



November 14, 2022

James Parrish  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

VIA EMAIL: [James.Parrish@waterboards.ca.gov](mailto:James.Parrish@waterboards.ca.gov)

**Subject: Comments on Tentative Order NPDES Permit CA0038849 for Mercury and PCBs from Municipal and Industrial Wastewater Discharges**

Dear James Parrish:

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to provide comments on the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board's) Tentative Order reissuing NPDES Permit CA0038849 for mercury and PCBs from municipal and industrial wastewater discharges to San Francisco Bay.

BACWA is a joint powers agency whose members own and operate publicly-owned treatment works and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health. BACWA collaborated with Regional Water Board staff during development of the Tentative Order, and strongly supports its adoption. In particular, we appreciate the approach taken in the Tentative Order to adjust the effluent monitoring frequency for PCB congeners. BACWA looks forward to assisting with development and funding of the risk reduction programs required by Special Provision 6.3.4 of the Tentative Order, which we expect will build upon the public outreach campaign that is ongoing in the current permit term.

BACWA has three comments on the Tentative Order, as outlined below:

- 1. Include language clarifying that flow discharged through the Oro Loma/Castro Valley Water Pollution Control Plant's shallow water outfall is to be used in calculating the East Bay Discharger Authority's (EBDA's) mercury mass load.**

EBDA has an annual average effluent mass limit for mercury of 2.2 kg/yr, as established in Table 7.2.2-3 of the Basin Plan. This mass loading represents the combined contributions of six treatment plants: (1) City of Hayward Water Pollution Control Facility, (2) Oro Loma/Castro Valley Sanitary Districts Water Pollution Control Plant, (3) Union Sanitary District's Raymond

A. Boege Alvarado Wastewater Treatment Plant, (4) City of San Leandro Water Pollution Control Plant; (5) Dublin San Ramon Services District Wastewater Treatment Plant, and (6) City of Livermore Water Reclamation Plant. Virtually all of the flow volume from these six plants is discharged through the EBDA common outfall. EBDA is responsible for effluent sampling of mercury and PCBs at the EBDA common outfall. EBDA is also responsible for estimating the annual mercury mass emissions for these six plants, and reporting it in the annual report.

The proposed markup is for clarity, and would not change the current reporting protocol established in the individual NPDES Permit for Oro Loma and Castro Valley Sanitary Districts (NPDES Permit CA0037559), which states:

“If the Discharger discharges on the same day EBDA samples for mercury or PCBs pursuant to NPDES Permit No. CA0038849, the Discharger shall report the flow to EBDA to be included in the mercury and PCBs loading calculations at the EBDA common outfall” (Order R2-2018-0010, Table E-3, Footnote [5])

Our expectation is that listing this protocol directly within the Tentative Order will facilitate the reporting process for EBDA and its member agencies.

[Pages 11-13]

**Table 3A. Mercury Effluent Limitations for Municipal Dischargers**

Discharger	Average Annual Effluent Limit (kg/yr) <sup>[1]</sup>	Average Monthly Effluent Limit (µg/L)	Average Weekly Effluent Limit (µg/L)
⋮			
East Bay Dischargers Authority (EBDA) <sup>[3]</sup>	2.2	0.066	0.072
City of Hayward			
City of San Leandro			
Oro Loma Sanitary District and Castro Valley Sanitary District			
Union Sanitary District			
Livermore-Amador Valley Water Management Agency			
Dublin San Ramon Services District			
City of Livermore			
⋮			
<b>Aggregate Mass Emission Limit (kg/yr) <sup>[1],[3],[4]</sup></b>	<b>11</b>	<b>Not Applicable</b>	<b>Not Applicable</b>

Footnotes:

...

[\[3\] EBDA mass emissions shall be calculated using the concentration at the EBDA Common Outfall \(Discharge Point 001\) and the total flow rate discharged to receiving waters on the day of mercury sampling from EBDA Discharge Point 001 \(NPDES Permit CA0038768\) plus that of Oro Loma Sanitary District and Castro Valley Sanitary District \(NPDES Permit CA0037559\).](#)

~~[4]~~~~[3]~~The total differs slightly from the column sum due to rounding to the nearest kilogram.

## **2. Remove Provision 6.1.3, which is overbroad, inappropriate, and not necessary.**

Since 2020, Provision 6.1.3 has been part of the standard NPDES permit template in the San Francisco Bay Area (Region 2). BACWA's position is that this provision is both overbroad and inappropriate. It should be removed from this Tentative Order, and from the permit template for the region.

For dischargers, it is not always clear cut which provisions are "more stringent" than others. Provision 6.1.3 leaves too much room for interpretation; dischargers and regulators may reasonably disagree on what is "more stringent." Sometimes it will be clear (e.g., 1/Year versus 2/Year monitoring), but many times it will be unclear (e.g., collect a grab or composite sample).

Provision 6.1.3 is inappropriate because it places a significant burden on the dischargers to determine whether something constitutes a "conflict," "duplication" or "overlap." It is the Regional Water Board's responsibility to prepare permits that avoid any conflict, duplication, or overlap between the provisions of the Order, and to specify which applies. Under Provision 6.1.3, the discharger could potentially violate the permit just by failing to note a permit discrepancy. Liability for permit discrepancies should rest with the Regional Water Board, not with the discharger.

In addition, because this permit already contains language that carefully specifies the precedence of specific provisions (see Provision 6.2 and Attachment E, Section 1.1), the language in Provision 6.1.3 is unnecessary within this Tentative Order. We respectfully request the removal of Section 6.1.3, as shown below.

[Page 18]

### **6.1. Standard Provisions**

6.1.1. The Dischargers shall comply with all "Standard Provisions" in Attachment D (as amended) of their individual NPDES permits listed in Attachment B of this Order.

6.1.2. The Dischargers shall comply with all applicable provisions of the "Regional Standard Provisions, and Monitoring and Reporting Requirements for NPDES Wastewater Discharge Permits" in Attachment G (as amended) of their individual NPDES permits listed in Attachment B of this Order.

~~6.1.3. If there is any conflict, duplication, or overlap between provisions in this Order, the more stringent provision shall apply.~~

### **6.2. Monitoring and Reporting Provisions**

The Dischargers shall comply with the Monitoring and Reporting Program (MRP, Attachment E) and future revisions thereto, and applicable monitoring and reporting requirements in Attachments D and G (as amended) of their individual NPDES permits listed in Attachment B of this Order. ~~Notwithstanding Provision 6.1.3, the~~ The MRP in Attachment E of this Order shall apply over any more stringent, conflicting, duplicative, or overlapping requirement in Attachments D and G of the individual NPDES permits listed in Attachment B of this Order. Between the MRP

in Attachment E of this Order and the MRP in individual NPDES permits listed in Attachment B of this Order, the more stringent MRP shall apply.

**3. Repeat Provision 6.2 language about discrepancies between multiple permits by adding similar language to the Monitoring and Reporting Program (Attachment E).**

Provision 6.2 contains helpful language about resolving discrepancies between different NPDES permits, stating, “Between the MRP in Attachment E of this Order and the MRP in individual NPDES permits listed in Attachment B of this Order, the more stringent MRP shall apply” (page 18). For consistency, we request that similar language be added to Attachment E.

This is a different issue that Comment #2, above, which deals with discrepancies *within* a single permit. This language resolves discrepancies *between* permits, which is problem less easily avoided. The requested markup is shown below.

[Page E-2]

**1. GENERAL MONITORING PROVISIONS**

- 1.1. Dischargers shall comply with this MRP. The Executive Officer may amend this MRP pursuant to 40 C.F.R. section 122.63. If any discrepancies exist between this MRP and the “Regional Standard Provisions, and Monitoring and Reporting Requirements (Supplement to Attachment D) for NPDES Wastewater Discharge Permits” (Attachment G) in the individual permits listed in Attachment B of this Order, this MRP shall prevail. Between this MRP and the MRP in individual NPDES permits listed in Attachment B of this Order, the more stringent MRP shall apply.

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

Respectfully Submitted,



Lorien Fono, Ph.D., P.E.  
Executive Director  
Bay Area Clean Water Agencies

cc: BACWA Executive Board