CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

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

West County Agency, West County Wastewater District, the City of Richmond, and Richmond Municipal Sewer District No.1
Richmond, Contra Costa County
NPDES Permit No. CA0038539

I. West County Agency – December 19, 2007
II. Bay Area Clean Water Agencies – December 21, 2007

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. West County Agency (WCA) – December 19, 2007

WCA Comment 1
WCA requests that only facility design capacities be included in Table 4. Inclusion of average dry weather flow rates under the heading of "Facility Design Flows" is misleading since these values represent recent monitoring data, not design parameters.

The mailing address for West County Wastewater District (WCWD) in incorrectly identified in Table 4. The WCWD plant is located on Garden Tract Road, but mail is received at 2910 Hilltop Drive.

Response 1
We have no objection. Table 4 will be revised as noted.

WCA Comment 2
The WCWD has 249 miles (instead of 235 miles) of gravity sewer collection lines within its boundaries. Please make this change to reflect actual conditions.

Response 2
We have no objection. Finding II.B will be revised as noted.

WCA Comment 3
Under some wet weather conditions, the Richmond plant bypasses secondary treatment and blends primary effluent with secondary effluent prior to disinfection. The following changes are suggested to ensure accuracy in the description of these operations.

Wet weather conditions sometime exceed the secondary treatment capacity at the Richmond plant due to infiltration into the collection systems. Under these conditions,

the excess primary-treated flows are diverted around the biological treatment units to wet weather storage. Once storage is at capacity, excess primary flows ~~go directly to chlorine contact tanks after which these disinfected flows~~ are blended with the secondary-treated wastewater, and the combined flow is disinfected and dechlorinated prior to discharge to the Bay. The stored wastewater is treated through the secondary treatment units after wet weather flows subside and there is capacity in those units.

Response 3
We have no objection. Finding II.B will be revised as noted.

WCA Comment 4
WCA requests removal of "proposed State criterion" in the Finding related to derivation of WQBELs. A "proposed State criterion" may not be used under State law for the development of water quality-based effluent limits. Using such criteria before they are fully developed and approved could be considered underground rule making.

Response 4
We are denying this request. This finding cites 40 CFR 122.44(d), which indicates proposed State criteria may be used.

WCA Comment 5
WCA requests removal of sentences regarding stringency of requirements for individual pollutant limits. WCA believes that these statements are not supported by evidence in the record. This TO do contain restrictions for individual pollutants (e.g., dioxin) that are come stringent than the Clean Water Act.

Response 5
We are denying this request, as we are unaware of conditions in the permit that are more stringent than the federal Clean Water Act (CWA). The narrative objective for dioxin-TEQ was developed and submitted to U.S. EPA prior to May 30, 2000, and therefore, is an "applicable water quality standard for purposes of the CWA" pursuant to 40 CFR 131.21(c)(1).

WCA Comment 6
WCA requests a revision of the flow limit included in the blending/bypassing prohibition for the Richmond plant. The revision is needed to accurately describe the plant's operational parameters and to ensure the plant produces the highest quality effluent that is possible under wet weather conditions. Blending/bypass is initiated when the flow rates reach 20 mgd. Until an influent flow meter is installed at the Richmond plant, the effluent flow meter must be used to estimate the individual flow rates through individual treatment units. Based on operator experience, the secondary treatment system will lose treatment effectiveness and solids washout can occur when effluent flows exceed 20 mgd. At that point, primary flows are diverted to out-of-service aeration basins for storage. The drains are left open in the storage basins, allowing 4 mgd to be returned to the headworks for full treatment. When the storage basins fill to capacity, the overflow is blended with effluent from the secondary clarifiers prior to disinfection and discharge to

the Bay. The following changes are suggested to incorporate this operational routine into the permit prohibition.

Blended wastewater is biologically treated wastewater blended with wastewater that has been diverted around biological treatment units or advanced treatment units. Such discharges are approved under the bypass conditions stated in 40 CFR 122.41(m)(4) (1) when the peak wet weather ~~influent~~ effluent flow volumes at its Richmond plant exceed 20 mgd ~~the wet weather capacity of the secondary treatment unit(s) of 24.0 MGD~~, (2) when the discharge complies with the effluent and receiving water limitations contained in this Order, and (3) provided the City of Richmond and RMSD satisfies Provision VI.C.5.c. Furthermore, the City of Richmond and RMSD shall operate its facilities as designed and in accordance with the Operation & Maintenance Manual developed for its facilities. This means that it shall optimize storage and use of equalization units, and shall fully utilize the biological treatment units and advanced treatment units, if applicable. The City of Richmond and RMSD shall report incidents of the anticipated blended effluent discharges in routine monitoring reports, and shall conduct monitoring of this discharge as specified in the attached MRP (Attachment E). Bypasses are prohibited at the WCWD plant.

Response 6

This comment indicates that the actual wet weather capacity of the Richmond plant is 20 mgd, not 24 mgd as indicated in your NPDES permit application. The permit will be revised to reflect the actual wet weather capacity and Prohibition III.C will be revised as noted.

WCA Comment 7

WCA requests the removal of final dioxin-TEQ limits from the permit. The following reasons are cited for removal of dioxin-TEQ limits: (1) compliance with the proposed final limits cannot accurately be assessed due to the technological limitations of laboratory instruments and difficulties with measuring dioxin; (2) the Dioxin-TEQ limit was determined using a narrative bioaccumulation objective for 2,3,7,8-TCDD along with toxic equivalence factors [other dischargers and BACWA are questioning the legality of this conversion]; (3) the congeners detected in fish tissue samples which form the basis of the 303(d) listing are different than the congeners detected in the publicly-owned treatment works; and (4) the Water Board has acknowledged that the primary source of dioxins and furans in the Bay Area is air emissions from combustion sources and, as such, dioxin in wastewater is beyond WCA's control.

Response 7

The numeric effluent limits for dioxin-TEQ are reasonable and appropriate. The Tentative Order includes dioxin-TEQ effluent limits because state and federal laws and regulations require them. By adopting the dioxin-TEQ limits, the Regional Water Board is complying with regulations implementing the Clean Water Act at 40 CFR 122.44(d), which require that permits include effluent limits for all pollutants that may be discharged at levels with a reasonable potential to cause or contribute to exceedances of water quality standards, including narrative objectives, such as the Basin Plan's

bioaccumulation objective. The Basin Plan states, "Water quality-based effluent limitations will consist of narrative requirements and, where appropriate, numerical limits for the protection of the most sensitive beneficial uses of the receiving water."

Dioxin and similar compounds have bioaccumulated in San Francisco Bay fish in violation of the Basin Plan's narrative bioaccumulation water quality objective. Therefore, a numeric effluent limit is appropriate to protect San Francisco Bay's beneficial uses, which the bioaccumulation objective is intended to preserve. We used Toxic Equivalency Factors (TEFs) published by U.S. EPA and the World Health Organization, together with the CTR water quality objective for 2,3,7,8-TCDD (the most toxic of the dioxins), to translate the Basin Plan's narrative bioaccumulation objective into numeric water quality-based effluent limits.

We do not intend to enforce compliance with the dioxins limits in situations where we cannot determine whether the limits are exceeded. However, neither 40 CFR 122.44(d) nor the Basin Plan allows consideration of whether analytical methods can actually measure dioxin-TEQ at concentrations as low as the limits. The Basin Plan states, "…when pollutant concentrations in waters are relatively low, the limits of quantification will be taken into account in determining compliance with, rather than the calculation of, effluent limits." Following this policy and the State Implementation Policy's Minimum Level (ML) concept, we developed effluent limits consistent with the water quality objective. We will use analysis-based Minimum Levels for compliance determination and enforcement.

We disagree that dioxins cannot be controlled. U.S. EPA resolved this issue by placing San Francisco Bay on the 303(d) list of impaired waters due to dioxin concentrations in fish and other aquatic organisms. The Basin Plan states, "Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the State and that may be reasonably controlled." Dioxins are primarily a result of human activity and their discharge to waters can be controlled by removing solids from wastewater (dioxins are hydrophobic and bind to particles). Additional dioxin removal could result from plant upgrades. This could be burdensome and may not be cost effective at this time; however, such actions could be necessary in the future.

WCA Comment 8

WCA requests an optional special study provision be included in the permit to allow use of a surrogate indicator to determine effluent quality during wet weather bypass events. The Monitoring and Reporting Program of this TO requires analysis for all pollutants with effluent limits on a daily basis during bypass events. Consistent with the Water Board's approach with other dischargers (e.g., Central Marin Sanitation Agency, Novato Sanitary District), WCA would like the option of analyzing for an indicator constituent and showing that when a minimum level is met for that constituent there is no violation of other effluent limits.

Response 8

We do not intend to include this optional study in the Revised Tentative Order because it provides no value. Consistent with the Regional Water Board's approach with other dischargers (e.g., Central Marin Sanitation Agency, Novato Sanitary District), we would have no objection to using a surrogate parameter to monitor bypass effluent should WCA or one of its members produce a study showing that surrogate monitoring is appropriate. Should WCA or one of its members submit a study showing surrogate monitoring is sufficient to ensure that beneficial uses are protected, we will revise the Monitoring and Reporting Program accordingly.

WCA Comment 9

WCA requests additional clarification on the monitoring locations when wet weather bypass events occur at the Richmond plant. Based on compliance with effluent limits specified in section IV of the permit, monitoring for toxic substances and chlorine residual is conducted at the combined outfall (E-001-DC) and monitoring for conventional parameters is conducted at the Richmond outfall (E-001-D2). To be consistent with this approach, the following changes are suggested.

Modifications to Part A of Self-Monitoring Program

Section C.2.h of Part A shall be amended as follows:

h. When any type of bypass occurs, except for bypasses that are consistent with Prohibition III.C of this Order, composite samples shall be collected on a daily basis for constituents at all affected discharge points that have effluent limits for the duration of the bypass.

When bypassing occurs from any treatment process (primary, secondary, chlorination, dechlorination, etc.) in the Facility that is consistent with Prohibition III.B of this Order during high wet weather inflow, the self-monitoring program shall include the following sampling and analysis in addition tot he schedule given in this MRP:

When bypassing occurs from any primary or secondary treatment(s), representative samples for each 24-hour increment of the bypass discharge shall be collected for the duration of the bypass event for all pollutants with effluent limits. Continuous monitoring shall be conducted for flow and pH, sampling shall be conducted every two hours for residual chlorine, and daily grab samples shall be collected for temperature and total coliform. Monitoring location E-001 shall be used for flow measurements; monitoring location E-001-DC shall be used for toxic substances and chlorine residual; and monitoring location E-001-D2 shall be used for pH, temperature, and total coliform.

Response 9

We have no objection. The Monitoring and Reporting Program will be revised as noted.

WCA Comment 10
WCA requests the following corrections and additional information be included in Table F-1

Table F-1. Facility Information

WDID	2 071107001
Dischargers	1. West County Agency (WCA), including its member agencies 2. West County Wastewater District (WCWD), and 3. City of Richmond 4. Richmond Municipal Sewer District (RMSD)
Name of Facilities	1. West County Agency Common Outfall 2. WCWD Treatment Plant and Its Collection System, 3. RMSD Water Pollution Control Plant No. 1 and Its Collection Sytem
Facility Addresses	1.2910 Hilltop Drive 2. 2377 Garden Tract Road 3. 601 Canal Boulevard Richmond, CA 94806 Richmond, CA 94801 Richmond, CA 94804 Contra Costa County Contra Costa County Contra Costa County
~~**Facility**~~ **Discharger Contacts, Titles, Phones**	1&2. E.J. Shalaby, WCA Manager, 510-222-6700 3&4. Rich Davidson, City Engineer and contact for RMSD, 510-307-8105
Authorized Person to Sign and Submit Reports	1&2. E.J. Shalaby 3&4. Rich Davidson
Mailing Address	~~Same as Facilities Addresses~~ 1.2910 Hilltop Drive 2. 2910 Hilltop Drive 3. 1401 Marina Way S. Richmond, CA 94806 Richmond, CA 94806 Richmond, CA 94804
Billing Address	Same as ~~Facilities~~ Mailing Addresses
Type of Facilities	Wastewater Treatment Plants and common outfall
Major or Minor Facility	Major
Threat to Water Quality	1
Complexity	A
Pretreatment Program	Yes
Reclamation Requirements	Not Applicable
Facility Permitted Flow	2. 12.5 million gallons per day (MGD) 3. 16.0 MGD
Facility Design Flow	2. 12.5 MGD 3. 16.0 MGD
Watershed	San Francisco Bay
Receiving Water	Central San Francisco Bay
Receiving Water Type	Marine

Response 10
We have no objection. Table F-1 will be revised as noted.

WCA Comment 11
WCA requests the following corrections to accurately reflect the total length of the collection system in the Dischargers' service area.

The Dischargers' collection systems includes about ~~422~~ 436 miles of gravity sewer, 11 miles of force main, and 29 pump stations. WCWD has ~~about 235~~ 249 miles of gravity sewer and 11 miles of force main with 17 pump stations. RMSD has about 187 miles of sewer line with 12 pump stations...

Response 11
We have no objection. Section II.A.2 will be revised as noted.

WCA Comment 12
WCA requests the following change to accurately describe pending enforcement action at the Richmond plant.

Permit exceedances were observed during the permit term and are summarized in Table F-5 below. In addition to these violations, the Richmond plant does not monitor influent flow at A-002, which is a violation of the monitoring and reporting program. The Regional Water Board staff has prepared a complaint assessing Mandatory Minimum Penalties (MMPs) for the numeric effluent limit violations. The influent flow metering requirement is addressed in a concurrent Cease and Desist Order (CDO). The Regional Water Board plans to consider the MMP complaint and the CDO at the same public hearing for this Order.

Response 12
We have no objection. Section II.D.1 will be revised as noted.

WCA Comment 13
WCA requests the following changes be made to clarify that the combined outfall at 001 is the official Discharge Point to the Central San Francisco Bay.

For non-bioaccumulative constituents (except ammonia and cyanide), a conservative allowance of 10:1 dilution for discharges to the Bay has been assigned for protection of beneficial uses. This 10:1 dilution ratio is based on the Basin Plan's prohibition number 1, which prohibits discharges like those from Discharge Point 001 with less than 10:1 dilution. As existing outfall structure at Discharge Point 001 is designed to achieve a minimum 10:1 initial dilution. Limiting the dilution credit is based on SIP provisions in Section 1.4.2. The following outlines the basis for derivation of the dilution credit.

Response 13
We have no objection. Section IV.C.4.b.3 will be revised as noted.

WCA Comment 14
The following editorial changes are suggested.

a. Discharge Prohibition III.D
The average dry weather flow, as measured at A-001 for the WCWD treatment plant, shall not exceed 12.5 MGD. The average dry weather flow, as measured at A-002 for the ~~RMSD~~ Richmond treatment plant, shall not exceed 16 MGD. Actual average dry

weather flow shall be determined for compliance with this prohibition over three consecutive dry weather months each year.

b. Effluent Limitations and Discharge Specifications IV.1

The discharge of secondary treated wastewater to Central San Francisco Bay shall maintain compliance with the following effluent limitations, with compliance measured at each treatment facility (monitoring locations E-001-D1 and E-001-D2) and at the combined outfall (monitoring location E-001-DC) as indicated in Table 6 and described in the attached Monitoring and Reporting Program (Attachment E).

c. Effluent Limitations and Discharge Specifications IV.5.a

Compliance with the Basin Plan narrative chronic toxicity objective shall be demonstrated according to the following tiered requirements based on results from representative samples of the discharge, as measured at Monitoring Location E-001-DC, meeting test acceptability criteria and Section V.B of the MRP (Attachment E). Failure to conduct the required toxicity tests or a TRE within a designated period shall result in the establishment of effluent limitations for chronic toxicity.

d. Provision VI.C.6 (Task 1)

Wet Weather Improvements. Submit a technical report that evaluates alternatives for potential wet weather conveyance and treatment plant improvements. The alternatives proposed shall, at a minimum, include the measures described in the City of Richmond's No Feasible Alternatives Analysis (NFAA) Report dated ~~July 2~~ September 27, 2007. The City of Richmond shall commit no less than $20 million over the term of this Permit to reducing or eliminating blending events, consistent with what was committed in the NFAA Report. Comparisons of various alternatives should be based on costs, effectiveness, and implementability. The report should propose preferred alternative(s) based on the results of the analysis.

e. Attachment D – Standard Provisions VI.D

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Order, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both [40 CFR §122.41(k)(2)].

f. Attachment E – General Monitoring Provision I.D, footnote to Table E-1

(3) Hydride or ICPMS (with helium collision cell ~~collider~~) are preferable because they are less subject to positive interference.

g. Attachment E – Influent Monitoring Requirement III.A, footnote to Table E-3

(1) Influent flows shall be monitored continuously and the following shall be reported in monthly self-monitoring reports:

~~a. Influent~~, average, maximum and minimum daily flows

h. Attachment E – Influent Monitoring Requirement III.A, footnote to Table E-4

(1) Effluent flows shall be monitored continuously and the following shall be reported in monthly self-monitoring reports:

~~a. Effluent~~, average, maximum and minimum daily flows;

i. Attachment E – Other Monitoring Requirements IX

~~A~~B. Sludge Monitoring (B-001 and B-002)

j. Attachment E – Effluent Monitoring Requirements X

Parameter and Unit Abbreviations

~~C~~BOD = ~~Carbonaceous~~ Biochemical Oxygen Demand

k. Attachment F – Permit Information I.A

...The City o~~r~~f Richmond and RMSD own and operate RMSD Water Pollution Control Plant ~~No. 1~~ (Richmond plant) located at 601 Canal Boulevard, Richmond, Contra Costa County, California. Together, WCA, WCWD, the City of Richmond, and RMSD are hereinafter referred to as Dischargers.

l. Attachment F – Facility Description II.A.3

... The wastewater treatment processes at the WCWD plant consists of bar screens, an aerated grit chamber, primary clarifiers, roughing ~~tricking~~ filters, aeration basins, secondary clarifiers, and chlorine contact basins...

m. Attachment F – Applicable Plans, Policies, and Regulations III.E

E. Other Plans, Policies and Regulations

This Order is also based on the following plans, policies, and regulations:

n. Attachment F – Rationale for Effluent Limitations and Discharge Specifications IV.A.2

This prohibition is similar the previous permit. It is based on the Basin Plan and the previous permit, which concludes that an initial dilution of 45:1 is required to be protective of shellfish beds, except when Delta outflow is greater than 8000 cubic feet per second. According to the Dischargers' dilution study, an initial dilution of 45:1 may not be achieved during periods of greater Delta flow because effluent follows the pathway of the deeper water mass which is typically 10 feet or more below the surface. However, near-shore areas close to shellfish beds are typically six feet or less and thus receive some physical separation from the deeper water mass. The deeper water likely flows parallel to the depth contours rather than mixing laterally into the shallow mudflat areas. Because ammonia and cyanide limits are based on and initial dilution of 25:1, it is necessary to require that the Dischargers achieve this dilution at higher Delta flows.

o. Attachment F - Rationale for Effluent Limitations and Discharge Specifications IV.C.4.c(2)

On ~~May 3, 2007~~ June 19, 2007 the Dischargers submitted a feasibility study (the 2007 Feasibility Study), asserting it is infeasible to immediately comply with final WQBELs, for selenium, cyanide, dioxin-TEQ, 4,4-DDD and heptachlor...

p. Attachment F – Rationale for Provisions VII.A

Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Dischargers must comply with all standard provisions and with those additional conditions that are applicable under section 122.42.

Response 14

With the exception of items b and k above, we have no objections to these editorial changes. For item b, the suggested change could be interpreted to mean that effluent limits do not apply when blending/bypassing. We want to be clear that all effluent limitations and discharge specifications apply at all times, even when blending/bypassing. For item k, we agree with the first edit, but not with the deletion of "No. 1". We have been notified by the City of Richmond that the official name of the facility is the RMSD Water Pollution Control Plant No. 1. The other appropriate sections have been revised as suggested.

West County Agency Comments to Tentative Cease and Desist Order (CDO)

WCA CDO Comment 1

WCA requests the following editorial changes:

a. *Finding 10 - As part of the time schedules to achieve compliance, this Order requires the Dischargers to comply with interim effluent limits, where feasible. These limits are intended to ensure that the Dischargers maintain at least ~~its~~ their existing performance while completing all tasks required during the time schedules...*

b. *Table 2, Action a - Deadline for Dioxin-TEQ November ~~11~~30, 2011*

c. *Table 2, Action g – If the discharge dat~~a~~ show that the discharge is not out of compliance (as defined in Section 2.4.5 of the State Implementation Policy)...*

d. *Table 2, Action i – Implement the plan required action " ~~f~~h " within 45b days of the deadline for action " ~~f~~h " and submit annual status reports.*

Response to WCA CDO Comment 1

We have no objection. The appropriate sections will be revised as noted.

WCA CDO Comment 2

WCA requests clarification of the actions needed to demonstrate that discharge data is not out of compliance with effluent limitations. A suggested change is included below for your consideration.

Action	***Deadline***
g. If the discharge data show that the discharge is not out of compliance (as defined in Section 2.4.5 of the State Implementation Policy), then the remainder of the provisions in this Order are not applicable	~~*Not Applicable*~~ *Review discharge data annually each February 28th in the Best Management Practices and Pollutant Minimization Reports*

Response to WCA CDO Comment 2
We have no objection. Task g will be revised as noted.

II. Bay Area Clean Water Agencies (BACWA) – December 21, 2007

BACWA comment 1
An enforceable schedule for blending should not be included in the permit. *A schedule with enforceable deadlines for the implementation of corrective measures to control blending is included in the TO. The Environmental Protection Agency (USEPA) and the Office of Management and Budget are still reviewing the current version of a national blending policy. We do not believe that it is national or state policy that a no feasible alternatives analysis (NFAA) be followed up by an enforceable schedule which may carry penalties. The draft regulation cited to require the development of an NFAA does not require an enforceable schedule in the permit. West County Agency is not the only BACWA member that is being asked to develop an NFAA, nor the only BACWA member agency that uses blending as a method to treat wet weather flows. We are opposed to having requirements in this region, which are being developed on a permit by permit basis, in advance of how these significant issues are settled nationally.*

If the Regional Water Board opts to leave the enforceable schedule for blending in the permit, BACWA requests the following edit to the permit's reference to the draft national blending policy in section IV.A.3 of the Fact Sheet, to reflect the current status of this policy.

> ***Criteria of 40 CFR 122.41(m)(4)(i)(A)-(C)***
> *USEPA's draft Peak Wet Weather policy states that "If the criteria of 40 CFR 122.41(m)(4)(i)(A)-(C) are met, the Regional Water Board can approve peak wet weather diversions that are recombined with flow from the secondary treatment.*

Response to Comment 1
We believe that requiring enforceable actions to reduce the need for blending is reasonable and consistent with existing federal laws and regulations (see 40 CFR 122.41(m)(4)), which require that dischargers document that there are no feasible alternatives to such bypasses as blending events). U.S. EPA developed draft guidance on this topic, and although the draft guidance is not legally enforceable, we consider it to be a useful tool as we interpret these federal laws and regulations. The provisions in the Tentative Order are necessary because dischargers need to show us the measures they are

undertaking to minimize blending events so we can consider whether to allow blending the next time we reissue the permit. The schedules in the Tentative Orders were crafted to provide the dischargers with maximum flexibility in determining their preferred alternatives for minimizing blending events.

We have no objection to the proposed language in the Fact Sheet.

BACWA Comment 2

BACWA supports the NPDES permit as being the governing regulatory document if there are discrepancies with previously issued regional requirements. *Language in this permit indicates that, of all the documents applicable to this permit, the most stringent requirements should apply, even though some of the documents, especially some produced on a regional basis, are 15 years old and acknowledged to be out of date. Significant resources have been expended to make sure that this tentative order, a very complicated, individual NPDES permit, has current regulatory requirements, and in addition, the permit is customized to West County Agency. Therefore, the requirements are more thoughtful about the site-specific conditions, and the requirements in the permit should supersede other, more historical documents.*

It is also unreasonable to expect that West County Agency be held responsible for deciding that if there are conflicting requirements, that requirements promulgated 15 years ago and acknowledged to be out of date should govern. The newly adopted NPDES permit should be the applicable governing document if there are any discrepancies. For these reasons, language in the NPDES permit should be revised as follows:

A. Standard Provisions

1. *Federal Standard Provisions. The Dischargers shall comply with all Standard Provisions included in Attachment D of this Order.*
2. *Regional Water Board Standard Provisions. The Dischargers shall comply with all applicable items of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Attachment G), and any amendments thereto. Where provisions of reporting requirements specified in this Order, including Attachments D and E, are different for equivalent or related provisions or reporting requirements given in Attachment G, the specifications of this Order shall apply. Duplicative requirements in the federal Standard Provisions in VI.A.1.2, above (Attachment D) and the regional Standard Provisions (Attachment G) are not separate requirements. A violation of a duplicative requirement does not constitute two separate violations.*

Response to Comment 2

We did not make the requested changes. Pursuant to State Water Board Order WQ 2007-0004, permits cannot contain language stating that, if the standard provisions differ from permit provisions, the permit provisions prevail. This is to ensure that dischargers comply with the minimum federally-required standard conditions.

BACWA Comment 3

BACWA requests a clarification regarding sanitary sewer overflow requirements*. BACWA requests the following edit to section IV.A.5 of the Fact Sheet. Language in this section is not consistent with the correct reference in Prohibition III.E of the permit and should be revised as follows:*

5. ***Discharge Prohibition III.E. (No sanitary sewer overflows (SSO) to waters of the United States)****: The Discharge Prohibition No. 15 from Table 4-1 of the Basin Plan, and the Clean Water Act prohibits the discharge of wastewater to surface waters except as authorized under an NPDES permit. POTWs must achieve secondary treatment, at a minimum, and any more stringent limitations that are necessary to achieve water quality standards. (33U.S.C §1311(b)(1)(B) and (C).) Thus, an SSO that results in the discharge of raw sewage, or sewage not meeting secondary treatment, to ~~surface waters~~ the waters of the United States is prohibited under the Clean Water Act and the Basin Plan.*

Response to Comment 3

We have no objection. The Fact Sheet, Section IV.A.5, will be revised as noted.

BACWA Comment 4

BACWA objects to the required procedure for the invalidation of data points. *BACWA objects to the language used to require correction of errors in data reporting. Inferring a time limit on the discovery and correction of these errors is confusing. We understand, based on the Response to Comments for the San Mateo permit, that Regional Water Board staff will consider erroneously reported data points at any time when sufficient information is available, although they prefer that it be taken care of promptly. But the confusing nature of this language means that some agencies will not understand this subtle point. BACWA requests that the language be revised as follows:*

g. *If the Discharger wishes to invalidate any measurement, the letter of transmittal will include identification of the measurement suspected to be invalid and notification of intent to submit, within 60 days, a formal request to invalidate the measurement, the original measurement in question, the reason for invalidating the measurement, all relevant documentation that supports the invalidation (e.g., laboratory sheet, log entry, test result, etc.), and discussion of the corrective actions taken or planned (with a time schedule for completion), to prevent recurrence of the sampling or measurement problem.*

Response to Comment 4

The procedure for invalidating data points is not intended to be burdensome. In several recent permits, reasonable potential has been found for pollutants based on detections that may have been questionable because the data had not been reviewed sufficiently. This has left the Regional Water Board with no choice but to include final limits in permits in several cases where more timely review of the data might have removed the need for

them. Furthermore, data may be invalidated whenever sufficient evidence is submitted to the Regional Water Board. However, we strongly encourage dischargers to review data as soon as possible after analytical results are received and to request invalidation of suspect data by submitting documentary evidence with the next monitoring report.

Although we respect and appreciate the work of laboratory staff, we see no reason why dischargers should not submit documentary evidence that data points should be invalidated. The Regional Water Board, in its oversight role, retains the authority to make the final determination of whether data are valid or not. That said, when convincing evidence is provided to show data are invalid, those data will not be retained.

BACWA Comment 5 on page 3 (There is also a Comment 5 on page 5.)

BACWA objects to including numeric final limits and a compliance schedule for dioxin-TEQ, as they are not commensurate with actual water quality impacts or sources. *BACWA requests that the dioxin-TEQ numeric final effluent limit be removed because there is no approved numeric water quality objective for dioxin-TEQ, it is not certain that West County Agency will be able to meet this limit, and there are no analytical methods that can accurately detect dioxins at these levels. BACWA believes that the Regional Water Board has the discretion to maintain the narrative standard that exists in the San Francisco Bay Basin Plan. There is no value in developing a numerical standard at this time since dioxin at these levels cannot be measured.*

The congeners detected in fish tissue samples which form the basis for the dioxin 303(d) listing are different than the congeners detected in publicly-owned treatment works. Given, also, that the sources for dioxin are uncontrollable by municipal wastewater treatment plants, and are primarily introduced through air deposition, the compliance requirements for dioxin reduction in the effluent will have little if any environmental benefit to reduce the concentrations of dioxin congeners found in fish tissue.

Response to Comment 5 on page 3

See response to WCA's comment 7.

BACWA Comment 6

BACWA has concerns about including final effluent limits for selenium with which West County Agency cannot comply. *The tentative order (TO) includes final effluent limits for selenium. However, a TMDL is currently under development that will address selenium issues in North San Francisco Bay. The Average Monthly Effluent Limit (AMEL) in the permit is 3.8 µg/L, yet the maximum concentration measured by West County is 9.0 µg/L. Requiring final effluent limits that are unachievable by West County Agency for a compound that is awaiting approval of a total maximum daily load (TMDL) is inappropriate. Although USEPA Region 9 has provided an opinion that TMDLs cannot be used to delay the implementation of a final limit in a permit, this is not a regulation adopted by the State of California or the USEPA.*

The Time Schedule of Prescribed Actions in the CDO prematurely includes requirements for special studies and capital improvements. These requirements are likely to be

superseded by differing requirements when the selenium TMDL is finalized. Considering the uncertainties involved in TMDL development and adoption schedules, the CDO requirements have the potential to require unnecessary expense of public resources.

Response to Comment 6

We see no basis for removing the final effluent limit for selenium. The State Implementation Policy's prescriptive measures require that we include these limits because there is reasonable potential for West County Agency to contain selenium at levels that could adversely affect water quality. West County Agency's inability to immediately comply with certain water quality-based limits does not diminish the need for the limits. We recognize that West County Agency will be unable to immediately comply with certain limits. The accompanying Cease and Desist Order addresses this foreseeable noncompliance. While the eventual adoption of a TMDL for selenium will likely result in revised limits, we cannot legally delay implementation of existing water quality standards.

In a December 2006 letter to the Regional Water Board, U.S. EPA stated that the purpose of a compliance schedule could not be to allow time for such regulatory actions as TMDLs. Compliance schedules must be crafted to give dischargers time to undertake actions to meet water-quality based effluent limits. State Water Board Order WQ 2007-0004 (May 2007) reinforced U.S. EPA's position, stating that compliance schedules must contain an enforceable sequence of actions leading to compliance with effluent limits. In an October 2006 letter, the State Water Board specifically noted that U.S. EPA had formally disapproved the State Implementation Policy's provisions on TMDL-based compliance schedules.

Although the compliance schedule and the accompanying Cease and Desist Order requires West County Agency to meet its effluent limits, the Cease and Desist Order is constructed such that, when applicable TMDLs and site-specific objectives become effective, as do the new effluent limits based on them, provisions of the Cease and Desist Order related to these pollutants will cease to be in effect.

BACWA Comment 7

BACWA has concerns about including final effluent concentration limits for mercury while final adoption of a mercury TMDL is imminent. *The tentative order (TO) includes final effluent and mass limits for mercury. This pollutant is currently being addressed through alternative means in order to protect beneficial uses for the San Francisco Bay. Requiring final effluent limits for a compound that is awaiting approval of a total maximum daily load (TMDL) is inappropriate. These final limits should be only provided for reference and should not be enforceable. BACWA requests removal of these final concentration limits.*

The Regional Water Board has been in the process of developing a mercury TMDL for at least 10 years. The mercury TMDL approved by the Regional Water Board contains requirements that have been developed in a meaningful way throughout the process of its

development and deliberation. Bay Area POTWs are ready to implement the mercury TMDL through activities that will address impairment in San Francisco Bay.

USEPA Region 9 has provided an opinion that TMDLs cannot be used to delay the implementation of a final limit in a permit. This is an opinion of USEPA Region 9, this is not a regulation adopted by the State of California or the USEPA. We strongly object to have final limits for mercury when we have worked tirelessly with the Clean Estuary Partnership (CEP), the Regional Water Board and the State Water Board to have a final mercury TMDL adopted. Now BACWA members are being punished because a final TMDL has not been approved. We urge the Water Board to discuss this with EPA Region 9 as this is a unique circumstance in California that the TMDL is approved and pending approval at EPA.

Response to Comment 7

The mercury TMDL has been adopted by the Regional Water Board and the State Water Board, but it has not yet been approved by USEPA. The mercury TMDL, once approved, will supersede requirements in this permit. However, until it has been approved, the permit must include final numeric effluent limits pursuant to the State Implementation Policy because there is reasonable potential for mercury water quality objectives to be violated.

BACWA Comment 5 on page 5 (There is also a comment 5 on page 3.)

BACWA has legal concerns with the mercury and selenium mass limits. *BACWA incorporates by reference earlier legal arguments it made in BACWA petitions regarding other San Francisco Bay Region permits adopted from 2000 through 2003 (e.g. Petition for Review of Central Contra Costa Sanitary District's Permit, Appeal No. OCC A-1399(a)), in order to preserve BACWA's legal rights to challenge the mercury and selenium mass limits should the mercury and selenium TMDLs not be approved by USEPA in a timely fashion. BACWA intends to withdraw this comment or any legal action taken once acceptable mercury and selenium TMDLs are adopted, approved, and implemented.*

Respose to Comment 5 on page 5

We stand by our decision to include mercury and selenium mass limits. The State Water Board has upheld the Regional Water Board's imposition of mercury mass limits on all four occasions when it reviewed this issue. Specifically, the State Water Board upheld mercury mass limits in its decisions on the permits for Tosco (WQ 2001-06), Napa (WQ 2001-16), Chevron (WQ 2002-0011), and East Bay Municipal Utility District (WQ 2002-0012).

BACWA Comment 8

The Time Schedule of Prescribed Actions in the Cease and Desist Order is overly stringent. *The Cease and Desist Order that accompanies this permit includes a schedule of prescribed actions for pollutants that have been banned for use or for which wastewater treatment plant effluents have been identified as non-significant sources. Additionally, each pollutant is already being addressed through an alternative regulatory*

strategy that will appropriately resolve beneficial use concerns for the San Francisco Bay. In addition to the discussion concerning dioxin-TEQ and selenium indicated above, the Time Schedule of Prescribed Actions is overly burdensome for every constituent, including the additional constituents specified below:

- *4,4-DDD and Heptachlor are both pesticides that were been banned for use in the United States many years ago. As a result, the lengthy and costly list of actions for wastewater treatment facilities in this CDO is not an appropriate solution.*

- *Cyanide – The Regional Water Board has adopted a site-specific objective for cyanide that, when fully approved, will result in appropriate water quality objectives that are protective, technically feasible, and reasonable. Cyanide is not a significant water quality concern for the San Francisco Bay. Yet the CDO potentially requires significant outlay of public funds for activities to reduce cyanide in municipal wastewater effluent. These requirements are a waste of public resources.*

For these reasons, as well as the reasons identified in comment that relate to individual constituents, above, the action plans should be revised to remove all activities related to the installation of capital improvements. In addition, any pollutant prevention activities should be identical to resolutions or orders already adopted by the Regional Water Board for specific constituents, such as mercury and cyanide. No new or different activities should be required for those constituents.

Response to Comment 8

We are not removing the activities related to capital improvements from the Cease and Desist Order. The purpose of this Order is to ensure compliance with effluent limits by requiring specific tasks that will achieve this goal. These tasks are sequential, and the requirements of each task depend on the outcome of the previous tasks. The time frames are reasonable because they provide time to investigate alternatives to capital improvements before they require consideration of capital improvements. Capital improvements are only required if, by April 2012, other efforts to comply with the effluent limits have been unsuccessful. We are committed to working with West County Agency to implement measures that result in compliance while minimizing unnecessary public expenditures.

We agree that capital improvements should only be required when effluent data clearly exceed effluent limits. For many pollutants, one of the first prescribed actions is to investigate sample collection, sample handling, and analytical laboratory quality assurance and quality control practices to ensure that analytical results are accurately determined and reported. We encourage West County Agency to adopt rigorous sampling and analytical protocols. This would reduce false or questionable results and ensure that reasonable potential analyses, effluent limit calculations, and treatment option selection are based on sound data.