CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESPONSE TO WRITTEN COMMENTS
ON THE REISSUANCE OF WASTE DISCHARGE REQUIREMENTS FOR:

Rodeo Sanitary District
Rodeo, Contra Costa County
NPDES Permit No. CA0037826

I. Rodeo Sanitary District – August 14, 2006
II. Bay Area Clean Water Agencies – August 14, 2006
III. U.S. EPA – August 14, 2006
IV. San Francisco Baykeeper – August 14, 2006

Note: The format of this staff response begins with a brief introduction of the party's comments, followed with staff's response. Interested persons should refer to the original letters to ascertain the full substance and context of each comment.

I. Rodeo Sanitary District (District) – August 14, 2006

District Comment 1
The District is distressed about increasing requirements for reports that seem to have no relevance with regard to preventing pollution or providing any benefit to its rate payers. The District would like to minimize these costs. For example, it requests that sampling for priority pollutants be done every five years instead of annually.

Response 1
While the District, in general, appears concerned over the number of requirements in its Tentative Order, we can only respond to specific requests. In regards to priority pollutant monitoring, we believe it is appropriate for the District, as a major discharger, to conduct monitoring at least annually. This is necessary to evaluate if priority pollutants have a reasonable potential to exceed water quality objectives. Nonetheless, we will continue to work with the District to identify ways to minimize the expense of its requirements on its ratepayers.

District Comment 2
The District reviewed the initial draft NPDES document and presented comments and corrections to Water Board staff, and that it received subsequent staff comments. For ease of reference the District attached both the District's and staff's response.

Response 2
Comment noted.

District Comment 3
The District requests that the Water Board increase the permitted capacity of its facility to 1.5 million gallons per day (mgd) because (a) this will accurately reflect the design

capacity of the facility, and (b) if the Water Board changes the permitted capacity when reissuing a NPDES permit, the change would be exempt from CEQA, in accordance with Section 13389 of the California Water Code. The District points out that in several locations, the Tentative Order refers to the design flow as the same as the permitted capacity of 1.14 mgd. The District indicates that 1.14 mgd value was probably more of a political value than reality since it is impossible to design a facility to the nearest ten thousand gallons per day. The District requests that the Water Board make this change in numerous areas of the permit.

Response 3

We are denying this request. As indicated in our response to the District's comments on the Administrative Draft, the District needs to demonstrate compliance with antidegradation and CEQA before the Water Board can make this change in its permit. The exemption from CEQA under Section 13389 of the California Water Code applies only to the issuance of waste discharge requirements. An increase in the permitted flow at a facility would trigger CEQA because, among other things, this would involve increased energy usage. In other words, even though the reissuance of the District's permit is exempt from CEQA, the Water Board cannot increase the permitted flow of a facility until CEQA has been satisfied.

The Tentative Order provides the District with the opportunity (Special Provisions C.2.c) to demonstrate (through a stress test) that the design capacity of its treatment plant is indeed 1.5 mgd. Should the District prove successful in this demonstration, satisfy requirements under CEQA, and provide an analysis that shows it satisfies antidegration, the Water Board would be able to consider increasing the design flow when the District's permit comes up for reissuance in 2011.

District Comment 4

The District requests that the Tentative Order remove all references that indicate it is a member of the East Bay Discharger's Authority.

Response 4

We are unaware of where the Tentative Order makes this statement. However, we did notice that footnote 5 on page 12 inadvertently refers to EBDA, and we have corrected this error.

District Comment 5

The District indicates that it cannot agree to monitoring chlorine residual using the limit of detection in standard test methods defined in the latest edition of Standard Methods for the Examination of Water and Wastewater. This is because a new edition may require monitoring that is beyond the District's resources.

Response 5

We have deleted this sentence from the Tentative Order. This is because the Tentative Order (Attachment D, Federal Standard Provisions) already requires that the District monitor according to test procedures under 40 CFR Part 136.

District Comment 6
In Attachment E of the Tentative Order, Rodeo objects to language regarding invalidation of data that states: "The invalidation of a measurement requires approval of Water Board staff and will be based solely on the documentation submitted at that time." The District indicates that this provides the Water Board to make subjective judgments, which the District believes are inappropriate. It requests that the Water Board modify this language to state: "Invalidation of any measurement will occur when the discharger presents documentation or a statement to that effect."

Response 6
We are denying this request. This language is consistent with other permits adopted by the Water Board, and is necessary to ensure that the District does not invalidate measurements without receiving concurrence from Water Board staff. We are puzzled by the District's concern with Water Board staff making judgments on the validity of data since this is part of our job as an impartial government agency. If the Water Board takes enforcement action on violations that the District believes to be invalid, the District will have the opportunity to voice its disagreement in a public hearing.

District Comment 7
The District objects to monitoring requirements for bypass on page E-9 because it only has one primary clarifier, which was designed to be removed from the wastewater treatment system for routine or major maintenance. Under such conditions, the District indicates that the only impact is increased energy costs in its biological reactors.

Response 7
We are denying this request because there is a greater likelihood of overwhelming the biological reactors when the District's primary clarifier is down. However, in order to be consistent with Part A of the SMP (Attachment G of the Tentative Order), which has been a standard requirement for the District since the 1980's, we have restored the original Part A C.2.h. language, which reads:

"When any type of bypass occurs, composite samples shall be collected on a daily basis for all constituents at all affected discharge points which have effluent limits for the duration of the bypass."

II. Bay Area Clean Water Agencies – August 14, 2006

BACWA Comment 1
Bay Area Clean Water Agencies (BACWA) indicates that the permit should not contain any provisions relating to how compliance will be determined because the proposed language prejudges violations and the number of violations, which should not be done without the benefit of a hearing where evidence can be presented and weighed. BACWA points out that even an EPA comment letter on another template permit found such language prejudging an outcome to be inappropriate. See Comment letter from USEPA Region IX on Proposed Permit for Fallbrook Public Utility District (Aug. 3, 2005) ('determinations about whether a discharge violates the Clean Water Act and/or a permit

are appropriately made on a case by case basis.') Thus, blanket compliance determinations language applicable to all permits is inappropriate.

This prejudgment of the number of permit violations is improper particularly when it is contrary to … Mandatory Minimum Penalties (MMP) statute [which] does not find every exceedance to be a 'violation' and does not find 31 or 7 'violations' from 31 or 7 days of exceedances, but merely one violation. … BACWA requests the Compliance Determination language be included in regional or statewide policy documents, instead of individual permits.

Response 1

We are denying BACWA's request. One of BACWA's main concerns appears to be that it believes the compliance determination language would find 31 violations, and therefore, would result in 31 MMPs if the District violated an average monthly effluent limitation. However, this is not the case. The Tentative Order indicates that an exceedance of an average monthly effluent limitation will represent a single violation, though the Discharger will be considered out of compliance for each day of that month. In other words, one violation would equate to one MMP. In our view, this is an accurate assessment of compliance determination. A violation of an average monthly limit is allowed to be deemed a violation of each of the days of that month. Atlantic States Legal Foundation, Inc. v. Tyson Foods, 897 F.2d 1128 (1990).

In regards to BACWA's reference to U.S. EPA's August 3, 2005, letter in support of its contention, we note that U.S. EPA's quote is taken out of context. U.S. EPA's statement was in relation to the San Diego Regional Water Board's proposal to exempt violations of discharges to land from the Clean Water Act. It was not in relation to the compliance determination language in the permit template. In our view, the language as proposed, is appropriate for determining compliance with limitations contained in the Tentative Order.

However, consistent with permits adopted in August 2006, we have added a definition for "reporting level" to Attachment A of the Tentative Order. This definition is consistent with the SIP and would complete section VII.A., which refers to reporting level but does not define the term.

III. U.S. EPA – August 14, 2006

U.S. EPA Comment 1

U.S. EPA points out that the Tentative Order allows for an alternative bacterial indicator study, which appears to be an exemption from the technology-based Basin Plan requirement in Table 4-2. U.S. EPA indicates that the study is acceptable for the purposes of receiving an exemption from the total coliform requirements in Table 4-2, but points out that effluent limits contained in any permit written on the basis of this study must contain effluent limits that are more stringent than limits calculated using the numeric objectives contained in Chapter 3 of the Basin Plan for the designated beneficial uses. Additionally, U.S. EPA indicates that if the Water Board wishes to grant an exception to the Basin Plan water quality objectives or beneficial uses, it must conduct

the appropriate standards action (e.g., use attainability analysis) for U.S. EPA approval. Finally, U.S. points out that if the Water Board can adopt standard methods for calculating bacteriological indicator limits, this will result in greater consistency in permit requirements, and a substantial work load reduction for permit writers.

Response 1
Comment noted. This optional provision only provides the District with the opportunity to conduct a study to develop an alternative bacterial indicator. Alternative limits would need to be incorporated in a permit amendment, which would be circulated for public comment.

U.S. EPA Comment 2
U.S. EPA indicates that the Fact Sheet does not discuss blending at the facility, and if blending does not occur, paragraph III.C under discharge prohibitions should be deleted.

Response 2
We deleted paragraph III.C under discharge prohibitions since the facility does not blend.

U.S. EPA Comment 3
U.S. EPA requests that Section VI.C.8.b regarding sanitary sewer management plans be amended to include the new standard language incorporated into the permits adopted by the Board in August.

Response 3
We modified the Tentative Order to include the new language.

U.S. EPA Comment 4
U.S. EPA requests that throughout the permit and the fact sheet, that the permit describe the permitted facility as including the treatment plant and the permittee's collection system.

Response 4
We modified the Tentative Order to include this information.

U.S. EPA Comment 5
U.S. EPA requests that the Tentative Order include chronic toxicity monitoring since it does not see justification for giving an exemption to a major POTW discharger. Additionally, U.S. EPA indicates that the SIP states that permits must require chronic toxicity monitoring to determine compliance with the Basin Plan chronic aquatic life toxicity objective.

Response 5
We revised the Tentative Order to require that the District conduct screening phase monitoring for chronic toxicity, consistent with the minimum requirements in the SIP, before the next permit reissuance. In our view, this is a reasonable balance of monitoring for this facility since it is unlikely that it will exhibit significant chronic toxicity in the

receiving water. This is because the District (a) uses a deepwater outfall which provides at least 10:1 dilution of effluent, (b) discharges on average less than 1 mgd, and (c) does not receive waste from any major industries.

U.S. EPA Comment 6
U.S. EPA indicates that the Tentative Order authorizes a compliance schedule of 10 years from the effective date of the permit, but does not include an interim limit for dioxin-TEQ because there is insufficient data to determine performance-based effluent limitations. U.S. EPA points out that federal regulations (40 CFR 122.47(a)(3)) state that compliance schedules exceeding one year must contain interim requirements. U.S. EPA indicates that the permit should include numeric interim requirements at least as stringent as current performance.

Response 6
We are denying this request. In the case of dioxin-TEQ, it is impossible to calculate an interim performance based limit because the District has only collected seven samples for this pollutant. In order to develop an adequate data set to evaluate current performance, and set an interim limit in the next permit, this Order requires twice/yearly monitoring. While 40 CFR 122.47(a)(3) requires interim requirements, it does not require interim limits. Because the Tentative Order grants the District a compliance schedule for dioxin-TEQ, it requires that it (a) implement a pollution minimization program to reduce loadings of dioxin-TEQ to its treatment plant, (b) support the development of a dioxin-TEQ TMDL, and (c) monitor twice per year. In our view, these interim requirements satisfy 40 CFR 122.47(a)(3), and are reasonable for this discharge.

U.S. EPA Comment 7
U.S. EPA indicates that the footnote on page E-5 regarding mercury should be changed to be consistent with the permits adopted in August.

Response 7
We modified footnote [8] on page E-6 of the Tentative Order as requested and also corrected the ML for mercury from 2 ng/l to 0.5 ng/l at pages 11 and E-3 of the Tentative Order. U.S. EPA Method 1631 for mercury specifies an ML of 0.5 ng/l instead of the 2 ng/l (or 0.002 μg/l) incorrectly stated in the draft Tentative Order distributed for public comment.

IV. San Francisco Baykeeper – August 14, 2006

Baykeeper Comment 1
Baykeeper requests that the Water Board remove the compliance schedule for cyanide because it believes it to be inconsistent with the California Toxics Rule (CTR) and the Basin Plan. Baykeeper indicates that the NTR compliance schedule provisions are incorporated into the CTR (40 CFR 131.38(B)(1), fn(r), and therefore, the CTR provisions are applicable to the Tentative Order.

Response 1

We disagree. Contrary to Baykeeper's position, NTR compliance schedule provisions are not incorporated into the CTR. In fact, 40 CFR 131.38(B) (1) fn (r) states just the opposite: "These criteria were promulgated for specific waters in California in the NTR….. This section does not apply instead of the NTR for these criteria."

Baykeeper Comment 2

Baykeeper indicates that the CTR provision authorizing compliance when dischargers believe compliance is infeasible expired on May 18, 2005. It points out that compliance schedules can only be used after May 2005 if (1) the State Board adopts and the Environmental Protection Agency (EPA) approves a statewide and /or regional policy authorizing compliance schedules, and (2) EPA acts to "stay the authorizing compliance schedule provision in [the CTR]." Baykeeper acknowledges that EPA has approved compliance schedules provision in the State Implementation Policy, but that EPA has not acted to stay the sunset provision of the CTR. Therefore, Baykeeper indicates that the Water Board cannot issue permits for CTR pollutants like cyanide.

Response 2

As explained in Response 1, cyanide is a NTR pollutant, NTR compliance schedule provisions are not incorporated into the CTR, and therefore, this comment is irrelevant.

Baykeeper Comment 3

Baykeeper indicates that the Basin Plan does not authorize a compliance schedule and interim limits for cyanide. It points out that the Basin Plan indicates that the Water Board may consider compliance schedules for newly adopted objectives or standards as NPDES permit conditions" provided there is appropriate justification. Baykeeper indicates that the cyanide criteria is not a "newly adopted" standard, and the Tentative Order does not provide sufficient justification as to why the compliance schedule is as short as practicable.

Response 3

We disagree. With respect to granting compliance schedules, the Basin Plan allows compliance schedules of up to ten years for new objectives or standards. See Basin Plan, p. 4-14. The Water Board has reasonably construed this Basin Plan provision to authorize compliance schedules for new interpretations of existing standards resulting in more stringent effluent limitations, which construction has been upheld by the State Board in Order WQ 2001-06 (the "Tosco Order") and recently by the California Court of Appeal in Communities for a Better Environment, et al. v. State Water Resources Control Board, et al., 2005 WL 2065306 (Cal.App. 1 Dist.) ("CBE II"). Neither the Tosco Order nor CBE II limits granting compliance schedules to new interpretations of existing narrative water quality standards only. Moreover, the Clean Water Act does not differentiate between numeric and narrative water quality standards for purposes of compliance schedules. See, e.g., 33 U.S.C. Section 1313 (e)(3)(F).

In this case, the promulgation of the SIP results in new interpretations of the existing standards for cyanide and more stringent effluent limitations. To illustrate this more

fully, the following shows how the water quality based effluent limits for cyanide under the SIP are more stringent than under the Basin Plan (the method used prior to the adoption of the SIP).

Table 1: Water Quality Based Effluent Limits Under the Basin Plan and SIP

Pollutant	Objective	Basin Plan		SIP	
		MDEL	AMEL	MDEL	AMEL
Cyanide (μg/L)	1.0	10	not required	6.4	3.1

SIP Methodology for Effluent Limit Calculation

Step 1: Identify Applicable Water Quality Criteria (WQC) cyanide = 1.0 μg/L chronic and acute.

Step 2: For each WQC, calculate the effluent concentration allowance (ECA)

ECA = C + D(C-B)

where: C = WQC, D = dilution credit, and B = background

B = 0.4 μg/L for cyanide, based on Regional Monitoring Program data

ECA (cyanide) = 1.0 + 9(1-0.4)

ECA (cyanide) = 6.4 (both chronic and acute)

Step 3: Determine the Long-Term Average (LTA) by multiplying the ECA with a factor that adjusts for effluent variability. As documented in the Fact Sheet, the coefficient of variation for cyanide is 0.66. Therefore, in accordance with the SIP, the ECA acute and chronic multipliers for cyanide will be 0.296 and 0.499; respectively.

Cyanide

LTA_{acute} = 6.4*0.296 = 1.89

$LTA_{chronic}$ = 6.4*0.499 = 3.19

Step 4: Select the lowest LTA. In this case, the LTA for cyanide = 1.89

Step 5: Calculate the water quality based effluent limitations, using the average monthly effluent limitation (AMEL), and maximum daily effluent limitation (MDEL) multipliers, which are based on the coefficient of variation, and provided by the SIP.

Cyanide

AMEL = 1.89*1.61 = 3.1 μg/L

MDEL = 1.89*3.38 = 6.4 μg/L

Basin Plan Methodology for Effluent Limit Calculation

Cyanide

$C_e = C_o + D(C_o - C_b)$

where: C_e = the effluent limitation, C_o = the water quality criteria- 1.0 μg/L, D = dilution credit, and C_b = background- 0 μg/L*

$C_e = 1.0 + 9(1-0)$

$C_e = 10$ μg/L

* The Basin Plan (p. 4-13, Background Concentrations) states: "For substances not included in Table 4-7, the background concentrations were assumed to be zero in calculating effluent limitations…" Table 4-7 of the Basin Plan does include background values for cyanide; thus, zero was used in the above calculation.

Baykeeper Comment 4

Baykeeper indicates that if a compliance schedule for cyanide is necessary, it should be through a Time Schedule Order.

Response 4

Because we disagree that a compliance schedule for cyanide is prohibited, it is inappropriate to recommend a Time Schedule Order.

Baykeeper Comment 5

Baykeeper states that more support is needed to justify an interim limit of 12 μg/L for cyanide. It notes that data provided by the Discharger indicates that compliance with a limit closer to 8 μg/L is feasible, but that the Tentative Order states that a statistical analysis of effluent data was not possible because of the high number of censored values. Baykeeper requests the Tentative Order explain why there were such a high number of censored values, and require the Discharger to undertake an effluent study in order to generate data that can be used to calculate a performance-based limit for cyanide.

Response 5

We are not proposing any changes to the Tentative Order based on this comment. A censored value is when a pollutant is not detected in effluent. In the case of cyanide, the reason for the high number of censored values is because this pollutant is normally not present in the District's discharge at commercially available detection limits. Since 62% of the data are nondetect for cyanide, it is impossible to calculate a meaningful performance-based limit, and therefore, the Tentative Order carries over the interim limit from the previous permit. Since the compliance schedule for cyanide sunsets on April 27, 2010, in our view, using the interim limit from the previous permit is a reasonable approach to address this pollutant until this sunset date.

Baykeeper Comment 6

Baykeeper indicates that Discharge Prohibition C incorrectly allows discharges of blended wastewater in situations not allowed under federal law. It indicates that

bypasses are illegal except in very narrowly defined circumstances, including when unavoidable to prevent substantial damage to life or property or when necessary for essential maintenance. Therefore, Baykeeper asserts that allowing the discharge of blended wastewater "(1) during wet weather, and (2) when the discharge complies with effluent and receiving water limitations" should be removed.

Response 6
We removed the second paragraph under Prohibition C since this facility does not blend during wet weather.

Baykeeper Comment 7
Baykeeper indicates that the Tentative Order authorizes anticipated bypasses, but fails to include the required feasibility demonstration. It points out that anticipated bypasses may be allowed provided they meet all the requirements of 40 CFR 122.41(m)(4).

Response 7
We believe that our response to comment 6 addresses Baykeeper's concern. This is because with the removal of blending language, the Tentative Order only permits bypasses if the District satisfies 40 CFR 122.41(m)(4).

Baykeeper Comment 8
Baykeeper indicates that the Tentative Order allows bypass in certain situations, but the Tentative Order only requires monitoring for TSS and CBOD. In Baykeeper's view the District must monitor for all pollutants (i.e., cyanide and mercury) that it has effluent limits in order to demonstrate compliance. It requests that the Water Board revise the Monitoring and Reporting Program to require monitoring for all effluent constituents for which there are permit effluent limitations.

Response 8
We agree. Please see Response 7 to the District.

Baykeeper Comment 9
Baykeeper indicates that Section I.D of the Monitoring and Reporting Program should be modified to specify minimum levels cannot be used to determine compliance except for purposes of reporting and agency enforcement discretion. Baykeeper points out that where a chemical-specific permit effluent limit is too low to be detected in discharge samples, U.S. EPA allows for the use of a minimum level for purposes of reporting requirements and administrative enforcement. However, Baykeeper explains that the minimum level cannot be used in lieu of a water quality based effluent limit.

Response 9
The Tentative Order already includes such language. Specifically, under section VII.A Compliance Determination, the Tentative Order states: "Compliance with effluent limitations for priority pollutants shall be determined using sample reporting protocols defined in the MRP and Attachment A of this Order. For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Discharger shall

be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL)."

Baykeeper Comment 10

Baykeeper indicates that the Tentative Order should be amended to more thoroughly address and incorporate the requirements of the State Water Resource Control Board's Statewide General WDR for Wastewater Collection Agencies. Since the primary goal of the Statewide General Order is to provide consistent regulation of sanitary sewer overflows, and the Tentative Order regulates sanitary sewer overflows, Baykeeper believes it should be explicitly reconciled with the terms of the Statewide General Order to reduce confusion. To ensure consistency and to reduce confusion, Baykeeper recommends the following changes: (a) Amend Section III – Discharge Prohibitions – to incorporate the General Order's two prohibitions on the discharge of waste as the results of sanitary sewer overflows, (b) Change Section VI.7.c to state the Discharger's collection system is subject to the General Order, (c) Remove the sentence in Section VI.7.c. that states compliance with the General Order constitutes compliance with the permit's federal NPDES requirements, and (d) Amend the Monitoring and Reporting Program to incorporate the Statewide General Order requirements and reconcile any applicable Region 2 requirements.

Response 10

Response to Baykeeper comment (a): We have amended the Discharge Prohibitions section to incorporate the first prohibition of the General Order: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." On the second prohibition, we are not including this requirement since it could pertain to discharges to land, which should not be included as a duplicative requirement in a NPDES Permit, which applies to discharges to surface waters.

Response to Baykeeper comment (b): On section VI.7.c we are not explicitly stating that the District's collection system is subject to the Statewide General Order. This is because under Application Requirements B.1 of the Statewide General Order, the District is already subject to those requirements.

Response to Baykeeper comment (c): On Section VI.7.c, we deleted the sentence at issue from the Tentative Order, and replaced it with the following: "While the Discharger must comply with both the General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) and this Order, the General Collection System WDR more clearly and specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDR requirements for proper operation and maintenance and mitigation of spills will satisfy the corresponding federal NPDES requirements specified in this Order. Following reporting requirements in the General Collection System WDR will satisfy NPDES reporting requirements for sewage spills." The purpose of including this revision is to avoid inconsistencies between

requirements in General Collection System WDR, and the Tentative Order. Such inconsistencies cause confusion which complicates compliance with and enforcement of the requirements. At this time, all NPDES Permits for POTWs currently include federally required standard conditions, three of which apply to collection systems. These are (1) Duty to mitigate discharges (40 CFR 122.41(d)); (2) Requirement to properly operate and maintain facilities (40 CFR 122.41(e)); and (3) Requirement to report noncompliance (40 CFR 122.41(l)(6) and (7)). As outlined below, we believe that that these three conditions are more clearly and fully regulated by the General Collection System WDR for most agencies. In future permits where warranted, we may choose to impose additional specifications in the permit, or as part of an enforcement order, for that problem agency. This targeted strategy is preferable to leaving the requirements vague, duplicative, and confusing for all agencies.

1) Duty to mitigate discharges. The General Collection System WDR addresses the duty to mitigate discharges more clearly and specifically than the Tentative Order. This is because in regards to sanitary sewer overflows, the Tentative Order is vague in requiring "reasonable steps" to prevent sanitary sewer overflows. Whereas, the General Collection System WDR more specifically requires (a) Sanitary Sewer Management Plans to address how the Discharger will mitigate sanitary sewer overflows should they occur, (b) all feasible steps to prevent untreated wastewater from reaching waters of the State (i.e., blocking storm drains), and (c) specific steps that must be undertaken should a sanitary sewer overflow occur (e.g., vacuum recovery, interception and rerouting of untreated or partially treated wastewater, and system modifications to prevent another overflow at the same location). As such, compliance with the General Collection System WDR is equivalent to those required by the Tentative Order.

2) Requirement to properly operate and maintain facilities. Again, the General Collection System WDR addresses operation and maintenance more clearly and specifically than the Tentative Order. This is because the General Collection System WDR includes a requirement similar to the Tentative Order on properly maintaining collection systems, and provides more details on how the Discharger must document compliance with this requirement. Specifics required by the General Collection System WDR include requirements that the Discharger (a) "allocate adequate resources for the operation, maintenance, and repair of its sanitary sewer system," and (b) "provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events." As such, compliance with the General Collection System WDR is equivalent to those required by the Tentative Order.

3) Requirement to Report Noncompliance. The General Collection System WDR includes more specifics than the Tentative Order on how reporting must be conducted. Additionally, these two documents are inconsistent in their reporting requirements. Since the General Collection System WDR is more specific to collection systems, we believe that it is appropriate to reference this document instead of the Tentative Order to avoid confusion that could result in duplicative reporting, or underreporting. For example, if there is a sewage spill of 1,000 gallons, the General Collection System WDR requires that the Discharger report online as soon as possible, but no later than 3 business days

after the Discharger becomes aware of the spill. This requirement is different than the Tentative Order, which requires that the Discharger orally report any noncompliance within 24 hours, and provides a written submission within 5 days. By requiring compliance with both, a Discharger must orally report to the Water Board within 24 hours, report that same spill online within 3 days, and followup with a written report, again of the same spill, within 5 days. Already limited Regional Water Board resources would be diverted towards tracking and filing these duplicative reports instead of towards enforcing the spills. Equally plausible is a discharger who makes the Tentative Order's 24-hour report, interpreting that to also satisfy the General Collection System WDR's "as soon as possible" requirement, thus neglecting to report to the statewide electronic system. Since the Discharger must already provide the Office of Emergency Services with 24-hour notification for spills greater than 1,000 gallons, and the General Collection System WDR requires online reporting for sanitary sewer overflows, the oral notification, and written submission requirements in the Tentative Order are effectively satisfied. In our view, it is much clearer to have one set of reporting requirements for sanitary sewer overflows, and that the requirements in the General Collection System WDR are the most appropriate.

Response to Baykeeper comment (d): See above. In our view, referencing the General Collection System WDR for reporting reconciles differences with Region 2 reporting requirements.

Baykeeper Comment 11

Baykeeper requests that the Tentative Order include an effluent limit for dioxin-TEQ. It indicates that water quality based effluent limits are required for all pollutants that may be discharged at levels that have reasonable potential to cause or contribute to an excursion of any water quality objective. Baykeeper indicates that the permit concludes that Rodeo's discharge has reasonable potential to exceed the CTR standard for 2,3,7,8 – tetrachlorinated dibenzo-p-dioxin (2,3,7,8 – TCDD), and therefore, the Tentative Order must contain a water quality based effluent limit for dioxin.

Further, Baykeeper explains that the justification in the Tentative Order for not including a limit: (1) the minimum levels for dioxins is higher than the applicable water quality based effluent limit, and (2) insufficient data exists to perform a meaningful statistical analysis are sufficient to justify excluding a dioxin limit from the Tentative Order. Baykeeper indicates that the assertion that there is insufficient data to calculate a limit is at odds with the fact that sufficient data exists to complete a reasonable potential analysis.

Response 11

We do not intend to include an effluent limit for dioxin-TEQ in this permit. First, the Tentative Order does not indicate that the District's discharge has a reasonable potential to exceed the CTR standard of 2,3,7,8 –TCDD because this particular congener was never detected in the District's effluent. The Tentative Order does, however, indicate that a summation of the 17 dioxin and furan congeners (referred to as dioxin-TEQ) have a reasonable potential to exceed the Basin Plan's narrative objective for bioaccumulation.

This is consistent with the preamble of the CTR, which states that California NPDES permits should use toxicity equivalents (TEQs) where dioxin-like compounds have reasonable potential with respect to narrative criteria.

Since the District demonstrated that it is infeasible for it to immediately comply with final water quality based effluent limits for dioxin-TEQ, the Water Board has granted the District a compliance schedule. In the case of dioxin-TEQ, final limits will not become effective until 10 years from the effective date of this Order. The reason for granting the District the maximum compliance schedule permissible by law is because (a) wastewater treatment plants are a small source of loadings of dioxin-TEQ to San Francisco Bay, and (b) there is uncertainty in the time-frame for developing a TMDL. Since the compliance schedule for dioxin-TEQ extends beyond the length of the permit, water quality based effluent limitations are included in the Fact Sheet as a point of reference.

On calculation of interim-performance based limits, the Tentative Order correctly points out that it is impossible to calculate a meaningful performance based limit because the data set is small, and because there are a number of nondetects (see response to U.S. EPA comment 6). Since the previous Order does not contain a dioxin-TEQ limit, and it is impossible to calculate a meaningful performance-based limit, we do not intend to include an interim limit for this pollutant.

V. Editorial Changes

E.1. We added two sentences to the end of VI.A.2 of the Tentative Order to clarify that duplicative requirements in standard provision attachments do not constitute separate requirements.

E.2. We added to the Fact Sheet the basis for the Pollution Minimization Program to include 2.2.1 of the SIP.