates dioxin-TEQ toxicity equivalency factors.
5. We added a note to Attachment C to clarify that the blending line is subject to Attachment D section I.G.

EXHIBIT H



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January 8, 2017

VIA EMAIL - VINCE.CHRISTIAN@WATERBOARDS.CA.GOV

Regional Water Quality Control Board Members
Bruce Wolfe, Executive Officer – Bruce.Wolfe@waterboards.ca.gov
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Re: **Central Marin Sanitary Agency (CMSA) Tentative Order – R2-2017-00XX**
Request to Remove Collection Systems from Permit

Dear Board Members, Mr. Wolfe, Mr. Mumley, and Mr. Christian:

Ross Valley Sanitary District (RVSD) and San Rafael Sanitation District (SRSD)(collectively “Districts”) received the Regional Water Board staff’s response to the Districts’ October 2017 comments by email from Mr. Christian on January 4th. The following are the Districts’ rebuttal to those responses since, inevitably, there will not be adequate time allotted at the hearing to address each of these topics in detail. As such, we respectfully request that this letter be included in the Administrative Record for this permit hearing.

1. Comment No. 1 Rebuttal - **The Regional Board staff’s interpretation of federal regulations as a basis for its recommendations is inaccurate, unsupported, and contrary to federal and state statutes and case law.**

- a. Misuse of “Excessive I/I” Definition

In response to Districts Comment 1 that the Districts should not be named as co-permittees, the Regional Board staff cited to 40 C.F.R. section 133.103(d) stating: “if treatment plant flows sometimes exceed 275 gallons per capita per day, inflow and infiltration is excessive. Based on CMSA’s service area population of 105,000, its flow can be as high as 285 gallons per capita per day.”

First, Section 133.103(d) defines “excessive infiltration and inflow” (I/I) for the sole purpose of allowing the substitution of a lower percent removal or a mass limit in lieu of the standard secondary treatment 85% removal requirement set forth in Section 13.102(a)(3), not as this term is being used in the response. Plus, staff is only looking at half of the equation because section 133.103(d) includes *both* “the definition of excessive I/I in 40 C.F.R. §35.2005(b)(16)” *plus* “the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e. wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.”¹ The regulation at 40 C.F.R. §35.2005(b)(16) defines “Excessive infiltration/inflow” as “The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.” (emphasis added). The Regional Board staff did not perform this cost-effectiveness analysis in its determination that the collection systems need to be co-permittees and flows must be controlled due to “excessive I/I.” Because water quality is not being impacted, and because in many places storm water is being diverted to treatment plants, the need to reduce flows through the plant has not been adequately justified.

Second, the Regional Board staff have not provided factual support for both the population of CMSA’s service area (*see Exhibit 1*) as being 105,000 and the flows being “as high as 285 gallons per capita per day.” Presumably, staff’s calculation was made by dividing 30 mgd by 105,000 population = 285 gallons per capita per day. Given that the flows rarely exceed 30 mgd, the average flows per capita per day would be substantially less. This value should be calculated based on the “average daily flow during periods of significant rainfall (i.e., any storm event that creates surface ponding and surface runoff; this can be related to a minimum rainfall amount for a particular geographic area),” not just highest flow days. *See* USEPA Infiltration/Inflow, I/I Analysis and Project Certification, May 1985 at p. 1.

b. Inaccurate Staff Interpretation of Federal Bypass Regulations

On page 3 of 16 to the response to Districts’ Comment 1, staff claim that “Federal regulations at 40 C.F.R. section 122.41(m)(4)(i) prohibit bypasses, including blending.” (emphasis added). This interpretation is not only wholly unsupported by any citations to law, this interpretation is incorrect. The regulation regarding “bypass” is set forth in its entirety as follows:

¹ Non-excessive infiltration is determined based on a national average for dry weather flow of 120 gallons per capita per day (gpcd). If the average daily flow per capita is less than 120 gpcd (i.e., a 7-14 day average measured during periods of seasonal high groundwater), the amount of infiltration is considered non-excessive. *See* USEPA Infiltration/Inflow, I/I Analysis and Project Certification, May 1985 at p. 1. No analysis of infiltration values were provided by the Regional Board staff.

122.41 (m) Bypass -

(1) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) 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 which 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.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) Notice -

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(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 which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

Nowhere in this regulation is the word “blending” found, or is the concept of treatment plants designed to blend discussed. Although Publicly Owned Treatment Works (POTWs) typically move incoming flows through a primary treatment process and then through a secondary treatment process (and more recently through advanced technologies), secondary treatment regulations do not “specify the type of treatment process to be used to meet secondary treatment requirements nor do they preclude the use of non-biological facilities.” 68 Fed.Reg. 63,042, 63,046 (Nov. 7, 2003).

At many POTWs, such as CMSA, primary treatment capacity exceeds secondary treatment capacity by design. Biological-based processes are particularly sensitive to deviations in volume of flow and pollutant level. Correspondingly, during heavy rain, large influxes of storm water can overwhelm a POTW’s standard biological secondary treatment processes, potentially rendering them inoperable. *Id.* Blending prevents this, by automatically channeling a portion of “peak wet weather flows” around biological secondary treatment units, recombining that flow with its counterpart that traveled through the biological units, and then discharging the combined stream. *Id.* at 63,045. Just like non-blended streams, the combined output and discharged water must still comply with all applicable effluent limitations, including the water quality levels specified in the secondary treatment regulations. *Id.* at 63,047.

Although all NPDES permits must comply with federal regulations regarding “bypass,” this only covers the “intentional diversion of waste streams from any portion of a treatment facility.” 40 C.F.R. §122.41(m)(1)(emphasis added). As noted in the Districts’ previous letter, the bypass rule “is not itself an effluent standard,” such as secondary treatment limits, but instead “merely ‘piggybacks’ existing requirements.” 53 Fed.Reg. 40,562, 40,609 (Oct. 17, 1988). The rule’s purpose was to “ensure that users properly operate and maintain their treatment facilities ... [pursuant to applicable] underlying technology-based standards,” by requiring incoming flows to move through the facility as it was designed to be operated. *Id.* Like the more general secondary treatment regulations, the bypass rule does not require the use of any particular treatment method or technology. *Id.*; *see also NRDC v. EPA*, 822 F.2d 104, 123 (D.C.Cir.1987). This rule was intended to apply where a clarifier or other portion of the plant is taken offline for routine or emergency maintenance, and flows had to be manually and intentionally diverted around that normally utilized treatment process.

At CMSA, blending happens automatically. When primary effluent flows exceed about 30 mgd, the excess flow is *passively* diverted around the secondary systems. This built-in system was never intended to be covered by the bypass regulations and Regional Board staff have not shown any evidence to the contrary.²

² Even if the “bypass” provisions *did* apply, those provisions prohibiting bypass only apply to bypasses that violate effluent limitations. *See accord* 45 Fed. Reg. 33339 (1980)(“Section 122.60(g) [now 122.41(m)] contains provisions covering bypass.... the paragraph now clarifies that bypass which causes violations of effluent limitations is prohibited.”).

While staff point out that secondary treatment and bypass are technically two different regulatory requirements, the driver of the draft USEPA blending regulations in 2005, which was cited by staff yet was never formally promulgated,³ was USEPA's concern that blended flow did not receive "full" secondary treatment. Regional Water Board staff say that the 2005 draft regulations are not being relied upon for this permit renewal, but no other authority is cited by staff to justify its interpretation that blending constitutes a prohibited bypass.

Staff tries to differentiate, instead of follow, the *Iowa League of Cities* case, which is the leading authority for interpreting the federal bypass regulations. Staff try to make a point that, in that case, the diversion involved physical treatment. However, the diversion was still around secondary treatment. The difference from CMSA is that the Iowa plant wanted to further treat the diverted (primary) flow using a physical process (called Actiflo). The Iowa League of Cities claimed Actiflo was equivalent to secondary treatment and, therefore, the plant did not need to undertake a "no feasible alternatives" analysis. But USEPA disagreed, claiming that Actiflo was not equivalent to secondary treatment. The League won the argument with the court holding that blending did not constitute an illegal "bypass."

The usefulness of the *Iowa League of Cities* ruling for CMSA is to show that, prior to 2005, USEPA had never viewed the process of blending as an inevitable trigger for the bypass regulation's "no feasible alternatives" requirement. The "no feasible alternatives" requirement being imposed on CMSA in each of the last two permit cycles (but interestingly not before that even though the bypass rule was adopted prior to 1983) is just a construct of Regional Water Board staff (that began right after the 2005 draft rule was released) and is not based on any regulation per se. It is just a new interpretation of an old rule (the bypass rule), and an old rule that was *clearly not originally* intended to apply to blending, given the large number of municipal wastewater treatment plants in the United States, such as CMSA, that incorporate blending *and* were built using federal USEPA construction grant funding.⁴

c. The Regional Board cannot mandate how secondary treatment limits are met.

The Clean Water Act (CWA) permits the setting of "effluent limitations based upon secondary treatment." 33 U.S.C. § 1311(b)(1)(B). But effluent limitations are restricted to regulations governing "discharges from point sources into navigable waters." 33 U.S.C. § 1362(11). More

³ Use of unpromulgated regulations as a "rule" constitutes underground regulation in violation of the federal and state Administrative Procedure Act (APA). See *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 735-737 (discussing invalid "underground regulation" subject to adoption pursuant to State APA); see also *Christensen v. Harris County*, 529 U.S. 576, 588 (2000) (agencies cannot adopt an inconsistent interpretation "under the guise of interpreting a regulation, to create *de facto* a new regulation" without notice and comment rulemaking procedures required under the APA).

⁴ CSMA completed construction on its regional wastewater treatment facility and began receiving sanitary flows from its member agencies in January 1985, after the bypass regulations were adopted. The facility was constructed and designed to blend at a cost of \$84 million with approximately 87.5% being funded by federal and state grant monies.

stringent “water quality related effluent limitations,” are also authorized (33 U.S.C. §1311(b)(1)(C)), but the CWA is clear that the object of these limitations is still the “discharges of pollutants from a point source.” 33 U.S.C. § 1312(a). In turn, “discharge of pollutant” refers to the “addition of any pollutant to navigable waters.” 33 U.S.C. § 1362(11).

As discussed previously, the proposed blending restrictions in the CMSA permit, interpreted by the Regional Board staff as a “bypass,”⁵ would apply restrictions on the discharge of flows from one internal treatment unit to another. Federal and state authorities have held that there is no statutory authority to do this. *See Iowa League of Cities v. EPA*, 711 F.3d 844, 877-8 (8th Cir. 2013); *see also Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C.Cir.1997) (“The statute is clear: The [permitting authority] may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United States through a ‘point source’; it is not authorized to regulate the pollutant levels in a facility’s internal waste stream.”); Cal. Water Code §13360(a)(no order of a regional board shall specify the design, location, type of construction, or particular manner in which compliance may be had with that order).

Therefore, insofar as the Regional Board staff’s interpretation that the bypass rule does not allow blending, this imposes secondary treatment regulations on flows within or even before the POTW treatment plant.⁶ This interpretation exceeds the Regional Board’s statutory authority under both state and federal law. So long as CMSA’s effluent limitations are met, CMSA can perform or not perform any sort of treatment on its effluent. The Regional Board cannot micromanage and prescribe how those limits are met, no matter whether the limits are technology-based or water-quality based.⁷

Blending has previously been and should continue to be authorized because that is how the CMSA plant was designed to be operated (as opposed to an intentional diversion that was *not*

⁵ A state agency is not owed deference when the state agency interprets federal law. *See, e.g., Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1495 (9th Cir. 1997) (“A state agency’s interpretation of federal statutes is not entitled to the deference afforded a federal agency’s interpretation of its own statutes under *Chevron*”); *see also Arizona v. City of Tucson*, 761 F.3d 1005, 1014 (9th Cir. 2014) (holding that “where state agencies have environmental expertise they are entitled to ‘some deference’ with regard to questions concerning their area of expertise. But ‘[a] state agency’s interpretation of federal statutes is not entitled to the deference afforded [to] a federal agency’s interpretation of . . . statutes’ that it is charged with enforcing.”) (emphasis in the original) (citation omitted); *Or. State Pub. Research Grp., Inc. v. Pac. Coast Seafoods Co.*, 361 F.Supp.2d 1232, 1241 (D. Or. 2004) (applying *Orthopaedic Hosp.* to a state agency’s interpretation of an NPDES permit, and also concluding that the state agency’s interpretation and calculation of violations under the CWA was contrary to the method described by USEPA).

⁶ Under 40 C.F.R. §403.3(r), the term **POTW Treatment Plant** means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

⁷ In support of this argument, the preamble to the early USEPA regulations related to proper operation and maintenance provisions of the federal regulations stated the following: One commentator argued that if a permittee can meet its permit requirements by operating the treatment or control systems at less than optimal efficiency, rather than at ‘designed facility removals,’ it should be able to do so. EPA agrees and has deleted that example from the second sentence.” 45 Fed. Reg. 33303 (1980) (emphasis added).

part of the design), and because CMSA has consistently met its effluent limitations over the last 13 years (except for one 85% removal requirement during an extraordinary wet weather event). Since the Regional Board has failed to demonstrate, with evidence, the existence of excessive I/I that is causing water quality impacts, there is no valid justification or need to force the Districts to become co-permittees on the CMSA permit.

2. Comment No. 2 Rebuttal - **Regional Board Staff Justifications are Unsupportable.**

The first paragraph of the response to the Districts' second comment once again relies upon blending and bypass control, which is not needed or statutorily authorized as described above. In addition, the Regional Board staff attempts to rely on a USEPA Environmental Appeals Board (EAB) decision that can be differentiated from the facts at issue here. In the cited decision (which is not binding authority on the Regional Board since it related to a USEPA-issued permit in Massachusetts, EPA Region 1 under regional guidance not available here), the EAB held that USEPA had the authority, but not the mandate, to regulate the collection systems attached to the POTW "on a case-by-case basis to ensure human health and water quality impacts from excessive extreme flow are minimized." *In Re: Charles River Pollution Control District*, EAB Appeal No. 14-01, Env. Admin. Dec., Vol. 16, at p. 629 (emphasis added). Unlike the situation with CMSA, the Charles River POTW was "experiencing excess influent flows during wet weather periods" and was "experiencing permit violations associated with wet weather infiltration and inflow." *Id.* at p. 628. The Regional Board has not demonstrated any human health or water quality impacts from collection system contributions to CMSA flows that justify making them co-permittees. The fact that CMSA has had just one effluent limitation exceedance in 13 years (during an enormous wet weather event where the flow was too clean to remove 85%) demonstrates that there are no such impacts.

Regional Board staff next claim that collection systems may be named because they have sanitary sewer overflows (SSOs) at "rates higher than the average within the Region." SSOs are already prohibited by the Sanitary Sewer System WDRs and by the Clean Water Act (33 U.S.C. §1311(a)), so the Districts do not need to be on the NPDES permit to make sure that SSOs are prohibited or enforceable. Also, the NPDES permit does not actually *permit* any SSOs so permit coverage is not needed to merely reiterate federal law. Finally, staff provided no evidence to support the staff's claim that the Districts' SSO rates are higher than the regional average. This claim is rebutted by data pulled from CIWQS related to performance of SRSD included in **Exhibit 2**, which shows that for Category 1 spills (the only ones relevant to discharges regulated by the CWA), SRSD is well below both the regional average rate (1.82/100 miles/year for SRSD v. 4.0/100 miles/year for the San Francisco Bay regional average) and net volume. This exhibit also shows that the spills for SRSD are primarily operational, not structural or based on pipe condition (which would implicate more I/I).

Staff also state that other recent permits have included collection systems. However, that fact is irrelevant to whether this permitting action is legal or not because if that permit was not objected to or appealed, then there has been no ruling as to the legality of those permits. Further, this

proposal is contrary to the action of this Regional Board in the 2007 timeframe after the SSS WDR was adopted when collection systems were routinely *removed* from NPDES permits because the State Board indicated that such inclusion was suspect based on recent court rulings. (SSS WDR Fact Sheet at pp. 3-4; *see also Waterkeeper Alliance, Inc. v. USEPA*, 399 F.3d 486, 505-06 (2nd Cir. 2005); *see also Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F.Supp.2d 803, 826-27 (N.D. Cal. 2007) (following *Waterkeeper*); *Cnty. Ass'n for Restoration of Env't v. Nelson Faria Dairy, Inc.*, 2011 WL 61882, at *2-3 (E.D. Wash. Jan. 7, 2011) (defendant did not have a duty to obtain an NPDES permit); *Puget Soundkeeper All. v. Whitley Mfg. Co. Inc.*, 145 F.Supp.3d 1054, 1057 (W.D. Wash. 2015); *Alt v. USEPA*, 2013 WL 4520030, at *6 (N.D. W. Va. Aug. 22, 2013).)

The State Water Board also recognized, contrary to staff's assertions, that "Satellite sewer collection systems (i.e., systems not owned and operated by the POTW) have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements." (SSS WDR Fact Sheet at p. 4.) Finally, this proposal to include collection systems in the NPDES permit, if needed to control collection systems, is incomplete and inconsistent because it does not include all sources of flow to the treatment plant or all collection systems satellite to CMSA, which raises constitutional issues of unfair and unequal treatment under the law.

3. **Comment No. 3 Rebuttal - Regional Board Staff Misconstrue SSS WDR Requirements.**

The statewide SSS WDR was adopted to ensure "consistent collection system management requirements..." (SSS WDR at p. 8.) Besides prohibiting spills into waters of the United States (which makes Discharge Prohibition III.E. of the draft CMSA permit unnecessary and a duplicative regulation of the same events), SSS WDR enrollees are required to reduce, prevent, and control I/I. The Districts have been diligent in this regard as all of the tasks included in the draft NPDES permit were already planned and scheduled, and would be done even if not included in the proposed permit as these are part of the Districts' Capital Improvement Project (CIP) plans. Regional Board staff have also provided no evidence that any of the tasks now prescribed in the NPDES permit will have any impact on flow reductions to CMSA or will eliminate or even reduce blending.

In addition, staff failed to respond to the Districts' concerns that having due dates for tasks in the NPDES permit could create a hardship and an alleged permit violation if the Districts were unable to meet those dates for any reason. Because those dates cannot be changed without a permit amendment, the Districts suggested a Time Schedule Order would be more appropriate, or even a Cease and Desist Order (either of which is not subject to third party enforcement).

4. **Comment No. 4 Rebuttal - Regional Board Staff Sidesteps the Fact that the Districts Did Not Ask for a Permit or Consent to be Co-Permittees.**

CMSA filed its Report of Waste Discharge (ROWD) in early 2017 for NPDES permit coverage under both state and federal law requirements to do so.⁸ The Districts filed for coverage under the permit required of collection systems by the State Water Resources Control Board, namely the SSS WDR. Regional Board staff state that RVSD and SRSD “cannot avoid permit coverage by failing to submit applications,” yet this ignores that the Districts *did file for coverage* under the appropriate permit prescribed by the State Water Board, and are currently covered by the SSS WDR and its prohibition on SSOs to waters of the United States. So, all of the Districts’ discharges to waters are covered by a permit. The District’s flow to CMSA becomes CMSA’s flow upon reaching the POTW treatment plant and is treated and discharged to the Bay. Only CMSA’s outfall to the bay is a “point source” regularly discharging to waters of the United States.

The fact that the Districts turned in substantial comments on the tentative permit in no way “show that they [the Districts] were not surprised by the decision to name them.” The District had no other choice once staff ignored the Districts’ attempts to find another win-win solution that did not involve the need for the collection systems to be co-permittees on the NPDES permit.

The Districts in no way are shirking their responsibilities to properly operate and manage their collection systems, but do not believe that an NPDES permit is needed for this purpose. The Districts hope that the Regional Water Board members will see that other options do exist to get to the same end with less liability and risk for the Districts.

5. **Comment No. 5 Rebuttal - Regional Board Staff Ignore Liability Issues and Other Options.**

Regional Board staff ignore the additional liability added by making the Districts co-permittees. This was one of the reasons why the SSS WDR was not made an NPDES permit by the State Water Board. Currently, the Districts are only liable under the CWA if they have an SSO that reaches waters of the United States for which no CWA defenses apply. Although Regional Board staff don’t agree, it is a fact that if the Districts are included as co-permittees on the CMSA permit and subject to Discharge Prohibition III.E. and the operation and maintenance Standard Provisions, then a third party citizen suit can be filed not just alleging an unpermitted discharge as it currently could, but could also allege:

- 1) Violation of Discharge Prohibition III.E.

⁸ Staff cite again to the *Charles River* EAB decision, which is not binding, and does not respond to any issues related to state law requirements for WDRs since the CMSA permit is both a CWA and state WDR permit.

- 2) Violation of Provision VI.A (which requires compliance with Standard Provisions in Attachments D and G, including proper operation and maintenance)
- 3) Violation of Attachments D and G (which are *separately and duplicatively* required to be met in the draft permit)

Therefore, one spill could have 4-6 alleged violations of permit provisions, instead of just one. At \$51,750 per violation per day, this adds up quickly and could be over \$300,000 per spill per day, plus attorneys' fees. As proper operation and maintenance is already required under the SSS WDR, and because I/I controls and SSO prohibitions are also included in the SSS WDR, it is unreasonable to impose duplicative regulation on the Districts that are trying hard to use their limited ratepayer monies to fix pipes and other conveyance infrastructure.⁹

The Districts understand the Regional Board's desire to oversee the Districts activities, but RVSD is already under a Cease and Desist Order,¹⁰ which would be yet one more layer of regulation if the CMSA permit includes the Districts as co-permittees. Staff rejected each of the Districts' options because not linked back to the bypass regulation and the need for CMSA to show no feasible alternatives. However, CMSA has already made that showing, even though arguably not required to do so by law, so no "linkage" is needed.

With this being said, if the Regional Board members determine that adequate justification exists to regulate the collection systems more stringently than currently regulated by the CWA and the SSS WDR, the Districts would consent to a supplement to the SSS WDR; a Time Schedule Order (TSO) adopted alongside the NPDES permit for those entities not already under an enforcement order, which includes the tasks to be undertaken by the collection systems to support reduced flows and presumably reduce the need for blending; or a new or revised Cease and Desist Order (CDO). The collection systems offered to assist with the drafting of any of the

⁹ The California Legislature has found and declared that activities affecting water quality "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." See Water Code §13000 (emphasis added). This section sets State policy and imposes an overriding requirement on the Regional Boards that all water regulation be reasonable considering all circumstances. For reasons set forth above, the requirements contained in the Permit as discussed herein as applied to the Districts are not reasonable, considering all of the circumstances. Therefore, the provisions contained in the proposed Permit as applied to the collection systems violate Water Code section 13000.

¹⁰ As stated in its earlier comments and ignored by staff, RVSD is already under a CDO (Order No. R2-2013-0020) requiring a comprehensive Infrastructure Asset Management Plan (IAMP) with collection system rehabilitation, operation, and maintenance improvements potentially through 2021, financial performance targets that have been met, and the adoption and implementation of a Private Sewer Lateral Program, which is currently active and being well utilized. The projects proposed for inclusion in the NPDES permit's table for RVSD duplicate projects already completed (e.g. lateral program) or committed to be completed under the CDO so there is no need for duplicative regulation. If this NPDES permit is adopted with the Districts as co-permittees, then RVSD requests that the CDO be rescinded as no longer necessary.

needed orders and still make that offer since the Districts understand that staff resources are scarce at the Regional Boards.

6. **Comment No. 6 Rebuttal – The Districts Appreciate that Changes Were Made, but these Changes Do Not Address or Eliminate the Districts’ Concerns or Objections.**

1. Staff use the argument taken from the *Charles River POTW* matter at the EAB to argue that the collection systems are part of the same POTW and, therefore, are properly considered dischargers. This holding contradicts federal appellate court decisions and the plain words of the regulations limiting definitions to particular sub-parts, and the Districts will not take up space to make extensive counterarguments here. Staff’s interpretation may *allow* for such inclusion with appropriate factual findings and evidence, but by no means *requires* the inclusion of collection systems, otherwise all collection systems nationwide would already be NPDES co-permittees, which is not the case.

2. The Districts appreciate that staff made the requested change to remove Discharge Prohibition III.A. from being applied to the Districts. However, there are other requirements that are also unnecessary, such as the III.E. since SSOs to waters of the U.S. are already prohibited by and enforceable under federal law and the SSS WDR. In addition, including both Provision VI.A. and Attachments D and G is unnecessary since Provision VI.A.1. and 2. require compliance with the provisions contained in Attachment D and G, respectively.

3. Again, the staff cite to unchallenged permits to prove legality, which it does not. Also, as stated above, adding the discharge prohibition III.E. to apply to the Districts at least doubles the liability for each sewer spill. The Regional Board presently has the ability to enforce sewer spills under the Water Code and the SSS WDR without having this duplicative and unnecessary prohibition adding to the Districts’ potential liability.

4. The Districts sincerely appreciate the changes made to Provision VI.C.4.c. However, if the Districts are maintained as co-permittees on the permit over their objections, the Districts ask that the word “separately” be added for additional clarity to the second sentence of the second paragraph. This change would be appreciated as well.

“While the San Rafael Sanitation District, Sanitary District No. 1 of Marin County, and Sanitary District No. 2 of Marin County must comply separately with both the statewide WDRs and this Order, the statewide WDRs....”

Also, because staff did not address the Districts concern with including dates in the NPDES Permit that could not be easily modified, the Districts ask that the Compliance Dates be removed from the tasks in Table 5, except for the Annual Progress Reports, which will identify the progress made or completion of the tasks in the list before that. This will ensure that the Regional Board knows whether the tasks are being done, but does not arbitrarily bind the Districts to dates that might not be met due to extraordinary circumstances.

5. This response again relies upon the staff's unsupported interpretation that blending is a prohibited bypass under 40 C.F.R. §122.41(m). Interpretations of law and findings not supported by authority or evidence constitute an abuse of discretion. See 40 C.F.R. §124.8(b)(4); *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 515; *California Edison v. SWRCB*, 116 Cal. App. 751, 761 (4th Dt. 1981); see also *In the Matter of the Petition of City and County of San Francisco, et al.*, State Board Order No. WQ-95-4 at 10 (Sept. 21, 1995). The Regional Board must make findings based on evidence in the record and may not merely tick off statutory requirements and make claims without supporting evidence. See *City of Carmel-by-the-Sea v. Bd. of Supervisors*, 71 Cal.App.3d 84, 93 (1977) (holding that written findings of fact were insufficient as a matter of law because they were merely a recitation of the statutory language). In addition, the Regional Board may not rely on speculation in reaching a decision. Rather, it must be clear from the record that the Regional Board actually relied upon solid evidence to support its findings, and that this clearly identified and cited evidence supports the agency's findings and ultimate conclusion. Further, the Regional Board must adequately demonstrate a rational connection between the evidence, the choices made, and the purposes of the enabling statute. See *California Hotel & Motel Ass'n v. Industrial Welfare Comm.*, 25 Cal.3d 200, 212 (1979). The level of detail that must be included in the Regional Board's consideration must clearly demonstrate the "analytical route" contemplated under *Topanga*. See *Department of Corrections v. State Personnel Board*, 59 Cal.App.4th 131, 151 (1997). It is insufficient for the Regional Board to simply cite to unsubstantiated findings of blending being a prohibited bypass without proof. Without evidence to support the findings, imposing these requirements on collection agencies is unlawful.

6. Standard provisions apply to all NPDES permits, but not to all co-permittees. See 40 C.F.R. §122.41("The following conditions apply to all NPDES permits.") If staff's interpretation were true, then the Districts would have to comply with all provisions of the permit, even those that the permit says are inapplicable. (See e.g., 40 C.F.R. §122.41(a) *Duty to Comply*. The permittee must comply with all conditions of the permit....") By making the Districts subject to all standard provisions, such as section 122.41(a), the staff is applying ALL sections of the permit to the Districts despite its claims or desire not to. This must be fixed in the final draft.

7. Staff state that "most" Attachment G provisions are based on the CWA and its regulations. To the extent any of these are more stringent than federal law, then additional analysis is required under Water Code section 13263 before being imposed. When the Regional Board goes beyond federal law requirements, it must undertake state law considerations, including the provisions of Water Code Section 13241. See *City of Burbank v. State Board*, 35 Cal.4th 613, 627-629 (2005); Water Code §13263(a). Only those provisions of Attachment D or G that would specifically pertain to collection systems should be included as binding upon the Districts. This demonstrates another reason why adding collection systems to an NPDES permit is problematic and ill-advised.

8. Regional Board members, assisted by advisory counsel not used to assist staff in preparing the permit or response to comments, must make the ultimate determination on the legal

issues as the Districts and Regional Board staff disagree. *See accord Morongo Band of Mission Indians v. State Water Board Resources Control Board* (2009) 45 Cal. 4th 731, 741.

9. The Districts' requested wording changes would be unnecessary if staff would reverse its recommendation to add the Districts to the CMSA permit.

7. **Comment No. 7 Rebuttal – The Districts Appreciate that Changes Were Made, but these Changes Do Not Address or Eliminate the Districts' Concerns or Objections.**

This section merely reiterates previous arguments and interpretations discussed above. However, this section for the first time alleges, without supporting evidence, that "The actions that the collection system agencies take to reduce inflow and infiltration will reduce wet weather bypasses at CMSA's treatment plant, which increase pollutant loading to San Francisco Bay." Because blending events are high dilute flows with lower pollutant concentrations, there is no evidence to support this statement and it should be stricken from the response to comments.

Further, it is also unclear how "naming the collection system agencies will advance the overarching Clean Water Act goal of eliminating discharges of pollutants altogether." Naming the collection agencies will not eliminate discharges or even necessarily eliminate or reduce pollutants. Only flows of relatively clean storm water will be decreased during peak wet weather events, which would have little to no effect on CWA goals.

8. **Comment No. 8 Rebuttal**

This section merely reiterates the arguments and interpretations of Regional Board staff and cites to other permits issued by the Regional Board, which were not challenged or appealed as binding precedent or authority for which they are neither.

9. **Comment No. 9 Rebuttal**

Regional Board staff may disagree with the Districts assessment that they will face additional potential liability, but have provided no evidence to rebut the Districts' claims. As shown above, for each additional provision applicable to the Districts, they face additional liability not currently applicable.

10. **Comment No. 10 Rebuttal**

Staff reiterate their unsupported interpretation that blending, even where a plant is designed to do so, constitutes a prohibited bypass. Nothing prevents a treatment plant from designing its plant in any way it desires so long as it can meet the required effluent limitations to meet technology-based and water quality-based requirements. Part of the excessive I/I calculation, as pointed out previously was to determine if it was less expensive to treat the I/I or eliminate it where such flows were causing human health or environmental impacts. Where there are no such impacts, I/I is not required to be eliminated so long as applicable effluent limits are met. *See American Iron and Steel Institute v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997)(specifically determined that

a permitting authority may not go beyond the imposition of effluent limits to regulating the internal processes of a plant –“the statute does not permit this sort of meddling inside a facility.”); *see also* Water Code section 13360(a).

11. Comment No. 11 Rebuttal

Staff again disagree with the Districts on the meaning and applicability of 40 C.F.R. §122.41(m), which they cite as the basis for adding the Districts as co-permittees. To further justify their position, staff cites section 122.41(m)(4)(i)(B) in the response for Comment No. 11, which “lists equipment maintenance (such as the maintenance the tentative order requires of the collection agencies) as an example of a ‘feasible alternative.’” Again, this citation is misplaced and truncated. The entire section is reproduced below:

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(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 which occurred during **normal periods of equipment downtime or preventive maintenance**; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

The maintenance discussed in subsection B relates to “maintenance during normal periods of equipment downtime.” This is inapplicable to maintenance on sewer lines, which have no normal equipment downtime. This subsection also discusses “if back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.” None of the blending events occur during periods of equipment downtime or preventative maintenance. As stated above, blending is an automatic part of the treatment plant design to accommodate peak wet weather flows, not an intentional diversion due to maintenance activities or equipment downtime, which is what the bypass rule was intended to address.

12. Rebuttal to Remaining Comment Responses

All responses rely upon staff’s misplaced and supported interpretation of the federal bypass rule. Although staff claim that the leading federal court authority on the meaning of the bypass rule at section 122.41(m) is “not precedential or otherwise binding in California,” staff relies heavily on an equally non-precedential, non-binding EAB decision to justify its actions. The issue with physical versus biological treatment issues raised by staff were previously addressed and irrelevant to the ultimate appellate court holding. With no other interpretation of section

122.41(m), the only federal court ruling on the meaning of this federal regulation should be very persuasive and should overrule an interpretation made by staff with no authority or support.

In closing, RVSD and SRSD once again respectfully request that the Tentative Permit not be adopted as proposed with the collection systems included as co-permittees. Instead, the Regional Board staff should remove the collection systems from the Tentative Permit and instruct staff to work with CMSA and its collection agencies and with the Bay Area Clean Water Agencies (BACWA) collection systems committee to come up with another approach that addresses and achieves everyone's goals of reducing wet weather flows to the treatment plant, continuing to protect water quality, all while recognizing and properly allocating limited public resources, and protecting collection systems from unnecessary liability.

The Districts would like to work together with the Regional Board as municipal dischargers in this region have been doing for over a decade to accomplish these and other laudable goals to protect the San Francisco Bay.

Respectfully submitted,



GREG NORBY
RVSD GENERAL MANAGER



DORIS TOY
SRSD GENERAL MANAGER

ATTACHMENTS

cc: Melissa Thorne and Nicole Granquist, Downey Brand LLP
Jason Dow, Manager, CMSA
David Bracken, Manager, Marin Sanitation District #2
Lorien Fono, BACWA

Exhibit 1

CENTRAL MARIN SANITATION AGENCY



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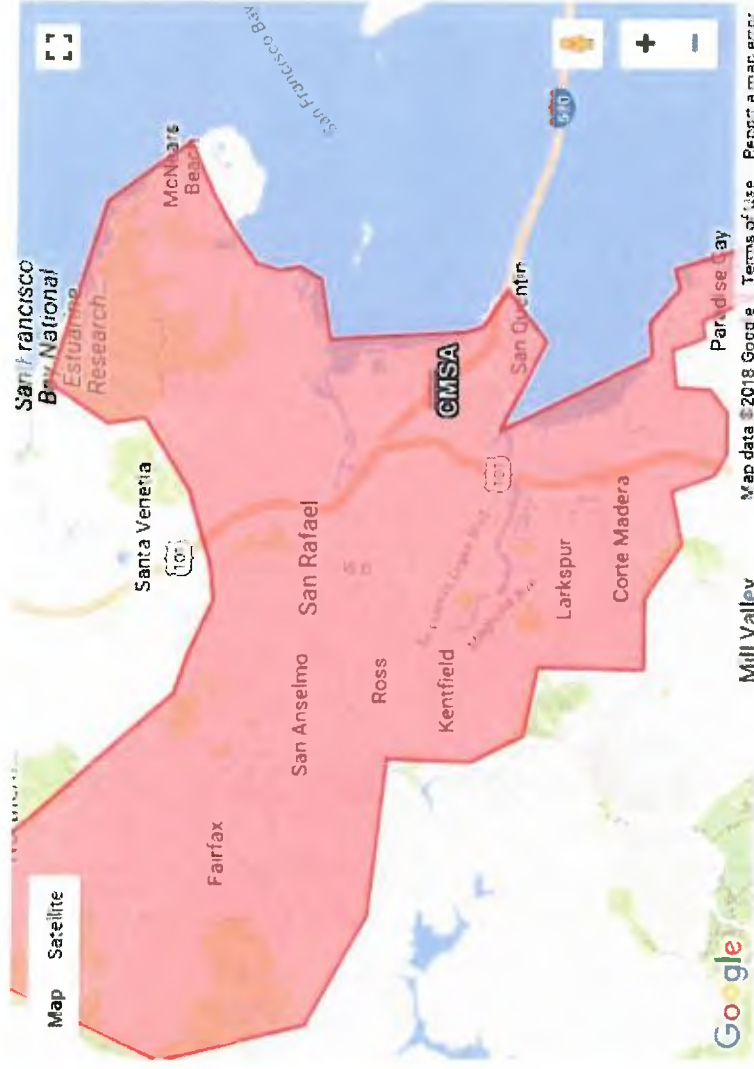
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Central Marin Sanitation Agency provides wastewater treatment for special districts and municipalities in the San Rafael and Ross Valley areas of central Marin County, California. We also provide wastewater treatment services under contract with the State of California for San Quentin State Prison.



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Paradise Bay

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Exhibit 2

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Friday, January 05, 2018



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

California Integrated Water Quality System Project (CIWQS)

COLLECTION SYSTEM OPERATIONAL REPORT

Please see the [Glossary of Terms](#) for explanations of the search results column headings. [More information about the report is found at the bottom of this page.](#)

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Date Range: Start_Date (1/1/2013) End_Date (1/1/2018)

DRILLDOWN HISTORY: [\[GO BACK TO LISTING OF COLLECTION SYSTEMS\]](#)

San Rafael SD CS

Agency: San Rafael Sanitation District

General Information



Region	Place ID	Place Name	CS Category	Place Address	Place County
2	631008	San Rafael SD CS	Municipal (Public)	P.O. Box 151560, CA, 94915	Marin

Collection System Spill Summary

Operational Indices: San Rafael SD CS

Spill Rate Indices (#spills/100ml/yr)									
	Category 1			Category 2			Category 3		
	Mainlines	Laterals	Not Specified	Mainlines	Laterals	Not Specified	Mainlines	Laterals	Not Specified
San Rafael SD CS	1.82	N/A	0.0	0.28	N/A	0.0	16.21	N/A	0.28
State Municipal (Public) Average	2.3	N/A	0.86	1.06	N/A	0.61	4.25	N/A	0.91
Region Municipal Average	4.0	N/A	0.51	1.01	N/A	0.72	7.7	N/A	1.29

Net Volume Spills Indices (Net Vol in gallons/1000 Capita/yr)									
	Category 1			Category 2			Category 3		
	Mainlines	Laterals	Not Specified	Mainlines	Laterals	Not Specified	Mainlines	Laterals	Not Specified
San Rafael SD CS	275.91	N/A	0.0	16.67	N/A	0.0	29.89	N/A	0.0
State Municipal (Public) Average	1612.25	N/A	25913.45	389.99	N/A	175.88	32.73	N/A	25.56
Region Municipal Average	1761.07	N/A	827.71	128.96	N/A	105.97	30.85	N/A	3.6

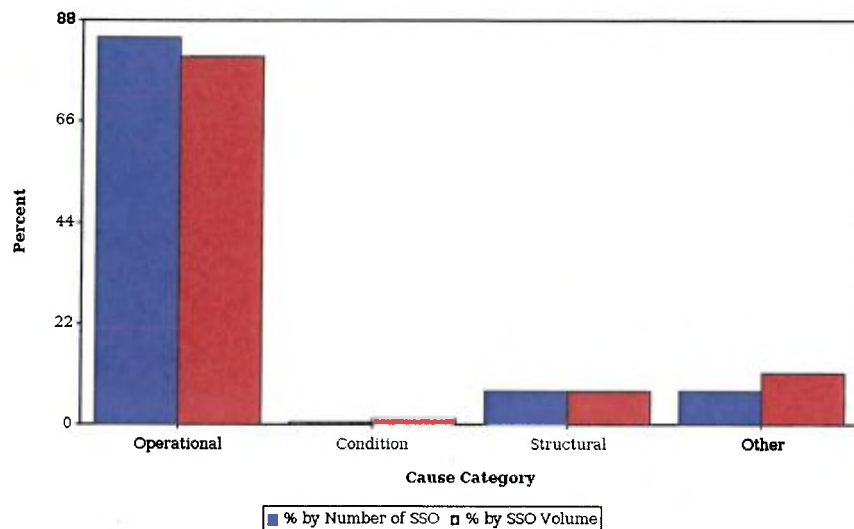
Note: Click on hyperlinks to get comparison charts for CS, Region, and State grouped by 'Miles Of Pipe'.

- (1) The number of Category 1, 2 and 3 SSOs resulting from a failure in the Enrollee sewer system per 100 miles sewer system owned by the Enrollee per year.
- (2) Net Volume (volume spilled minus volume recovered) of SSOs, for which the reporting Enrollee is responsible, per capita (i.e. the population served by your agency's sanitary sewer system), per year.
- (3) Value calculated using miles of force mains and other pressure systems and miles of gravity sewers the agency is responsible for.
- (4) Value calculated using miles of laterals the agency is responsible for (Lower Only, Upper/Lower). For collection systems with no lateral responsibility a N/A is shown.
- (5) Value Calculated using total miles of collection system pipe the agency is responsible for.
- (6) Comparison made between similar collection systems type (e.g. municipal) and lateral responsibility for the entire state over the selected time period. Comparison indices are calculated for all similar collection systems and averaged for comparison.
- (7) Comparison made between similar collection systems type (e.g. Municipal) and lateral responsibility for collection systems in same region (e.g. Region 5S). Collection system indices are calculated for all similar collection systems and averaged for comparison. For airport, hospital, marinas, military, park, port, prison, school, and other collection systems facilities, only state comparison is shown.
- (8) For Criteria used and term definitions refer to the SSO Glossary of Terms.



Percentage of total Number and Volume of SSOs by Spill Cause

Collection System: San Rafael SD CS



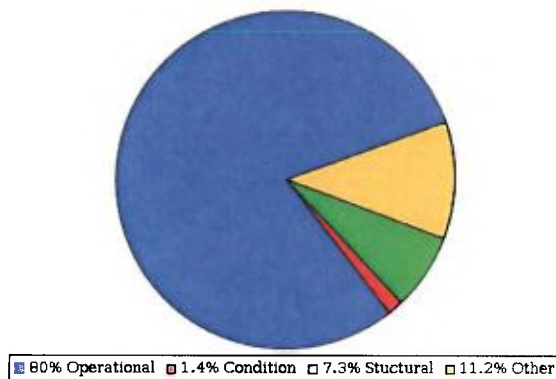
Percentage of total Volume of SSOs by Spill Cause

Operational: Debris from Construction, Debris from Lateral, Debris-General, Debris-Rags, Grease Deposition (FOG), Root Intrusion, Non - Dispersible Wipes

Condition: Flow Exceeded Capacity (Separate CS Only), Natural Disaster, Rainfall Exceeded Design, I&I (Separate CS Only)

Structural: Air Relief Valve (ARV)/Blow-Off Valve (BOV) Failure, Pipe Structural Problem/Failure, Pipe Structural Problem/Failure - Installation, Pump Station Failure-Controls, Pump Station Failure-Mechanical, Pump Station Failure-Power, Siphon Failure

San Rafael SD CS



Region 2

State of California

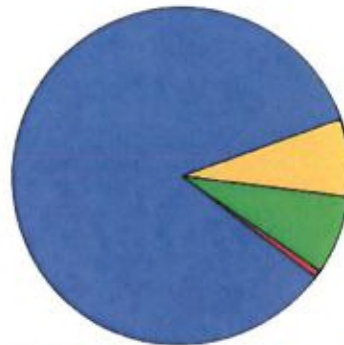
Percentage of total Number of SSOs by Spill Cause

Operational: Debris from Construction, Debris from Lateral, Debris-General, Debris-Rags, Grease Deposition (FOG), Root Intrusion, Non - Dispersible Wipes

Condition: Flow Exceeded Capacity (Separate CS Only), Natural Disaster, Rainfall Exceeded Design, I&I (Separate CS Only)

Structural: Air Relief Valve (ARV)/Blow-Off Valve (BOV) Failure, Pipe Structural Problem/Failure, Pipe Structural Problem/Failure - Installation, Pump Station Failure-Controls, Pump Station Failure-Mechanical, Pump Station Failure-Power, Siphon Failure

San Rafael SD CS



84.2% Operational 0.8% Condition 7.5% Structural 7.5% Other



Region 2



State of California



Collection System Questionnaire Data(*)

Collection System Information: San Rafael SD CS

Status	Active
Last Updated On	2017-08-31 11:55:45.0
Population Served	38,000
Miles of Force Main	13
Miles of Gravity Sewer	130
Miles of Laterals	60
Portion of Laterals Responsible	none
Miles of Laterals Responsible	0
Number of Service Lateral Connection	10913
Sewer Constructed 2000 Current	7
Sewer Constructed 1980 1999	11
Sewer Constructed 1960 1979	33
Sewer Constructed 1940 1959	15
Sewer Constructed 1920 1939	1
Sewer Constructed 1900 1919	0
Sewer Constructed Before 1900	0
Inaccessible Sewer (Miles)	25
Sewer Clean Production (Miles/Yr)	288
Gravity Sewer Inspection (Miles/Yr)	10

(*) The information presented above was provided by the Enrollee in the Collection System Questionnaire. Enrollees are required to update the questionnaire information at least once a year; therefore, the information presented above may not be the most current.



Sewer System Management Plan (SSMP) Completion (*)

SSMP Information: San Rafael SD CS

Task and Associated Section	Completed
Development Plan and Schedule	Yes
Section I - Goal	Yes
Section II - Organization	Yes
Section III - Legal Authority	Yes
Section IV - Operation & Maintenance Program	Yes
Section V - Design & Performance Provisions	Yes
Section VI - Overflow Emergency Response Plan	Yes
Section VII - FOG Control Program	Yes
Section VIII - System Evaluation & Capacity Assurance Plan	Yes
Section IX - Monitoring, Measurement, and Program Modifications	Yes
Section X - SSMP Program Audits	Yes
Section XI - Communication Program	Yes
Complete SSMP Implementation	Yes

(*) Under the Statewide General WDRs for Sanitary Sewer Systems, WQO No. 2006-0003, enrollees are required to develop and implement a written Sewer system Management Plan (SSMP) and must make it publicly available. The SSMP must be approved by the deadlines in the SSMP Time Schedule presented in the Sanitary Sewer Systems WDR.

Additional Information:

- Data used for the Operational report is reported by the enrollees through the CIWQS (California Integrated Water Quality System) SSO module.
- Indices are calculated for the date range specified (default is past 4 months) and using data available since reporting was required for all enrollees as specified in the Sanitary Sewer Systems WDR. Reporting was required to begin for Regions 4,8,9 on 1/2/2007, Regions 1,2,3 on 5/2/2007, and, Regions 5,6,7 on 9/2/2007.

- Comparisons are made between similar collection systems type (e.g. Municipal), and lateral responsibility for the entire state and region. Indices are calculated for all similar collection systems and averaged for comparison.
- Category 1 and 2 spills are required to be fully certified 15 calendar days after SSO response conclusion and Category 3 spills are required to be fully certified 30 Calendar days after end of calendar month which SSO occurred. Therefore, spill records for the past approximately 60 days may be incomplete.
- Average Number of Spills per 100 miles: Measures the number of sewer overflows per 100 miles of sewer lines. Notice that these indices are strongly influenced by the length of collection system owned by the enrollee.
 - For instance, an enrollee that owns and operates a collection system of one (1) mile in length having only one (1) spill (analyzing data for ONE year) will have a Operational indice of 100.0 spills/100mi/yr. On the other hand, an enrollee that owns and operates a collection system of one hundred (100) miles in length having only one (1) spill (analyzing data for ONE year) will have a Operational indice of 1.0 spills/100mi/yr.
- Average Net Volume (volume spilled minus volume recovered) of Spills per Capita: Measures the volume in gallons of SSOs, for which the reporting Enrollee is responsible, per capita (the population served by your agency's sanitary sewer system). Where the volume recovered is greater than the volume spilled, the net volume will be considered to be zero.
- The "agency" or Enrollee listed on a SSO report is responsible for the data presented in this report and should be contacted directly for questions related to their Data.
- More information on the Sanitary Sewer Overflow Reduction program is available at:
http://www.waterboards.ca.gov/water_issues/programs/sso/index.shtml
- The Sanitary Sewer Overflows Incident Map is available at:
http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml
- The Interactive SSO report: https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main

The current report was generated with data as of: Thursday, January 04, 2018
Regional Boards are in the process of entering backlogged data.
As a result, data may be incomplete.

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the umbrella of the California Environmental Protection Agency.
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EXHIBIT I

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Special Counsel for Petitioner
 ROSS VALLEY SANITARY DISTRICT

BEFORE THE
 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Ross Valley Sanitary District, San Rafael Sanitation District, and the Southern California Alliance of POTWs for Review of Action and Failure to Act by the California Regional Water Quality Control Board, San Francisco Bay Region, in Adopting Order No. R2-2018-0003 for the Central Marin Sanitation Agency.

SWRCB/OCC Files A-_____

**DECLARATION OF GREG NORBY IN
 SUPPORT OF ROSS VALLEY
 SANITARY DISTRICT'S PETITION FOR
 STAY**

I, Greg Norby, declare:

1. I am the General Manager of Ross Valley Sanitary District ("RVSD") where I have acted in that position for the past five years. My business address is 2960 Kerner Boulevard, San Rafael, California 94901. I have personal knowledge of the facts stated herein and, if necessary, could testify thereto.

2. I am responsible for the overall administration and management of RVSD's service area, which includes the communities of Corte Madera, Larkspur, Ross, San Anselmo, Fairfax, and Greenbrae, California. RVSD is one of three member agencies that make up the Central Marin Sanitation Agency ("CMSA") Joint Powers Authority ("JPA"), providing wastewater conveyance services. My duties include implementing RVSD's comprehensive capital program, O&M practices, financial plans, and collection system permitting programs.

Additionally, I have overseen the adoption of RVSD's rate schedules.

3. I have a Bachelor's Degree in Civil Engineering from California State University-Chico and a Master's Degree in Civil Engineering from Utah State University. I am a registered and licensed civil engineer in the State of California. I have served in various civil engineering and water utility management positions since 1993. RVSD is a member of the California Association of Sanitary Agencies ("CASA") and the Bay Area Clean Water Agencies ("BACWA").

4. At the January 10, 2018 California Regional Water Quality Control Board, San Francisco Region ("Regional Board"), hearing concerning the National Pollutant Discharge Elimination System ("NPDES") Permit for CMSA (Order No. R2-2018-0003) ("Permit"), I, along with special counsel for RVSD and the General Manager of San Rafael Sanitation District ("SRSD"), testified and expressed numerous concerns related to the Regional Board's inclusion of RVSD as a co-permittee on the Permit. (*See generally* **Exhibit D**, Regional Board January 10, 2018 public hearing transcript ("HT").) RVSD and SRSD also provided extensive written and oral comments on the tentative permit, including during in-person meetings with Regional Board staff.

5. When the Regional Board adopted the Permit, the Regional Board failed to comply with the legal requirements and authority as related to blending or "bypass" and related to collection system regulation. The Regional Board's failure to remove RVSD as a co-permittee under the Permit as requested numerous times places RVSD in immediate jeopardy of being in violation of requirements set forth in the Permit on March 1, 2018, the effective date of the Permit. (*See* Exhibit D, HT at 55:1-2 ("This is a very big deal for [RVSD].").

6. RVSD was not included on the two previous NPDES permits issued to CMSA (Order Nos. R2-2007-0007 and R2-2012-0051). Instead, RVSD is regulated under the Sanitary Sewer System Waste Discharge Requirements, State Water Resources Control Board Order No. 2006-0003-DWQ ("SSS WDR"), as amended by Order No WQ 2008-0002-EXEC. Moreover, RVSD did not request to be on and did not wish to be a co-permittee on the Permit. This makes sense because CMSA does not own RVSD – it is an entirely different and separate entity.

7. It is unclear why the Regional Board required RVSD to be added on the Permit

when, as a collection system, RVSD is already appropriately permitted by the statewide general SSS WDR and by a separate Cease and Desist Order (Order No. R2-2013-0020) (“CDO”). In addition, the Permit does not authorize any discharges from RVSD to waters of the United States. CMSA is the only permitted discharger authorized as a point source to discharge pollutants to a water of the United States under the Permit. Therefore, CMSA is the only entity subject to NPDES discharge requirements under section 402 of the Clean Water Act (33 U.S.C. § 1342).

8. The Regional Board’s actions to adopt the Permit and not remove RVSD as a co-permittee may unnecessarily result in RVSD being deemed out of compliance with the Inflow and Infiltration (“I/I”) reduction activity or proper operation and maintenance requirements set forth in the Permit and subject RVSD to citizen suits and discretionary civil or criminal penalties by USEPA.

9. RVSD’s request that the State Board temporarily stay the Permit conditions applicable to RVSD while the State Board rules on RVSD’s Petition for Review should be granted. During the period in which the requested stay is in effect, RVSD will continue to comply with the statewide General SSS WDR. In addition, RVSD will remain subject to its 2013 CDO with the Regional Board, which requires a comprehensive Infrastructure Asset Management Plan (“IAMP”) with collection system rehabilitation, operation, and maintenance improvements potentially through 2021, financial performance targets that RVSD has already met, and the proposal and implementation of a Private Sewer Lateral Program, which is currently active and being well utilized. (*See Exhibit C, RVSD CDO; see also Exhibit D, HT at 50:17-18 (“... Ross Valley will continue to operate under the 2013 cease and desist order.”).*)

10. The general public will be substantially harmed if the State Board does not grant RVSD’s stay request. If the requirements contained in the Permit are not immediately stayed, businesses and residents in RVSD’s service area, already under substantial strain from other utility cost increases, may be asked to pay for unnecessary costs of additional work that may not be needed or the costs of defending new federal enforcement actions. (*See Exhibit D, HT at 48:4-14 (“I will address the basic, what I think are the basic stakeholder interests. They start with the community who pays the bills, which have gone up 50 percent in the past five years to pay for*

these capital programs. Certainly, they include our community. They include the folks interested in the environmental health of the Bay. And I can't identify any benefit to any stakeholder, other than the Regional Board staff's preference for this permitting approach that is being served here, beyond what's already being offered.".) The forced implementation of costly new requirements that may ultimately prove unnecessary, or the commencement of enforcement actions based on such requirements, is a misdirection of scarce public resources, and should be avoided in order to prevent substantial harm to the public. (*See* Exhibit D, HT at 46:3-7 (The Permit is a "step back to an overly prescriptive, convoluted, duplicative permitting process that appears to be trying to solve a problem that doesn't actually exist.").)

11. The adoption of the Permit in violation of federal and state law also causes substantial harm to the public who have a vested interest in the government complying with its own laws and regulations. (*See* Exhibit D, HT at 47:19-25 ("You have these regulations generally to push people to get to do the things they're not already doing. We're already doing all those things [under the CDO]. So it's not clear to us what public value, what public interest is being served by adding this new layer of, again, what we consider to be convoluted, duplicative....").)

12. Other interested persons and the public will not suffer substantial harm if a stay of the Permit conditions applicable to RVSD are granted by the State Board because a stay merely protects the status quo. Granting a stay of the requested provisions will not operate to eliminate RVSD's requirements under the statewide General SSS WDR or its 2013 CDO. In addition, the issuance of a stay will not eliminate or alter any other requirements set forth in the Permit, including all other permit requirements related to CMSA.

13. The issuance of a stay will simply prevent compliance jeopardy and unnecessary costs associated with the current Permit requirements while these requirements are being administratively reviewed. The requested stay will also temporarily suspend administrative and civil and potential criminal liability for non-compliance with requirements that may ultimately be removed from the Permit or modified.

14. The issuance of a stay by the State Board simply suspends the susceptibility to

1 third-party lawsuits or USEPA enforcement of the Permit against RVSD pending review of the
2 requested provisions, which may ultimately be removed from the Permit. (See Exhibit D, HT at
3 48:4-14.) Because the Permit does not authorize any discharge to waters of the United States
4 directly from RVSD and CMSA is the only permitted discharger authorized as a point source and
5 subject to NPDES discharge requirements under section 402 of the Clean Water Act, there is little
6 to no chance of environmental harm in granting a stay of the appealed provisions.

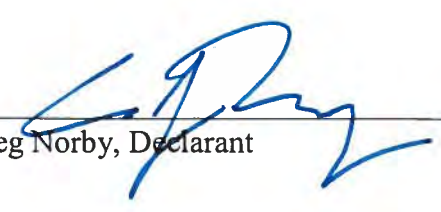
7 15. If a stay were issued, the Regional Board's regulatory oversight of RVSD will
8 remain unchanged. All other effluent limitations, monitoring and reporting requirements, and
9 substantive provisions contained in the Permit as applicable to CMSA will remain in effect and be
10 fully enforceable by the Regional Board.

11 16. During the period of the requested stay, RVSD will continue its existing programs
12 and capital improvements. The issuance of a stay will benefit the public by providing orderly
13 resolution of the issues raised by RVSD in this Request for Stay as well as Petitioners' Petition
14 for Review.

15 17. RVSD raised numerous substantial questions of fact and law regarding provisions
16 contained in the Permit in Petitioners' Petition for Review filed with the State Board on February
17 5, 2018. RVSD hopes that the State Board will take up its Petition for Review and issue an order
18 removing RVSD as a co-permittee on the Permit.

19 I declare under penalty of perjury pursuant to the laws of California that the foregoing is
20 true and correct.

21 Executed this 5th day of February, 2018 at San Rafael, California.

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Greg Norby, Declarant

EXHIBIT J

1 DOWNEY BRAND LLP
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5 mthorme@downeybrand.com
6 Tel.: (916) 520-5376
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8 Special Counsel for Petitioner
9 SAN RAFAEL SANITATION DISTRICT

10
11 BEFORE THE
12 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
13

14 In the Matter of the Petition of Ross Valley
15 Sanitary District and San Rafael Sanitation
16 District and the Southern California Alliance
17 of POTWs for Review of Action and Failure
18 to Act by the California Regional Water
19 Quality Control Board, San Francisco Bay
20 Region, in Adopting Order No. R2-2018-
21 0003 for the Central Marin Sanitation
22 Agency.

SWRCB/OCC Files A-_____

23 **DECLARATION OF DORIS TOY IN**
24 **SUPPORT OF SAN RAFAEL**
25 **SANITATION DISTRICT'S PETITION**
26 **FOR STAY**

27 I, Doris Toy, declare:

28 1. I am the General Manager of San Rafael Sanitation District ("SRSD") where I
have acted in that position for the past 9 years. My business address is 111 Morphew Street, PO
Box 151560, San Rafael, California 94915. I have personal knowledge of the facts stated herein
and, if necessary, could testify thereto.

2. I am responsible for the overall administration and management of SRSD's service
area, which includes Central San Rafael, California. SRSD is one of three member agencies that
make up the Central Marin Sanitation Agency ("CMSA") joint powers authority ("JPA"),
providing wastewater conveyance services. My duties include serving as chief administrative
officer and chief engineer for SRSD and are responsible for managing and directing the legal,
administrative, financial, engineering, operating, maintenance, and construction functions of
SRSD.

1 3. I have a Bachelor's and Master's Degree in Civil Engineering, with more than 20
2 years of experience working at the Fairfield-Suisun Sewer District, City of San Rafael
3 Department of Public Works, and San Rafael Sanitation District. SRSD is a member of the
4 California Association of Sanitary Agencies ("CASA") and the Bay Area Clean Water Agencies
5 ("BACWA").

6 4. At the January 10, 2018 California Regional Water Quality Control Board, San
7 Francisco Region ("Regional Board"), hearing concerning the National Pollutant Discharge
8 Elimination System ("NPDES") Permit for CMSA (Order No. R2-2018-0003) ("Permit"), I,
9 along with special counsel for SRSD and the General Manager of Ross Valley Sanitary District
10 ("RVSD") testified and expressed numerous concerns related to the Regional Board's inclusion
11 of SRSD as a co-permittee on the Permit. (*See generally* **Exhibit D**, Regional Board January 10,
12 2018 public hearing transcript ("HT").) SRSD and RVSD also provided extensive written and
13 oral comments on the tentative permit, including during in-person meetings with Regional Board
14 staff.

15 5. When the Regional Board adopted the Permit, the Regional Board failed to comply
16 with the legal requirements and authority as related to blending or "bypass" and related to
17 collection system regulation. The Regional Board's failure to remove SRSD as a co-permittee
18 under the Permit places SRSD in immediate jeopardy of being in violation of requirements set
19 forth in the Permit on March 1, 2018, the effective date of the Permit.

20 6. SRSD was not included on the two previous NPDES permits issued to CMSA
21 (Order Nos. R2-2007-0007 and R2-2012-0051). Moreover, SRSD did not request to be on and
22 did not wish to be a co-permittee on the Permit. This makes sense because CMSA does not own
23 SRSD – it is an entirely different and separate entity.

24 7. It is unclear why the Regional Board required SRSD to be added on the Permit
25 when, as a collection system, SRSD is already appropriately permitted by the statewide General
26 Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ ("SSS
27 WDR"), as amended by Order No WQ 2008-0002-EXEC). In addition, CMSA is the only
28 permitted discharger authorized as a point source to discharge pollutants to a water of the United

1 States under the Permit. Therefore, CMSA is the only entity subject to NPDES discharge
2 requirements under section 402 of the Clean Water Act (33 U.S.C. § 1342).

3 8. The Regional Board's actions to adopt the Permit and not remove SRSD as a co-
4 permittee will unnecessarily result in SRSD being out of compliance with the Inflow and
5 Infiltration ("I/I") reduction activity or proper operation and maintenance requirements set forth
6 in the Permit and subject SRSD to citizen suits and discretionary civil or criminal penalties by
7 USEPA. (*See* Exhibit D, HT at 56:19-22 ("And we're just concerned, you know, that we'll be in
8 violation [of the Permit] and a third party coming after us and that sort of thing, and double
9 penalties.").)

10 9. SRSD's request that the State Board temporarily stay the Permit conditions
11 applicable to SRSD while the State Board rules on SRSD's Petition for Review should be
12 granted. During the period in which the requested stay is in effect, SRSD will continue to comply
13 with the statewide General SSS WDR.

14 10. The general public will be substantially harmed if the State Board does not grant
15 SRSD's stay request. If the requirements contained in the Permit are not immediately stayed,
16 businesses and residents in SRSD's service area, already under substantial strain from other
17 utility cost increases, will immediately be asked to pay for unnecessary costs of additional work
18 that may not be needed or the costs of defending new federal enforcement actions. The forced
19 implementation of costly new requirements that may ultimately prove unnecessary, or the
20 commencement of enforcement actions based on such requirements, is a misdirection of scarce
21 public resources, and should be avoided in order to prevent substantial harm to the public.

22 11. The adoption of the Permit in violation of federal and state law also causes
23 substantial harm to the public who have a vested interest in the government complying with its
24 own laws and regulations.

25 12. Other interested persons and the public will not suffer substantial harm if a stay of
26 the Permit conditions applicable to SRSD are granted by the State Board because a stay merely
27 protects the status quo. Granting a stay of the requested provisions will not operate to eliminate
28 SRSD's requirements under the statewide General SSS WDR. In addition, the issuance of a stay

1 will not eliminate or alter any other requirements set forth in the Permit, including all other permit
2 requirements related to CMSA.

3 13. The issuance of a stay will simply prevent compliance jeopardy and unnecessary
4 costs associated with the current Permit requirements while these requirements are being
5 administratively reviewed. The requested stay will also temporarily suspend administrative and
6 civil and potential criminal liability for non-compliance with requirements that SRSD cannot
7 consistently meet, and which may ultimately be removed from the Permit or modified.

8 14. The issuance of a stay by the State Board simply suspends the susceptibility to
9 third-party lawsuits pending review of the requested provisions, which may ultimately be
10 removed from the Permit. Because the Permit does not authorize any discharge to waters of the
11 United States directly from SRSD and CMSA is the only permitted discharger authorized as a
12 point source and subject to NPDES discharge requirements under section 402 of the Clean Water
13 Act, there is little to no chance of environmental harm in granting a stay of the appealed
14 provisions.

15 15. If a stay were issued, the Regional Board's regulatory oversight of SRSD will
16 remain unchanged. All other effluent limitations, monitoring and reporting requirements, and
17 substantive provisions contained in the Permit as applicable to CMSA will remain in effect and be
18 fully enforceable by the Regional Board.

19 16. During the period of the requested stay, SRSD will continue its existing programs
20 and capital improvements. The issuance of a stay will benefit the public by providing orderly
21 resolution of the issues raised by SRSD in this Request for Stay as well as Petitioners' Petition for
22 Review.

23 17. SRSD raised numerous substantial questions of fact and law regarding provisions
24 contained in the Permit in the Petitioners' Petition for Review filed with the State Board on
25 February 5, 2018. SRSD hopes that the State Board will take up its Petition for Review and issue
26 an order removing SRSD as a co-permittee on the Permit.

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I declare under penalty of perjury pursuant to the laws of California that the foregoing is true and correct.

Executed this 5th day of February, 2018 at San Rafael, California.


Doris Toy, Declarant