

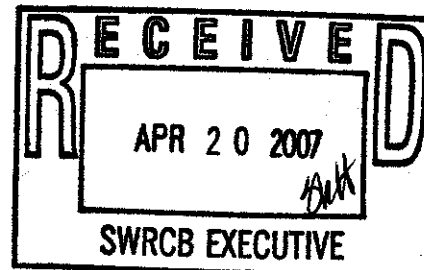
**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

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April 20, 2007

Ms. Tam Doduc, Chair, and Members  
State Water Resources Control Board  
and Ms. Song Her  
Clerk to the Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



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Re: Comments on the Draft Order for Own Motion Review of East Bay Municipal Utility District's Wet Weather Permit (Order No. R2-2005-0047 (NPDES No. CA0038440)) and Time Schedule Order (Order No. R2-2005-0048), San Francisco Bay Region, SWRCB/OCC File A-1771.

Dear Ms. Dudoc and Members of the State Water Resources Control Board:

The San Francisco Public Utilities Commission (SFPUC) appreciates the opportunity to provide comments on the State Water Board's draft order regarding East Bay Municipal Utility District's (EBMUD) wet weather discharge permit (Order No. R2-2005-0047, NPDES No. CA0038440). SFPUC operates one of the few combined sewer systems in California, and thus has a substantial interest in the proper interpretation and application of state and federal regulatory policies for wet weather discharges.

We appreciate recent modifications to the draft order that more accurately describe the holding in *Montgomery Environmental Coalition v. Costle*,<sup>1</sup> regarding the applicable technology-based standards for combined sewer systems. We remain concerned, however, that several summary conclusions in the draft order are inconsistent with both the *Montgomery* case and the modified discussion of the case in the text of the draft order. Further modifications should be made in order to avoid any potential unintended consequences for jurisdictions with wet weather discharges.

On page 11 of the draft order, the following statements are made:

The wet weather facilities are "treatment works." They both treat and store municipal sewage of a liquid nature. They are owned by EBMUD, a municipality. Therefore, the facilities are POTWs. The fact that the facilities treat or store sewage flows only during wet weather events is immaterial to their classification as POTWs. . . . The Clean Water Act and implementing regulations do not differentiate between wet weather flows and dry weather flows in the classification of POTWs.

These statements do not accurately represent the *Montgomery* court analysis. Wet weather facilities are not "treatment works" subject to secondary treatment standards merely because they treat and store municipal sewage of a liquid nature and are owned by

<sup>1</sup> 646 F.2d 568 (D.C. Cir. 1980).

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a municipality. As noted in our previous comments, the Court of Appeals actually held the opposite: treatment of wet weather overflows does not transform such facilities into publicly owned treatment works subject to secondary treatment standards.

Contrary to the discussion of *Montgomery* on page 11 of the draft order, the Court upheld EPA's Clean Water Act interpretation that combined sewer overflows were not "treatment works" subject to secondary treatment standards; it did not consider or adopt EPA's purported reasoning that secondary treatment standards were not required because the overflow points did not provide storage or treatment. As noted in the draft order, EPA and the *Montgomery* court were in agreement that combined sewer overflows are subject to effluent limitations based on BCT/BAT and any more stringent limitations necessary to achieve water quality standards. Compliance with these standards, as reflected in the EPA's Combined Sewer Overflow Control Policy and its implementing guidance, frequently involves activities and facilities that constitute treatment of sewage.

Finally, the discussion on page 12 of the draft order regarding POTW treatment requirements during wet weather events should directly refer to the CSO-related bypass policies under the Combined Sewer Overflow Control Policy.

We respectfully urge the State Water Board to revise its analysis to reflect an accurate interpretation of the Clean Water Act and the *Montgomery* decision.

Sincerely,



Thomas J. Franze  
Assistant General Manager  
Wastewater Enterprise