



BAYKEEPER.

*Defending Our Waters—from the
High Sierra to the Golden Gate*

Tam Doduc, Chair and Board
State Water Resources Control Board
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Attn: Ms. Song Her, Clerk to the Board

20 February 2007

Re: Comments on Draft State Water Board Order, "In the Matter of Own Motion Review of EBMUD Wet Weather Permit (Order No. R2-2005-0047 [NPDES No. CA0038440]) and Time Schedule Order (Order No. R2-2005-0048), SWRCB/OCC File A-1771



Dear Chair Doduc and Members of the Board:

Baykeeper thanks you for the opportunity to comment on the above-referenced Draft Order concerning Regional Board 2's National Pollutant Discharge Elimination System ("NPDES") permit and Time Schedule Order ("the TSO") for the East Bay Municipal Utility District ("EBMUD")'s wet weather facilities and overflow structures ("the WWFs"). We agree with most aspects of the Draft Order, and we commend staff for its meticulous legal and factual research reflected in the Draft Order. As pointed out below, Baykeeper recommends changes to the TSO and/or the NPDES permit to require participation in solving the WWF discharge problem by the East Bay satellite cities that discharge to EBMUD's sewage interceptors. Without this involvement, EBMUD is unlikely to be able to solve the WWF discharge problem on its own. Two, Baykeeper supports most of the Draft Order's analysis of multiple and NPDES permitting issues and urges adoption of most of the Draft Order's conclusions as an important step for reasserting effective State Board oversight of NPDES permitting statewide.

I. The Draft Order Should Direct Amendment of the TSO and/or the NPDES Permit To Include East Bay Satellite Cities.

As the State Board may be aware, for the past two years, EBMUD has been performing a series of studies to investigate alternatives to its current WWF discharges.

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Though not required by Regional Board 2's Permit or TSO, EBMUD has also convened a multi-stakeholder Blue Ribbon Panel to foster exchange of information and ideas concerning alternatives to its current WWF discharges. Baykeeper has been one of the Blue Ribbon Panel participants. EBMUD's investigation of the WWF problem to date, and its attempts to involve multiple stakeholders, are commendable and already have yielded valuable insights.

EBMUD collects sewage from nine cities and communities in the East Bay area with a population totalling approximately 650,000: the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont and Stege Sanitary District (which include El Cerrito, Kensington and part of Richmond). Each of the cities and Stege Sanitary District own and operate their own wastewater collection system. Taken as a whole, the East Bay sewer system has insufficient capacity to convey wet weather sewage flows as needed to protect human health and the environment and comply with Clean Water Act ("CWA") section 301(b)(1)(B)'s mandate to provide secondary treatment to all municipal sanitary sewage. While EBMUD's current means of addressing this capacity shortfall, routing peak wet weather flows to the WWFs, is an improvement over discharging raw sewage, Baykeeper has consistently opposed permanent reliance on the WWFs, at least as they are currently designed and operated. Effluent discharged from the WWFs is well documented to contain several toxic priority pollutants at levels exceeding water quality standards. We further believe it quite likely that if the effluent were subjected to whole effluent toxicity testing (which, contrary to law, it has not been), the effluent would be shown to be excessively toxic. The effluents are disinfected, which is generally beneficial for reducing human health risk, but disinfection by chlorination is no doubt forming toxic chlorinated organic compounds that are then discharged without adequate monitoring or limitation. We are further concerned that chlorination may not be achieving effective kill of all pathogens present in the effluent even when levels of indicator bacteria are shown to be below effluent limits, especially during high flows when retention and chlorine contact times will be minimal. The effluents have high solids levels, as well, especially during high flow/minimal retention time conditions, which will tend to hamper disinfection.

Baykeeper has consistently advocated implementation of new remedial measures that will eventually curtail or eliminate discharges from the WWFs and/or dramatically improve sewage treatment at these facilities. There are three basic remedial options: (1) increasing the capacity of EBMUD's interceptor system to convey sewage to a full secondary treatment plant (at the moment, this would only be EBMUD's main wastewater treatment plant), (2) reducing rainfall-derived infiltration and inflow ("RDI/I") into the nine satellite collection systems that discharge to EBMUD's interceptors, and (3) improving the treatment efficacy of the WWFs. EBMUD's studies and Blue Ribbon Panel meetings to date have underscored that EBMUD cannot feasibly on its own implement any combination of these options that will eliminate the WWF discharges or bring the WWF discharges into CWA compliance. Any viable solution will require some combination of reduced RDI/I in the East Bay satellite cities together with increased functional storage capacity for peak sewage flows within these satellite cities' collection systems upstream of EBMUD's interceptors as at least part of the remedial approach.

The core cause of discharges from EBMUD's WWFs will not be addressed until there is incentive for political authorities owning and operating the satellite systems to reduce excessive RDI/I in the East Bay sewer system and/or build in-system storage for peak flows. For these satellite authorities (though not the residents of these communities), discharging excessive peak flows to EBMUD's interceptors is a "free good" whereas controlling RDI/I or building in-system storage would be expensive. EBMUD currently lacks any authority to restrict RDI/I within the satellites or directly charge the satellite jurisdictions for their excessive flow contributions. As the "tragedy of the commons" fable teaches, the result is predictable: the satellites are overloading EBMUD's interceptors with RDI/I-driven peak flows. A new TSO or revised NPDES Permit issued jointly to EBMUD and all its satellites needs to be issued to reverse these incentives. While the satellites are still variously involved in a multi-year, Regional Board-ordered RDI/I reduction effort, to date this effort has proven ineffective and may actually exacerbate the WWF discharge problem. At least some of the satellites have addressed their own wet weather sewage spill problems primarily by constructing relief sewers as opposed to reducing RDI/I or building in-system storage. New relief sewers in these satellites are conveying greater amounts of peak flow to EBMUD's interceptors, which will tend to increase the magnitude and frequency of WWF discharges. A new TSO and/or NPDES permit must order/require the satellites to participate jointly with EBMUD and with each other in comprehensively studying and reducing their peak flow discharges to EBMUD's interceptors that currently make use of the WWFs unavoidable.

Information available to date suggests that private lateral sewer lines connecting sewer users to the satellite cities' sewer main lines are likely a very large source of RDI/I. A new TSO and/or NPDES permit should expressly require from EBMUD and the satellites (by specified interim and final deadlines): a) identification of the number of lateral lines in the East Bay sewer system tributary to EBMUD's interceptors, b) development and application of a methodology for estimating what percentage of the lateral lines are likely defective in ways that are contributing RDI/I to the system, c) the cost of replacing the lateral lines, d) analysis of the political, economic, and social means of achieving lateral line replacement (taking into account successful lateral line replacement programs in other cities), and e) the time needed to complete lateral line replacement.

In addition, the TSO and/or NPDES permit should require EBMUD and the satellites to consider and report on the best options for securing the necessary unified and coordinated approach to controlling system-wide RDI/I, including EBMUD assuming ownership or operational control of some or all of the East Bay sewer system currently owned by the nine satellite cities or interagency contracts or other agreements.

The TSO and/or NPDES permit should mandate that EBMUD and the satellites evaluate the best practices for RDI/I control implemented by the "best in class collection systems throughout the State" with respect to inspection of sewer line conditions via CCTV, smoke testing, and visual inspections and analysis of feedback information from

sewer line cleaning/de-rooting and municipal public works department reports of street subsidence and other evidence of RDI/I.

II. Adoption of the Draft Order's Conclusions Are Vitaly Needed To Ensure Proper NPDES Permitting Statewide.

In Baykeeper's view, the appropriate regulatory response to discharges from the WWFs is important, but the proper approach to several NPDES permitting issues addressed by the Draft Order are far more significant. In adopting the Draft Order, Baykeeper urges the State Board, above all, to consider the importance of faithful adherence to the plain dictates of the CWA and California Water Code, the laws that the State Board is charged with implementing. As one member of the State Board recently observed in a public hearing, societies founder that do not establish and consistently adhere to clear rules.

The Draft Order states 26 conclusions concerning Regional Board 2's failure to adhere to CWA and Water Code requirements in issuing the WWF NPDES permit and Time Schedule Order at issue. While the Draft Order's directions for correcting these 26 separate errors of law with respect to the WWF NPDES permit are important, of far greater significance is the future direction to the Regional Boards that adoption of the Draft Order will give. Specifically, the Draft Order's Conclusions Nos. 5-26 concerning adoption of compliance schedules, setting water quality-based effluent limitations ("WQBELs") based on sound reasonable potential analysis, amending permit conditions by unilateral Regional Board Executive Officer action, and proper adherence to standard NPDES permit conditions are the most important as these issues arise in nearly all NPDES permits. Accordingly, Baykeeper particularly urges the State Board to adopt the Draft Order's Conclusions Nos. 5-26, which collectively correctly find that:

- 1) Basin Plan limits that purport to waive the secondary treatment requirements of the CWA are illegal, must be eliminated where they exist in Basin Plans, and cannot form the basis of effluent limits in NPDES permits;
- 2) Proper Reasonable Potential Analyses must be conducted for all discharges;
- 3) WQBELs for all dischargers must ensure compliance with water quality standards set forth in the California Toxics Rule, National Toxics Rule, and Basin Plans;
- 4) Self-monitoring programs need to be sufficiently frequent and comprehensive to assess compliance with permit limits and assess facility performance, through fully representative data;
- 5) Regional Board Executive Officers may only make minor permit amendments by unilateral action; all other changes must follow public notice and comment procedures; and
- 6) Standard NPDES permit conditions derived from EPA regulations must be adhered to and not superseded by other permit terms.

Additionally, Baykeeper agrees that the Draft Order appropriately rejects the compliance schedules adopted by Regional Board 2, which violate the State Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California ("State Implementation Plan" or "SIP") and U.S. Environmental Protection Agency ("EPA") regulations. However, the Draft Order improperly endorses compliance schedules for new or more stringent limits in NPDES permits. As explained below, any compliance schedules that delay the effective date of WQBELs beyond 1977 violate the CWA. Thus, Baykeeper asks that the Draft Order be amended to direct that the effective date of WQBELs cannot now be delayed and that Regional Board 2 should issue TSOs for WQBELs for which Regional Board 2 finds immediate compliance infeasible.

There is a paramount need for the State Board to exercise the effective oversight of Regional Board 2 and the remainder of the Regional Boards that the Draft Order offers. Regional Board 2 has in recent years repeatedly deviated from CWA and Water Code dictates in its NPDES permit decisions in many of the same ways that the Draft Order disallows. Baykeeper has commented on CWA and Water Code compliance in numerous permit considerations, including the EBMUD permit. Baykeeper staff worked extensively with the Regional Board staff to improve the permit and TSO, and at that time raised many of the issues referenced in this comment letter. Despite a collaborative effort on the EBMUD permit, we believe the Draft Order raises many statewide policy issues with implications for future NPDES permitting within Region 2 and across the state. We urge the State Board to set out use this opportunity to set out clear policy for Regional Boards to follow, so that proper permitting is achieved.

Without adoption of the Draft Order, the Regional Board will no doubt repeat these errors in future permit decisions. Notably, Baykeeper recently brought the Draft Order to Regional Board 2's attention in commenting on NPDES permits issued by Regional Board 2 to the South Bayside System Authority and Central Marin Sanitation Agency. As the attached excerpts from the transcript from the Regional Board hearing on these permits reflects, Regional Board 2 is currently resolute in persisting in many of the permitting errors addressed by the Draft Order.

During this hearing, Regional Board 2 staff advised the Regional Board:

[A]lthough the State Water Board recently released, a little bit over a week ago, a draft order on the East Bay MUD wet weather permit, that some could interpret to be in conflict with our interpretations of [past State Board decisions governing NPDES permitting], we emphasize that the State Water Board draft order is a draft. Unlike in other permit reviews, because the State Water Board took East Bay MUD up on its own motion, State Board Staff developed its draft order without the benefit of arguments from all sides. We have reevaluated our interpretation [of permitting requirements] in light of State Water Board's draft order and

maintain that our interpretation is still reasonable and consistent with [past State Board permitting decisions].

Attachment 1 at 12, lines 6-18.

Baykeeper raised the Draft Order during the hearing to emphasize the importance of considering the State Board's perspective in new permitting decisions. One Board member responded to Baykeeper's observation by saying that the Draft Order "doesn't really affect my thinking at all." Attachment 1 at 31, lines 11-15. Another Board member discussed at length the possibility of imposing limits on air emissions of dioxin in lieu of an appropriate WQBEL for dioxin, prompting yet another Board member to criticize imposing the WQBEL for dioxin mandated by the CWA thusly:

If we're setting up any agency of government or the private sector to fail, is that not a violation of our own obligations? If they cannot possibly succeed [in complying with their permit limits], what are we doing? I just wonder what the rationale is to justify putting out -- putting out a permit that requires them to do something that they can't do.

Attachment 1 at 35, lines 2-12.

It is the obligation of administrative agencies to implement the laws duly enacted by Congress and the state legislature. The Regional Board's duty is not to ensure that regulated dischargers receive NPDES permits they can readily comply with, but instead to issue NPDES permits that have the effluent limitations mandated by Congress and that protect Beneficial Uses of waters. Further, it is improper for Regional Boards to avoid setting effluent limitations in NPDES permits due to their own judgment that the costs of compliance exceed the benefits. As a federal court recently observed, the CWA forbids administrative agencies from taking into account "cost considerations or an assessment of the desirability of reducing adverse environmental impacts in light of the cost of doing so [when setting effluent limitations]. The statute . . . precludes cost-benefit analysis because Congress itself defined the basic relationship between costs and benefits." *Riverkeeper, Inc., et al. v. EPA*, 2007 WL 184658 (2nd Cir. 2007) (Jan. 25, 2007).

III. The Draft Order Correctly Finds that Basin Plan Limits Cannot Exempt Dischargers from the CWA's Secondary Treatment Requirement.

The San Francisco Basin Plan ("the Basin Plan") purports to authorize discharges from POTWs with less than secondary treatment, based on the beneficial uses of the receiving waters. According to the Basin Plan, full secondary treatment is required only for discharges to waters with year-round shell fish harvesting, and even then, only up to the 20-year return period storm. Areas requiring less protection (such as beaches!) require secondary treatment only up to the two-year return period storm, with primary treatment for discharges up to the 20-year storm, and overflows allowed for storms above the 20-year return period. For more degraded waters, POTWs may spill primary sewage during the six-month storm, and raw sewage during the 5-year storm.

Baykeeper agrees with the Draft Order's finding that these provisions of the Basin Plan are directly inconsistent with the plain CWA dictate that all discharges from POTWs achieve secondary treatment, and that NPDES permits mandate that level of treatment. Further, Baykeeper points out that the basic premise of these Basin Plan provisions is inconsistent with the CWA. The current Basin Plan provides for lesser protections of waters showing greater levels of impairment. Under the CWA, waters listed as impaired on the State's 303(d) list warrant greater protection-both WQBELs that limit pollutant discharge to below the level expected to cause impairment and, where impairment continues, the development of Total Maximum Daily Loads ("TMDLs") limiting pollutant discharge from the various dischargers to a water body to a level that will eliminate the impairment. The current Basin Plan's mandate that POTWs be allowed increased discharges when a water is already degraded contradicts CWA section 303(d)'s mandates to particularly target such waters for tighter regulation and greater restriction on pollutant discharge. We support the Draft Order's direction to correct this right hand not coordinating with the left hand problem by initiating Basin Plan amendments to revise these illegal wet weather discharge provisions.

Finally, all NPDES permits must include a monitoring and reporting program fully sufficient to ensure that permit requirements and the CWA are complied with, and that beneficial uses are protected. Baykeeper concurs with the Draft Order's conclusion that all NPDES permits must include monitoring and reporting requirements that achieve at least this minimum level.

IV. The Draft Order Improperly Endorses Compliance Schedules that Delay the Effective Date of WQBELs.

While Baykeeper agrees with the Draft Order's finding that the Regional Board 2's application of compliance schedules goes well beyond even the limits set out for compliance schedules in the SIP, Baykeeper disagrees with the Draft Order's endorsement of compliance schedules issued consistent with the SIP. Baykeeper urges the State Board to modify the Draft Order to provide that compliance schedules may not under the CWA delay the effective date of WQBELs after 1977.

A. CWA Section 301(b)(1)(C) establishes a firm deadline for complying with WQBELs.

The CWA mandates that:

there shall be achieved . . . not later than July 1, 1977, any more stringent limitations, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations . . . or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

CWA § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Despite this unambiguous, nearly 30 year-old statutory deadline for achieving WQBELs, the State Boards and the Regional Boards have improperly authorized compliance schedules that delay the effective date of WQBELs.

The Draft Order would continue to allow compliance schedules to delay WQBELs for new or more stringent effluent limits imposed after 1977. This would provide dischargers with an extension for meeting WQBELs that extends far beyond the statutory deadline in CWA section 301(b)(1)(C). 33 U.S.C. § 1311(b)(1)(C). This approach is blatantly illegal and, if continued, would directly undermine the water quality standards that form a central part of the CWA.

Numerous courts have held that neither the EPA nor the states have the authority to extend the deadlines for compliance established by Congress in CWA section 301(b)(1). 33 U.S.C. § 1311(b)(1); see *State Water Control Board v. Train*, 559 F.2d 921, 924-25 (4th Cir. 1977) ("Section 301(b)(1)'s effluent limitations are, on their face, unconditional."); *Bethlehem Steel Corp. v. Train*, 544 F.2d 657, 661 (3d Cir. 1976), cert. denied sub nom. *Bethlehem Steel Corp. v. Quarles*, 430 U.S. 975 (1977) ("Although we are sympathetic to the plight of Bethlehem and similarly situated dischargers, examination of the terms of the statute, the legislative history of [the CWA] and the case law has convinced us that July 1, 1977 was intended by Congress to be a rigid guidepost").

This deadline applies equally to technology-based effluent limitations and WQBELs. See *Dioxin/Organochlorine Ctr. v. Rasmussen*, 1993 WL 484888 at *3 (W.D. Wash. 1993), aff'd sub nom. *Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517 (9th Cir. 1995) ("The Act required the adoption by the EPA of 'any more stringent limitation, including those necessary to meet water quality standards,' by July 1, 1977.") (citation omitted); *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1312, (9th Cir. 1992) ("Section 301(b)(1)(C) requires achievement of the described limitations 'not later than July 1, 1977.' ") (citation omitted). Any discharger not in compliance with a WQBEL after July 1, 1977 violates this clear congressional mandate. See *Save Our Bays and Beaches v. City & County of Honolulu*, 904 F. Supp. 1098, 1122-23 (D. Haw. 1994).

Congress provided no blanket authority in the CWA for extensions of the July 1, 1977, deadline, but it did provide authority for the states to foreshorten the deadline. CWA section 1313(f) provides that:

[n]othing in this section [1313] shall be construed to affect any effluent limitations or schedule of compliance required by any State to be implemented prior to the dates set forth in section 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

33 U.S.C. § 1313(f) (emphasis added). Because the statute contains explicit authority to expedite the CWA section 301(b)(1)(C) compliance deadline but not to extend it, the State Board and Regional Boards may not authorize extensions beyond this deadline in discharge permits.

B. The July 1, 1977 deadline applies even where water quality standards are established after that date.

The July 1, 1977, deadline for achieving WQBELs applies equally even if the applicable water quality standards are established after the compliance deadline. CWA section 301(b)(1)(C) requires the achievement of "more stringent limitations necessary to meet water quality standards . . . established pursuant to any State law . . . or required to implement any applicable water quality standard established pursuant to this chapter." 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Congress understood that new water quality standards would be established after the July 1, 1977 statutory deadline; indeed, Congress mandated this by requiring states to review and revise their water quality standards every three years. See 33 U.S.C. § 1313(c). Yet Congress did not draw a distinction between achievement of water quality standards established before the deadline and those established after the deadline.

Prior to July 1, 1977, therefore, a discharger could be allowed some time to comply with an otherwise applicable WQBEL. Beginning on July 1, 1977, however, dischargers were required to comply as of the date of permit issuance with WQBELs, including those necessary to meet water quality standards established subsequent to the compliance deadline.

C. Congress has authorized limited extensions for specific purposes, precluding exceptions for other purposes.

In the CWA Amendments of 1977, Congress provided limited extensions of the July 1, 1977 deadline for achieving WQBELs. In CWA section 301(i), Congress provided that "publicly-owned treatment works" ("POTWs") that must undertake new construction in order to achieve the effluent limitations, and need federal funding to complete the construction, may be eligible for a delay in meeting effluent limitations that may be "in no event later than July 1, 1988." 33 U.S.C. § 1311(i)(1) (emphasis added). Congress provided for the same limited extension for industrial dischargers that discharge into a POTW that received an extension under section 301(i)(1). See 33 U.S.C. § 1311(i)(2). Also, Congress indicated that the effective date of effluent limitations on toxic pollutant discharge required by CWA section 307(a)(2) could be delayed for up to three years after their promulgation, but no further. 33 U.S.C. § 1317(a)(6). Finally, Congress provided that the effective date of pretreatment standards imposed pursuant to CWA § 307(b) on indirect dischargers ("industrial users") that discharge into a POTW may be delayed for no more than two years after their adoption. See 33 U.S.C. § 1317(e).

The fact that Congress explicitly authorized certain extensions indicates that it did not intend to allow others which it did not explicitly authorize. In *United States v.*

Homestake Mining Co., the Eighth Circuit held that an enforcement extension authorized by section 301(a)(2)(B) for technology-based effluent limitations did not also extend the deadline for achievement of WQBELs. 595 F.2d 421, 427-28 (8th Cir. 1979). The court pointed to Congress' decision to extend only specified deadlines:

Having specifically referred to water quality-based limitations in the contemporaneously enacted and similar subsection [CWA section 309](a)(6), the inference is inescapable that Congress intended to exclude extensions for water quality-based permits under subsection 309(a)(5) by referring therein only to Section 301(b)(1)(A). See generally H.R.Conf.Rep. No. 95-830, 95th Cong., 1st Sess. 88-89, Reprinted in (1977) U.S.Code Cong. & Admin.News, pp. 4463-64.

Id. at 428. By the same reasoning, where Congress extended the deadline for achieving effluent limitations for specific categories of discharges and otherwise left the July 1, 1977, deadline intact, there is no statutory basis for otherwise extending the deadline.

D. Schedules of compliance may be issued only to facilitate, not to avoid, achievement of effluent limitations by the statutory deadline.

The Clean Water Act defines the term effluent limitation as:

any restriction established . . . on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

33 U.S.C. § 1362(11). The term schedule of compliance is defined, in turn, as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard." 33 U.S.C. § 1362(17). The purpose of a compliance schedule is to facilitate compliance with an effluent limitation by the applicable deadline by inserting interim goals along the way:

[a] definition of effluent limitations has been included so that control requirements are not met by narrative statements of obligation, but rather are specific requirements of specificity as to the quantities, rates, and concentration of physical, chemical, biological and other constituents discharged from point sources. It is also made clear that the term effluent limitation includes schedules and time tables of compliance. The Committee has added a definition of schedules and time-tables of compliance so that it is clear that enforcement of effluent limitations is not withheld until the final date required for achievement.

S. Rep. No. 92-414, at 77, reprinted in 1972 U.S.C.C.A.N. 3668 (Oct. 28, 1971) (emphasis added). Thus, Congress authorized compliance schedules, not to extend its

deadlines for achievement of effluent limitations, but to facilitate achievement by the prescribed deadlines.

In *United States Steel Corp.*, the industry plaintiff argued that CWA 301(b)(1)(C) allows the July 1, 1977, deadline to be met simply by beginning action on a schedule of compliance that eventually would result in achieving the technology- and water quality-based limitations. 556 F.2d at 855. The Court of Appeals disagreed:

[w]e reject this contorted reading of the statute. We recognize that the definition of 'effluent limitation' includes 'schedules of compliance,' section 502(11), which are themselves defined as 'schedules . . . of actions or operations leading to compliance' with limitations imposed under the Act. Section 502(17). It is clear to us, however, that section 301(b)(1) requires point sources to achieve the effluent limitations based on BPT or state law, not merely to be in the process of achieving them, by July 1, 1977.

Id. Thus, compliance schedules may not be used as a means of evading, rather than meeting, the deadline for achieving WQBELs.

E. States may not issue permits containing effluent limitations that are less stringent than those required by the CWA.

Finally, a compliance schedule that delays the effective date of WQBELs beyond CWA section 301(b)(1)(C)'s statutory deadline would amount to a less stringent effluent limit than is required by the CWA. States, however, are explicitly prohibited from establishing or enforcing effluent limitations less stringent than is required by the CWA. See 33 U.S.C. § 1370; Water Code §§ 13372, 13377. The clear language of the CWA, bolstered by the legislative history and case law, establishes unambiguously that compliance schedules extending a WQBEL compliance deadline beyond July 1, 1977 may not be issued in NPDES permits. By issuing NPDES permits that delay achievement of WQBELs for over thirty years beyond Congress' deadline, Regional Board 2 is failing to comply with CWA section 301(b)(1)(C).

The Regional Board's approach further assumes that when compliance with WQBELs is economically or technically infeasible for a discharger, the proper response is to allow that discharger to continue to pollute at levels that are impairing water quality and causing WQS to be violated until it is feasible for the discharger to curtail its pollution. This, however, is flatly contrary to Congress' intent in enacting the CWA. Congress mandated that WQBELs must be set at a level necessary to ensure WQS attainment regardless of economic and technological restraints. *Ackels v. EPA* 7 F.3d 862, 865-66 (9th Cir. 1993); *Defenders of Wildlife v. Browner* 191 F.3d 1159, 1163 (9th Cir. 1999); *Oklahoma v. EPA*, 908 F.2d 595, 597-98 (10th Cir. 1990); rev'd on other grounds *Arkansas v. Oklahoma*, 503 US 91 (1992); accord *In the Matter of: NPDES for City of Fayetteville*, 1988 EPA App. LEXIS 35, *13; 2 E.A.D. 594 (June 28, 1988) ("The meaning of [the CWA] is plain and straightforward. It requires unequivocal compliance

with applicable water quality standards, and does not make any exceptions for cost or technological feasibility. . . ."). Congress further mandated a strict deadline, long since passed, for achieving WQBELs designed to assure attainment with WQS: July 1, 1977. 33 U.S.C. § 1311(b)(1)(C).

As the U.S. Supreme Court has observed, Congress foresaw and accepted that implementing the sweeping policies of the CWA would impose economic hardship, including the closing of some plants:

Prior to the passage of the [Clean Water] Act, Congress had before it a report jointly prepared by EPA, the Commerce Department, and the Council on Environmental Quality on the impact of the pollution control measures on industry. That report estimated that there would be 200 to 300 plant closings caused by the first set of pollution limitations. Comments in the Senate debate were explicit: "There is no doubt that we will suffer some disruptions in our economy because of these efforts; many marginal plants may be forced to close."

EPA v. National Crushed Stone, 449 U.S. 64, 80 (1980). As another federal court has observed, "The CWA is strong medicine . . ." Texas Municipal Power Agency, 836 F.2d at 1488. Congress further intended that any lack of currently available pollution control technology was not to slow attainment of CWA goals of clean water. As the D.C. Circuit explained, Congress intended the Act to be "technology-forcing," i.e., to force the development of new treatment methods:

[T]he most salient characteristic of [the CWA] statutory scheme, articulated time and again by its architects and embedded in the statutory language, is that it is technology-forcing.... The essential purpose of this series of progressively more demanding . . . standards was not only to stimulate but to press development of new, more efficient and effective technologies.

NRDC v. EPA, 822 F.2d 104, 123 (D.C. Cir. 1987); see also NRDC v. Train, 510 F.2d 692, 695-97 (D.C. Cir. 1974).

The compliance schedule approach adopted by the Regional Board is simply re-writing the CWA and ignoring Congress' clear dictates that pollutant discharges which violate water quality standards must be prohibited.

In situations where curtailing pollution would require closing of a facility that would result in "substantial and widespread economic and social impact," the State has some discretion to relax its water quality standards if justified by a rigorous "use attainability analysis" (UAA), a "structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, an economic factors." 40 C.F.R. §§ 131.3(g), 131.10(g). Only when the rigorous analysis in a UAA demonstrates that the benefits of protecting water resources are clearly outweighed by the

cost can WQS be relaxed, and only then with public notice and comment participation and EPA approval. 40 C.F.R. § 131.10(e). Regional Board 2's compliance schedule approach is an unlawful end-run around the UAA process.

CONCLUSION

Baykeeper commends, and agrees with nearly all, the State Board's staff careful factual and legal research reflected in the Draft Order. To assert effective oversight over NPDES permitting statewide, it is particularly paramount that the State Board adopt conclusions Nos. 5-26 of the Draft Order. At the same time, it is important for the State Board and Regional Board 2's regulatory response to EBMUD's WWFs to recognize that the WWF discharges and CWA noncompliance associated with these discharges are not EBMUD's sole problem to solve. The root cause of these discharges is excessive RDI/I in the satellite systems that discharge to EBMUD. Solving the WWF discharge problem and bringing the WWFs into compliance with the CWA will require a TSO and/or NPDES permit jointly issued to EBMUD and the nine satellite jurisdictions that discharge to EBMUD's system.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Self". The signature is written in a cursive style with a large, sweeping initial "D".

Deborah Self
Executive Director

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 OAKLAND, CALIFORNIA
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8 JANUARY 22, 2007

9 EXCERPT OF PROCEEDINGS: ITEMS 9 & 10

10 SOUTH BAYSIDE SYSTEM AUTHORITY, WASTE WATER TREATMENT PLANT
11 AND ITS CONVEYANCE SYSTEM, REDWOOD CITY, SAN MATEO COUNTY;

12
13 CENTRAL MARIN SANITATION AGENCY, WASTE WATER TREATMENT PLANT
14 AND ITS FORE MAIN, SAN RAFAEL, MARIN COUNTY;

15
16
17 LOCATION:

18 1515 CLAY STREET, SUITE 1400
19 OAKLAND, CALIFORNIA
20

21
22
23 Transcription By:
24 HOUSE OF SCRIBES
25 Stockton, California
(209) 478-8017

1 P R O C E E D I N G S

2
3 **CHAIRMAN MULLER:** Moving on now, we're going to
4 jump back up to --

5
6 **MR. WOLFE:** Back to Number 9.

7
8 **CHAIRMAN MULLER:** Number 9. Thank you. What's
9 the lengths of these presentations so -- just give
10 everybody an idea.

11 **MR. WOLFE:** Many of the issues are common.
12 We're going to do our best to address those common
13 issues during the first presentation on the South
14 Bayside Authority. So I estimate the first one will be
15 longer than the subsequent ones. By and large the
16 Staff presentations are in the five to seven0minute
17 range, so we will work from there.

18 **CHAIRMAN MULLER:** And all of our speaker cards
19 are kind of 9, 10, and 11 also so --

20
21 **MR. WOLFE:** Right.

22
23 **CHAIRMAN MULLER:** -- Michele and Monica, they
24 know where they're coming from on all of the items, I'm
25 sure.

1 **MR. WOLFE:** And as we get into comments by the
2 public and the agencies, I'd recommend that speakers
3 indicate whether their comments are specific only to
4 one or whether they are consistent with all three,
5 because our intent here is for -- because the
6 presentation on Item 9 does address issues that are
7 also on 10 and 11, to have the record incorporate --
8 the record for Items 10 and 11 incorporate comments and
9 presentation made on Item 9. With that Item 9 is the
10 reissuance of the NPDS permit for the South Bayside
11 System Authority and I'd like John Madigan to make the
12 presentation. He'll be speaking from this side while
13 his trusty assistant, Robert, handles the slide.

14 **CHAIRMAN MULLER:** Go ahead, please.

15 **MR. MADIGAN:** Good afternoon, Chairman Muller
16 and Board Members. I'm John Madigan, a staff engineer
17 at our NPDS based water division. This tentative order
18 reissues the NPDS permit for South Bayside System
19 Authority, otherwise known as SBSA. Their NPDS permit
20 was last issued in January of 2001.

21 **CHAIRMAN MULLER:** Speak up a little bit,
22 please, John.

23 **MR. MADIGAN:** Okay.
24
25

1 **CHAIRMAN MULLER:** Yeah, maybe just pull that up
2 a little bit. [Indiscernible]

3
4 **MR. MADIGAN:** Is that better?

5 **CHAIRMAN MULLER:** Try to -- yeah, speak up.
6 Yes, please.

7
8 **MR. MADIGAN:** Okay. SBSA's wastewater treatment
9 plant provides advanced secondary treatment for
10 wastewater collected from the cities of Belmont, San
11 Carlos, Redwood City, Woodside, and also parts of
12 unincorporated San Mateo County. The treatment plant's
13 design capacity is about 30 million gallons a day. The
14 treatment plant also produces a quarter million gallons
15 a day of recycled water, which is used by the city of
16 Redwood City for landscape irrigation. SBSA plans to
17 expand its capacity to recycle wastewater to 2.5
18 million gallons a day by mid 2007.

19 The approximate locations of the treatment
20 plant and outfall diffuser are shown on this slide.
21 Treated wastewater is discharged through San Francisco
22 Bay through a deep water diffuser located about 1 ¼
23 miles offshore and about 2 1/3 miles south east of the
24 main span of the San Mateo Bridge. The treatment
25 plants -- treatment units rather, at the SBSA plant are
stacked, that is the plant has two levels. So not all

1 of the treatment units are shown on this slide,
2 however, most of the [indiscernible] are. Well
3 wastewater flows in through the influent lift station
4 that Robert's helpfully pointing out up there, then
5 through primary treatment, which is not visible, to
6 secondary treatment, which, as shown in the figure,
7 includes fixed form reactors, variation basins, and
8 secondary qualifiers.

9 Most of the wastewater is also filtered by the
10 dual media filters prior to discharge in order to
11 remove any remaining particles. Okay, we got four
12 comment letters on this tentative order. One came from
13 SBSA, one came from the SEPA, one from Bay Area Clean
14 Water Agencies or BACWA, and one from Baykeeper. And
15 the major issue raised by SBSA and BACWA was the limit
16 for dioxins. The major issue raised by EPA and by
17 Baykeeper was the component schedules for cyanide and
18 for dioxins. I'm going to discuss the dioxins then at
19 first, followed by the compliance schedules for cyanide
20 and dioxin.

21 Okay. Dioxins. The term dioxins refers to a
22 specific chemical called dioxin and a family of about
23 210 related compounds. Dioxins share the
24 characteristics of being ubiquitous in the environment
25 and toxic at very low levels. I'm going to have to
refer to the distinction between the two again, so for

1 clarity I will call the specific chemical dioxin proper
2 and I will call the whole group of them dioxins. The
3 main source of dioxins in San Francisco Bay is air
4 deposition, both current and historic. Dioxins are
5 deposited on the land and some of the deposition washes
6 into the bay in stream water runoff, which exposes
7 aquatic organisms like fish, and anybody who eats the
8 fish, to dioxins. Some of the deposition will stick to
9 plants that are eaten by animals like cows, which are
10 in turn eaten by people. The main sources of dioxins
11 flowing into the SBSA plant are [indiscernible] water
12 and human waste.

13 People become a source of dioxins due to
14 sanitary because of our diet. We ingest it in meat and
15 dairy and then excrete it, on average, seven years
16 later. The source of dioxins in [indiscernible] water
17 could be from skin that we slough off on a daily basis.
18 Also, there are some studies that suggest dioxins could
19 be a contaminate in some clothing dyes from overseas or
20 a byproduct of leaching in the wash.

21 In 1999 the EPA placed dioxins on the 303D list
22 of pollutants that impair San Francisco Bay. They did
23 so because of evidence that dioxins have accumulated in
24 the tissues of fish in the bay. Dioxins are present in
25 SBSA's discharge at low levels and SBSA has had a
compliance schedule for dioxins since the last permit

1 reissuance, because dioxins in their discharge have
2 reason to potential to violate water quality standards.

3
4 Okay. So it's worth discussing briefly why and
5 how we develop the limit for dioxins. First, we look
6 at the basin plan narrative bioaccumulation water
7 quality objective. The EPA has found that, as I
8 mentioned a moment ago, dioxins are accumulated in fish
9 tissues in San Francisco Bay, therefore, we know that
10 the narrative objective is not being met. Because SBSA
11 discharges to the Bay and dioxins are present when they
12 are discharged, their discharge has reasonable
13 potential to cause or contribute to a violation of the
14 narrative objective. Federal regulations, therefore,
15 mandate that we set a limit. In order to do so we used
16 the available science on dioxins to calculate a limit
17 based on a sum of the relative toxicity of each dioxin
18 compound. The result is a translation of the narrative
19 bioaccumulation objective into a numeric limit for
20 dioxins.

21 Okay. SBSA and BACWA had several comments on
22 the dioxins limit and I will try to summarize the most
23 important ones. First, they commented that the dioxins
24 limit has no technical legal basis, because there is no
25 water quality objective for all dioxins, only ones
specifically for dioxin proper. And that dioxin proper
has not been detected in the bay or in SBSA's

1 discharge. SBSA and BACWA also commented that the
2 limit violates federal law because it is not based on a
3 TMDL, and because the basin plan does not establish a
4 specific procedure for translating a narrative
5 objective into a numeric limit. Finally, SBSA and
6 BACWA commented that the dioxins limit violates state
7 law because we have, in effect, created a new water
8 quality objective, and we have not gone through the
9 correct legal and procedural process that the law
10 requires to do so. This would include analysis of the
11 economic impact of a new water quality objective as
12 well as analysis of other social factors.

13 Excuse me. So these are our responses. First,
14 on the technical and legal basis for the dioxins limit,
15 we based the limit on the existing bioaccumulation
16 narrative objective in the basin plan. As I mentioned
17 before, we know that this narrative objective is
18 violated by dioxins. We also based the limit on
19 dioxins detected in the Bay in SBSA's discharge and in
20 fish tissues that threaten human health if those fish
21 are consumed. SBSA and BACWA are correct that dioxin
22 proper has not been found in their discharge, however,
23 it has been detected in the Bay and in fish tissue, and
24 in any case the narrative objective reasonably applies
25 to all of the other toxic dioxins.

1 Second, we think the dioxins limit complies
2 with federal law. The law requires limits for
3 pollutants that have a reasonable potential to cause or
4 contribute to an exceedance, whether those limits are
5 based on a TMDL or not. And the basin plan states in
6 Chapter 4 that narrative objectives will be translated
7 into numerical limits by best professional judgment.
8 In doing so we have properly relied on and followed the
9 federal regulations on establishing effluent limits
10 from narrative water quality objectives.

11 Third, on state law, we disagree with SBSA and
12 BACWA that the dioxins limit establishes a new water
13 quality objective. As I mentioned previously the water
14 quality objective we are looking at is the basin plan
15 narrative objective. Economic and other social factors
16 were considered when that objective was established.
17 In addition, the dioxins limit is no more stringent
18 than the federal standard for dioxin proper, therefore,
19 new economic analysis is not required.

20 Compliance schedules. Regarding compliance
21 schedules, the EPA commented that compliance schedules
22 must include an enforceable series of actions intended
23 to lead to compliance, and commented that compliance
24 schedule provisions that relate to TMDL development
25 were disallowed. We responded to their concerns by
reorganizing the limit to more clearly identify --

1 excuse me, more clearly identify the required
2 compliance schedule tasks and deadlines in one
3 provision rather than in several provisions, and by
4 removing provisions relating to TMDL development.
5 Based on communication with the EPA, we think these
6 revisions have addressed their concerns.

7
8 Okay. Baykeeper also had several comments on
9 compliance schedules and, again, I will try to
10 summarize them in order to get the most important
11 points. Baykeeper commented that the compliance
12 schedules for cyanide and dioxins are illegal. First
13 of all, because permits issued after May 2005 cannot
14 contain compliance schedules for dioxin based on the
15 provisions of the California Toxics Rule. And
16 secondly, because the basin plan does not authorize
17 compliance schedules for cyanide or dioxin since the
18 water quality objectives for these pollutants are not
19 new

20 Baykeeper also commented that our compliance
21 schedules lack enforceable requirements intended to
22 lead to compliance. This was similar to the EPA's
23 comment, which as I described in the last slide, we've
24 responded to by including more clearly the specific
25 tasks and deadlines in one section of the permit.

1 Finally, Baykeeper, commented that the draft
2 data does not demonstrate that it is not feasible for
3 SBSA to comply with the cyanide and dioxin limits
4 immediately. In Baykeeper's view we have relied solely
5 on the results of SBSA's past monitoring and have not
6 analyzed additional measures that SBSA could take. The
7 dioxin compliance schedule is a continuation of the
8 compliance schedule granted in the last permit, which
9 was the same approach we used in the Tosco permit,
10 which was upheld by the State Board in Tosco order.

11 With respect to the cyanide compliance
12 schedule, that is also a continuation from the last
13 permit and we believe it is proper under the basin
14 plant's compliance schedule authorization, although the
15 State Board has recently, in the draft letter, taken a
16 different position.

17 As to immediate compliance, we believe SBSA
18 cannot comply immediately, because the plant is well
19 run and meets stringent limits for most pollutants as
20 it is. Dioxin sources, as previously discussed, are
21 not in SBSA's control. Cyanide sources have already
22 been significantly reduced by a pretreatment program
23 and even so, SBSA's discharge record shows that it
24 cannot comply immediately.

1 The nature and sources of these pollutants,
2 especially dioxins, make the limits difficult to meet.
3 Meeting them will require time, therefore, the approach
4 that is most likely to succeed is to provide SBSA with
5 the maximum time schedule and flexibility to come into
6 compliance, while also requiring tasks and deadlines
7 that must be met. Finally, although the State Water
8 Board recently released, a little bit over a week ago,
9 a draft order on the East Bay MUD wet weather permit,
10 that some could interpret to be in conflict with our
11 interpretations of the Tosco order, we emphasize that
12 the State Water Board draft order is a draft. Unlike
13 in other permit reviews, because the State Water Board
14 took East Bay MUD up on its own motion, State Board
15 Staff developed its draft order without the benefit of
16 arguments from all sides. We have reevaluated our
17 interpretation in light of State Water Board's draft
18 order and maintain that our interpretation is still
19 reasonable and consistent with the Tosco order and its
20 associated rulings.

21 So to close, we believe we have made reasonable
22 revisions to the tentative order and have addressed the
23 issues brought to our attention to the best of our
24 ability. Thank you.

25 **MR. CHILD:** I would first like to thank both
John and [indiscernible] for their excellent work

1 they've done. We've had several challenges as we've
2 gone through this process and they've worked very hard
3 in a very confident and professional manner to reach
4 agreement on most of the issues, and I sincerely
5 appreciate their efforts. Unfortunately despite our
6 mutual efforts to resolve all of the issues, as I stand
7 here today I must say that SBSA is not able to support
8 adoption of this permit. The reason for this position
9 is the proposed limits on and for dioxin equivalents.
10 I am the person who has requested we make this comment.
11 I am the first of three agencies that will speak to
12 this issue today. All three of our proposed permits
13 before you have dioxin limits in them and I think you
14 will hear comments on this from all three of this as we
15 go through the process today.

16 We really have a significant and fundamental
17 disagreement with the practice of adopting the proposed
18 numeric effluent limits for dioxin equivalents based on
19 the narrative and the best professional judgment to
20 translate that narrative into a numerical limit. We
21 believe the plan should provide greater flexibility
22 than we see in this permit, and we also believe the
23 approach is an unsatisfactory method for setting
24 numeric limits. This practice is particularly
25 troubling in that it leads to effluent limits that we
know we cannot achieve currently. We have no clear
path to achieving these limits. This language I'm

1 going to quote from the fact sheet of the proposed
2 permit, and I quote, "The Regional Board recognizes
3 that the primary source of dioxins and pherins in the
4 Bay area is A, emissions from combustion sources." The
5 second quote, "The main source of dioxins and pherins
6 in the domestic waste stream is beyond the dischargers
7 control."

8 Dioxins are a group of chemicals that are
9 widespread throughout the environment. With the
10 control of industrial services 80 percent of dioxins
11 released to the environment in the United States in
12 2004 originated from forest fires and backyard trash
13 burning. In the Bay area, [indiscernible] exhaust and
14 residential wood burning are acknowledged to be the
15 main sources of dioxins. These sources are not within
16 the control of any publicly owned treatment works in
17 the state of California.

18 I'd like to make it clear that SBSA -- we are
19 very supportive of a regional approach to work on the
20 issue of dioxins, coming up with ways to prevent
21 dioxins equivalents in fish, and we're willing to work
22 with your staff and others on a TMDL for dioxin
23 equivalents in the San Francisco Bay. We are also
24 willing to participate in regional activities that
25 could evaluate and further understand dioxin

1 equivalents and how we can do pollution prevention and
2 effective resource management.

3
4 We ask today, however, that you do not adopt
5 the proposed permit as written and either modify the
6 permit to eliminate dioxin equivalents or direct staff
7 to work with us to craft language that is mutually
8 agreeable to us. I thank you for your time and look
9 forward to your consideration on this matter.

10 **CHAIRMAN MULLER:** Thank you. Comments?
11 Questions? Margaret?

12
13
14 **MS. BRUCE:** Yes, actually I did -- sorry --
15 I'm sorry to call you back. Just a quick question on
16 that small fraction of the dioxin equivalent loading
17 that goes through the treatment works, if I understand
18 correctly from the staff report and from the fact
19 sheet, dioxins and their congeners are hydrophilic and
20 particlphilic. They like to hang on [indiscernible]
21 with particles. So if your system removes those solid
22 particles, how effective is that process? Is there --
23 I mean obviously you're saying you would have some
24 technical challenges with meeting the discharge limits,
25 but how do you understand the technical process by
which you would already go through the process to
remove those things?

1 **MR. CHILD:** Well, I think the main thing where
2 you're talking about where it attaches to solids, and I
3 have some staff members up here so if I get on the
4 wrong track I'll have to ask them to correct me, but
5 the main thing is the removal of suspended and
6 inseditable solids. At our treatment plant our
7 influent suspended solids, what's coming into the
8 plant, runs in the area of 200 milligrams per liter.
9 Our permit limit is 8. Our permit limit is 8 and our
10 annual average is 2. So we're removing virtually 99
11 percent of the solids. And also, another thing to
12 consider is we're really transferring those solids over
13 to the biosolids that we have to dispose of somewhere
14 else. So where that ends up -- I don't know if any
15 studies have been done to really look at that today, a
16 whole different can of worms. But, yes, I think
17 obviously I'm not sure if I treatment plant can be run
18 any better on a day to day basis to remove these. It
19 really is a matter of they're coming in and we don't
20 know of any technology right now that would allow us to
21 remove them better.

22 **MS. BRUCE:** Do you have a sense of what it
23 would take in your watershed to go upstream in terms of
24 pollution prevention activities to ameliorate what you
25 receive?

1 **MR. CHILD:** I really don't. it's generally
2 considered to be something like doing water for laundry
3 and that's -- it's such a vast thing from everybody and
4 as someone said, it's in all of our systems, they're
5 you know short of --

6 **MS. BRUCE:** Seven years from now if you changed
7 everything it would be something different.
8

9 **MR. CHILD:** Exactly. Short of turning off the
10 sewer systems, I really don't know how you could
11 prevent anything any more dioxins than there already
12 are. The industrial guides have pretty much been taken
13 care of. This is really, like I said, laundry grey
14 water and just natural human excretion.

15 **CHAIRMAN MULLER:** It's not my granddaughter,
16 [indiscernible].
17

18 **MS. BRUCE:** She's not seven yet.
19

20 **CHAIRMAN MULLER:** Oh, that's right.
21

22 **MR. CHILD:** Any other questions?
23

24 **MS. BRUCE:** Possibly later, but thank you.
25 That's really helpful. Appreciate it.

1 **MR. CHILD:** Okay. Thank you.

2
3 **CHAIRMAN MULLER:** Baykeepers, please. Ms.
4 Isaacs.

5
6 **MS. ISAACS:** Good afternoon, Chairman and
7 members of the board. My name is Jodene Isaacs. I'm
8 an attorney with a firm of environmental advocates and
9 I'm going to be submitting these comments on behalf of
10 our client, Baykeeper. And if it's acceptable these
11 comments actually address -- because they're
12 overlapping they address both the South Bayside and
13 Central Marin so --

14 **CHAIRMAN MULLER:** Thank you, yes, you have 9
15 and 10 on here so we'll call it for both.

16 **MS. ISAACS:** Okay. Well, thank you again for
17 the opportunity to comment. And as you know, Baykeeper
18 has already provided you with extensive written
19 comments, and I'm not going to repeat those, but we
20 appreciate the Staff's response. However there are a
21 few points that I wanted to emphasize. Baykeeper has
22 appeared before you on many other occasions to express
23 our concerns about recurring problems in the NPDS
24 permits being issued by Region 2. And in particular,
25 excuse me, we are and remain concerned that the permits
contain compliant schedules for toxic pollutants that

1 are not allowed by law. And that they, including the
2 Central Marin permit, inappropriately authorized
3 untreated wet weather discharges in the form of blended
4 wastewater. We are also troubled by the permit's
5 inclusion of bacteria limits that are inconsistent with
6 the basin plan and the allowance of unilateral
7 modification to permit conditions by the executive
8 officer. Excuse me.

9 We would also like to point out that most of
10 these issues, as mentioned by Staff, were recently
11 addressed by the draft State Board decision, remanding
12 East Bay MUD wet weather facilities permit that this
13 Board issued in 2005, and the State Board's draft
14 decision points out many flaws in the permit decision
15 methodology that Baykeeper, again, has repeatedly
16 objected to in the past and that we have complained
17 about with respect to the current comments on both the
18 South Bayside and the Central Marin permits. Once it
19 becomes final, the State Board's decisions would become
20 binding precedent that would not allow the Regional
21 Board to adopt, as written, many of the conditions in
22 the Bayside [indiscernible] as currently written.
23 Excuse me.

24 For example, the State Board decision would
25 invalidate the compliance schedules in these permits
for mercury and cyanide. It would also require the
modification of limits for bacteria, toxicity and

1 ammonia, and it will also necessitate changes in the
2 permit language relating to the bypasses and the
3 executive officer approval. So for these reasons, we
4 hope you adopt the methodology that's been presented in
5 the State Board drafted decision, and we urge you to
6 disapprove these permits and require that they be
7 revised to comport with federal NPDS regulations.

8 We also ask that you carefully consider any
9 permitting process the steps needed to ensure that
10 wastewater agencies not only comply with federal law,
11 but also work towards improved treatment. As a result
12 of [indiscernible] on the infrastructure and inadequate
13 capacity, discharges of raw sewage in the Bay area are
14 all too frequent. The Central Marin permit, for
15 instance, has, and continues to allow, the agency to
16 rely on wet weather flow diversions as a long-term
17 management approach as explicitly stated by US EPA only
18 aggressive efforts by NPDS permitting authorities and
19 POTWs will solve these problems.

20 So, again, we thank you for the opportunity to
21 comment on these permits.

22
23 **CHAIRMAN MULLER:** Thank you. And that was for
24 9 and 10, correct?

25 **MS. ISAACS:** Correct. Thank you.

1
2 **CHAIRMAN MULLER:** Thank you. Michele Pla,
3 please and then Monica Oakley.

4
5 **MS. PLA:** Good afternoon, Chairman Muller and
6 Board Members. My name is Michele Pla. I'm the
7 executive director of the Bay Area Clean Water
8 Agencies, and as you know the Bay Area Clean Water
9 Agencies is a public joint powers authority of all the
10 clean water agencies in the San Francisco Bay area. We
11 have 54 members. My members work everyday of the year,
12 every minute of the day, treating domestic, and
13 industrial, and commercial wastewater to protect the
14 San Francisco Bay. That is their job and that is what
they do.

15 I was here last January, sitting in this room
16 and I too heard the charge, the scolding, and the
17 challenge that was issued to this Board to get permits
18 written and to get them out the door, and I have to say
19 that I believe your staff has been very impressive in
20 their response to that. And that BACWA too has geared
21 up substantially over the last year to work with your
22 staff and to make sure these permits are getting
23 issued. We've had a staff -- we had a very large
24 workshop in June and we've had very consistent meetings
25 within our membership to make sure that they could get
these permits together with your staff.

1 I have two -- I did, as you know, respond on
2 behalf of my membership to the SBSA permit, and I
3 really appreciate the responses that we've got from the
4 staff on all of our issues, but I have two issues that
5 remain. The first issue is the inclusion of the
6 numerical effluent limit, which was a translation from
7 the narrative limit for dioxin in the permit. We
8 objected to this five years ago when it was included.
9 We appealed those permits and we still object today.

10 The second issue we continue to have is the
11 requirement for the individual dischargers to have a
12 plan by July 2009 to comply with the final 303D listed
13 permits. And I want to address both of these because
14 they are actually quite related. And you have heard
15 very well from Mr. Childs about dioxin, and we do
16 understand that it is an uncontrollable substance.
17 And, as I said, we did appeal this in the last permit
18 rounds and we continue to disagree that this narrative
19 standard has to be translated to a numerical standard.

20 We find dioxins everywhere. We think that the
21 -- we understand fully, based on the response to
22 comments, why Staff did what they did, but it points
23 out to us in the BACWA community that we think the
24 water quality program is broken. Your staff has stated
25 that this is an uncontrollable substance. We believe
that, in fact, based on the question that we got from

1 Ms. Bruce, someone whispered in my ear when you asked
2 that question. The only way we could probably get
3 dioxin out of our waste stream is to stop all the
4 people in the Bay area from eating beef, because that's
5 how it's getting into our bodies and that's how it's
6 getting into the waste stream that the POTWs handle.

7
8 So we understand why this is happening and
9 we're being driven by this process, this process that
10 started last, you know, that you were scolded on that
11 started last January, the process to meet these
12 schedules, the process to follow these rules and how
13 they all fit together. But what's going on here is
14 that we will now have final numerical effluent limits
15 for an uncontrollable substance in our permits. If we
16 cannot meet this limit we will be subject to citizen
17 lawsuits and MMPs. This process is not working. So I
18 want to -- I think that we're all really smart people
19 in this room. We have a lot of ways that we can take a
20 look at how to do this. We have a TMDL program and I -
21 - BACWA feels very very challenged by this and I would
22 like to issue that challenge to all of us to find a way
23 to solve this issue, rather than putting numerical
24 effluent limits in a permit, which we cannot meet and
25 we'd have no way of meeting.

The second issue that I have for you is the
July 2009 requirement. And, again, this is related to

1 dioxin, but it's related to the other TMDLs. I fully,
2 again, understand and really actually appreciate why
3 the staff has put this in here. They are complying
4 with the EPA requirements and questions on the
5 compliance schedule, but what this limit has -- or what
6 this statement that says, "By July 2009 if the
7 pollution prevention and source controls that you put
8 in place to try to come into compliance with mercury,
9 cyanide, copper, dioxin, if they haven't shown you
10 anything then you've got to come up with a plan on how
11 to get there by 2010. Well, again, my sense is that
12 we're all working on this, and yet in this permit with
13 this language, the individual POTW is put at risk so --
14 and I have talked to Staff about this. So, again, I
15 understand why that language is there. I appreciate
16 that, but I would've preferred to have seen some
17 additional language in there that talked about how all
18 of us are engaged in a process across this region to
19 get these TMDLs done, to get these site specific
20 objectives accomplished. It is all of our problems.
21 We're finding that now, the way this language is, it's
22 only shown to be a problem for the clean water agency.
23 So I appreciate the ability -- the opportunity to make
24 these comments to you. I will have similar comments
25 for SPS -- excuse me, for CMSA and Central San. I have
additional comments on those as well, and I'm available
for questions and thank you again.

1 **CHAIRMAN MULLER:** Thank you, Michelle. If not,
2 we'll go onto Monica, please. And you have down 9 and
3 10, is that correct?

4
5 **MS. OAKLEY:** Right, I'll just be talking on 9,
6 but it's applicable to 10.

7 **CHAIRMAN MULLER:** Then you'll come back for 10?
8

9 **MS. OAKLEY:** No, well these -- my name is
10 Monica Oakley, let me just explain, and I'm here to --
11 on behalf of the Central Marin Sanitation Agency, and
12 I'm going to be talking on Agenda Item 9 right now.
13 These comments are applicable to 10 and CMSA will be
14 commenting on 10, which is their permit, but they've
15 asked me to comment on 9, because we were instructed
16 that the dioxin issue would really be discussed on
17 Agenda Item 9 and that we should get up and talk if we
18 wanted to address that so that's why I'm here.

19 **CHAIRMAN MULLER:** We have your card.
20

21 **MS. OAKLEY:** Okay. Great. So as you know,
22 CMSA also has a dioxin TEQ limit in their proposed
23 permit and while their limit does not come into effect
24 until after the permit term, which is different from
25 SBSA and Central San, they're still very concerned
about this limit, because they cannot meet it, just

1 like the others. Municipal wastewater treatment plants
2 are not a significant source of dioxin TEQ, the TEQ is
3 the toxicity equivalent quotient, otherwise known as
4 equivalence. And there is no feasible control to
5 measurably reduce the dioxin TEQ so we can't even
6 determine if we're reducing it. Municipal wastewater
7 treatment plants are not designed in the first place to
8 remove dioxin, and so that's also part of the concern.
9 And for these reasons, CMSA requests that the final
10 limit for dioxin TEQ be removed from all three permits.

11 And I would -- I -- I -- I also just wanted to
12 confirm that Michelle's comments were also applicable
13 to Agenda Item Number 10 for the CMSA permit. Okay.
14 So, okay. Thanks.

15
16 **CHAIRMAN MULLER:** Thank you, Monica. So that's
17 all I have on 9 and 9½ and 10. So -- so we'll go
18 forward. Getting a little [indiscernible], but we'll
19 go ahead and ask Staff questions. And we need a little
20 help on this, Board Members and Staff. This dioxin
21 thing we've been beating around for quite a while I
22 believe and we've heard all different stories about it
23 and where it comes from and how it comes from, and, you
24 know, during my Tosco days it was the refineries and
25 today it's the -- the beef and so where it's all coming
from I hope we find out and if we can really reduce it
at the POTW level, which is something I think we have

1 to look at very closely so -- We'll start down at the
2 end here. So we'll go with Clifford, you want to work
3 your way down.

4
5 **MR. WALDECK:** I don't really have any questions.

6
7 **CHAIRMAN MULLER:** Okay.

8
9 **MR. WALDECK:** So I just have some comments to
10 make, but I'll wait until we're done with questions,
11 and my comments might be made by somebody else.

12 **CHAIRMAN MULLER:** Terry, please?

13
14 **MS. YOUNG:** Yes, I wanted to perhaps ask the
15 Staff to elaborate on what you see as the options for
16 creating or obtaining offsets?

17
18 **MS. TANG:** I think there are opportunities for
19 offsets in dioxins and that's probably my only -- I
20 think -- solution for the POTWs. In terms of Chairman
21 Muller's original question about where it's all coming
22 from, it's actually refineries and POTWs are relatively
23 in the same position. They're dealing with very minute
24 dioxin concentrations in their discharge that they
25 really can't control without advanced treatment. With
advanced treatment like ultra filtration or even
reverse osmosis although with reverse osmosis you

1 always have the brine to deal with, you know, you can
2 comply or compliance in terms of non-detects.

3
4 Where all these discharges are currently at are
5 -- we're -- we're finding levels that could be of
6 concern. They are actually at levels that are below
7 what is called the minimum level, which is where
8 laboratories can say with confidence, "You are at this
9 concentration." So when they're in this gray area
10 where they're below minimum levels they're actually --
11 we would not actually take enforcement action against
12 these dischargers.

13 So their option could be to measure these
14 estimated values that suggest that they are above the
15 limit. We do not take enforcement action and they kind
16 of just, kind of coast along the way, until perhaps,
17 the analytical technology improves or they can help
18 and, you know, work with us to develop mass offset
19 policy. I think either this morning or the EO Report
20 there was some discussion about the State Board
21 releasing a draft to mass offset policy for mercury,
22 and the Delta and the Bay, because that was one of the
23 directives of the State Board in our mercury TMDL.
24 And, you know, the concepts presented in that mass
25 offset policy has a lot of transfer to dioxins, because
these are chemicals that are -- there are a lot of
sources of it, it's out there in the environment. It's

1 in fish tissue and so, like I say, there's a lot of
2 potential.

3
4 We identify that storm water is a huge source
5 in the Bay area, a lot more than the point source
6 wastewater discharges that we regulate. There is
7 opportunities and we're actually exploring some
8 opportunities with the East Bay Municipal Utility
9 District as part of their wet weather permit that the
10 Board adopted in 2005 to study the feasibility and the
11 effectiveness, the efficacy of guiding some first flush
12 storm water or, you know, some dry water storm water to
13 a municipal treatment plant when they have capacity,
14 and treat that water. And a lot of that is in the
15 solids, that solids will drop out and, you know, I
16 think we -- it could be something that is definitely
17 measurable and accountable for in a mass offset
18 program.

18 **CHAIRMAN MULLER:** Clifford, and then I'll come
19 to Margaret.

20
21 **MR. WALDECK:** Let's say that the ambient level
22 for dioxin is one. Now that the ambient -- well no
23 matter it's the air or water, where is -- I mean is our
24 permit at -- for these POTWs is it .9? Is it at 1.1 or
25 -- I'm just trying to get my arms around it, because
I'd like to see it around the ambient level plus a

1 really tight amount, you know? Whereas I don't want to
2 see the ambient level minus a certain amount, but --
3 but, you know, because, you know, you basically -- I
4 mean they're not worried about the -- the POTWs are not
5 worried about us finding them in as much as they're
6 worried about getting sued by private organizations and
7 whatever's out there if they're not hitting the dioxin
8 goal. So I just wondered if you could comment on those
9 two?

10 **MS. TANG:** The limit that we're setting on --
11 or that we're proposing to set on these three permits
12 is below the ambient. If you look at on the fact sheet
13 in the tables, it presents what is the background
14 concentration that we're finding in the Bay and the
15 water and the limit is below that concentration. It's
16 also much -- it's also much lower than storm water
17 runoff as well. So it's -- you know -- what do you
18 consider as ambient, those are -- and

19 **MR. WALDECK:** Oh, so ambient isn't a solid I
20 mean --

21
22 **MS. TANG:** No, no.

23
24 **MR. WALDECK:** Okay. Yeah, because it just --
25

1 **MS. TANG:** But that's just indicative of why
2 the EPA listed the Bay as being impaired, right?

3
4 **MR. WALDECK:** Because -- because we're down to
5 the same sort of conversation we always have, you know?
6 You have the POTWs saying your -- it's too strong and
7 then, you know, and then you have the environmental
8 community coming out saying it's not strong enough. So
9 I really look towards Staff guidance so we can move
10 forward in a reasonable way kind of knowing whatever we
11 do will probably get appealed to the state. And one
12 other comment is, you know, they talked about the draft
13 thing the state came out with, well frankly I've never
14 seen that. I'm just made aware of it and, you know,
15 that just -- that -- that doesn't really affect my
16 thinking at all. I'm just speaking for myself.

17 **CHAIRMAN MULLER:** Thank you. Margaret?

18 **MS. BRUCE:** I have a question. You -- you
19 alluded to the opportunity to do something about
20 offsets or to look for other ways of, you know,
21 swapping those sorts of emissions. Understanding that
22 dioxins are from inefficient combustion of whatever,
23 whether it's wood or diesel, do we have any sense of
24 the quantification of -- let's just say because
25 diesel's probably easier to measure than a wood fire.
How much dioxin or dioxins are generated from the

1 combustion of a gallon of -- or 100 gallons of diesel
2 in an old school bus or in an old garbage truck or in
3 an old semi, and if there were ways of encouraging, in
4 a collaborative effort, the exchange of the kind of
5 fuel that's burned or the exchange of the equipment
6 that is burning that fuel or a catalyzed converter you
7 can put particular traps or converters on old diesel
8 equipment so that you reduce the emissions from
9 existing older equipment that was the equivalent, plus
10 a little bit, of what would be discharged by the POTWs
11 or by storm water or by any other regulated source so
12 that we remove it from it's -- at as close to the
13 source as possible. And I'm thinking there may be some
14 really nice convergences of opportunity in this right
15 now. The Governor's just released his executive order
16 that says we'd like to go forward with a low carbon
17 fuel standard. There's AB32 and all of its
18 implementation about let's reduce our carbon footprint.
19 There's a clean diesel rule, low sulfur diesel fuel
20 going into effect. There are encouraging signs for
21 people who want to use biodiesel. The air district has
22 many stringent requirements on backup diesel
23 generators. There are new technologies for catalytic
24 converters to be put on diesel equipment -- and so
25 perhaps the POTWs, all of them collectively in the
region, can then do some outreach to the Bay area air
quality management district for diesel generator
retrofits. That may be a more cost effective

1 application of their resources or with the Air
2 Resources Board and the Carl Moyer program that they
3 run to help retrofit older equipment to reduce
4 emissions, again, not just, you know, for the diesel
5 particulate issue, but also for a lower carbon
6 footprint. Can we take this out of the contentious
7 realm of setting up the POTWS and the waste discharge
8 folks to not be able to succeed, because I feel very
9 strongly that that's a bad thing to do, and create
10 another mechanism for them to be successful in reducing
11 dioxin emission to the environment? I am much more
12 concerned about success there than about whether or not
13 they met the .00004 or if they were at .00005. I
14 really don't care. I want the dioxin to go away.

15 **MS. TANG:** You know there -- people spend their
16 entire career, some people, you know, on dioxins.
17 There are emission estimates for many of these air
18 sources. Another big air source in the Bay area is
19 wood burning, you know, fire places, which the POTWS
20 can also collaborate with the -- the air. I don't
21 think that Bay Air Quality Management District deals
22 with those types of sources, but --

23 **MS. BRUCE:** Yes, they do. They have a very
24 aggressive, "Don't Light Tonight" program that deals
25 with the particulate PM10 PM2.5 emissions and nox
emissions from wood burning fire -- wood burning

1 stoves. And that would be a great opportunity to
2 collaborate. There are also catalytic devices you can
3 affix to a wood burning stove so that you can make it
4 burn a little cleaner. Or you can just tell people,
5 "Take out your wood stove and put in a natural gas
6 heater." So --

7
8 **CHAIRMAN MULLER:** Do I detect a little weakness
9 in your support for this permit?

10 **MS. BRUCE:** How to put this? I am profoundly
11 concerned that we not set our wastewater discharge
12 agencies up to fail. I want to set them up to succeed.
13 Success, in my estimation, is get the dioxin out of the
14 environment. It's going to end up in the water
15 eventually. It's the universal solvent. So how do we
16 get it out of the environment in the most cost
17 effective, expeditious, efficient, measurable way?

18 **CHAIRMAN MULLER:** Any other comments down this
19 way? Mr. Peacock?

20
21 **MR. PEACOCK:** I tend -- I tend to agree with
22 what Margaret just said.

23
24 **CHAIRMAN MULLER:** Bring your mike in, please.
25 Right there, yeah.

1 **MR. PEACOCK:** I said I tend to agree with one
2 aspect of what Margaret just said. If we're setting up
3 any agency of government or the private sector to fail,
4 is that not a violation of our own obligations? That
5 doesn't make a whole lot of sense. If they cannot
6 possibly succeed, what are we doing? And if we're
7 setting them up to fail so that we have the authority
8 to go find them when they don't have an available
9 technology to fix it, and then it also subjects them to
10 lawsuits from the general public. I just wonder what
11 the rationale is to justify putting out -- putting out a
12 permit that requires them to do something that they
13 can't do.

14 **CHAIRMAN MULLER:** Please comment staff, please?

15
16 **MR. WOLFE:** The basic requirement is that this
17 is a requirement through the Clean Water Act, that as
18 we address each of these pollutants we need to
19 ultimately, for water quality based effluent limits,
20 come to a final limit. And as we -- we've talked about
21 the issues that have been brought up relative to both
22 the dioxin limit and the compliance schedules for
23 dioxins, cyanide, mercury, we definitely are put in the
24 hard position of at one point being told we shouldn't
25 have any compliance limit or schedules, because the
limits should be final right now.

1 Or when we do have compliance limits that we
2 shouldn't, excuse me, compliance schedules that we
3 shouldn't have limits. And so for the permitting
4 process we're trying to come up to an approach that is
5 a legally based permit, but then we fully recognize
6 that we do need to be working with the discharger
7 community on how we address this or, as Margaret says,
8 we need to be working on a broader sense cross-media to
9 be looking at the multimedia benefits by addressing
10 this and that -- that -- I've always been -- been big
11 at looking how do we get most bang for the buck. And
12 so certainly there -- there need to be options to
13 consider things like offsets, to consider complimentary
14 programs. To a certain degree we are including the
15 mention of offset programs in here, even though we
16 don't have any in place. In the past we really hadn't
17 even put that out there as a possibility, because this
18 is, again, something new that many many parties are
19 nervous about, how offsets would work, whether they
20 would be abusive and whether the environment really
21 would be protected if we had those in place. But I
22 think we're definitely finding that through these
23 constituents, dioxins, cyanide, and the others, that
24 our measured at very low levels that by and large, as
25 it's been noted, the only real way to -- to not have
them in wastewater is to not discharge wastewater, not
have any wastewater at all. That we do need to look
how do we address this both legally and technically.

1
2 The permit, that's our -- our attempt to,
3 initially through the permit, be legal. Then through
4 the -- the majors that are spelled out through the
5 compliance schedule to try to address the technical
6 opportunities. Building a new treatment plant is not
7 the solution. We recognize that, and so we need to
8 find other solutions. On the other hand, we feel we
9 can't necessarily say that these are not subject to
10 compliance schedules and final limits, because legally
11 they are. So that's -- that's where we need then to
12 get passed that and move forward towards what is the
13 ultimate solution, how can we move forward bit by bit
14 as we are trying to do through all of our efforts.

15 **CHAIRMAN MULLER:** Well, with that said, I mean
16 in the last five years we've been very consistent with
17 these permits, is that correct? Each -- each permit is
18 on its own regards and --

19 **MR. WOLFE:** That's -- right. That's -- that's
20 one issue that has come up somewhat on both sides of
21 the fence, as it were. That as BACWA noted that there
22 was an appeal filed last time this permit was up. We
23 respect that they'll -- they'll file an appeal this
24 time through. At the same time, we're -- we're hearing
25 from State Board that -- that to a certain degree we
should not have adopted or even considered compliance

1 schedules, yet we're trying to be consistent. I would
2 say the difference from last permit cycle to this
3 somewhat driven by EPA's comments is really rather than
4 have the compliance schedule that sort of says, "Okay,
5 here's today. The compliance schedule is way out there
6 a ways, and we'll sort of deal with it when we're way
7 out there." Now we're within one permit cycle of sort
8 of that quote unquote way out there date so we really
9 need to address this now.

10 Some of them such as cyanide and mercury we're
11 addressing through TMDL site specific objectives. We
12 don't feel that a TMDL for dioxin can accomplish much,
13 because as everybody's noting, looking at it purely
14 from a water or an influent basis there's not
15 necessarily so much we can do. We need to take the
16 broader approach and that's -- that's going to be the
17 challenge to -- to make sure we can all work together
18 on that broader approach.

19 **MR. WALDECK:** John?

20 **CHAIRMAN MULLER:** Yes, Clifford?

21 **MR. WALDECK:** To get -- so going back on US
22 EPA's comment, was US EPA -- they were okay with our --
23 with our dioxin level we came in with?
24
25

1 **MS. TANG:** Yes, they are and actually it was in
2 large part due to EPA's comments five-six years ago on
3 the refineries that we developed the strategy that we
4 have on regulating dioxins in the bay.

5
6 **MR. WALDECK:** And so you've checked with them
7 and they're consistent? Because they didn't come and
8 speak -- I mean didn't chime in at all here so --

9 **MR. WOLFE:** Well, the -- the compliance
10 schedule issue is something that -- that's at issue
11 nationally and -- and I think they -- they don't want
12 to sort of delve into that too significantly. But as I
13 eluded to the point they had -- had made was that
14 really we should not have a compliance schedule without
15 some level of milestones. We should not just say,
16 "Okay, we're issuing the permit today, sometime out
17 there comply." And not have some sort of steps how
18 we're going to get there. Now as -- as the dischargers
19 are saying they don't feel they'll ever get there and
20 so the issue is what do we do?

21 The -- the reference was to the -- the July
22 2009 date where we say, "If it doesn't look like
23 there's another regulatory strategy or another approach
24 that's going to get you to that final limit, you need
25 to come up with a plan." That essentially gives us two
and a half years to all work together to say okay,

1 let's not wake up on July 1st, 2009 and say we have no
2 way to do this. And so that's really the challenge.

3
4 **CHAIRMAN MULLER:** Margaret?

5
6 **MS. BRUCE:** Is it a legal requirement that the
7 compliance schedule be specific to wastewater
8 discharges or can it be specific to the equivalent
9 amount of dioxin removed from the environment?

10 **MR. WOLFE:** Well I would say that's in to how
11 do you attain the final limit and whether an offset
12 policy or something like that might allow you to say
13 you effectively attained it. In other words, right now
14 what we have in here basically says yes, at the end of
15 the compliance schedule you are required to attain your
16 -- comply with the final limit, but that's --

17 **MS. BRUCE:** That's the water [indiscernible].

18
19 **MR. WOLFE:** -- that's what we're throwing out
20 here as one of the strategies between now and then is
21 to consider is there an offset approach that might say
22 in lieu of meeting or complying with that limit at that
23 point what are the equivalents?

1 **MS. BRUCE:** I see the two representatives from
2 US EPA laughing at me so maybe I'm on a totally wrong
3 track.

4
5 **MR. WOLFE:** So -- but let me reiterate at this
6 point we've -- we've mentioned an offset policy, but
7 we're not there and we know that it -- it is something
8 that will be difficult to get to. We think that --
9 that what State Board is doing to consider a mercury
10 offset policy is a first step to try to evaluate the
11 issues. This is something that actually came out of
12 our mercury TMDL. We had initially said we may take
13 that on and then they said, well mercury is also an
14 issue throughout central valley, throughout the
15 foothills, the State Board will take them on. From a
16 resources perspective I'm pleased they are, but I'm not
17 confident that they'll have something in place in the
18 time that -- that we may need it.

19 **CHAIRMAN MULLER:** Legal staff, did you have a
20 comment or are you comfortable in the direction? We're
21 kind of all over the board on this Number 10 here.

22 **MS. WON:** With respect to Ms. Bruce's question
23 on compliance schedules, I mean, you know, Michelle
24 eluded to the fact that the system is broken. I mean
25 it's really -- I mean it's -- I think what she's
eluding to the fact that it is the prescriptive nature

1 of the Clean Water Act, you know? The compliance
2 schedule it's very, you know, pollutant specific,
3 discharger specific, and then with respect to this
4 issue of requiring limits when the discharger can't
5 comply, setting the, you know, discharge up for fail.
6 It's not something that we, of course, want to do, but,
7 you know, given the prescriptive nature of the Clean
8 Water Act and how, you know, what all the calculations
9 are, you know, we kind of have no choice but put these
10 limits in there and, you know, put a very specific kind
11 of compliance schedule, not the kind, you know,
12 innovative kind that you are proposing.

13 **MR. WOLFE:** Well, I -- I think from my
14 perspective me personally I mean I don't think there's
15 one of us up here that wouldn't think that, you know,
16 why are we doing this at times. But I -- I feel that I
17 have no choice. I'm being mandated to do this and
18 that's why I have to be leaning to vote in support of
19 the -- the permit. Naturally we all have our personal
20 feelings on how we would get around this wastewater
21 dioxin issue, but we don't have a control for that I
22 don't think.

23 **MR. ELIAHU:** Mr. Chair?

24 **CHAIRMAN MULLER:** Yes?
25

1 **MR. ELIAHU:** Do I understand that in two and a
2 half years if they cannot comply there is no penalty?

3
4 **MR. WOLFE:** The requirement there is --

5
6 **MR. ELIAHU:** From you?

7
8 **MR. WOLFE:** There is a table in the -- the
9 tentative order for this one it's on Page 19 of the --
10 the tentative order for SBSA. And you'll note that
11 Task Number 3 says, "In the event that source control
12 measures are insufficient for meeting the final water
13 quality based effluent limitations for cyanide and
14 dioxin TEQs the discharger shall submit a schedule for
15 implementation of additional actions to reduce the
16 concentrations of these pollutants." And so that's --
17 that's the challenge between today and July 1, 2009,
18 that everyone is essentially saying source control
19 measures are not going to be anywhere close to be able
20 to allow us to meet these, predominately for dioxins,
21 because we have -- do have a process underway for
22 addressing cyanide. But should there be -- we get to
23 July 1, 2009, we are requiring them to give us a
24 schedule of implementation of additional actions.

25 Now we're not specifying what those additional
actions necessarily are, nor are we saying exactly how
they're implemented or the schedule, but the schedule

1 then needs to point to full compliance, which would be
2 required in SBSA's case by July 31st, 2012.

3
4 **MR. ELIAHU:** So in writing this you also have
5 doubts that they cannot attain that limitation?

6
7 **MR. WOLFE:** Clearly.

8
9 **MR. ELIAHU:** [Indiscernible] And you are
10 putting it there because you have to.

11 **MR. WOLFE:** Yes, and I think we also want to
12 make sure that we do what we can to not be February 1st,
13 2012 to say we've known this for years that we were
14 going to be in violation, but sorry, you're in
15 violation and -- and see if we can address that. But
16 nonetheless this, I think, is really going to be the
17 permitting challenge for us over the coming permit
18 cycle, is how do we address the very small pollutants
19 where it may be inefficient or unable to reach what
20 science or other aspects say should be that final
21 limit, when the Clean Water Act says you need final
22 limit.

23 **CHAIRMAN MULLER:** At this time I take staff
24 recommendations, please. Terry?

1 **MS. YOUNG:** I was going to ask another follow-
2 up question on the -- follow-up question on the
3 offsets. I understand that it would be very straight
4 forward to create offsets for a mass emissions limit.
5 I can also understand that it would be relatively
6 straightforward to create offsets for a monthly
7 average, although that's a little bit more difficult if
8 the discharges in mass loading really is seasonal.
9 It's hard for me to understand intuitively how you
10 would create an offset system if there was a one for
11 one type of offset system for a maximum daily limit.
12 Does the -- is -- is there anything legally that would
13 prevent one from creating an offset system that -- that
14 would allow you to still discharge on a daily basis
15 more than what the daily limit says but -- but still
16 get credit for your offsets? I'm not sure if I --

17 **MS. TANG:** Yes, I think because dioxin is a
18 bioaccumulative pollutant we could probably justify
19 that the offset be more appropriate in a mass basis.
20 And particularly if -- if we're, you know, instead of
21 diesel engines, we're looking at a storm water offset,
22 storm water only flows during the wet -- wet season.

23 **MS. YOUNG:** I'm clear that we could justify it
24 on the science. I don't know whether we would get hung
25 up on the law though. I -- that -- I guess that was my

1 question is that there -- is there some reason that
2 would preclude us from doing that?

3
4 **MS. WON:** I don't think there's a whole lot of
5 problems with this whole offset policy or admission of
6 offsets so I mean this is, you know, very grey area
7 [indiscernible].

8 **MS. TANG:** I have one final comment. There's -
9 -

10
11 **CHAIRMAN MULLER:** Yes, I'd like to bring this
12 to some conclusion.

13
14 **MS. TANG:** Sure.

15
16 **CHAIRMAN MULLER:** I read the paper today here.

17
18 **MS. TANG:** Just to throw more salt on the wound
19 on those who oppose the dioxin limit, we recognize --
20 because of the East Bay MUD draft order we realize that
21 in this particular order -- we had in previous permits
22 for some reason it was calculative, the compliance
23 schedule for dioxin was calculated to be more than 10
24 years, which is what is maximum allowable under our
25 basin plan. So really a 10 year schedule from when it
was first set to the end is actually January 1st, 2011,
not January 2012. So for -- I'd like to introduce that

1 as a -- include that in our recommendation to amend the
2 permit to reflect a compliance schedule for dioxin that
3 is 10 years long from when it first started with the
4 previous permit.

5
6 **CHAIRMAN MULLER:** Do we all understand where we
7 are at the moment here? Legal?

8
9 **MS. DICKEY:** I'm wondering if you could
10 indicate what parts of the permit would be modified?

11 **MS. TANG:** In the permit requirements it would
12 be under Table -- on page -- starting on Page 11, Table
13 6C, Dioxin TEQ, there's a Footnote 6, which then if you
14 turn over the page to Page 12, Final Limits for Dioxin
15 TEQ Will Take Effect -- so it will read January 1st,
16 2011 rather than January 31st, 2012. And then in the
17 provision section, Page 19, there's no table number,
18 but it's the table on that page, Task 6, the compliance
19 schedule that lies in there would also read January 1st,
20 2011. And then we would make appropriate changes to
21 the fact sheet to make it consistent with this.

22 **MR. WOLFE:** And to me this -- while this
23 obviously is a surprise, I'm sure, to the discharger
24 and all that this does keep us consistent on that 10
25 year requirement. But really the big date where we
need to be getting the approach -- the long term

1 approach spelled out is July 1st, 2009. It's not the
2 2011 or 2012 date. So it's really trying to say, okay,
3 what do we expect to see in July of 2009 and how do we
4 move forward between that date and any time for a final
5 limit, because as I say, this -- and as the commenters
6 say, this is not only South Bayside, it's essentially
7 all of our dischargers.

8 **MR. WALDECK:** I'd like to move the staff
9 recommendation.

10
11 **MR. WOLFE:** Well, actually I think that might -

12 -

13
14 **CHAIRMAN MULLER:** We didn't get one yet.

15
16 **MR. WOLFE:** -- I thought Margaret had a comment
17 or question, but --

18
19 **MS. BRUCE:** Real quickly, if I may, how long
20 would it take to develop an offset and perhaps a
21 multimedia offset policy and set of guidelines for that
22 implementation? Could that be achieved before the
23 compliance schedule expired?

24 **MR. WALDECK:** Get the Air Board to pay for it.
25 They've got all the --

1 **MR. WOLFE:** Well, I would say that's -- that's
2 the challenge, because as you say, I think the staff
3 feels the same way. We don't want to necessarily be
4 putting or setting someone up to fail. And I
5 personally do dislike the situation where we may be
6 driven to do something legally that may not A be
7 practical, B it's not clear what the water quality
8 benefits are. But that being said that we really are
9 forced to ensure that are permits are legally sound and
10 so then the challenge comes, if we have a permit in
11 place, trying to address that issue. If it appears
12 we've set somebody up to be in noncompliance, we should
13 also be stepping up to the table to work with them to
14 ensure that we're doing all we can to address that.

15 And one of those options obviously is an offset
16 policy that would address, especially for dioxin, the
17 multimedia benefits. More commonly we talk on many of
18 these about just within water, how can we address it.
19 That's certainly easier, but we should be thinking
20 outside the box on this one especially.

21 **CHAIRMAN MULLER:** Okay, right. In this
22 morning's paper on global warming with the energy, and
23 business, and government environmental people together
24 there's a great quote from a vice president -- a senior
25 fellow of the energy research, Thomas Tanton that says
-- kind of can go with what we've been working on here

1 today. "Something less bad is better than something
2 really bad."

3
4 **MR. WOLFE:** Well, that's true and I guess even
5 in --

6
7 **CHAIRMAN MULLER:** That's a quote.

8
9 **MR. WOLFE:** -- in context to that I'm
10 personally quite pleased that it does appear here in
11 the Bay area, that over the passed few months the
12 appreciation of the impact from climate change, the
13 understanding of that has drastically ramped up. I
14 think the Bay area can be a leader, and I think that
15 this agency should be definitely correctly involved in
16 that process, because there are so many things that are
17 water quality related when you start talking about air
18 quality and climate change. And so we recognize that.

19 **CHAIRMAN MULLER:** And I think we do have to
20 move on or we could -- we've been down this road a lot
21 lately on these permits and the POTWs -- it's not like
22 they're the enemy. Without a doubt I want to, you
23 know, from my personal perspective this is -- they are
24 a very valuable resource in our whole life, daily life,
25 and so I still say, you know, I have to go by what I'm
being mandated to push towards and so I'll ask for
staff recommendations.

1 **MR. WOLFE:** Right, well my staff
2 recommendation would adoption of the tentative order
3 for the South Bay System Authority's NPDS permit with
4 the modification to the final limit compliance date, as
5 Lila said, to July, excuse me, January 1, 2011.

6 **CHAIRMAN MULLER:** You heard the recommendation,
7 Board Members?

8 **MR. WALDECK:** I'd like to move staff
9 recommendation, if we could have -- I'd like to be part
10 of the motion to have staff begin to look at offset,
11 the whole world of offsets. I don't know how to say
12 that in the -- to add this to the motion, because that
13 is something. We're going to have to look at creative
14 and collaborative ways to move forward on this and
15 we've had -- we've always been talking about
16 collaborative meetings between the Air Board and us,
17 and now were kind of creating somewhat of a crisis
18 moment to create that collaboration, whether it is
19 through offsets, you know, so I don't know if I want to
20 use the word offsets, but, you know, look at creative
21 ways to achieve these goals.

22 **MR. WOLFE:** I'm -- without having that in the
23 motion, I'm willing to report back to you on efforts
24 we're going to be taking to do that, because to a
25 certain degree we've already set this in motion. We've

1 already adopted over the past year a number of permits
2 that already have this same situation set up in place
3 and so it's clear that, again, we have that July 1st,
4 2009 date in the permits to try to demonstrate that
5 progress needs to be made, but obviously the question
6 comes up progress towards what. And so we need to be
7 addressing --

8 **MR. WALDECK:** Well, that's why on this vote
9 here, this is why it's important on this vote here. I
10 mean we could just say go with staff recommendation and
11 it's like oh, the Board just went with staff
12 recommendation, but I want this vote to be something
13 that can, you know, that can kind of sets into motion
14 something that, you know, that could get the ball
15 rolling on certain things, because if something's, you
16 know, if my homework assignment's not due 'til 2009,
17 you know, January 1st, 2009, I'm cramming on December
18 31st, 2008. So I want to make sure that I'm not in that
19 world and if our Board's been down the dioxin path
20 before, I can argue both sides very well.

21 Shut up and go away or, you know -- but I'm
22 just looking for something, and I'll ask my fellow
23 board members here, I don't want to use the word
24 offset, but --

1 **MS. BRUCE:** Commensurate reductions?

2
3 **MR. WALDECK:** Commensurate -- just some
4 language there that shows that the people in this board
5 here that are kind of -- are not nay sayers or rubber
6 stampers, but forward thinking people, because
7 especially I mean, I won't put words in Margaret's
8 mouth. I mean Margaret's immersed in this stuff all
9 day long. I mean that's what her job is. I mean I get
10 involved in stuff like --

11 **MS. BRUCE:** That would explain a few things.

12
13 **MR. WOLFE:** It's your laundry.

14
15 **CHAIRMAN MULLER:** I understand where you're
16 coming from Board Member, but I think we should caution
17 ourselves, personally, on inserting offset into a
18 permit at this [indiscernible]. I mean we could be
19 opening up a pretty big can of worms.

20 **MR. WOLFE:** I would welcome some language --
21 some language that at least is strong enough, not
22 necessarily to say offset to tie our hands, but, for
23 instance, as I noted earlier that next month I'll be up
24 speaking to the State Board about what are our issues
25 for 2007, and I wouldn't mind being able to tell State
Board that my board has set it as a priority that we

1 look at how we address this compliance issue in a
2 fashion that recognizes the need to consider multimedia
3 benefits of reductions that are also beneficial to air,
4 climate change, and water, multimedia benefits.

5
6 **CHAIRMAN MULLER:** Does that work for you,
7 Clifford?

8 **MR. WALDECK:** Yes, I'd --

9
10 **MS. BRUCE:** I would actually like something a
11 little bit more explicit in terms of the Board staff's
12 work plan and a commitment to working with regional
13 agencies all around the Bay area region, an air
14 resources board, the Bay Area Air Quality Management,
15 in every municipality, looking at how to reduce inputs
16 to the environment, whatever media, by storm water, by
17 air deposition, by wood burning, whatever so that we
18 have a collaborative process moving forward in parallel
19 with the compliance schedules that are laid out in
20 these permits. So that when these two trains running
21 on parallel tracks get to 2011 there's a solution and
22 not a cliff to fall off for the wastewater discharge
23 agencies, that we have measurable reduced dioxin inputs
24 to our environment and we have resources and tools
25 imbedded in our municipalities, in our regional
districts, in our regional agencies for collaborating
on all kinds of multimedia issues. That's what I, you

1 know, the State's not leading on this. Fed EPA isn't
2 leading on this. So we have to step into the void.

3
4 **MR. WOLFE:** It's a serious void, but I agree
5 that it's something that we need to step into.

6
7 **MR. WALDECK:** Multimedia collaboration. Take
8 the lead in multimedia collaboration.

9
10 **MR. CHAIRMAN:** Yeah, I think you have to
11 realize too that I mean we are in limited resources.
12 Again, I don't think there's one of us that --

13
14 **MR. WALDECK:** No, if you come up with the right
15 collaboration there's money available for it, you know,
16 and so -- I mean there --

17
18 **CHAIRMAN MULLER:** Well, I don't know -- do we
19 have an amendment to the staff's recommendation at this
20 time?

21
22 **MR. WOLFE:** Well, I guess he was trying to
23 frame his motion and --

24
25 **CHAIRMAN MULLER:** I know it was -- Mr. Peacock?

MR. PEACOCK: Mr. Chairman, maybe the easy way
to do it is just to act on each one of these permits

1 and then have a motion by the full board encouraging
2 the staff to follow these separate and apart from any
3 of these permits. And that's probably a good
4 procedural directive or suggestion or recommendation to
5 the staff.

6
7 **CHAIRMAN MULLER:** Right, and not attached at
8 the moment.

9
10 **MR. PEACOCK:** Not attached and then it just cuts
11 through all the ice and keeps moving.

12 **CHAIRMAN MULLER:** Thank you for that.

13
14 **MR. WOLFE:** As long as our attorneys would --

15
16 **CHAIRMAN MULLER:** Yes, D.D.?

17
18 **MS. DICKEY:** I want to just suggest in response
19 to Mr. Peacock's --

20
21 **CHAIRMAN MULLER:** Speak loudly, please, because
22 they're going to want to hear this.

23
24 **MS. DICKEY:** In response to Mr. Peacock's
25 suggestion, in terms of a motion to be adopted by the
Board, we would need to separately agendaize that so we
could do that next month, but perhaps we could

1 accomplish the spirit of what you're suggesting by the
2 Board expressing its collective wishes in this regard
3 without actually voting on a motion. And you could
4 certainly do that this month without separately
5 agendizing it. So either of those things would work.

6
7 **MR. PEACOCK:** May I start by saying I wish you
8 would do what we've just been talking about.

9
10 **CHAIRMAN MULLER:** The boys have it. Sandy,
11 were you all right or did you have more advice there?
12 Okay. Who wanted to be chair this year? So we're
13 going to go back to this permit. We have a staff
14 recommendation. We are giving --

15 **MR. WOLFE:** With one amendment.

16
17 **CHAIRMAN MULLER:** -- with one amendment, and
18 we are giving the staff our --

19 **MR. WOLFE:** Direction.

20
21 **CHAIRMAN MULLER:** -- enthusiastic wholehearted
22 interest in this direction of looking at the --

23
24 **MR. WALDECK:** Multimedia collaboration.

1 **CHAIRMAN MULLER:** -- multimedia collaboration
2 Margaret offset program.

3
4 **MR. WOLFE:** Well, there's the Carl Moyer
5 program, we can have the Margaret Bruce program.

6
7 **CHAIRMAN MULLER:** So we have that as a motion.
8 You made that motion?

9 **MR. PEACOCK:** Second.

10
11 **CHAIRMAN MULLER:** And we have a second. Is
12 there -- hopefully not further discussion, if not, I
13 don't mean to take this lightly, because this is very
14 serious work. The POTW's done a heck of a lot of work
15 on it. Staff, you've done a tremendous amount of work
16 on it. This is -- and all of the other involved
17 parties, I mean really and truly. Every time we go
18 through this permit I'm amazed at how much work
19 everybody puts into it so it's no joke. I mean I try
20 to make a little humor up here at times, but sometimes
21 it gets away on me. So I mean to be serious about this
22 so roll call vote, please.

23 [Roll Call]

24
25 **CHAIRMAN MULLER:** So ordered on Item 9. Now we
get to go through this again.

1
2 **MR. WOLFE:** Item 10 --

3
4 **CHAIRMAN MULLER:** And I will say South Bay you
5 better stay for your buddies.

6
7 **MR. WOLFE:** Yes, Item 10 is the Central Marin
8 Sanitation Agency reissuance of their NPDS permit, but
9 by and large we are trying to, and I'm sure you agree,
10 we'll, as much as possible, rely on what you have just
11 discussed over the last hour and a half for the issue
12 of final dioxin limits and compliance schedule. So
13 with that I will state that for Item 10 the record will
14 incorporate the presentations and all of the comments
15 and all of your deliberations into the record for Item
16 10. With that I'd like to ask Vince Christian to make
17 the staff presentation for Central Marin.

18 **MR. CHRISTIAN:** Good morning or afternoon.
19 Thank you, Mr. Chairman and Board. My name is Vince
20 Christian and I'm the case handler for the Central
21 Marin Sanitation Agency. I will briefly describe the
22 facility and cover the issue of blending, which is
23 related to this draft permit. As with the SBSA permit
24 John just spoke about, compliance schedule and dioxin
25 limit issues were raised by interested parties. The
comments on these issues were very similar to the
comments on the SBSA permit, and our responses were

1 consistent with those on the SBSA permit. Therefore
2 I'm not going to cover those issues, but instead I will
3 focus on the wet weather blending, which is a unique
4 issue to the Central Marin permit on this agenda.

5
6 The plant is located on the west side of the
7 Richmond San Rafael Bridge just north of San Quinton.
8 Central Marin Sanitation Agencies serves the city of
9 San Raphael and the surrounding area. They have very
10 little industry in their service area so most of the
11 effluent is from residential use. Central Marin owns
12 the treatment plant, but they don't own the collection
13 systems that discharge to it. These are owned by four
14 independent agencies not governed by Central Marin
15 Sanitation Agency. This is an important point related
16 to the issue of blending as I will explain later.

17 The treatment plant has a capacity of 3 million
18 gallons per day. Dry weather flows do not exceed this
19 capacity. And under normal conditions the plant works
20 very well, however, in wet weather the rain leaks into
21 the sanitary sewer collection system and this
22 dramatically increases flow to the treatment plant.
23 This is known as inflow and infiltration. This problem
24 can cause flow rates to exceed the treatment capacity
25 of the plant. These conditions occur about 30 days per
year.

1 When this happens measures must be taken to
2 maximize the treatment effectiveness. Central Marin
3 uses a procedure known as blending or bypassing which I
4 will describe in this next slide. This shows the
5 treatment process under wet weather conditions when
6 infiltration is high. In this example the influent to
7 the plant is 50 million gallons per day, however, the
8 treatment capacity of the secondary clarifiers is only
9 30 million gallons per day so not all the flow can go
10 to secondary treatment. Flow is split after primary
11 treatment with 30 million gallons per day going to
12 secondary treatment and 20 million gallons per day
13 diverted around it. There's the storage pond that
14 holds 3 million gallons. The pond can hold water until
15 the flow rates subside and capacity becomes available
16 in the secondary treatment units thereby reducing
17 blending. However the pond is relatively small and
18 would fill up in about three hours in this scenario.

19 Once the pond is full flow bypasses secondary
20 treatment and is then recombined or blended with the
21 flow from the secondary clarifiers prior to
22 disinfection and discharged to the bay. It's important
23 to note that all effluent limitations must be met
24 during blending events. We've received comments from
25 Central Marin, US EPA, Baykeeper, and verbal comments
from BACWA or the Bay Area Clean Water Agencies. We've
resolved many of these comments, but I want to bring to

1 your attention the main issues that were raised by all
2 or most of the parties. As mentioned earlier comments
3 on compliance schedules and dioxin limits were very
4 similar to the comments on the SBSA permit and our
5 responses were consistent to those on the SBSA permit.
6 I will therefore skip those issues and only discuss
7 blending. Consistent with its comments on the recent
8 permits, EPA requested that the discharger perform an
9 analysis showing that there are no feasible
10 alternatives to blending before blending can be
11 permitted.

12 Central Marin has done this and has proposed
13 specific measures to reduce blending. Central Marin
14 has proposed these measures to produce blending during
15 this permit cycle. Central Marin estimates that the
16 cost of these improvements is about \$60 million, and
17 they estimate that the measures will reduce blending by
18 about 50 percent.

19 EPA, BACWA, Baykeeper -- and Baykeeper
20 commented on the blending issue. We believe that we
21 have satisfied EPA's concerns by revising the tentative
22 permit to include a schedule for major milestones to
23 implement Central Marin's proposed improvement projects
24 and to study options for working with its collection
25 system agencies to reduce inflow and infiltration. We
understand that BACWA disagrees with APA's position

1 that an enforceable schedule is required. We believe
2 that a schedule is necessary to assure that the
3 improvement projects are completed in a timely manner.
4 Central Marin has committed substantial resources to
5 blending during this permit term and they will be
6 required to analyze the feasibility of further
7 reduction measures for the next permit term. For that
8 reason we believe that the measures proposed in this
9 permit will provide the maximum benefit to water
10 quality and, therefore, should be adopted. Thank you.

11 **CHAIRMAN MULLER:** Thank you. Any questions
12 from staff otherwise we'll move on to the general
13 manager of Central Marin, please. Jason Dow, please?
14 Followed by Monica and Michelle. You okay, Monica?
15 Thank you. Then Michelle.

16 **MR. DOW:** Good afternoon, Chairman Muller and
17 members of the Board. My name is Jason Dow, General
18 Manager of the Central Marin Sanitation Agency. It's a
19 pleasure to be here today. This is our first Regional
20 Water Board meeting for my staff and myself, and it's
21 great to be here. And I'm here to give you a little
22 background of CMSA and some of the exciting things
23 we've done over the last few years, but more
24 importantly to express appreciation to the committed
25 staff of the Water Board for moving the permit forward
for the last six to eight months, that's Ms. Lila Tang,

1 Mr. Vince Christian, and Mr. Robert Schlipf. This is
2 our first permit reissuance for myself and staff, and
3 they were very patient with us and helped us through
4 the process and we found it to be very educational and
5 enlightening and we really appreciate their support
6 through the whole thing.

7
8 CMSA strives to be a high performance utility.
9 Over the last several years we've really embraced the
10 concept of continuous improvement and we're very
11 excited that we've seen that becoming engrained into
12 the organizational culture at the agency, which is
13 quite a bit different than several years ago. Our
14 agency, and our staff, and our board are committed to
15 protecting the environment. We're committed to being
16 environmental stewards. We're committed to protecting
17 the environment. And equally important, we're
18 committed to producing the highest quality effluent and
19 highest quality biosolids that our current facility can
20 produce.

21 And these commitments and efforts have been
22 recognized by peer groups and state and national
23 associations over the last year. The National
24 Association of Clean Water Agencies has issued CMSA the
25 Gold Peak Performance Award for NPDS permit exceedances
for 2005 calendar year. The California Water
Environment Association, the CWEA, has recognized CMSA

1 as having a statewide plan of the year for 2005 and
2 also the statewide safety program of the year. And
3 also the local section of the CWEA, the Redwood Empire
4 section, has recognized many of our staff and the
5 organization with other awards.

6
7 This makes the staff real proud and it really
8 just solidifies our commitment to the environment and
9 doing great work at the agency. One of the main
10 environmental initiatives that we've undertaken over
11 the last several years is what Mr. Christian was
12 referencing was our wet weather improvement project.
13 That started out with trying to understand the
14 relationships between different rainfall events and how
15 that effects the infiltration inflow into the sanitary
16 sewer system of our member agencies, and how that
17 translates to different influent flows at the plant for
18 different rain events. We spent a couple years on
19 this, worked with a lot of consultants, got some really
20 good information. With that information we worked with
21 our member agencies to collaborate on developing
22 regional solutions to help them reduce [indiscernible]
23 system. We've also developed standard operating
24 procedures for our plant, emergency contingency plans,
25 and also communication protocols to best manage these
significant wet weather flows that come into the plant.

1 Our average dry weather flow is about 8 million
2 gallons per day. On that December 31st, 2005 storm we
3 hit 115 million gallons per day, a 15 times increase in
4 our flow. And luckily because of these protocols and
5 our fine staff they were able to -- we met our permit
6 limits, you know, for the year, and the month, and the
7 week, and everything was fine. But it just reinforced
8 another project that we're initiating, which was the
9 wet weather improvement project where we're looking at
10 ways to manage the flow from hydraulic and treatment
11 prospective, and all of those various improvements that
12 Mr. Christian mentioned, is integrated into that
13 program. Right now we're at about the 75 percent
14 design level. The final design should be completed by
15 the summer. Construction will start at the end of the
16 calendar year. And when the construction's finished
17 and the new plant comes on line, we'll be able to
18 process all of these significant flows and a little bit
19 more for larger storm events for our member agencies,
20 and maintain the high quality effluent to meet all of
21 our NPDS permit requirements and exceed those.

22 So we're very excited about that. We're able
23 to solve a regional situation at the plant and protect
24 the public health and the environment. And regarding
25 the permit, the -- as I mentioned, the permit process,
we thought was -- went real smooth. We believe
generally our permit is fair. There is a lot of

1 additional provisions and some changes to some
2 requirements in the permit that I commend Lila and her
3 staff that they fully communicated to our staff what
4 those changes were and the justification for those
5 changes. We understand those and we can comply with
6 everything in the permit, except for the dioxin limit.
7 And we echo the comments by our colleagues and peers at
8 SBSA, and also what Michelle Pla said with BACWA, is
9 that CMSA cannot meet the dioxin limit now and we don't
10 foresee being able to meet it in the future.

11 And we're concerned with everyone else that
12 these dioxin limits placed into the permits of
13 wastewater treatment agencies is troubling, because the
14 wastewater treatment agencies aren't designed to remove
15 dioxin, and wastewater treatment agencies aren't a
16 significant source of dioxin as we talked about for the
17 last hour or so. Anyways, with that I just want to say
18 it's a pleasure addressing the Board and thanks, again,
19 very much to the Staff and for consideration of
20 adopting our permit.

21 **CHAIRMAN MULLER:** Great, congratulations on
22 all of your fine work. I was waiting patiently for the
23 hammer to fall what it was all about here. We had a
24 sense it was that dioxin [indiscernible]. Michelle,
25 please, with BACWA.

1 **MS. PLA:** Good afternoon, Chairman Muller. My
2 name is Michelle Pla and I'm the chair -- I'm the
3 executive director of the Bay Area Clean Water
4 Agencies. And I have to apologize, because I believe
5 that BACWA submitted written comments, and I didn't
6 realize until today when I got here and was looking at
7 the response to comments that they never got here. So
8 I'm going to have to take a few minutes and go over
9 some of our comments so that they are in the record.

10 So the first comment I'd like to make is about
11 copper. The -- we commented in our written comments
12 and we have a similar comment in our Central San
13 comments, that we disagree with the conclusion that the
14 staff has drawn that they could not use a water effects
15 ratio in developing the effluent -- numerical effluent
16 limit for CMSA on copper. And I won't spend anymore
17 time on that since I know we've been here a long time
18 today.

19 Secondly, I want to -- I do want to talk a
20 little bit about dioxins really quickly. I very much
21 appreciate the discussion that we just had, that the
22 Board just had, about looking for creative ways of
23 dealing with this issue. When I raised the issue also
24 of the July 2009 deadline in my previous comments, they
25 weren't only about dioxin, they were also about
mercury, copper, nickel, cyanide. So all of those and

1 dioxin, all of those have to be addressed in some
2 creative way we have to be finished by -- if not known
3 exactly how we're going to be finished by July 2009,
4 and it would basically have to be finished very quickly
5 thereafter. And so I really appreciate the discussion
6 here, because that was really what I was hoping we
7 would have is an agreement that we're all going to work
8 together, be very aggressive, in a regional way and get
9 this -- get done what we need to get done so we're not
10 left leaving the clean water agencies out there being
11 responsible for things that are regional issues. So I
12 thank you very much.

13 As far as offsets, I really appreciate the
14 comment that Board Member Young made on the maximum
15 daily. I agree with you. We don't know how we could
16 set up an offset program on anything that has a
17 concentration limit as opposed to mass limits. And the
18 dioxin limit and some of these other limits are
19 concentration limits, not mass limits. So I'm not sure
20 how we would ever do that. We are looking at the
21 offset policy that's being developed by the State Board
22 on mercury. We are not very pleased with it at this
23 point. We have some time between now and February 15th
24 to develop some comments on it, and we will definitely
25 be working on it with your staff and sharing that. But
at this point I don't think the State's really going
down the right track on that mercury offset program.

1 My last comment is about blending. Your staff
2 member was correct in that we continue to disagree
3 respectfully with your staff and with EPA about the
4 need for putting compliance with the no feasible
5 alternative plan for the blending program into the
6 permit. And this is quite a complex issue. Blending
7 has been quite a topic of discussion for the last --
8 for the last about four years, certainly since the last
9 permits were developed. This blending practice is a
10 practice that is done by about 40 percent of the clean
11 water agencies nationally. So it's not unusual for
12 CMSA or for some other BACWA members to blend. In
13 fact, blending is something that's done in order to
14 prevent sanitary sewer overflows and in order to
15 prevent bypasses directly into the San Francisco Bay or
16 into some receiving water. So it's a practice that
17 nobody wants stopped per se, but we have to make sure
18 it's consistent with the requirements of 40CFR
19 122.41M4IA-C. So we believe that it is correct that a
20 plan has to be developed in order to determine how you
21 can reduce your blending, but we do not agree with
22 EPA's requirement that a compliance schedule has to be
23 in the permit for implementation of that plan. Now
24 CMSA has agreed to that and that's fine, but we're
25 hoping that as other permits come up in this region for
agencies that are blending that we work through that
process, because they're not all going to be in the
position that CMSA is in. They have, as you heard from

1 Mr. Dow, been working on their wet weather program for
2 some time. Not all of our agencies have been doing
3 that. We all know we need to do it. And so that was
4 my comment on that. So thank you.

5
6 **CHAIRMAN MULLER:** Thank you, again. And that
7 is in the record. Any other questions or comments on
8 this particular Item 10, Central Marin? I have no more
9 cards on 10. We go to 11 I have cards.

10 **MR. WOLFE:** Okay.

11
12 **CHAIRMAN MULLER:** So we'll take staff's
13 recommendation.

14
15 **MR. WOLFE:** Initially, let me note that, and
16 thank you Board Member Young for pointing it out, we do
17 have a supplemental, because the dioxin final limits
18 did not get into the table. So we've included those.
19 We did note in putting those in yesterday afternoon to
20 prepare the supplemental that on Table 7 -- is it
21 somewhere, and Table F12 that the final limits for
22 dioxin TEQ got flopped, that the 1.4E to the minus 8
23 and the 2.8E to the minus 8 should be switched, that
24 the 1.4E to the minus 8 is for average monthly limit
25 and the 2.8E to the minus 8 is maximum daily limit.
Probably at this time of the day I might cynically say

1 that maybe it doesn't make so much different, but
2 pragmatically we will make that change.

3
4 **CHAIRMAN MULLER:** That change.

5
6 **MR. WOLFE:** So -- and we should also
7 incorporate, we noted that we're being pushed to use
8 templates on the first page, the template. We need to
9 then include in Table 3 on the template the dates there
10 would be the adoption date would be today, the
11 effective date would be March 31st, excuse me, April 1st,
12 2007. And the expiration date would be March 31st,
13 2012. Also, I just do wish to note that there is a
14 difference here between this permit and SBSA's because
15 we did not have a compliance schedule for dioxin
16 before. In this case Central Marin will get the full
17 10 years in their compliance schedule for dioxin TEQ.
18 That explains why on Page 17 their final date is April
19 1st, 2017 and for dioxin at Task 3, the July 1st, 2009
20 we've been throwing around here in our discussion for
21 dioxin we're setting that as April 1st, 2011.
22 Nonetheless that doesn't, as they've duly noted, really
23 remove the expediency for us to address these issues
24 and, as Michelle Pla noted, that this is not a dioxin
25 only issue, that the July 2009 does include in these
permits mercury and cyanide, and it can be other
constituents as well and other permits.

1 So with that I'd recommend adoption of the
2 permit with the supplemental -- as amended in the
3 supplemental and with the dates on Page 1 included.

4
5 **CHAIRMAN MULLER:** Understood.

6
7 **MR. ELIAHU:** Move for approval.

8
9 **MR. PEACOCK:** Second.

10 **CHAIRMAN MULLER:** Moved and seconded. Any
11 further discussion? Roll call vote, please, Mary?

12
13 [Roll Call]

14
15 **CHAIRMAN MULLER:** Aye, so ordered with the five
16 of us.

17 **[END OF TESTIMONY ON ITEMS 9 AND 10.]**
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