

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

REVISED TENTATIVE CEASE AND DESIST ORDER NO. R2-2009-XXXX

**REQUIRING THE EAST BAY MUNICIPAL UTILITY DISTRICT, SPECIAL DISTRICT
NO. 1, TO CEASE AND DESIST DISCHARGING PARTIALLY-TREATED
WASTEWATER FROM ITS WET WEATHER FACILITIES (WWFs) TO WATERS OF
THE STATE**

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

1. The East Bay Municipal Utility District, Special District No. 1 (hereinafter "Discharger") owns and operates wet weather facilities (WWFs) at (1) Point Isabel WWF: 2755 Point Isabel Street, Richmond, CA 94804, (2) San Antonio Creek WWF: 225 5th Avenue, Oakland, CA 94606 and (3) Oakport WWF: 5597 Oakport Street, Oakland, CA 94621.
2. The wastewater discharge from the Discharger's WWFs was previously regulated by waste discharge requirements (WDRs) in Order No. R2-2005-0047, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038440.
3. Concurrent with the adoption of this Cease and Desist Order (CDO), the Regional Water Board adopted Order No. R2-2009-XXXX (hereinafter "Permit"), reissuing WDRs for the Discharger. The Permit prohibits further discharge from the WWFs.
4. As stated in the Permit Findings and Fact Sheet, the WWFs discharge only during severe wet weather events, and this occurs, on average, 2.6, 9.2 and 9.2 times per year at the San Antonio Creek, Oakport and Point Isabel WWFs, respectively. Therefore, the Discharger will discharge waste in violation of the Permit.
5. Water Code §13301 authorizes the Regional Water Board to issue a CDO when it finds that a waste discharge is taking place, or threatening to take place, in violation of Regional Water Board requirements.
6. Because the Discharger will violate or threatens to violate Discharge Prohibition III.A in the Permit, this Order is necessary to ensure that the Discharger achieves compliance. This Order establishes time schedules for the Discharger to complete necessary investigative, preventive, and remedial actions to address its imminent and threatened violations.
7. The time schedules in this Order are intended to be as short as possible. Because the WWFs never discharge during dry weather, the Regional Water Board finds the discharges occur as the result of inflow and infiltration (I/I) during severe wet

weather events. Inflow is water that enters a sewer system from sources such as roof leaders, yard drains, area drains, manhole covers, and cross-connections between storm sewers and sanitary sewers. 40 C.F.R. § 35.2005(21). Infiltration is water that enters the system from the ground through such means as defective pipes, pipe joints, connections, private sewer laterals or manholes. Id. § 35.2005(20). I/I of stormwater into the upstream collection systems during severe wet weather events can lead to a 10-fold increase in the volume of wastewater that reaches the Discharger's interceptor system. The time schedules in this Order account for the considerable uncertainty in determining effective measures necessary to achieve compliance. The time schedules are based on reasonably expected times needed to identify sources of I/I, evaluate I/I reduction measures, and implement them. The Regional Water Board may wish to revisit these schedules as more information becomes available.

8. As part of the time schedules to achieve compliance, this Order requires the Discharger to comply with interim effluent limits. These interim limits are intended to ensure that the Discharger maintains at least its existing performance while completing all tasks required during the time schedules. The interim limits for total coliform, chlorine residual, and pH are retained from Order No. R2-2005-0047.
9. This Order is an enforcement action and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with 14 CCR § 15321.
10. Discharges in violation of Discharge Prohibition III.A in the Permit are not subject to California Water Code §13385(h) and (i) because Discharge Prohibition III.A is not an effluent limitation.
11. The Regional Water Board notified the Discharger and interested persons of its intent to consider adoption of this CDO, and provided an opportunity to submit written comments and appear at a public hearing. The Regional Water Board, in a public hearing, heard and considered all comments.

IT IS HEREBY ORDERED, in accordance with Water Code §13301, that the Discharger shall cease and desist from discharging and threatening to discharge wastes in violation of its Permit by complying with the following provisions:

1. Prescribed Actions. The Discharger shall comply with the required actions in Table 1 in accordance with the time schedules provided therein to comply with all effluent limits contained in the Permit. All deliverables listed in Table 1 shall be acceptable to the Executive Officer, who will review them for adequacy and compliance with the Table 1 requirements. The Discharger shall further implement all actions set forth in each deliverable, unless the Executive Officer finds the deliverable to be unacceptable.
2. Reporting Delays. If the Discharger is delayed, interrupted, or prevented from

meeting one or more of the time schedules in Table 1 due to circumstances beyond its reasonable control, the Discharger shall promptly notify the Executive Officer, provide the reasons and justification for the delay, and propose time schedules for resolving the delay.

3. Consequences of Non-Compliance. If the Discharger fails to comply with the provisions of this Order, the Executive Officer is authorized to take further enforcement action or to request the Attorney General to take appropriate actions against the Discharger in accordance with Water Code §§ 13331 and 13350 or other applicable provisions of law.
4. Effective Date. This Order shall be effective on the effective date of the Permit.

Table 1: Time Schedules and Prescribed Actions

Action	Deadline
a. Comply with the following interim effluent limits in the WWF discharges: <u>Total Coliform Organisms:</u> 240 MPN/100 ml (moving median of 5-consecutive samples); 10,000 MPN/100 ml (any single sample) <u>Chlorine Residual:</u> 0.0 mg/L (The chlorine residual requirement is defined as below the limit of detection defined in Standard Methods for the Examination of Water and Wastewater. The Discharger may elect to use a continuous on-line monitoring system(s) for measuring flows, chlorine and sodium bisulfate dosage, and concentration to prove that chlorine residual exceedances are false positives. If convincing evidence is provided, the Regional Water Board may conclude that these false positive chlorine residual exceedances are not violations of this permit limit.) <u>pH:</u> Discharge must be within 6.5 to 8.5 (If the Discharger continuously monitors pH, the Discharger shall be in compliance with the pH limitation provided that both of the following conditions are satisfied: (1) The total time during which the pH values are outside the required range of 6.5 to 8.5 pH values shall not exceed 1% of the total duration of discharge during any calendar month; and (2) No individual excursion from the range of pH values shall exceed 60 minutes.)	Upon the effective date of this Order
b. Submit reports pursuant to the Self-Monitoring Program attached hereto as Exhibit A.	See Exhibit A
c. Submit a plan for eliminating discharges from the three WWFs at the earliest possible date.	January 14, 2010
d. Begin implementing the plan according to the schedule contained in the plan.	Within 30 days of the Regional Water Board's approval of the plan
e. Continue to implement the program described in action "d" and submit annual status reports that evaluate its effectiveness and summarize planned changes until such time as Discharge	Annually each October 1

Action	Deadline
Prohibition III.A has been complied with.	
f. Submit a plan, consistent with State Water Board Resolution No. 2008-0070, to evaluate the impact of wet weather discharges on sediment quality.	Within 365 days of U.S. EPA's approval of State Water Board Resolution No. 2008-0070
g. Achieve full compliance with Discharge Prohibition III.A of the Permit. In the event that the Discharger does not achieve full compliance with this discharge prohibition by the deadline, it shall submit a report that addresses why compliance was not achieved and provide a plan and time schedule for achieving compliance as soon as possible.	January 13, 2019

I, Bruce H. Wolfe, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on January 14, 2009.

BRUCE H. WOLFE
 Executive Officer

Exhibit A: Self-Monitoring Program

**Exhibit A to EBMUD Wet Weather Facilities Cease and Desist Order
SELF-MONITORING PROGRAM**

I. Description of Sampling and Observation Stations

A. EFFLUENT STATIONS

<u>Stations</u>	<u>Description</u>
E-001	At any point in the Pt. Isabel WWF outfall where all waste tributaries to that outfall are present (may be the same as E-001-D)
E-002	At any point in the San Antonio WWF outfall where all waste tributaries to that outfall are present (may be the same as E-002-D)
E-003	At any point in the Oakport WWF outfall where all waste tributaries to that outfall are present (may be the same as E-003-D)
E-001-D	At any point in the Pt. Isabel WWF outfall at which adequate disinfection has taken place
E-002-D	At any point in the San Antonio WWF outfall at which adequate disinfection has taken place
E-003-D	At any point in the Oakport WWF outfall at which adequate disinfection has taken place

B. UNTREATED SEWAGE OVERFLOWS AND SPILLS

<u>Stations</u>	<u>Description</u>
OV-1	Oakland Inner harbor overflow structure at Alice Street
OV-2	Oakland Inner harbor overflow structure at Webster Street
OV-3	Overflow structure at Elmhurst Creek
OV-4	Overflow structure at San Leandro Creek
OV-5	Overflow structure at Temescal Creek
OV-X	Any sewerage overflow locations, such as manholes, pump stations, etc.

II. Schedule of Sampling, Analysis and Observations

Effluent sampling is required only during discharge events lasting more than one hour. For monitoring purposes, a discharge ceases if there is no effluent flow from the facility for a period of at least 4 hours. Effluent flow after a 4-hour cessation constitutes a new discharge.

The schedule of sampling, analysis and observation shall be that given in Tables 1 and 2 below.

**Table 1
SCHEDULE of SAMPLING, ANALYSES and OBSERVATIONS**

Sampling Station		E-001 to E-003	E-001 to E-003	E-001-D to E-003-D
Type of Sample		GRAB	C-X	GRAB
Parameter	Units			
Flow Rate	mgd	Cont.		
pH	pH units	E		
Total Coliform	MPN / 100 ml	M		
Chlorine Residual	mg/L			Cont.
Oil and Grease	mg/L	M		
Ammonia	mg/L	M		
BOD ₅	mg/L		M	
TSS	mg/L		M	

Table 2
SCHEDULE of SAMPLING, ANALYSES and OBSERVATIONS

Sampling Stations						
Parameter	OV-1	OV-2	OV-3	OV-4	OV-5	OV-n
Flow (MG)	E	E	E	E	E	E

NOTE: A map and description of each known or observed overflow or by-pass location shall accompany each monthly report. A summary of these occurrences and their location shall be included with the Annual Report for each calendar year.

LEGEND FOR TABLES 1 and 2

	<u>Sampling Stations:</u>		<u>Types of Samples</u>
E-00n	= Effluent	(includes continuous sampling, such as for flows)	
E-00n-D	= Chlorinated effluent		GRAB = Grab sample
			C-X = Composite sample (1/hour) over X hours (the duration of the discharge, not to exceed 24 hours).
	<u>Frequency of Sampling</u>		<u>Parameter and Unit Abbreviations</u>
E	= each occurrence of a discharge	mgd	= million gallons per day
Cont.	= Continuous	mg/L	= milligrams per liter
M	= Once each calendar month	µg/L	= micrograms per liter
		MPN/100 ml	= Most Probable Number per 100 milliliters

III. Specifications for Sampling, Analysis and Observations

Sampling, analyses and observations, and recording and reporting of results shall be conducted in accordance with the schedule given in Table 1 of this SMP, and in accordance with the following specifications, as well as all other applicable requirements given in this SMP. All analyses shall be conducted using analytical methods that are commercially and reasonably available, and that provide quantification of sampling parameters and constituents sufficient to evaluate compliance with applicable effluent limits.

A. Flow Monitoring.

Flow monitoring shall be conducted by continuous measurement of flow and reporting of the following measurements:

1. Each Occurrence:
 - a. Total Discharge (MG)
 - b. Hourly Discharge Flow (mgd)
2. Monthly: Total Discharge volume for the calendar month.

B. Total Coliform Monitoring. Because of the difficulty of analyzing coliform samples from an intermittent discharge within the maximum holding period, sampling for total coliform may be taken at any time during the discharge.

C. Chlorine Residual Monitoring.

During all times when chlorination is used for disinfection of the effluent, effluent chlorine residual concentrations shall be monitored continuously, or by grab samples taken hourly. Chlorine residual concentrations shall be monitored and reported for sampling points both prior to and following dechlorination.

IV. REPORTING REQUIREMENTS

A. Written reports, electronic records, strip charts, equipment calibration and maintenance records, and other records pertinent to self-monitoring program requirements, shall be maintained by the Discharger in a manner and at a location (e.g., wet weather facilities or Discharger offices) such that the records are accessible to Board staff. These records shall be retained by the Discharger for a minimum of three years. The minimum period of retention shall be extended during the course of any unresolved litigation regarding the subject discharges, or when requested by the Board or by the Regional Administrator of the U.S. EPA, Region IX.

B. Records to be maintained shall include the following:

1. Parameter Sampling and Analyses, and Observations

For each sample, analysis or observation conducted, records shall include the following:

- (a) Parameter
- (b) Identity of sampling or observation station, consistent with the station descriptions given in this SMP.
- (c) Date and time of sampling or observation.
- (d) Method of sampling (grab, composite, other method)
- (e) Date and time analysis started and completed, and name of personnel or contract laboratory performing the analysis.
- (f) Reference or description of procedure(s) used for sample preservation and handling, and analytical method(s) used.
- (g) Calculations of results.
- (h) Analytical method detection limits and related quantitation parameters.
- (i) Results of analyses or observations.

2. Flow monitoring data

For all required flow monitoring, records shall include the following:

- (a) Total flow or volume, for each day.
- (b) Hourly flow (mgd)
- (c) Duration of each discharge

3. For bacteriological analyses:

- (a) Date and time of each sample collected
- (b) Wastewater flow rate at the time of sample collection
- (c) Results of sample analyses (coliform count)

4. For chlorination process, at least daily average values for the following:

- (a) Chlorine residual in contact basin (mg/L)

C. For each calendar month, a self-monitoring report (SMR) shall be submitted to the Board in accordance with the following:

1. The report shall be submitted to the Board no later than the first day of the second month following the reporting month.
2. Letter of Transmittal: Each report shall be submitted with a letter of transmittal. This letter shall include the following:
 - a. Identification of all violations found during the monitoring period;
 - b. Details of the violations: parameters, magnitude, test results, frequency, and dates;
 - c. The cause of the violations;
 - d. Discussion of corrective actions taken or planned to resolve violations and prevent recurrence, and dates or time schedule of action implementation. If previous reports have been submitted that address corrective actions, reference to such reports is satisfactory; and
 - e. Signature: The letter of transmittal shall be signed by the Discharger's principal executive officer or ranking elected official, or duly authorized representative, and shall include the following certification statement:

"I certify under penalty of law that this document and all attachments have been prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. The report shall contain results of analyses and observations, including tabulations of all required analyses and observations, including parameter, sample date and time, sample station, and test result.
4. The Discharger shall make all reasonable efforts to obtain analytical data for required parameter sampling in timely manner. The Board recognizes that certain analyses require additional time in order to complete analytical processes and result reporting. For cases where required monitoring parameters require additional time to complete analytical processes and reporting, and results are not available in time to be included in the SMR for the subject monitoring period, such cases shall be described in the SMR. Data for these parameters, and relevant discussions of any observed violations, shall be included in the next SMR due after results are available.
5. The Discharger shall submit SMRs to:

Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: NPDES Division