



COMMISSION MEETING AGENDA

Thursday, July 18, 2024

4:00 PM

**Oro Loma Sanitary District Operations Training Room
2600 Grant Avenue, San Lorenzo, CA**

**This meeting will be teleconferenced from the following locations:
Library Entry Patio, 5630 N Lincoln Avenue, Chicago, IL and UC Davis Medical
Center, 4301 X Street, Sacramento, CA**

**Teleconference link: <https://us02web.zoom.us/j/89796898677>
Call-in: 1(669) 900-6833 and enter Webinar ID number: 897 9689 8677**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Public Forum**

C O N S E N T C A L E N D A R

- MOTION**
- 5. Commission Meeting Minutes of June 20, 2024**
 - 6. List of Disbursements for June 2024 – See Item No. FM4**
 - 7. Treasurer’s Report for June 2024 – See Item No. FM5**

R E G U L A R C A L E N D A R

- INFORMATION**
- 8. General Manager’s Report**
(The General Manager will report on EBDA issues.)
 - INFORMATION**
 - 9. Report from the Managers Advisory Committee**
(The General Manager will report on Managers Advisory Committee activities.)
 - INFORMATION**
 - 10. Consideration of Designating Juneteenth as an Authority Holiday**
(The Commission will discuss potential designation.)
 - INFORMATION**
 - 11. Feedback on Logo Design**
(The Commission will consider possible new EBDA logos and provide feedback.)
 - INFORMATION**
 - 12. Report from the Regulatory Affairs Committee**
(The General Manager will report on the meeting.)
 - INFORMATION**
 - 13. Report from the Financial Management Committee**
(The General Manager will report on the meeting.)

- MOTION 14. Motion to Approve Revisions to the Authority’s Conflict of Interest Policy – See Item No. FM7**
(The Commission will consider the motion.)
- MOTION 15. Motion to Approve Revisions to the Authority’s Audit Policy – See Item No. FM8**
(The Commission will consider the motion.)
- INFORMATION 16. Report from the Operations & Maintenance Committee**
(The Operations & Maintenance and General Managers will report on the meeting.)
- MOTION 17. Motion Approving Amendments to the General Manager’s Amended and Restated Employment Agreement**
(The Commission will consider the motion.)
- INFORMATION 18. Items from the Commission and Staff**
(The Commission and staff may address items of general interest.)
- CLOSED SESSION 19. Closed Session**
(The Commission may meet in closed session pursuant to Government Code §54956.9(d)(2) for Conference with Legal Counsel regarding Anticipated Litigation.)
- OPEN SESSION 20. Reconvene Open Session**
(The Commission Chair will report any action taken in Closed Session.)
- 21. Adjournment**

Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available in the Boardroom and are to be completed prior to speaking.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the Administration Manager at the EBDA office at (510) 278-5910 or juanita@ebda.org. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Commission meeting is
Thursday, September 19, 2024 at 4:00 pm**

GLOSSARY OF ACRONYMS

ACWA	Association of California Water Agencies	DSRSD	Dublin San Ramon Services District
AQPI	Advanced Quantitative Precipitation Information	DTSC	Department of Toxic Substances Control
AMP	Asset Management Plan	EBDA	East Bay Dischargers Authority
ANPRM	Advanced Notice of Proposed Rulemaking	EBRPD	East Bay Regional Park District
BAAQMD	Bay Area Air Quality Management District	EIS/EIR	Environmental Impact Statement/Report
BACC	Bay Area Chemical Consortium	EPA	United States Environmental Protection Agency
BACWA	Bay Area Clean Water Agencies	FOG	Fats, Oils and Grease
BPA	Basin Plan Amendment	GASB	Government Accounting Standards Board
BCDC	Bay Conservation and Development Commission	HEPS	Hayward Effluent Pump Station
BOD	Biochemical Oxygen Demand	JPA	Joint Powers Agreement
CARB	California Air Resources Board	LAVWMA	Livermore-Amador Valley Water Management Agency
CASA	California Association of Sanitation Agencies	LOCC	League of California Cities
CBOD	Carbonaceous Biochemical Oxygen Demand	MAC	Managers Advisory Committee
CDFA	CA Department of Food & Agriculture	MCC	Motor Control Center
CEC	Compound of Emerging Concern	MCL	Maximum Contaminant Level
CEQA	California Environmental Quality Act	MDF	Marina Dechlorination Facility
CFR	Code of Federal Regulations	MG	Million Gallons
CMMS	Computerized Maintenance Management System	MGD	Million Gallons per Day
COH	City of Hayward	MMP	Mandatory Minimum Penalty
CPUC	California Public Utilities Commission	MOU	Memorandum of Understanding
CSL	City of San Leandro	MSS	Mixed Sea Salt
CTR	California Toxics Rule	N	Nitrogen
CVCWA	Central Valley Clean Water Association	NACWA	National Association of Clean Water Agencies
CVSAN	Castro Valley Sanitary District	NBS	Nature-Based Solutions
CWA	Clean Water Act	NGO	Non-Governmental Organization
CWEA	CA Water Environment Association	NOX	Nitrogen Oxides
DO	Dissolved Oxygen	NPDES	National Pollutant Discharge Elimination System
DPR	Department of Pesticide Regulation	NPS	Non-Point Source

GLOSSARY OF ACRONYMS

O&M	Operations & Maintenance	SSMP	Sewer System Management Plan
OLEPS	Oro Loma Effluent Pump Station	SSO	Sanitary Sewer Overflow
OLSD	Oro Loma Sanitary District	SWRCB	State Water Resources Control Board
OMB	Office of Management and Budget	TDS	Total Dissolved Solids
P	Phosphorous	TIN	Total Inorganic Nitrogen
PAHs	Polynuclear Aromatic Hydrocarbons	TMDL	Total Maximum Daily Load
PCBs	Polychlorinated Biphenyls	TP	Total Phosphorus
PLC	Programmable Logic Controller	TRC	Total Residual Chlorine
PFAS	Per and Polyfluoroalkyl Substances	TSO	Time Schedule Order
POTW	Publicly Owned Treatment Works	TSS	Total Suspended Solids
QA/QC	Quality Assurance / Quality Control	UEPS	Union Effluent Pump Station
Region IX	Western Region of EPA (CA, AZ, NV & HI)	USD	Union Sanitary District
ReNUWit	Re-Inventing the Nation's Urban Water Infrastructure Engineering Research Center	UV	Ultraviolet Treatment
RFP	Request For Proposals	VFD	Variable Frequency Drive
RFQ	Request For Qualifications	VOCs	Volatile Organic Compounds
RMP	Regional Monitoring Program	WAS	Waste Activated Sludge
RO	Reverse Osmosis	WDR	Waste Discharge Requirements
RRF	Renewal and Replacement Fund	WEF	Water Environment Federation
RWB	Regional Water Board	WET	Whole Effluent Toxicity or Waste Extraction Test
RWQCB	Regional Water Quality Control Board	WIN	Water Infrastructure Network
SBS	Sodium Bisulfite	WLA	Waste Load Allocation (point sources)
SCADA	Supervisory Control and Data Acquisition	WPCF	Water Pollution Control Facility
SCAP	Southern California Alliance of POTWs	WQBEL	Water Quality Based Effluent Limitation
SEP	Supplementary Environmental Project	WQS	Water Quality Standards
SFEI	San Francisco Estuary Institute	WRDA	Water Resource Development Act
SFEP	San Francisco Estuary Partnership	WRF	Water Research Foundation
SLEPS	San Leandro Effluent Pump Station	WWTP	Wastewater Treatment Plant
SRF	State Revolving Fund	WWWIFA	Water and Wastewater Infrastructure Financing Agency

CONSENT CALENDAR

Consent calendar items are typically routine in nature and are considered for approval by the Commission with a single action. The Commission may remove items from the Consent Calendar for discussion. Items on the Consent Calendar are deemed to have been read by title. Members of the public who wish to comment on Consent Calendar items may do so during Public Forum.

- Item No. 5 Commission Meeting Minutes of June 20, 2024
- Item No. 6 List of Disbursements for June 2024 – See Item No. FM4
- Item No. 7 Treasurer’s Report for June 2024 – See Item No. FM5

Recommendation

Approve Consent Calendar

ITEM NO. 5 COMMISSION MEETING MINUTES OF JUNE 20, 2024

1. Call to Order

Chair Lathi called the meeting to order at 4:00 P.M. on Thursday, June 20, 2024 at the Oro Loma Sanitary District, 2655 Grant Avenue, San Lorenzo, CA 94580.

2. Pledge of Allegiance

3. Roll Call

Present:	Angela Andrews	City of Hayward
	Fred Simon	Oro Loma Sanitary District
	Ralph Johnson	Castro Valley Sanitary District
	Bryan Azevedo	City of San Leandro (arrived at 4:30 p.m.)
	Anjali Lathi	Union Sanitary District

Absent: None

Attendees:	Jacqueline Zipkin	East Bay Dischargers Authority
	Howard Cin	East Bay Dischargers Authority
	Juanita Villasenor	East Bay Dischargers Authority
	Eric Casher	Legal Counsel
	Alex Ameri	City of Hayward
	Hayes Morehouse	City of San Leandro
	Paul Eldredge	Union Sanitary District
	Roland Williams	Castro Valley Sanitary District

4. Public Forum

No members of the public were present.

Motion to allow a member of the Commission to participate remotely pursuant to AB 2449

Commissioner Simon requested to participate in the meeting remotely pursuant to AB 2449 on the basis of “emergency circumstances” as pursuant to Government Code section 54954.2(b)(4). This provision allows the Commission to consider a request for remote appearance at the start of the meeting for an emergency circumstance if the request does not allow sufficient time to place the proposed action on the posted agenda. The request for remote appearance, and subsequent vote, was consistent with government code and EBDA’s Rules of the Commission. Commissioner Simon disclosed that no individuals over the age of 18 were present at the remote location.

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Johnson and carried with the following roll call vote:

Ayes:	Andrews, Johnson, Lathi
Noes:	None
Absent:	Azevedo
Abstain:	Simon

CONSENT CALENDAR

5. Commission Meeting Minutes of May 16, 2024

6. List of Disbursements for May 2024

7. Treasurer's Report for May 2024

Commissioner Johnson moved to approve the Consent Calendar. The motion was seconded by Commissioner Andrews and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Lathi
Noes: None
Absent: Azevedo
Abstain: None

REGULAR CALENDAR

8. General Manager's Report

The General Manager (GM) advised the Commission that she will assume role of Chair of Bay Area Clean Water Agencies (BACWA) for a two-year term.

9. Report from the Managers Advisory Committee

The GM provided an update on the status of the Nutrients Watershed Permit.

10. Feedback on Conceptual Logo Designs

The Commission discussed the logo designs and provided feedback for the graphic artist.

11. Report from the Financial Management Committee

The GM reported on the June 19, 2024, meeting of the Financial Management Committee. The recommended edits to the Authority's Audit Policy are supported, and staff will bring the policy to the Commission for approval in July. The Financial Management Committee supports motions to amend the Cropper Accountancy Corporation agreement and set the FY 2024/2025 City of Hayward recycled water fee.

12. Motion Authorizing the General Manager to Execute Amendment No. 1 to the Professional Services Agreement with Cropper Accountancy Corporation for Financial Audit Services in the Amount of \$38,000, for a Total Not to Exceed Amount of \$74,750

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Johnson and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Lathi
Noes: None
Absent: Azevedo
Abstain: None

13. Motion Setting the City of Hayward Recycled Water Fee for Fiscal Year 2024/2025 at \$9,000 per Quarter

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Johnson and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

14. Report from the Operations and Maintenance Committee

The Operations and Maintenance (O&M) Manager and GM reported on the June 18, 2024 meeting. The O&M Manager discussed compliance and provided project updates. The GM discussed the status of the Cargill draft project approval agreement. The Committee supports the Commission's approval of Items 15, 16, and 17.

15. Motion to Approve the Renewal and Replacement Fund Project List for Fiscal Year 2024/2025

Commissioner Johnson moved to approve the item. The motion was seconded by Commissioner Andrews and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

16. Motion Authorizing the General Manager to Issue a Purchase Order to Thatcher Company of California, Inc. for Sodium Bisulfite 25% Solution for Fiscal Year 2024/2025 in the Amount of \$50,000

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Azevedo and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

17. Motion Authorizing the General Manager to Enter Into a Professional Services Agreement With Calcon Systems, Inc. in the Amount of \$450,000 for Electrical, Instrumentation, and Emergency Services in Fiscal Years 2024/2025, 2025/2026, and 2026/2027

Commissioner Johnson moved to approve the item. The motion was seconded by Commissioner Andrews and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

18. Report from the Personnel Committee

The GM deferred the Committee report to the specific Agenda Items.

19. Motion Adopting the Authority's Fiscal Year 2024/2025 Compensation Plan

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Azevedo and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

20. Motion Approving Fiscal Year 2024/2025 Commission Chairperson and Vice Chairperson

Commissioner Johnson moved to approve the item. The motion was seconded by Commissioner Azevedo and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

21. Motion Accepting Fiscal Year 2024/2025 Committee Appointments and Schedule

Commissioner Andrews moved to approve the item. The motion was seconded by Commissioner Johnson and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi
Noes: None
Absent: None
Abstain: None

22. Items from Commission and Staff

Commissioner Andrews announced the City of Hayward's Juneteenth celebration, which will take place at Heritage Plaza on June 22. The GM expressed her appreciation for Chair Lathi's service. A celebration of life for former Commissioner Thomas Handley will also take place on June 22.

23. Closed Session

Pursuant to Government Code 54957(b)(1), the Commission entered a Closed Session at 5:03 p.m. to discuss the general manager's public employee performance evaluation.

24. Reconvene Open Session

The Commission reconvened to Open Session at 5:35 p.m. Chair Lathi noted there were no reportable actions from closed session.

25. Adjournment in Memory of Thomas Handley.
Chair Lathi adjourned the meeting at 5:35 pm.

Jacqueline Zipkin
General Manager

ITEM NO. 8 GENERAL MANAGER'S REPORT

The General Manager will discuss items of interest to EBDA.

ITEM NO. 9 REPORT FROM THE MANAGERS ADVISORY COMMITTEE

**MANAGERS ADVISORY COMMITTEE
AGENDA**

**Monday, July 1, 2024
2:00 pm**

Via Zoom

- 1. Nutrients Watershed Permit**
- 2. Juneteenth Holiday Designation**
- 3. AQPI Site Tour Debrief**
- 4. EPA SF Bay Program Update**
- 5. BACWA Private Sewer Lateral Survey**
- 6. Fellowships (SeaGrant, CivicSpark) and Internships**
- 7. Biosolids Check-in**
- 8. EBDA Commission Agenda**
- 9. Managers Information Sharing**

ITEM NO. 10 CONSIDERATION OF DESIGNATING JUNETEENTH AS AN AUTHORITY HOLIDAY

Recommendation

Provide feedback to staff.

Background

The Authority's adopted Personnel Policy currently designates the following as Authority holidays, as well as 28 hours of floating holidays:

New Year's Day	January 1
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Eve	December 24
Christmas Day	December 25
New Year's Eve	December 31

Juneteenth, observed annually on June 19, was made a federal holiday in 2021. The holiday commemorates June 19, 1865 when, nearly two years after President Abraham Lincoln emancipated enslaved Africans in America, Union troops arrived in Galveston Bay, Texas with news of freedom.

Several EBDA Commissioners requested that the Commission discuss and consider designation of Juneteenth as an Authority holiday.

Discussion

Since the federal holiday designation, many municipal agencies have designated Juneteenth as a holiday. Of EBDA's member agencies, USD and San Leandro have designated the holiday, Oro Loma and CVSan have not, and Hayward has adopted a business closure, where City offices are closed to the public, and staff may work, use accrued leave, or take time off without pay. Some agencies have added Juneteenth to their overall holiday leave, while others have swapped an existing holiday (e.g. Columbus Day) or floating holiday for Juneteenth.

EBDA staff's recommendation is to add Juneteenth as a designated Authority holiday, and in exchange, to reduce floating holiday leave from 28 hours (3.5 days) to 16 or 20 hours (2 or 2.5 days). This approach allows for official recognition of the holiday while not impacting the Authority's budget.

ITEM NO. 11 FEEDBACK ON LOGO DESIGN

Recommendation

Provide feedback on the draft EBDA logo.

Background

Historically, EBDA has not had a formal logo. The following block letter representations have been used in EBDA correspondence:

A large, bold, blue block letter logo for EBDA.

In recognition of EBDA's 50th anniversary in 2024, the Commission directed staff to develop some element of EBDA-branded merchandise that could be provided to Commissioners along with key Member Agency staff and officials as part of an anniversary celebration. After developing some high-level concepts, staff sought the expertise of graphic designer Laura Patterson, who was engaged to provide several logo concepts for consideration. A set of potential logo options was reviewed by the Commission in June 2024.

Discussion

Using the feedback from the Commission, staff has worked with Ms. Patterson to develop the final draft logo shown here. Once finalized, Ms. Patterson will provide a new EBDA letterhead incorporating the logo, as well as guidelines on logo use to preserve its integrity.



EBDA

East Bay Dischargers Authority

50 years of protecting the SF Bay

1974 – 2024



EBDA

East Bay Dischargers Authority

50 years of protecting the SF Bay

1974 – 2024

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ITEM NO. 12

REGULATORY AFFAIRS COMMITTEE AGENDA

Tuesday, July 16, 2024

9:00 A.M.

**East Bay Dischargers Authority
2651 Grant Avenue, San Lorenzo, CA 94580**

**This meeting will be teleconferenced from the following location:
Library Entry Patio, 5630 N Lincoln Avenue, Chicago, IL**

**Teleconference link: <https://us02web.zoom.us/j/83470324644>
Call-in: 1(669) 900-6833 and enter Webinar ID number: 834 7032 4644**

Committee Members: Johnson (Chair); Simon

- RA1. Call to Order**
- RA2. Roll Call**
- RA3. Public Forum**
- RA4. EBDA NPDES Compliance – See Item No. OM4**
(The Committee will review NPDES Permit compliance data.)
- RA5. BACWA Key Regulatory Issues Summary**
(The Committee will review BACWA's issues summary.)
- RA6. PFAS Updates**
(The Committee will receive an update on regulatory and legislative action governing PFAS.)
- RA7. Ocean Protection Council Report on Microplastics Removal**
(The Committee will hear a summary of the recently published report.)
- RA8. Adjournment**

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Agenda Explanation
East Bay Dischargers Authority
Regulatory Affairs Committee
July 16, 2024

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<p>Next Scheduled Regulatory Affairs Committee Meeting October 15, 2024 at 9:00 a.m.</p>
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ITEM NO. RA5 BACWA KEY REGULATORY ISSUES SUMMARY

Recommendation

For the Committee's information only; no action is required.

Strategic Plan Linkage

1. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
 - a. Represent EBDA and the Member Agencies' interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
 - c. Ensure compliance with non-NPDES permits and regulatory requirements, including air quality and hazardous waste.
 - e. Track and share scientific and regulatory developments related to emerging contaminants, and advocate for source control.

Background

Periodically, BACWA's Regulatory Program Manager updates a Key Regulatory Issues Summary that contains succinct information on regulatory issues of interest to Bay Area wastewater agencies. The Summary matrix contains background, challenges and recent updates, next steps for BACWA, and links to key resources and documents.

Discussion

The most recent issue summary is attached. This latest version highlights updates made in purple. Previous versions are available at <https://bacwa.org/regulatory-issues-summaries/>.



KEY REGULATORY ISSUE SUMMARY

Updated May 3, 2024

Action items for member agencies are in **bold**

Contents	Page		
Nutrients in San Francisco Bay	1	Sanitary Sewer Systems General Order	10
SF Bay Nutrient Watershed Permit	2	Laboratory Accreditation	11
Chlorine Residual Compliance	3	Biosolids	12
Pesticides	4	Climate Change Mitigation	13
Mercury and PCBs	5	Climate Change Adaptation	14
State Water Board Toxicity Provisions	6	Toxic Air Contaminants	15
Compounds of Emerging Concern (CECs)	7	Recycled Water	16
Microplastics	8	Acronyms	17
Per- and Polyfluoroalkyl Substances (PFAS)	9		

New updates in this version are shown in Purple highlighting

Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
NUTRIENTS IN SAN FRANCISCO BAY			
<ul style="list-style-type: none"> San Francisco Bay receives some of the highest nitrogen loads among estuaries worldwide, yet has not historically experienced the water quality problems typical of other nutrient-enriched estuaries. It is not known whether this level of nitrogen loading, which will continue to increase in proportion to human population increase, is sustainable over the long term. Because of the complexity of the science behind nutrient impacts in SF Bay, stakeholders in the region are participating in the Nutrient Management Strategy (NMS) steering committee to prioritize scientific studies and ensure that all science to be used for policy decisions is conducted under one umbrella. 	<ul style="list-style-type: none"> For FY24, BACWA is contributing \$1.8M to fund scientific research needed to make management decisions for the 3rd Watershed Permit. This payment completes the science funding requirement in the 2nd Watershed Permit. The focus of current scientific efforts is improving model representation of biogeochemistry, light attenuation, dissolved oxygen, and harmful algal bloom dynamics. The science team is also developing an Assessment Framework for Open Bay habitats and Lower South Bay sloughs. In summer 2022, a harmful algae bloom in San Francisco Bay brought increased public attention to this topic. A smaller bloom recurred in summer 2023. In both cases, the NMS science team modified the science plan to conduct monitoring and assist with data interpretation. 	<ul style="list-style-type: none"> Continue to participate in NMS steering committee, Nutrient Technical Workgroup, and planning subcommittee meetings, and provide funding for scientific studies. Continue to work with NMS scientists to obtain summaries of scientific accomplishments for public use. Continue to engage with Nutrient Technical Team and BACWA's Nutrient Management Strategy technical consultant, Mike Connor, to provide review of recent work products and charge questions for the science team. 	<p>BACWA Nutrients Page: https://bacwa.org/nutrients/</p> <p>NMS FY24 Science Program Plan Materials https://drive.google.com/drive/folders/16H_sQ8AuogHv- eo9QZx2A9Ph9MTecg5j?usp=drive_link</p> <p>NMS Work Products https://sfbaynutrients.sfei.org/boos/reports-and-work-products</p> <p style="background-color: #e6e6fa;">BACWA Nutrient Infographic https://bacwa.org/wp-content/uploads/2024/03/BACWA-Algal-Blooms-Infographic-March-2024.pdf</p> <p>2023 SF Bay Algal Bloom https://bacwa.org/general/2023-algal-bloom-in-sf-bay-updated-8-3-2023/</p>

SF BAY NUTRIENT WATERSHED PERMIT

<ul style="list-style-type: none"> • The 1st Nutrient Watershed Permit was adopted in 2014, and required a regional study on Nutrient Treatment by Optimization and Upgrades, completed in 2018. • The 2nd Nutrient Watershed Permit was adopted in 2019. It includes: <ul style="list-style-type: none"> ○ Continued individual POTW nutrient monitoring and reporting; ○ Continued group annual reporting; ○ Significantly increased funding for science; ○ Regional assessment of the feasibility and cost for reducing nutrients through nature-based systems and recycled water; ○ Establishing current performance for Total Inorganic Nitrogen (TIN), and “load targets” for nutrient loads based on 2014 to 2017 load data plus a 15% buffer for growth and variability ○ Recognition of “early actors” who are planning projects that will substantially decrease TIN loads. • Through the nutrient surcharge levied on permittees, BACWA funds compliance with the following provisions on behalf of its members: <ul style="list-style-type: none"> ○ Group Annual Reporting ○ Regional Studies on Nature-Based Systems and Recycled Water ○ Support of scientific studies through the Regional Monitoring Program (RMP) with \$11M over the five-year permit term. 	<ul style="list-style-type: none"> • Studies related to Recycled Water and Nature-Based Systems were completed in June 2023, as required by the 2nd Nutrient Watershed Permit. • Each year by February 1, BACWA submits a Group Annual Report on behalf of its members. The report summarizes trends in nutrient concentrations and loading for each agency, and for all the agencies as a whole. The annual reporting period in the 2nd Watershed Permit is based on a water year (Oct. 1 – Sept. 30). • In response to the summer 2022 algae bloom, Regional Water Board staff plan to include significant TIN load reduction requirements in the 3rd Watershed Permit. The NMS modeling team tested several load reduction scenarios to inform the new requirements. Based on this modeling, Regional Water Board staff have proposed dry season load limits that are about 40% lower than actual loads from the 2022 dry season. • The Regional Water Board plans to reissue the Nutrient Watershed Permit in June 2024 and has released a Tentative Order (draft permit). The Tentative Order contains interim limits for dry season TIN loads that are effective immediately and “final limits” that become effective after 10 years. The 10-year clock could be modified in subsequent permits if the “final limits” become more stringent, so the term “final” only applies to this specific permitting action. 	<ul style="list-style-type: none"> • Prepare written and oral comments on the Tentative Order versions of the forthcoming 3rd Nutrient Watershed Permit. Written comments are due May 8, and the adoption hearing is scheduled for June 12, 2024. • Continue to advocate for sufficient time for agencies to implement nutrient load reduction projects, including those with involving innovative technologies, recycled water, and nature-based solutions. • BACWA continues to convene a Nutrient Strategy Team to develop BACWA’s key tenets for the 3rd Watershed Permit, and members are encouraged to participate. The Nutrient Strategy Team is actively engaging with the Regional Water Board to expand upon the key tenets and discuss implementation details for the 3rd Watershed Permit, including the magnitude and timing of required load reductions. • Agencies will continue to report nutrient monitoring data both through CIWQS and directly to BACWA. 	<p>2nd Nutrient Watershed Permit: www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2019/R2-2019-0017.pdf</p> <p>Special Studies of Recycled Water and Nature-Based Solutions: bacwa.org/document-category/2nd-watershed-permit-studies/</p> <p>BACWA Group Nutrient Annual Reports: bacwa.org/document-category/nutrient-annual-reports/</p> <p>Presentations from 2023 BACWA Annual Members Meeting bacwa.org/document-category/2023-annual-meeting/</p> <p>BACWA Concerns related to Compliance Timelines in the 3rd Watershed Permit bacwa.org/document/bacwa-comments-on-nutrient-removal-timelines-2024-01-29/</p> <p>Tentative Order for 3rd Nutrient Watershed Permit https://www.waterboards.ca.gov/sanfranciscobay/board_info/agen/das/2024/June/nutrients/Nutrients%20Tentative%20Order-final.pdf</p>
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CHLORINE RESIDUAL COMPLIANCE

<ul style="list-style-type: none"> • The Basin Plan effluent limit for residual chlorine is 0.0 mg/L. Prior to 2024, residual chlorine was the most frequent parameter for violations for Bay Area POTWs. Because there are 24 hourly reporting events each day, the “opportunities” for violations are enormous. However, the actual violation rates are infinitesimal (~0.001%). • Prior to 2024, agencies were overdosing their effluent with the dechlorination agent, sodium bisulfite, to prevent chlorine violations, a practice which cost the region approximately \$2 million each year. • Regional Water Board staff and BACWA have worked together for more than decade to modify the effluent limit for chlorine residual. 	<ul style="list-style-type: none"> • In November 2023, the Regional Water Board adopted an NPDES Permit Amendment that modifies effluent limits for residual chlorine for most dischargers. The revised limits are based on a translation of the Basin Plan’s existing narrative toxicity objective. The NPDES Permit Amendment includes: <ul style="list-style-type: none"> ○ Limits calculated based on a 0.013 mg/L water quality objective in marine and estuarine waters, and incorporating dilution for deep water dischargers. The limits are applied as a 1-hour average. ○ A Minimum Level of 0.05 mg/L for online continuous monitoring systems. • The NPDES Permit Amendment requires most dischargers to prepare a Chlorine Process Control Plan targeting a chlorine residual of 0.0 mg/L at discharge points. The Chlorine Process Control Plan is part of the Operation and Maintenance Manual; updates are to be summarized with annual self-monitoring reports. 	<ul style="list-style-type: none"> • Comply with new effluent limits for residual chlorine, new reporting requirements, and new Chlorine Process Control Plan requirements beginning January 1, 2024. • BACWA has prepared a guidance document for agencies to use to meet the new chlorine process control requirement. 	<p>Blanket NPDES Permit Amendment, Effective January 1, 2024: www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2023/R2-2023-0023.pdf</p> <p>BACWA Guidance on Complying with Amended NPDES Permit Requirements for Residual Chlorine bacwa.org/document/complying-with-amended-npdes-permit-requirements-for-residual-chlorine-2023-12-20/</p>
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Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
PESTICIDES			
<ul style="list-style-type: none"> • Pesticides are regulated via FIFRA, and not the Clean Water Act. POTWs do not have the authority to regulate pesticide use in their service area, but may be responsible for pesticide impacts to their treatment processes or to surface water. • EPA reviews all registered pesticides at least once every 15 years. Each review allows opportunity for public comment. • Through BAPPG, BACWA aims to proactively support a scientific and regulatory advocacy program so that pesticides will not impact POTWs' primary functions of collecting and treating wastewater, recycling water, and managing biosolids, or impact receiving waters via the "down the drain" route. 	<ul style="list-style-type: none"> • BACWA continues to fund consultant support to write comment letters advocating for the consideration of POTW and surface water issues by EPA and the California Department of Pesticide Registration (CalDPR). Funding for pesticide regulatory outreach in FY24 is \$69k. • The Regional Water Board leverages BACWA's efforts to provide their own comment letters. • The August 2023 version of the BAPPG/BACWA Pesticide Watch List added indoor uses of Quaternary Ammonia Compounds, whose usage has been increasing in recent years. • In January 2023, CalDPR released a Sustainable Pest Management Roadmap. The Roadmap identifies actions that would enhance understanding of pesticide use in urban areas and enhance outreach to urban pesticide users. CalDPR is also pursuing a significant increase to the "Mill Fee," a tax on pesticide sales, to fund some activities identified in the Roadmap. The proposed tax increase was included with the Governor's State Budget Proposal for FY25 and would be applicable to all pesticides, including sodium hypochlorite. • Baywise.org has flea and tick control messaging for pet owners and veterinarians. In addition, the BACWA website offers toolkits for conducting outreach to pet owners and veterinary offices. 	<ul style="list-style-type: none"> • BACWA members can conduct public and veterinary office outreach using the newly available flea and tick outreach toolkits. • Advocate for implementation of specific actions from the Sustainable Pesticide Management Roadmap. • Continue to comment on EPA pesticide re-registrations and CalDPR actions. • Engage with EPA on proposed changes to the regulatory approval process for pesticides. • Work with veterinary associations on messaging with respect to flea and tick control alternatives. • Continue to develop summaries of EPA actions on pesticides. • Look for opportunities to work with CalDPR on pesticides research. • Work with other regional associations, such as CASQA to collaborate on funding pesticide regulatory outreach. 	<p>BACWA Pesticide Regulatory Support Page: bacwa.org/bappg-pesticides/</p> <p>Flea and Tick Outreach Toolkits: bacwa.org/bappg-pesticides/flea-and-tick-outreach-toolkits/</p> <p>Baywise flea and tick pages: baywise.org/residential/for_your_pets/</p> <p>CalDPR Sustainable Pest Management Roadmap www.cdpr.ca.gov/docs/sustainable_pest_management_roadmap/</p> <p>BACWA coalition letter on modernizing the pesticide approval process bacwa.org/document/bacwa-nacwa-coalition-comments-on-fda-epa-pesticide-modernization-2023-04-25/</p> <p>BAPPG/BACWA Pesticides Watch List bacwa.org/wp-content/uploads/2023/08/FINAL-BACWA-Pesticides-Watch-List-Aug-2023.pdf</p>

Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
MERCURY AND PCBs			
<ul style="list-style-type: none"> • The Mercury & PCBs Watershed Permit is based on Total Maximum Daily Loads (TMDLs) for San Francisco Bay for each of these pollutants. • The Mercury & PCBs Watershed Permit was most recently reissued in December 2022, and it continues to require discharger support for risk reduction activities. BACWA is funding risk reduction activities on behalf of its members to comply with this permit provision. For FY24, BACWA has budgeted \$12,500 to support risk reduction activities related to fish consumption. • Aggregate mercury and PCBs loads have been well below waste load allocations through 2022, the last year for which data have been compiled. • EPA Method 1668C for measuring PCB Congeners has not been promulgated by EPA. Effluent limitations are based on PCB Aroclors quantified using EPA Methods 625.1 or 608.3. • In 2017, EPA adopted federal pretreatment program rules requiring dental offices to install dental amalgam separators. The rule is intended to reduce dental office discharge of mercury. The compliance date was July 14, 2020. 	<ul style="list-style-type: none"> • As part of the 2021 Triennial Review of the Basin Plan, the Regional Water Board has prioritized designation of three new beneficial uses: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB) and Subsistence Fishing (SUB). Water bodies designated with these beneficial uses could also be assigned lower mercury objectives. • BACWA supported risk reduction programming by two grantees to fulfill requirements of the 2017 Mercury & PCBs Watershed Permit. In 2023, BACWA arranged for the grantees to present their work to Regional and State Water Board staff. • Through 2026, State Water Board and Regional Water Board staff are working on a Bioaccumulation Monitoring Program Realignment effort in the San Francisco Bay region. BACWA intends to support risk reduction activities related to this effort, which may include public outreach related to subsistence fishing. • In January 2022, monitoring requirements for mercury were reduced for most dischargers by a blanket NPDES Permit amendment (Order R2-2021-0028). Revised monitoring frequencies are also reflected in the reissued permit. • Recent consolidations among contract laboratory providers of PCB analysis via EPA Method 1668C has led to difficulties with electronic reporting. 	<ul style="list-style-type: none"> • BACWA Lab and Permits Committee members are working to facilitate smoother electronic reporting of PCB congeners via EPA Method 1668C. • Continue to coordinate with local community-based organizations and Water Boards staff to develop concepts for risk reduction activities that BACWA could support during the term of the 2022 permit. • Continue outreach to dentists BAPPG and BACWA's pretreatment committee. Per federal rules, all dental facilities were required to submit one-time compliance reports by October 2020. • Track potential Basin Plan Amendments resulting from the Triennial Review project related to new beneficial use designations. The new designations are not expected to impact the Bay-wide mercury TMDL in the near term, but there could be localized or longer-term impacts. • Participate in the Regional Water Board's 2024 Triennial Review process, which will impact the prioritization of Basin Plan amendments, including designation of new beneficial uses. The Regional Water Board is accepting input on candidate projects through May 24, 2024. 	<p>2022 Mercury & PCBs Watershed Permit (Effective Feb. 1, 2023) https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2022/R2-2022-0038.pdf</p> <p>Risk Reduction Materials (Updated August 2023) https://bacwa.org/mercurypcb-risk-reduction-materials/</p> <p>NPDES Permit Amendment for Monitoring and Reporting https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2021/R2-2021-0028.pdf</p> <p>Mercury and PCB Load Trends 2013- 2022 (Updated July 2023) https://www.waterboards.ca.gov/sanfranciscobay/board_info/agen-das/2023/July/6_ssr.pdf</p> <p>2024 Triennial Review of the Basin Plan https://www.waterboards.ca.gov/sanfranciscobay/basin_planning.html#triennialreview</p>

STATE WATER BOARD TOXICITY PROVISIONS

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| <ul style="list-style-type: none"> • The State Water Board adopted the Statewide Toxicity Provisions in October 2021 as state policy for water quality control for all inland surface waters and estuaries. The Provisions establish: <ul style="list-style-type: none"> ○ Use of Test of Significant Toxicity (TST) as statistical method to determine toxicity, replacing EC25/IC25; ○ Numeric limits for chronic toxicity for POTWs >5 MGD and with a pretreatment program; smaller POTWs will receive effluent targets and only receive limits if Reasonable Potential is established; ○ Regional Water Board discretion on whether to require RPAs for acute toxicity ○ For POTWs with <i>Ceriodaphnia dubia</i> as most sensitive species, numeric targets rather than limits were initially in effect until completion of a statewide quality assurance study in December 2023. | <ul style="list-style-type: none"> • EPA approved the Statewide Toxicity Provisions in May 2023, and they became effective on June 1, 2023. Individual NPDES permits reissued in the San Francisco Bay Region are implementing the Toxicity Provisions and requiring use of the TST for chronic toxicity testing. Reissued permits no longer require acute toxicity monitoring. • EPA has not yet approved the Alternate Test Procedure for whole effluent toxicity testing. Until the Alternate Test Procedures are approved, the Regional Water Board has advised that dischargers should use the full five-concentration series for all tests, including routine monitoring and Species Sensitivity Screening Studies. • Since 2016, agencies have had the option to skip sensitive species screening upon permit reissuance and pay the avoided funds to the RMP to be used for CECs studies. Under the Toxicity Provisions, agencies are now required by the provisions to do sensitive species screening once every 15 years. • The State Water Board collaborated with stakeholders on a special study to improve the quality of <i>Ceriodaphnia dubia</i> testing. The multi-laboratory study of toxicity testing was completed and presented to the State Water Board in 2023. The State Water Board has compiled resources related to the study for dischargers that plan to use <i>Ceriodaphnia dubia</i> for chronic toxicity monitoring. | <ul style="list-style-type: none"> • Begin conducting toxicity testing using the Statewide Toxicity Provisions. All member agencies with individual NPDES permits reissued after August 2022 have transitioned to the new toxicity testing requirements. • Plan to conduct a species sensitivity screening to comply with the Toxicity Provisions, which require a study no more than 10 years old be used to determine a “Tier I” species for use in compliance monitoring. The BACWA laboratory committee has compiled some tips related to sensitivity screening studies for member agencies’ use. • Members hiring a contract laboratory to perform testing using <i>Ceriodaphnia dubia</i> should utilize the <i>Ceriodaphnia dubia</i> Quality Assurance Guidance Recommendations from the multi-laboratory study, including the performance metrics listed in Appendix E of the report. | <p>SWRCB Toxicity Page: http://www.swrcb.ca.gov/water_issues/programs/state_implementation_policy/tx_ass_cntrl.shtml</p> <p>Regional Water Board presentation on implementation of Statewide Toxicity Provisions from December 2020: https://bacwa.org/wp-content/uploads/2021/01/Slides-from-RWQCB-Regarding-R2-Tox-Language-in-NPDES-Permits-2020-12-08.pdf</p> <p>EPA Approval of Statewide Toxicity Provisions https://bacwa.org/wp-content/uploads/2023/05/05.01.2023-EPA-CWA-303c-Approval-of-California-Toxicity-Provisions.pdf</p> <p><i>Ceriodaphnia dubia</i> Study Resources, including link to Quality Assurance Guidance Recommendations https://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/docs/ceriodaphnia-dubia-study-resources.pdf</p> <p>CASA Webinar on Lessons from Ceriodaphnia Study https://casaweb.org/resources/speaker-presentations/</p> |
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Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
COMPOUNDS OF EMERGING CONCERN (CECS)			
<ul style="list-style-type: none"> Pharmaceuticals and other trace compounds of emerging concern (CECs) are ubiquitous in wastewater at low concentrations and have unknown effects on aquatic organisms. The State Water Board has formed a Pretreatment and CECs Unit. The San Francisco Bay region's CEC strategy focuses on monitoring/tracking concentrations of constituents with high occurrence and high potential toxicity. Much of what the State Water Board is considering for its monitoring program is already being implemented in the Bay Area through the RMP. 	<ul style="list-style-type: none"> The Regional Water Board has stated that voluntary and representative participation in RMP CECs studies is key to avoiding regulatory mandates for CECs monitoring. These studies are informational and not for compliance purposes. BACWA developed a White Paper on representative participation to support facility selection for these studies. Bay dischargers are continuing to provide supplemental funding for RMP CECs studies through the NPDES Permit Amendment adopted in 2021 by the Regional Water Board (R2-2021-0028). The State Water Board has recently increased its focus on CECs. In April 2023, a State Water Board Science Advisory Panel released a report identifying risk-based and occurrence-based monitoring strategies in aquatic ecosystems. Similar approaches are already in use in the Bay Area by the RMP. In the Bay Area, the RMP has designated organophosphate esters (OPEs) and PFAS as CECs of "high" concern include. CECs of "moderate" concern include alkylphenols and alkylphenol ethoxylates, bisphenols, fipronil and its degradates, imidacloprid, and microplastics. 	<ul style="list-style-type: none"> Continue to participate in the RMP Emerging Contaminants Workgroup. Participate in RMP studies by collecting wastewater samples at member facilities. In 2024, the RMP is funding a study of organophosphate esters (OPEs), bisphenols, and other plastic additives. Update the 2020 White Paper created for use by the RMP or others in selecting representative POTWs for participation in CEC studies. The 2020 White Paper will be updated to note recently completed and ongoing studies of CECs in Bay Area wastewater. 	<p>RMP Emerging Contaminant Workgroup: https://www.sfei.org/rmp/</p> <p>BACWA CECs White Paper: https://bacwa.org/document/bacwa-cec-white-paper-updated-june-2020/</p> <p>NPDES Permit Amendment for Monitoring and Reporting https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/R2-2021-0028.pdf</p> <p>State Water Board CECs webpage: https://www.waterboards.ca.gov/water_issues/programs/cec/index.html</p>

Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
MICROPLASTICS			
<ul style="list-style-type: none"> • Microplastic pollution is an environmental threat with the potential to impact wastewater disposal and reuse, as well as biosolids end uses. • Microplastics have been a focus of the RMP in recent years. BACWA has participated in the Workgroup and developed a POTW Fact Sheet. One conclusion of the RMP work is that POTWs contribute much lower microplastic loads than stormwater. As a result, the RMP is focusing future microplastics sampling efforts on stormwater pathways. 	<ul style="list-style-type: none"> • In February 2022, the Ocean Protection Council (OPC) adopted a Statewide Microplastics Strategy that calls for increased water recycling, additional monitoring of wastewater, source control in wastewater, and additional scientific research. • OPC is funding a study of microplastic removal through wastewater treatment processes. The study commenced in 2021 with a pilot study involving BACWA member agency participation. Full-scale sampling and analysis of influent, effluent, and biosolids was completed in 2023. • The 2024 California Integrated Report (303(d) List) was adopted by the State Water Board in February 2024 and has been submitted to EPA. The Integrated Report notes that San Francisco Bay is “potentially threatened” by microplastics. Due to data limitations, the Bay was <u>not</u> listed as an impaired water body during this listing cycle. • Additional research to improve scientific understanding of microplastics in aquatic ecosystems will be needed to support a future impairment determination for the Bay. The Water Boards and OPC are supporting allocation of funding towards these research efforts. • Ongoing microplastics investigations by the RMP are focused on tire particles in stormwater. 	<ul style="list-style-type: none"> • Continue to participate in the RMP Microplastics Workgroup. • Review and share the final report for the OPC-funded microplastics study, which is expected in May 2024. Three BACWA member agencies participated in the OPC-funded microplastic study. CASA has also funded the study team at the Southern California Coastal Water Research Project (SCCWRP) to complete add-on work comparing results between different sampling methods, including use of an autosampler. The add-work will be completed later in 2024. • Continue tracking State Water Board and Ocean Protection Council actions via the CASA Microplastics Workgroup. 	<p>BACWA Microplastics Fact Sheet: https://bacwa.org/wp-content/uploads/2019/09/BACWA-Microplastics-flyer.pdf</p> <p>SFEI Microplastics project: https://www.sfei.org/projects/microplastics</p> <p>Ocean Protection Council Microplastics Strategy: https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20220223/Item_6_Exhibit_A_Statewide_Microplastics_Strategy.pdf</p> <p>2024 California Integrated Report / 303(d) List https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2024-integrated-report.html</p>

PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

<ul style="list-style-type: none"> • Per- and polyfluoroalkyl substances (PFAS) are a group of human-made substances that are very resistant to heat, water, and oil. PFAS have been used in surface coating and protectant formulations. Common PFAS-containing products are non-stick cookware, cardboard/paper food packaging, water-resistant clothing, carpets, and fire-fighting foam. • Perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) are two types of PFAS no longer manufactured in the US; however, other types of PFAS are still produced and used in the US. • All PFAS are persistent in the environment, can accumulate within the human body, and have demonstrated toxicity at relatively low concentrations. • Potential regulatory efforts to address PFAS focus on drinking water in order to minimize human ingestion of these chemicals, although regulators have also expressed concern about uptake into food from biosolids. • In 2020, the SWRCB issued an investigative order for POTWs. At that time, BACWA obtained SWRCB approval to fund and conduct a Regional PFAS Study in lieu of the investigative order. • In 2021, EPA formed a Council on PFAS, then released a PFAS Strategic Roadmap. • 	<ul style="list-style-type: none"> • In April 2024, EPA finalized Maximum Contaminant Levels for PFOA, PFOS, PFHxS, PFNA, and HFPO-DA (commonly referred to as GenX Chemicals), and mixtures containing two or more specific PFAS compounds. By design, these MCLs are very close to the current limits of quantification. • California has finalized public health goals for PFOA and PFAS and has adopted notification and response levels for four PFAS compounds in drinking water, but has not yet adopted Maximum Contaminant Levels. • Drinking water limits will not be applicable to wastewater discharges to the Bay, but they could be used in NPDES permits for inland dischargers. • In April 2024, EPA designated PFOA and PFOS as hazardous substances under CERCLA (the Superfund law). EPA simultaneously released a memo stating that it intends to focus enforcement on PFAS manufacturers, not on public agencies. • EPA is conducting pretreatment standards rulemaking for three types of industrial users: Metal Finishing, Organic Chemicals, Plastics and Synthetic Fibers, and landfills. • EPA is planning to conduct a POTW Influent PFAS Study to collect nationwide data on industrial and domestic sources of PFAS. 	<ul style="list-style-type: none"> • Continue to share the results of BACWA's Regional PFAS Study, which was conducted by SFEI in two phases in 2020 and 2022. The study found that residential areas and industrial laundries are potential sources of PFAS. BACWA has prepared a PFAS Study Summary for members' use. • Use Clean Water Act methods (EPA Method 1633 or 1621) for use in pretreatment programs or monitoring effluent. • Review the draft questionnaire for EPA's POTW Influent Study. BACWA plans to provide comments by the May 28th due date. • Continue tracking developments at the federal, state and regional level, in particular to understand the impact of the CERCLA designation on biosolids reporting. • Continue to support PFAS source control efforts by participating in monitoring studies, and by supporting regulatory and legislative efforts to limit the use of PFAS. For example, BACWA has expressed support for SB 903 (Skinner) restricting the sale of PFAS-containing products in California. 	<p>BACWA PFAS Study Summary bacwa.org/wp-content/uploads/2024/02/BACWA-PFAS-Study-Summary-2024-02-07.pdf</p> <p>SWRCB PFAS Resources: www.waterboards.ca.gov/pfas/</p> <p>EPA PFAS Resources www.epa.gov/pfas</p> <p>EPA Drinking Water Limits https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas</p> <p>EPA letter on enforcement discretion for CERCLA https://www.epa.gov/system/files/documents/2024-04/pfas-enforcement-discretion-settlement-policy-cercla.pdf</p> <p>EPA POTW Influent Study https://www.epa.gov/eg/study-pfas-influent-potws</p> <p>EPA NPDES Permitting Guidance (Dec. 2022) www.epa.gov/system/files/documents/2022-12/NPDES_PFAS_State%20Memo_December_2022.pdf</p> <p>Presentation on BACWA's Regional PFAS Study at RMP 2023 Annual Meeting www.sfei.org/projects/rmp-annual-meeting</p>
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Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
SANITARY SEWER SYSTEMS GENERAL ORDER			
<ul style="list-style-type: none"> • In 2022, the State Water Board reissued the statewide Sanitary Sewer Systems General Order (SSS-WDR). The reissued order replaced the 2006 Order and the 2013 Monitoring and Reporting Program. • The State Water Board’s goals for the update were: <ul style="list-style-type: none"> ○ Updating the 2006 Order ○ Clarifying compliance expectations and enhancing enforceability ○ Addressing system resiliency, including climate change impacts ○ Identifying valuable data and eliminating non-valuable reporting requirements • The reissued order became effective on June 5, 2023. • The first annual reports due under the reissued order were due April 1, 2024. 	<ul style="list-style-type: none"> • The reissued SSS-WDR contains numerous new and modified requirements, such as: <ul style="list-style-type: none"> ○ A prohibition on discharges to groundwater; ○ Reduced spill reporting requirements for small spills (spills from laterals or <50 gallons); ○ New spill monitoring requirements such as photo documentation and faster water quality sampling; ○ New requirements for preparation of Sewer System Management Plans (SSMPs), including a focus on system resiliency, prioritizing corrective actions, and coordinating with stormwater agencies; ○ Modified annual reporting requirements; ○ New mapping requirements; and ○ Modified timelines for preparation of audits and SSMPs. The State Water Board has prepared an online tool to assist agencies in determining compliance dates (at right). • Maintaining an updated SSMP continues to be a core requirement of the SSS-WDR. Beginning in May 2025, SSMP updates will be required every six years (instead of five) and must contain the 11 updated elements described in the reissued SSS-WDR. 	<ul style="list-style-type: none"> • Continuing working through the Collections System Committee to update a guidance document for Sewer System Management Plans (SSMPs). BACWA has hired a consultant to assist with this task, and work is underway. A draft SSMP guidance document was circulated in March 2024 and will be finalized in the coming months. • Complete a member survey of sewer lateral ordinances in the region. Prompted by changes to the reissued SSS-WDR and ongoing concerns about infiltration and inflow (I&I), some agencies are considering changes to their practices regarding sewer lateral maintenance and replacement. • Continue to coordinate with CASA and CWEA on training opportunities for members as they transition to enrollment under the new SSS-WDR. 	<p>State Water Board SSS-WDR page: https://www.waterboards.ca.gov/water_issues/programs/ssso/</p> <p>Reissued SSS-WDR (General Order 2022-0103-DWQ), Effective June 5, 2023 https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf</p> <p>Materials from Clean Water Summit Partners Webinars on Reissued SSS-WDR https://casaweb.org/ssss-wdr/</p> <p>SSMP and Audit Due Dates Lookup Tool from State Water Board https://www.waterboards.ca.gov/water_issues/programs/ssso/lookup/</p>

Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
LABORATORY ACCREDITATION			
<ul style="list-style-type: none"> • In May 2020, the State Water Board adopted new comprehensive regulations for the Environmental Laboratory Accreditation Program. • Adoption of the new regulations was required by AB 1438, legislation that became effective in 2018. • The new ELAP regulations replaced the previous state-specific accreditation standards with a national laboratory standard established by The NELAC Institute (TNI). • Compliance with TNI standards was required beginning January 1, 2024. 	<ul style="list-style-type: none"> • The TNI standards apply to every ELAP-certified laboratory, regardless of certificate expiration date and regardless of location. Some laboratories have not yet been assessed to the TNI standard. Starting January 1, 2024, ELAP will be sending laboratories a written request asking for information about assessment plans and requesting a TNI-compliant Quality Assurance manual. • The TNI standards pose a particular challenge to small laboratories, many of which are closing because they cannot economically meet the new standards. ELAP has reported a 15% reduction in the number of accredited laboratories in California since 2020, and a 25% reduction since 2015. This reduction is contributing to significantly higher ELAP fees for the remaining laboratories. ELAP fees increased by 30% in FY24. ELAP is investigating fee structure options that would reduce impacts on small laboratories. Fee restructuring may occur as soon as FY25. • ELAP is now implementing EPA's 2021 Method Update Rule, and has advised labs to update any outdated methods by February 2024. • In April 2024, EPA finalized the 2023 Method Update Rule. The 2023 Method Update Rule will be implemented by ELAP at a later date. 	<ul style="list-style-type: none"> • The BACWA Lab Committee will host the last Q&A session on the TNI on June 18, 2024. The free virtual training sessions have been underway since 2021 and are open to BACWA members holding a valid copy of the 2016 TNI Standard. Diane Lawver of Quality Assurance Solutions, LLC, is providing the training. BACWA's TNI training sessions are recorded, and a link is available upon request. • Participate in discussions with ELAP staff and other stakeholders regarding fee restructuring. • Review the 2023 Method Update Rule and share notable changes with BACWA members. • Continue to work through BACWA's Laboratory Committee to support members as they navigate laboratory accreditation under the new TNI standards. • Publicize training opportunities offered by consultants, ELAP, and others. 	<p>State Water Board's 'Roadmap to ELAP Accreditation' page: https://www.waterboards.ca.gov/drinking_water/certlic/labs/roadmap_to_elap_accreditation.html</p> <p>State Water Board's ELAP regulations page: https://www.waterboards.ca.gov/drinking_water/certlic/labs/</p> <p>ELAP Timeline Guidance Tool: https://www.waterboards.ca.gov/drinking_water/certlic/labs/docs/2023/elap-scheduler_002.xlsx</p> <p>ELAP Implementation of 2021 Method Update Rule: https://www.waterboards.ca.gov/drinking_water/certlic/labs/mur.html</p> <p>2023 Method Update Rule: https://www.epa.gov/cwa-methods/methods-update-rules</p>

BIOSOLIDS

<ul style="list-style-type: none"> Regulatory drivers are leading to the phase-out of biosolids used as alternative daily cover (ADC) or disposed in landfills. SB 1383, adopted in September 2016 requires organics diversion: <ul style="list-style-type: none"> -50% by 2020 (relative to 2014) -75% by 2025 (relative to 2014) CalRecycle is the state agency responsible for implementation. Regulations implementing SB 1383 went into effect in 2022. Jurisdictions can begin local enforcement January 1, 2024, and compliance is required by January 1, 2025. Requirements include: <ul style="list-style-type: none"> Diverted biosolids must be anaerobically digested and/or composted to qualify as landfill reduction. CalRecycle is accepting applications to qualify other specific treatment technologies as landfill reduction (per Article 2 of SB 1383). Local ordinances restricting land application are disallowed. While the regulations implementing SB 1383 do not explicitly forbid biosolids disposal/reuse in landfills, it is assumed that since biosolids are a relatively "clean" waste stream that can be easily diverted, landfills will stop accepting biosolids. The Bay Area Biosolids Coalition (BABC) was formed to find sustainable, cost-effective, all-weather options for biosolids management. BABC is a BACWA Project of Special Benefit. 	<ul style="list-style-type: none"> Jurisdictions that divert organic waste must also procure the end products of diversion, such as biogas, biomethane, and compost (but not biosolids). Procurement rules are being phased in over three years (2023 to 2025) and there are interim rules regarding procurement of biogas from POTWs. In 2023, Sutter County revised its ordinance to allow land application of Class A biosolids, reversing its previous ban. The change was made to conform to SB 1383. CalRecycle and biosolids stakeholders continue to conduct outreach to counties with restrictive ordinances. CalRecycle reviewed the first application under Article 2 ("H Cycle"), and determined it conditionally qualifies as equivalent to landfill diversion/reduction. CalRecycle has also been providing clarification on technologies that <i>already</i> comply with SB 1383, and need not apply under Article 2 (e.g., land application of biosolids that have not been anaerobically digested). AB 1857, signed in 2022, removes a diversion credit for municipal solid waste incinerators. CalRecycle will soon prepare draft regulations implementing the law, which could apply to biosolids treated via pyrolysis. New York and Michigan are imposing restrictions on land application of biosolids with levels of PFAS >20 ppb for PFOA or PFOS. Based on the recently completed regional study of PFAS, few BACWA members are likely to exceed those thresholds for land-applied biosolids. 	<ul style="list-style-type: none"> BACWA's next Biosolids Trends Survey Report is underway, and will cover 2021-2023. The survey has been circulated, and responses will be compiled in summer 2024. This version will replace the previous (2021) version covering 2018-2020. Review the draft questionnaire for EPA's POTW Influent Study (see PFAS page), which also functions as a nationwide biosolids survey. BACWA plans to provide comments by the May 28th due date. Continue to follow emerging science and regulatory developments regarding PFAS in biosolids (see page 9). Engage through CASA and BABC to follow development of regulations implementing AB 1857, with the goal of avoiding limits on POTWs using pyrolysis for organic waste management. Actively work through CASA with California Air Resource Board, CalRecycle, State Water Board, and California Department of Food and Agriculture to develop sustainable long-term options for biosolids beneficial use. Meet with BAAQMD regularly in 2024 to discuss alignment of state and local regulations. 	<p>BACWA 2021 Biosolids Trends Survey Report: https://bacwa.org/wp-content/uploads/2021/12/BACWA-2021-Biosolids-Trends-Survey-Report.pdf</p> <p>BABC website: http://www.bayareabiosolids.com</p> <p>CASA White Paper on SB 1383 Implementation: https://bacwa.org/document/summary-of-sb-1383-and-its-implementation-casa-2020/</p> <p>CalRecycle - Short-Lived Climate Pollutant Reduction Strategy https://www.calrecycle.ca.gov/organics/slcp</p> <p>CalRecycle Procurement FAQ (Updated by AB 1985) https://calrecycle.ca.gov/organics/slcp/faq/recycledproducts/</p> <p>SB1383 Article 2 Determination https://calrecycle.ca.gov/organics/slcp/recyclingfacilities/article2/</p> <p>SB 1383 Procurement FAQ (including interim rules for POTWs) https://calrecycle.ca.gov/organics/slcp/faq/recycledproducts/</p> <p>EPA POTW Influent Study https://www.epa.gov/eg/study-pfas-influent-potws</p>
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Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
CLIMATE CHANGE MITIGATION			
<ul style="list-style-type: none"> • CARB’s Climate Change Scoping Plan Update lays out the approach for the State to meet its greenhouse gas (GHG) emissions reduction targets through 2030. The latest Scoping Plan was updated in 2022 targeting carbon neutrality by 2045, including policies addressing: <ul style="list-style-type: none"> ○ Short-lived climate pollutants ○ Carbon sequestration on Natural and Working Lands ○ Largest emitters (transportation, electricity, and industrial sectors) • SB 1383 (Short-Lived Climate Pollutant Reduction) calls for: <ul style="list-style-type: none"> ○ 40% methane reduction by 2030 ○ 75% diversion of organic waste from landfills by January 1, 2025 ○ Policy / regulatory development encouraging production/use of biogas • BAAQMD developed a Clean Air Plan requiring GHG emissions supporting CARB’s 2050 target (80% below 1990 levels). • BAAQMD proposed the development of Regulation 13 (climate pollutants) targeting methane and nitrous oxide reductions related to organics diversion and management. After a pause of several years, BAAQMD may revisit Regulation 13 in 2024. • CARB states POTWs are part of the solution for reducing fugitive methane and encourages diversion of organics to POTWs to use available digester capacity and produce biogas. 	<ul style="list-style-type: none"> • CARB is pursuing rapid fleet conversion to zero-emission vehicles (ZEVs), including medium and heavy-duty vehicles, through the Advanced Clean Fleet rule. • AB 1594, adopted in 2023, authorizes wastewater and other “public agency utilities” to purchase traditional replacements for medium- and heavy-duty vehicles. In March 2024, CARB re-opened the Advanced Clean Fleet regulations to incorporate requirements of AB 1594. The rulemaking process is expected to be complete by early 2025 and is focused on ZEV purchase and daily usage exemptions. CASA is working with CARB on recommended language. • In addition to pushing for ZEVs, CARB is proposing changes to the Low Carbon Fuel Standard to emphasize hydrogen rather than biomethane as a transportation fuel. Proposed changes to the Low Carbon Fuel Standard were released in early 2024, and CARB intends to vote on a final version in early 2025. • Due to a 2022 CPUC mandate for the state’s four largest gas utilities, PG&E now has an active biomethane procurement program. • In 2023, EPA finalized updates to its Renewable Fuel Standard Set Rule allowing apportionment of renewable identification numbers (RINs) or “Credits for food-waste-based (D5) or sludge-based (D3) biogas. 	<ul style="list-style-type: none"> • Continue to track implementation of the Advanced Clean Fleet rule. This includes modifications to the rule being developed in 2024 that will exempt some traditional utility-specialized vehicles used by public agency utilities, per AB 1594. • Continue to advocate for changes to the Low Carbon Fuel Standards to maintain a viable pathway for biomethane used as CNG in vehicles. In 2024, CARB will continue to develop proposed changes to the Low Carbon Fuel Standards based on written comments and public workshops. • Closely follow rule development of Proposed Regulation 13 (climate pollutants), which BAAQMD may revisit in 2024. • Look for ways to inform BAAQMD on opportunities and challenges related to climate change mitigation by Bay Area POTWs, including education about anaerobic digesters and POTW operations. • Work with PG&E and BAAQMD to explore options for POTWs to inject biogas into PG&E pipelines. 	<p>Climate Change Scoping Plan, including 2022 Update: https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan</p> <p>CARB Low Carbon Fuel Standard: https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard</p> <p>CARB Advanced Clean Fleet Rule: https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets</p> <p>SB 1383: https://www.calrecycle.ca.gov/organics/slcp</p> <p>BAAQMD Regulation 13: http://www.baaqmd.gov/rules-and-compliance/rules/regulation-13-climate-pollutants</p> <p>EPA Renewable Fuel Standards: https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuels-standards-rule-2023-2024-and-2025</p> <p>PG&E Procurement: http://www.pge.com/rngrfo, & https://casaweb.org/wp-content/uploads/2023/11/PGE-at-CASA-Webinar.pdf</p>

CLIMATE CHANGE ADAPTATION

<ul style="list-style-type: none"> Climate change and water resilience are strategic priorities of both the State Water Board and Regional Water Board. In April 2019, Governor Newsom signed Executive Order N-10-19 directing State Agencies to recommend a suite of priorities and actions to build a climate-resilient water system and ensure healthy waterways through the 21st century. Bay Area coordination occurs through Bay Adapt, the Bay Area Climate Adaptation Network (BayCAN), and other venues. BACWA has signed a letter of support for the Bay Adapt Joint Platform. In April 2022, the State released a Climate Adaptation Strategy, including an updated climate change assessment for the Bay Area region. The California Coastal Commission's November 2021 <i>Sea Level Rise Planning Guidance</i> recommends that agencies "understand and plan" for 2.7 feet of sea level rise (SLR) by 2050. The Regional Water Board is modifying the Basin Plan to address climate change and wetland policy. The changes will occur through multiple Basin Plan amendments. 	<ul style="list-style-type: none"> In 2022, the Regional Water Board adopted a Climate Change Basin Plan amendment addressing dredge and fill procedures near the region's shorelines, especially for climate adaptation projects. In April 2024, the Regional Water Board released a revised version of this Basin Plan amendment for public comment. Separately from the Basin Plan amendment, the NDPES division has released information regarding permitting of nature-based solutions. Shallow groundwater response to SLR is a concern in low-lying Bay Area communities. Information about current and future depth-to-groundwater maps is summarized in a January 2023 report now available from Pathways Climate Institute and SFEI. The Bay Conservation and Development Commission (BCDC) is developing regional SLR adaptation planning guidelines for the Bay Area as part of the Regional Shoreline Adaptation Plan. The guidelines must be adopted by Dec 31, 2024, to comply with SB 272, signed by the Governor in Oct. 2023. SB 272 requires cities and counties to develop regional sea level rise adaptation plans by 2034. The Ocean Protection Council (OPC) has issued a draft 2024 SLR guidance update reflecting the latest projections. Previous projections for extreme SLR (i.e., H++ scenario) have been removed, and the range of projections has narrowed considerably, especially for 2050. 	<ul style="list-style-type: none"> Begin using the OPC's updated Sea Level Rise Guidance when it becomes available later in 2024. BACWA submitted comments on the draft guidance in March 2024. OPC plans to consider adoption of the updated guidance at its meeting on June 4, 2024. Updates to the Coastal Commission's "Critical Infrastructure at Risk" SLR planning guidance are expected to follow. Continue to develop webinars on technical topics related to climate change, such as sea level rise projections and changes in precipitation. The BACWA Climate Change Community of Practice will provide a forum to discuss these topics. Engage with BCDC during the agency's development of Regional Shoreline Adaptation Plan guidance, which will likely impact most BACWA member agencies. BACWA is participating in an advisory group for the Regional Shoreline Adaptation Plan. Prepare for engagement with the Regional Water Board on expectations for SLR planning. Continue to work with Regional Water Board and other resource agencies to look for regulatory solutions to encourage wetlands projects for shoreline resiliency. 	<p>Regional Water Board Basin Plan Amendment on Climate Change and Aquatic Habitat https://www.waterboards.ca.gov/sanfranciscobay/water_issues/pr_ograms/climate_change/</p> <p>OPC 2024 Draft Sea Level Rise Guidance https://opc.ca.gov/2024/01/draft-slr-guidance-2024/</p> <p>California Coastal Commission's <i>Critical Infrastructure at Risk</i> https://documents.coastal.ca.gov/assets/slr/SLR%20Guidance_Critical%20Infrastructure_12.6.2021.pdf</p> <p>BayCAN Funding Tracker https://www.baycanadapt.org/</p> <p>Bay Adapt Joint Platform (includes Regional Shoreline Adaptation Planning info) https://www.bayadapt.org/</p> <p>NPDES Permitting for Nature-Based Solutions https://bacwa.org/wp-content/uploads/2022/08/NPDES-Permitting-for-Nature-Based-Solutions-5.pdf</p> <p>2023 Report on Shallow Groundwater Response https://www.sfei.org/projects/shallow-groundwater-response-sea-level-rise</p>
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TOXIC AIR CONTAMINANTS

<ul style="list-style-type: none"> • Regulation 11, Rule 18 (Rule 11-18), adopted in 2017, is BAAQMD's local effort to protect public health from toxic air pollution from existing facilities, including POTWs. • Per the Rule, BAAQMD will conduct site-specific Health Risk Screening Analyses and determine each facility's prioritization score (PS). BAAQMD will conduct Health Risk Assessments (HRAs) for all facilities with a cancer PS>10 or non-cancer PS>1. After verifying the model inputs, if the facility still has PS above that threshold, that facility would need to develop and implement a Risk Reduction Plan that may include employing Best Available Retrofit Control Technology for Toxics (TBARCT). • AB 617 (Community Air Protection Program) – requires CARB to harmonize community air monitoring, reporting, & local emissions reduction programs for air toxics and GHGs). POTWs within communities already impacted by air pollution may have to accelerate implementation of risk reduction measures. • AB 2588 (Air Toxics “Hot Spots” Program) - Establishes a statewide program for the inventory of air toxics emissions from individual facilities, as well as requirements for risk assessment and public notification of potential health risks. 2020 updates expanded compound list from >500 to >1,700. 	<ul style="list-style-type: none"> • In April 2024, BAAQMD finalized updated Implementation Procedures for Rule 11-18 describing how BAAQMD will conduct HRAs. It also establishes rules for vendors or contractors to conduct HRAs, if allowed by BAAQMD. • In the <i>Final Statement of Reasons</i> for rulemaking on AB 617 and AB 2588, CARB provided the wastewater sector time to develop a short-list of relevant compounds and perform a pooled emissions estimating effort to update outdated default emission factors (through 2028). CASA is directing the statewide two-step process pooled emissions study with consultant support from Yorke Engineering. Many BACWA members are participating in the study by providing financial contributions. In FY25, BACWA will collect funds from participating BACWA member agencies. • In 2021, BAAQMD amended Rule 2-5 to reduce allowable levels of toxic air contaminants in new source permitting. In 2022, BAAQMD and BACWA convened a working group to address concerns related to toxic air contaminants and rule-making, which is meeting quarterly. BACWA is coordinating with BAAQMD about implementation of the two-step process and its timing relative to BAAQMD Rule 11-18 and 2-5. • In July 2023, the EPA announced a proposal to revise its Air Emissions Reporting Requirements (AERR). CARB has applied to submit information on behalf of California facilities. 	<ul style="list-style-type: none"> • Review and understand the updated Rule 11-18 Implementation Procedures. For most POTWs with a relatively low prioritization score, the HRAs will not occur right away. These POTWs will likely be able to use updated emissions factors from the statewide pooled emissions study, as described below. • Report “business as usual” for air toxics through 2028 (through year 2027 data). CARB is preparing a message to Air Districts confirming POTWs can delay reporting new compounds until the pooled emissions study is complete. The wastewater sector has until 2028 to perform the statewide “two-step process” pooled emissions study. • Continue participating in the BAAQMD workgroup to discuss toxic air contaminants, rule development, and related air quality regulatory issues. 	<p>BAAQMD Facility Risk Reduction Program Updates (Rule 11-18): https://www.baaqmd.gov/community-health/facility-risk-reduction-program</p> <p>BAAQMD Rule 2-5 https://www.baaqmd.gov/rules-and-compliance/rules/reg-2-permits?rule_version=2021%20Amenagements</p> <p>CARB page on AB 617 and AB 2588: https://ww2.arb.ca.gov/our-work/programs/criteria-and-toxics-reporting <i>Final Statement of Reasons</i> https://ww3.arb.ca.gov/board/15day/ctr/fsor.pdf</p> <p>Timing of Rule 11-18 vs. Process for AB 617 https://bacwa.org/document/baaqmd-rule-11-18-vs-carb-two-step-process-for-ab-617-feb-2023/</p> <p>EPA Air Emissions Reporting Requirements https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr</p>
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Background Highlights	Challenges and Recent Updates	Next Steps for BACWA	Links/Resources
RECYCLED WATER			
<ul style="list-style-type: none"> • Approximately 10 percent of the municipal wastewater of Bay Area POTWs is currently recycled. Expansion of recycled water projects is a goal of many BACWA members, but implementation is slowed by high costs and administrative requirements. • In 2018, the State Water Board adopted uniform water recycling criteria for two types of Indirect Potable Reuse: surface water augmentation and groundwater augmentation. • In December 2023, the State Water Board adopted uniform water recycling criteria for two types of Direct Potable Reuse: raw water augmentation and treated water augmentation. • As of 2020, virtually all recycled water in the Bay Area was produced at centralized facilities using municipal wastewater, and was treated to meet standards for non-potable reuse. There are not yet any Indirect or Direct Potable Reuse projects in the Bay Area, although several are in the planning stage. 	<ul style="list-style-type: none"> • The State Water Board is currently developing standards for onsite treatment and reuse of non-potable water in multi-family, mixed use, and commercial buildings. The rulemaking process for onsite non-potable reuse is slated to begin around June 2024 with a projected Board adoption later in 2024. • In June 2023, BACWA completed a Regional Evaluation of Potential Nutrient Discharge Reduction by Water Recycling, as required by the 2nd Nutrient Watershed Permit. • The State Water Board has launched a “Strike Team” to assess how California will meet new recycled water goals listed in California’s Water Supply Strategy: 800,000 acre-feet per year of recycled water by 2030 and 1.8 million acre-feet per year by 2040. The Strike Team will also document challenges to meeting these goals, such as funding. • In December 2023, the Regional Water Board approved a Basin Plan Amendment that will allow greater flexibility for NPDES permitting of reverse osmosis concentrate discharges to San Francisco Bay. In April 2024, the Basin Plan Amendment was approved by the State Water Board. The Basin Plan Amendment must be approved by the Office of Administrative Law and EPA before it goes into effect. 	<ul style="list-style-type: none"> • Review draft regulations for Onsite Non-Potable Reuse when they are released by State Water Board staff, which is expected as soon as June 2024. • Continue to provide members with technical resources related to interagency coordination, such as cost-sharing agreements and permitting. These topics are based on feedback from the September 2023 workshop on interagency collaboration in which wastewater and water agency representatives convened to discuss challenges and opportunities for expanding water recycling in the Bay Area. • Continue to track the role of recycled water projects in diverting nutrient loads from San Francisco Bay. Load reductions are expected to be a requirement of the 2024 Nutrient Watershed Permit (see page 2). • Track California legislation with potential impacts on recycled water funding, mandates, or regulations. 	<p>Water Boards Recycled Water Policy and Regulations www.waterboards.ca.gov/water_issues/programs/recycled_water/</p> <p>Direct Potable Reuse Regulations www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/dpr-regs.html</p> <p>Onsite Nonpotable Reuse Regulations www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/onsite_nonpotable_reuse_regulations.html</p> <p>BACWA Special Studies of Recycled Water and Nature-Based Systems: bacwa.org/document-category/2nd-watershed-permit-studies/</p> <p>California’s Water Supply Strategy (August 2022) Resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf</p> <p>December 2023 Basin Plan Amendment www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningmdls/amendments/NPDES_corrections.html</p>

Previously covered issues with no updates can be found in previous [BACWA issues summaries](#).

ACRONYMS

ADC	Alternate Daily Cover	PCB	Polychlorinated Biphenyl
BAAQMD	Bay Area Air Quality Management District	PFAS	Per- and Polyfluoroalkyl Substances
BACT	Best Available Control Technology	PFHxS	Perfluorohexane Sulfonic Acid
BCDC	Bay Conservation and Development Commission	PFNA	Perfluorononanoic Acid
BTU/SCF	British thermal units per standard cubic foot	PFOA	Perfluorooctanoic Acid
CalDPR	California Department of Pesticide Registration	PFOS	Perfluorooctane Sulfonic Acid
CARB	California Air Resources Board	POTW	Publicly-Owned Treatment Works
CASA	California Association of Sanitation Agencies	PS	Prioritization Score
CAP	Criteria Air Pollutant	RMP	Regional Monitoring Program
CEC	Compound of Emerging Concern	RPA	Reasonable Potential Analysis
CIWQS	California Integrated Water Quality System	SCAP	Southern California Alliance of POTWs
CVCWA	Central Valley Clean Water Agencies	SF Bay	San Francisco Bay
CWEA	California Water Environment Association	SFEI	San Francisco Estuary Institute
EC25/IC25	25% Effect Concentration/25% Inhibition Concentration	SLR	Sea Level Rise
ELAP	Environmental Laboratory Accreditation Program	SSMP	Sewer System Management Plan
ELTAC	Environmental Laboratory Technical Advisory Committee	TMDL	Total Maximum Daily Load
EPA	United States Environmental Protection Agency	TIN	Total Inorganic Nitrogen
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	TNI	The NELAC Institute
FY	Fiscal Year	TST	Test of Significant Toxicity
GHG	Greenhouse Gas	WQO	Water Quality Objective
HFPA-DA	Hexafluoropropylene Oxide (HFPO) Dimer Acid, also known as GenX	ZEV	Zero-Emission Vehicle
MCL	Minimum Contaminant Level (Drinking Water)		
MGD	Million Gallons per Day		
NACWA	National Association of Clean Water Agencies		
NELAC	National Environmental Laboratory Accreditation Conference		
NMS	Nutrient Management Strategy		
OEHHA	Office of Environmental Health Hazard Assessment		
OPC	Ocean Protection Council		

ITEM NO. RA6 PFAS UPDATES

Recommendation

For the Committee’s information only; no action is required.

Strategic Plan Linkage

2. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
 - a. Represent EBDA and the Member Agencies’ interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
 - e. Track and share scientific and regulatory developments related to emerging contaminants, and advocate for source control.

Background

Per- and polyfluoroalkyl substances (PFAS) are a large group of human-made substances that are very resistant to heat, water, and oil. PFAS have been used extensively in surface coating and protectant formulations. Common PFAS-containing products are non-stick cookware, cardboard/paper food packaging, water-resistant clothing, carpets, and fire-fighting foam. All PFAS are persistent in the environment, can accumulate within the human body, and have demonstrated toxicity at relatively low concentrations. PFOA and PFOS, two of the most common PFAS compounds, were found in the blood of nearly all people tested in several national surveys.

Discussion

Drinking Water Regulation

Regulatory efforts to address PFAS have primarily focused on drinking water in order to minimize human ingestion of these chemicals. On April 10, 2024, EPA finalized Primary Drinking Water Standards for six PFAS chemicals, establishing enforceable maximum contaminant levels (MCLs) and unenforceable maximum contaminant level goals (MCLGs):

	MCLG	MCL
Perfluorooctanoic acid (“PFOA”) Perfluorooctane sulfonic acid (“PFOS”)	Zero	4 ppt
GenX Chemicals Perfluorohexane sulfonic acid (“PFHxS”) Perfluorononanoic acid (“PFNA”) Hexafluoropropylene oxide dimer acid (“HFPO-DA”)	10 ppt	10 ppt
Mixtures containing two or more GenX or perfluorobutane sulfonic acid (“PFBS”)	1 (unitless)*	1 (unitless)

* There is no unit for this this Hazard Index MCL because it is a sum of fractions. EPA is currently developing an online calculator that will add up each fraction that represents average PFAS ratios (e.g., PFHxS/10 ppt + PFNA level/10 ppt) and see if the annual average is greater than the MCL of 1.

In California, however, public water systems will also be required to comply with California MCLs, which will be based on the new OEHHA public health goals (“PHGs”), adopted by California’s Office of Environmental Health Hazard Assessment (“OEHHA”) on April 5, 2024:

	California Public Health Goal
PFOA	0.007 ppt
PFOS	1 ppt

While the proposed MCLs are of obvious concern to drinking water agencies, they are unlikely to directly affect EBDA or our members’ wastewater operations. Where wastewater facilities discharge into waterbodies that have the potential to be drinking water sources, there is a chance that the MCLs could be implemented as effluent limits in wastewater permits. However, because EBDA discharges to the Bay, any limits on EBDA’s effluent would be more likely driven by the potential for impacts to aquatic ecosystems or fish consumption. Levels safe for aquatic health and fish consumption have yet to be defined, but likely will be in the next few years.

Additional information on the drinking water regulations and projected costs of compliance can be found in this [article](#).

Hazardous Waste Regulation

As discussed with the Committee previously, in August 2022, EPA proposed a rule designating PFOA and PFOS as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) – also known as the Superfund law. The rule was recently approved, with an effective date of July 8, 2024. The intent of this approach by EPA is to invoke a “polluter pays” principle, forcing the chemical companies that produce PFAS compounds to take responsibility for cleaning them up. The Superfund law works by triggering cleanups once contamination exceeds EPA thresholds, and another provision allows the agency to sue for cost recovery. However, the wastewater sector and other industries that are passive receivers of PFAS have argued that we should not be subject to these requirements.

There are unlikely to be any immediate ramifications to wastewater agencies from this designation because the default reportable quantity is one pound per day for PFOA and PFOS, a mass which is unlikely to be reached in wastewater agencies’ biosolids or effluent. The rule adoption was also accompanied by an [Enforcement Discretion and Settlement Policy](#) that makes clear that “EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including farmers, municipal landfills, water utilities, municipal airports, and local fire departments.” However, the wastewater sector is continuing to push for an exemption to counter the risk that the reportable quantity could be lowered in the future. Several bills

sponsored by the National Association of Clean Water Agencies (NACWA) are aimed at excluding wastewater agencies from liability.

NACWA put together an informative primer on this topic that is attached to this report.

Biosolids Regulation

The most significant area of potential vulnerability for wastewater agencies lies with regulation of biosolids. USEPA has indicated to California Association of Sanitation Agencies (CASA) staff that they are performing a risk assessment process that evaluates impacts to human health and the environment based on toxicity and exposure from biosolids. They expect to release draft risk-based values for PFOA and PFOS in biosolids in late October or early November this year, after they go through internal and external scientific review. The risk-based values will be published in the federal register and will be open for public review and comment. The draft values will represent the results of the risk assessment and will not be recommended final regulatory mandates.

Following the development of risk-based numbers, there will be a risk management analysis completed by EPA, which will look at alternatives to mitigate the potential risks. This may include inserting regulatory values inserted into the code that governs biosolids regulation, or it may include alternative management options yet to be identified. The analysis may include an aggregate risk assessment looking at all sources in the absence of biosolids regulations, and then determining the additional risk from biosolids. Working with CASA, staff will continue to track biosolids regulations at the federal level. No state level biosolids regulations are in the works at this time.

California Legislation

As noted above, because we are receivers of PFAS, the wastewater community is primarily focused on source control rather than treatment as the most effective way to address PFAS in the environment. CASA has been working with a consortium of environmental advocacy partners, including Environmental Working Group, to sponsor and support legislation targeted at companies producing products containing PFAS. Several bills approved by the legislature over the past several years that banned added PFAS in certain classes of products were vetoed by Governor Newsom, citing state agency cost concerns.

CASA and its environmental partners sponsored a new bill this session, [SB 903](#) (Skinner). The bill would have prevented the sale and use of products containing PFAS unless the use of the PFAS in the product is necessary and there is not a safer alternative available. It would have banned the sale of products containing PFAS by 2030, and would have set up a process at the Department of Toxic Substances Control (DTSC) allowing manufacturers to petition for the Department to determine whether the presence of PFAS in their product is a currently unavoidable use. Unfortunately, the Appropriations Committee's fiscal analysis cited \$10 million annually and 44 positions at DTSC to implement the program, effectively killing the bill in this year of budget shortfall.

Public Information

In the absence of regulation, and given that past studies have shown PFAS in influent to come primarily from residential and commercial sources, the best way for agencies to address PFAS today is through public education. Several agencies and organizations have collaborated to create <https://pfas411.org/>. This public-facing website contains resources and also a newsletter. CASA has also developed a [Fact Sheet](#) along with other resources posted on its PFAS website at <https://casaweb.org/renewable-resources/pfas-1/>.

EPA's PFOA and PFOS CERCLA Hazardous Substance Designations: A Primer for Clean Water Utilities

The U.S. Environmental Protection Agency (EPA) recently utilized its authority under Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the first time ever to [designate](#) two per- and polyfluoroalkyl substances (PFAS) – perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) – as CERCLA “hazardous substances.”

At the same time, EPA issued a memorandum, [PFAS Enforcement Discretion and Settlement Policy Under CERCLA](#), clarifying EPA's position that “equitable factors do not support seeking [PFAS] response actions or costs under CERCLA” from publicly owned treatment works (POTWs), municipal separate storm sewer systems (MS4s), publicly owned or operated municipal solid waste landfills, farms where biosolids are applied to the land, and community water systems, among others.

We are guessing that trying to understand what these actions mean for your utility has at some point caused you to throw up your hands in frustration.¹ Indeed, conflicting information about the potential implications of the designations for clean water utilities abounds. While that is partially because no one knows exactly how these novel actions will play out, there are some things we *do* know, resources we have available for utilities to use, and actions NACWA and our partners are taking to help contain potential negative impacts the designations could have on the water sector.

This document attempts to put all the critical information about the final rule in one place for the NACWA membership. To help make information about a statute with not just one but two commas in its title more digestible, we have organized it pursuant to frequently asked questions (FAQs) that utility members have asked us about the designations.

This document is intended for informational purposes only and does not constitute direct legal advice from NACWA. NACWA continues to strongly urge members to consult with counsel to obtain advice concerning the potential impacts of the rule on their individual utility. That said, we do hope this document encourages utilities to follow one piece of important, non-legal, advice: don't panic!

¹ Or maybe that's just us.

These designations are troubling, but we as a sector will do what we always do – work collaboratively and diligently to protect human health and the environment, even when decisions are made that lead to unnecessarily complicated policy outcomes. Please contact NACWA’s General Counsel, [Amanda Aspatore](#), with any questions.

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Question 1: We are Clean Water Act people. What is this CERCLA statute of which you speak?

CERCLA is the federal environmental statute dedicated to the cleanup of hazardous substances, particularly legacy contamination sites. Have you heard of the Love Canal? Where Hooker Electrochemical Company (now Occidental Chemical Corporation) buried over 21,000 tons of dangerous chemicals in leaky drums in New York State and then sold the property to a local school district for \$1.00, thereby causing major soil and groundwater contamination and a public health disaster? CERCLA was Congress' response to that.

How CERCLA Works

CERCLA gives EPA the authority to order or conduct short-term removal actions where there are releases or threatened releases of hazardous substances requiring a prompt response, as well as longer-term remedial actions specifically designed to permanently reduce dangers to the environment and human health associated with releases or threatened releases of hazardous substances.

To fund these removal and remediation actions, CERCLA establishes liability for "potentially responsible parties" (PRPs) for releases of hazardous substances, as well as a trust fund (called the "Superfund") to pay for cleanups when no responsible party can be identified.

In the wake of the Love Canal, Congress was focused on ensuring that, wherever possible, the parties responsible for causing contamination perform or pay for its cleanup. Congress therefore did two things when it enacted CERCLA: (1) defined the scope of PRPs very (very, very) broadly; (2) made liability for that broad range of PRPs strict, joint and several, and retroactive (i.e., you didn't have to know you were causing contamination to be liable, and if you caused *any* of the contamination at a site, you are potentially legally responsible for the cost of cleaning up the *whole* site).

Under CERCLA's structure, EPA can sue PRPs to force them to conduct or fund cleanups, private parties who voluntarily conduct cleanups of designated hazardous substances can seek reimbursement from PRPs, and PRPs can sue *other* PRPs to try to make them pay for at least some of the costs of any of those cleanups. Think "cleanup funding cage matches," but way less fun and with lawyers instead of professional wrestlers.

CERCLA also includes certain reporting requirements related to releases of hazardous substances that will become effective for PFOA and PFOS when the rule takes effect on July 8, 2024. While we do not anticipate that many utilities will release PFOA or PFOS in

large enough quantities to trigger these requirements, utilities should be aware of them, and they are discussed in more detail in Question 3 below.

Importantly, we want to flag for utilities that CERCLA is primarily focused on site-specific cleanups of and liability for pollution that has *already occurred*. It is not a forward-looking permitting statute, such as the Clean Water Act (CWA), which utilities are more familiar with. As EPA explains in the preamble of the rule:

CERCLA is unlike traditional environmental statutes that prospectively regulate, among other things, how facilities operate and provide limitations on discharges, emissions, releases, or disposal of certain chemicals into water, air, or land. Instead, CERCLA is designed to address contamination already in the environment on a site-specific basis, which includes evaluating the nature, extent, and risk to human health and/or the environment from the release.

As we go through the information below, it is important to keep in mind that CERCLA does not address everyday operations and permitting, nor, outside of reporting requirements, does it set categorical standards for what types or amounts of releases of a hazardous substance may warrant a particular response.² We aren't saying remembering that will make everything else make sense, but it will help.

National Priorities List

When EPA receives a report of a potentially hazardous waste site, it reviews historical information and visits the site to assess the potential for releases of hazardous substances, determine if the site poses an immediate threat to human health and the environment, and decide whether additional information should be collected. EPA then employs the Hazard Ranking System,³ which looks at factors ranging from toxicity to the

² EPA did recently strengthen its [Regional Screening Levels \(RSLs\)](#) for certain PFAS, including PFOA and PFOS, for tap water and soil. RSLs are not de facto cleanup levels, but instead are risk-based values EPA uses in its CERCLA implementation to help determine if further investigation or other actions, such as sampling or additional risk assessments, are needed at a site. EPA lowered the PFAS RSLs based on the strict cancer slope factors used in the recently finalized Safe Drinking Water Act PFAS National Primary Drinking Water Regulation.

³ The Hazard Ranking System focuses on four major pathways: groundwater, surface water, soil exposure / soil vapor intrusion, and air mitigation.

presence of sensitive populations, and ultimately proposes to list the worst hazardous waste sites on the National Priorities List (NPL).⁴

Once EPA has decided to list a site on the NPL, that begins the formal process for EPA to study the site and select and implement a remedy. This process is often long and complex, and involves remedial investigation,⁵ a feasibility study,⁶ a proposed cleanup plan,⁷ a Record of Decision (ROD)⁸ in which a remedy is adopted, and then implementation of the cleanup plan by either EPA or PRPs.^{9,10} Following completion of the selected remedy, EPA will also conduct monitoring and reviews to determine whether the remedy is intact or if further action is necessary.

EPA searches for PRPs early in the cleanup process to begin negotiating with them concerning either paying for or performing the cleanup. This search can include document review, title searches, site investigation, interviews, and information request letters. The Agency informs PRPs of their potential liability at an NPL site through general

⁴ EPA proposes NPL listings in the *Federal Register* and holds a public notice and comment period prior to making a listing determination.

⁵ During remedial investigation, EPA characterizes contamination at the site through sampling efforts, sets levels of contamination reduction the cleanup will seek to achieve (called “preliminary remediation goals”), conducts community outreach, and begins to establish an Administrative Record.

⁶ Feasibility studies include evaluation of the potential performance and cost of treatment options. Treatment options are supposed to be “cost effective.”

⁷ These can include phased implementation, and focus on source control and removal of hazardous substances. EPA holds a public comment period and conducts public meetings on proposed cleanup plans.

⁸ RODs describe the contamination present, response actions that need to be taken, and the remedy selected. They serve as the basis for all subsequent orders to PRPs to perform remedial work.

⁹ EPA can perform the remedy itself, but typically will issue unilateral orders or enter into administrative orders on consent with PRPs to perform (or contribute funding for) the remedial work.

¹⁰ As noted above, private parties can also undertake voluntary cleanups of hazardous substances. To obtain cost recovery for such cleanups under CERCLA, they must be consistent with the National Contingency Plan, which generally requires that they include similar steps to those undertaken by EPA, including public participation, remedial investigations, and feasibility studies considering different treatment technologies and appropriate remedies.

notice letters, and then sends special notice letters when it is ready to negotiate with the PRP to clean up a site or fund its cleanup.¹¹

Who Is Liable Under CERCLA

CERCLA Section 107(a) outlines the following categories of persons or entities that may be liable for the costs or performance of cleanups of hazardous substances:

- (1) Current owners and operators of a facility where hazardous substances come to be located;
- (2) Owners and operators of a facility at the time that hazardous substances were disposed of at the facility;
- (3) Generators and parties that arranged for the disposal or transport of the hazardous substances;
- (4) Transporters of hazardous waste that selected the site where the hazardous substances were brought.

A lot of the terms in those four bullet points are legal works of art,¹² but suffice it to say that several types of “releases” or “disposals” of hazardous substances can lead to clean water utilities falling into one (or more) of those four categories of PRPs, including discharges of effluent (including end-of-pipe, combined sewer overflows [CSOs], sanitary sewer overflows [SSOs], and stormwater), as well as all three biosolids management practices (incineration, land-filling, and beneficial land application).

In other words, all of the work utilities do to protect human health and the environment in their communities every day can expose them to CERCLA liability when hazardous substances – like PFOA and PFOS – are entering their systems. While downplaying the threat this fact poses to utilities and public ratepayers (more on that later), EPA does acknowledge it in its enforcement discretion memo, which explains:

Community water systems and POTWs conduct public services by providing safe drinking water and managing and processing public waste. These entities are required to treat PFAS-contaminated sources of drinking water and receive PFAS-contaminated wastewater. They do not manufacture PFAS nor use PFAS as part of an industrial process. Through their operation processes, these parties may discharge

¹¹ Additional information concerning EPA’s general CERCLA enforcement activities, PRP identification and communication, negotiations, and settlements can be found at <https://www.epa.gov/enforcement/superfund-enforcement>.

¹² Some definitely lean in the direction of a Jackson Pollock painting, if you catch our drift.

effluents, dispose or manage sewage sludge, biosolids, and drinking water treatment residuals; and arrange for the disposal of spent treatment media (i.e., activated carbon filters, anion exchange media, or membranes) and/or the discharge of leachate, permeate, or regeneration brines.¹³

Existing CERCLA Exclusions Potentially Applicable to Clean Water Utilities

CERCLA does include several exclusions and defenses against liability that can apply to clean water utilities. Though limited in scope, they are important shields that have protected utilities from unwarranted CERCLA liability in the context of other hazardous substances and could provide some relief in the context of PFOA and PFOS under certain circumstances. Two of the most common are the exclusion from the definition of covered “releases” of (1) “federally permitted releases” and (2) the “normal application of fertilizer.”

Federally Permitted Releases

“Federally permitted releases” not subject to CERCLA liability or reporting requirements are just what they sound like: “releases” (i.e., discharges, emissions, etc.) made pursuant to certain permits issued under a federal environmental statute, including discharges under a CWA National Pollutant Discharge Elimination System (NPDES) permit.¹⁴ Specifically, the CERCLA federally permitted release exclusion applies to: (A) discharges in compliance with an NPDES permit; (B) discharges “resulting from circumstances identified and reviewed and made part of the public record” with respect to an NPDES permit; and (c) continuous or anticipated intermittent discharges from a point source identified in an NPDES permit that are “caused by events within the scope of relevant operating or treatment systems.”¹⁵

While the general concept of the federally permitted release exclusion is clear, as you may have guessed from the statutory language quoted above, its scope is a little blurry. EPA has issued limited guidance on the exemption and few courts have addressed its application. In 1988, EPA proposed a rule on federally permitted releases, but that rule was

¹³ The memo makes similar acknowledgements for MS4s and publicly owned or operated municipal solid waste landfills, and also states that farms that apply biosolids as a soil amendment “provide for a beneficial application of a product from the wastewater treatment process...[which] can result in both economic and resource management benefits, including conservation of landfill space, reduction in methane gas from landfills, reduction of releases from incinerators, and reduced demand for synthetic fertilizers.”

¹⁴ The federally permitted release exemption also applies to certain permits issued under the Clean Air Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act.

¹⁵ CERCLA § 101(10)(A)-(C).

never finalized. Even so, the preamble to that proposed rule confirmed that EPA at least at that time considered the scope of the NPDES permit exemption to include both pollutants discharged in compliance with the effluent limitations in an NPDES permit, as well as pollutants and other conditions that were reflected in the permit application process and made part of the public record.¹⁶

Unfortunately, however, EPA is less willing to make such statements these days. In the enforcement discretion policy accompanying the PFAS designations, when addressing NPDES effluent discharges from POTWs, EPA instead states that it “does not take a position on the applicability of a ‘federally permitted release’ as defined in CERCLA section 101(10).”¹⁷

Even assuming that courts will find that “federally permitted releases” include both NPDES-permitted discharges compliant with effluent limitations and releases of pollutants addressed in the permit application process but not limited in the permit (which we certainly hope they do), there are important limitations on the federally permitted release exclusion utilities should be aware of. Releases of hazardous substances that are listed in a facility’s NPDES permit which exceed the applicable permit limit are not considered “federally permitted releases.”¹⁸ Discharges that EPA contends are “unpermitted,” such as SSOs, are also not likely to be covered. And the exclusion is unlikely to be available for past discharges made pursuant to permits that did not include consideration of PFOA and PFOS which, given CERCLA’s retroactivity, can potentially be the source of considerable liability in the context of so-called “forever chemicals.”

The Normal Application of Fertilizer

The other primary exclusion applicable to utilities is that for the “normal application of fertilizer.”¹⁹ Past EPA guidance indicates that the land application of biosolids as a soil

¹⁶ See 53 Fed. Reg. 27271-72 (Jul. 19, 1988).

¹⁷ EPA points to a decision from the U.S. Court of Appeals for the D.C. Circuit in support of its position that “section 102 is [not] the appropriate mechanism to establish liability exclusions, and EPA questions whether it has the authority to do so through this provision.” *Kelley v. EPA*, 15 F.3d 1100, 1108 (D.C. Cir. 1994) (“Congress...has designated the courts and not EPA as the adjudicator of the scope of CERCLA liability”). This is also the case EPA has alluded to when asked by NACWA and others to conduct separate rulemakings clarifying the scope of the existing statutory exclusions for “federally permitted releases” and the “normal application of fertilizer” in the context of PFAS.

¹⁸ See, e.g., [POTW Management](#) at 14-15.

¹⁹ 42 U.S.C. § 9601(22).

amendment in accordance with 40 CFR Part 503 constitutes the normal application of fertilizer, and thus would typically not be considered a covered “release” subject to CERCLA liability and reporting requirements.²⁰

Again, however, EPA’s statements on the scope of the exclusion in the context of the PFOA and PFOS designations are not giving us warm and fuzzy feelings. Specifically, EPA states in the final rule that:

EPA acknowledges that the CERCLA definition of ‘release’ explicitly excludes the ‘normal application of fertilizer.’ EPA believes this language is best read as requiring a site-specific analysis and that a categorical exclusion for all contaminated biosolid application using section 102(a) risks exceeding the limits of the exclusion as envisioned by Congress.²¹

EPA goes on to state that “site-specific decisions are also the more appropriate opportunity to evaluate unacceptable risk posed by specific releases, rather than a blanket exclusion for certain uses of PFAS-containing materials that may not account for site-specific risk.”²² Not exactly the clear statement excluding beneficial land application of municipal biosolids from CERCLA liability that NACWA and the agricultural sector want to see.

Nor have court decisions been particularly illuminating to date. Few courts have evaluated the applicability of the exclusion, and some that did have taken a limited view of its scope. In particular, courts have struggled to define what constitutes the “normal”

²⁰ See, e.g., EPA, [A Plain English Guide to the EPA Part 503 Biosolids Rule](#), at 52–53 (1994). See also, e.g., *Standards for the Use or Disposal of Sewage Sludge*, 58 FR 9248-01 (Feb. 19, 1993) (“If the placement of sludge on land were considered to be ‘the normal application of fertilizer,’ that placement could not give rise to liability under CERCLA. Today’s rule, as previously noted, establishes standards for sewage sludge when applied to the land for a beneficial purpose (i.e., as a fertilizer substitute or soil conditioner). Sludge placed on the land for such beneficial purpose and applied in compliance with the requirements for land application of sewage sludge provided in §§ 503.13(b) (2) and (4), § 503.14 and § 503.15 (where applicable) of the final rule today, and in accordance with accepted agricultural practices using appropriate application rates, which constitutes the normal application of fertilizer, does not constitute a ‘release.’”).

²¹ See Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, U.S. Environmental Protection Agency, 89 Fed. Reg. 39124, 39168 (May 8, 2024).

²² See 89 Fed. Reg. 39169.

application of fertilizers, with some even reaching the conclusion that the presence of hazardous substances suggests that the application is not “normal.”²³

As discussed further below, given these uncertainties and the limitations of existing exclusions, NACWA and our sector partners are continuing our efforts to obtain more comprehensive statutory protections against unwarranted PFAS CERCLA liability for utilities.

Question 2: What does this new rule do?

PFOA and PFOS “Hazardous Substance” Designations

Under CERCLA Section 102(a), EPA can designate as “hazardous substances” any elements, compounds, mixtures, solutions or substances “which, when released into the environment, may present substantial danger to the public health or welfare or the environment.” The rule outlines EPA’s determinations that PFOA and PFOS present such a danger based on available scientific and technical information.

Specifically, the rule states that “in consideration of the evidence of adverse effects to human health and the environment from PFOA and PFOS exposure, their persistence and mobility in the environment, and the significant potential for human exposure due to their prevalence in the environment, EPA concludes that PFOA and PFOS may present a substantial danger to public health or welfare or the environment when released.” As such, the rule amends the CERCLA list of hazardous substances at 40 CFR Part 302.4 to include PFOA and PFOS, including their salts and structural isomers.

Notably, EPA has never designated a CERCLA hazardous substance under Section 102(a) before. The hundreds of other existing CERCLA hazardous substances were

²³ See *Sheridan v. D&D Grading, Inc.*, No. 16-CV-5085(JS)(ARL), 2019 WL 1433086, at *5 (E.D.N.Y. Mar. 29, 2019) (“Plaintiffs argue that ‘the normal application of fertilizer’ permits only that, and appear to argue that ‘fertilizer’ such as this, containing numerous hazardous substances, does not fall within the exception. The Court agrees.”); *Fallowfield Dev. Corp v. Strunk*, No. CIV. A. 89-8644, 1994 WL 498316, at *1 (E.D. Pa. Sept. 2, 1994), *aff’d sub nom. Fallowfield Dev. Corp. v. Strunk*, 96 F.3d 1432 (3d Cir. 1996) (holding application of “sludge” fertilizer on cornfields “not ‘normal’ because it was contaminated” with lead and chlorinated solvents). See also, *United States v. Morrison-Quirk Grain Corp.*, No. CV88-L-720, 1990 WL 482139, at *4 (D. Neb. May 4, 1990) (application of pesticide according to manufacturer’s instructions and industry practice not “normal application” where pesticide leached down into grain elevator); *City of Tulsa v. Tyson Foods, Inc.*, 258 F. Supp. 2d 1263, 1288 (N.D. Okla. 2003), *vacated pursuant to settlement* (July 16, 2003)(denying summary judgment and holding that interpretation of “normal application of fertilizer” is a fact-based inquiry).

automatically listed because they were first found to be CWA hazardous substances or toxic pollutants, Clean Air Act (CAA) hazardous air pollutants, Resource Conservation and Recovery Act (RCRA) hazardous wastes, or Toxic Substances Control Act (TSCA) imminently hazardous substances.²⁴

In other words, this is the first time EPA has subjected substances to CERCLA's cleanup and liability regime without first addressing the substances under its primary air, water, waste and toxics laws. This has led to questions about what sites may rise to the level of needing remediation and what the appropriate cleanup standards should be. The indestructible nature and ubiquity of PFAS likewise present unique challenges in the context of CERCLA's traditional removal and remediation processes (which, as we noted, were crafted with abandoned leaking barrels in mind).²⁵

EPA downplays many of these questions and concerns in the preamble of the final rule, stating that CERCLA actions are always driven by site-specific cleanup levels (known as "applicable or relevant and appropriate requirements," or ARARs), and pointing to the recently promulgated PFOA and PFOS Safe Drinking Water Act (SDWA) maximum contaminant levels (MCLs), as well as certain state PFAS standards, as examples of potential PFAS ARARs.²⁶ EPA also takes the position that "many of the same response and cleanup methods available" to address other hazardous substances can be used to remove and remediate PFAS, including, for example, asserting in the Regulatory Impact Analysis that "wastewater treatment plants may dispose of sludge by incineration which can destroy PFOA and PFOS under certain conditions."²⁷

²⁴ More on Congress' inability to break out a thesaurus and find synonyms for the word "hazardous" below.

²⁵ We may have PFAS in our homes and bodies, but last we checked we didn't have barrels from Oxy Chem laying around the kitchen. Expired cereal is about the worst we've got going on in that regard.

²⁶ See 89 Fed. Reg. 39171-72 ("the current regulatory landscape for PFOA and PFOS is sufficient to inform future remedies, and regulatory actions to address PFOA and PFOS are increasing").

²⁷ While NACWA strongly supports the ongoing efforts by wastewater utilities and others to study potential thermal PFAS destruction technologies, this assertion came as a bit of a surprise to us given that EPA's recently released document, [Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances – Version 2 \(2024\)](#), states that "there is low confidence in the reliability of [SSIs] to control PFAS releases." NACWA was also troubled by EPA's lack of acknowledgement of incinerator capacity constraints throughout the country, which have, somewhat ironically, been largely driven by stringent EPA air regulations.

NACWA is continuing to evaluate EPA's assumptions underlying the rule, as well as how CERCLA removal and remediation actions for PFOA and PFOS may impact utilities. Suffice it to say, however, that we are not yet convinced of EPA's rosy outlook for applying a strict liability federal cleanup regime to ubiquitous substances that were commercially engineered to be indestructible, that we do not yet know how to treat for in the volume of wastewater and biosolids generated daily, and for which we do not yet know what concentrations will be considered protective of public health and the environment.

"Totality of the Circumstances" Analysis

In EPA's initial proposal to designate PFOA and PFOS as hazardous substances, the Agency took the position that CERCLA Section 102(a) precluded them from considering any costs of the designations when making their determination. NACWA and others found the assertion that EPA was somehow legally precluded from considering whether they were about to effectively turn every American washing a non-stick pan into a hazardous substance transporter...questionable. Apparently upon further reflection, so did their counsel.

EPA states in the final designations that it "is not resolving whether section 102 is best construed as precluding or requiring consideration of costs in designating a hazardous substance."²⁸ Rather, EPA determined that, whether just looking at science and technical information or also including consideration of costs pursuant to a "voluntary" "totality of the circumstances" analysis,²⁹ the designations are justified.

In particular, while downplaying the potential impacts – including the costs associated with complex litigation and environmental cleanups – which the designations could impose on utilities, EPA focused on the benefits associated with achieving more timely cleanups of contaminated sites and, allegedly, "holding polluters accountable for contamination they caused (i.e., the "Polluter Pays" principle)."^{30, 31} NACWA continues to

²⁸ Likely translation: we didn't like our arguments either and would now like to ghost them.

²⁹ According to EPA, this expanded economic assessment includes a Regulatory Impact Analysis (RIA) which is consistent with E.O. 12866 and OMB Circular A-4.

³⁰ See 89 Fed. Reg. 39125.

³¹ EPA failed to respond to concerns raised by NACWA that, in many instances, PFAS manufacturers may be able to fully escape CERCLA liability for PFAS cleanups. Federal court cases interpreting CERCLA, including one from the U.S. Supreme Court, have held that companies that manufactured but were not involved in disposing of a hazardous substance are not responsible for cleaning it up. Thus, unless the manufacturer was involved in the actual disposal, CERCLA would currently not hold them accountable for the environmental damage they caused. See, e.g., *Burlington Northern and*

evaluate EPA's "totality of the circumstances" analysis and its potential legal vulnerabilities, and has serious concerns about how it addresses the costs the rule could impose on clean water utilities.

EPA Enforcement Discretion Policy

The same day EPA put out the pre-publication version of the PFOA and PFOS hazardous substance designations, the Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance, David Uhlmann, issued a memorandum to EPA's Regional and Deputy Administrators and Counsels, [PFAS Enforcement Discretion and Settlement Policy Under CERCLA](#). In that memo, EPA indicates that it does not intend to seek response actions or costs under CERCLA related to PFOA and PFOS from POTWs,³² MS4s,³³ community water systems,³⁴ municipal solid waste landfills, or farms applying biosolids, as "equities do not support" doing so.³⁵

Moreover, the memorandum outlines how EPA intends to help shield those entities (let's call them "passive receivers" here for ease of use) from third-party suits brought by other PRPs for PFAS-related cleanup costs by doing two things: (1) requiring other PRPs to waive their rights to sue passive receivers as a condition of settling their own liability with

Santa Fe Ry. Co. v. U.S., 556 U.S. 599 (2009) (holding where a company makes a "useful product" but is not engaged in its ultimate "disposal," the company is not responsible for CERCLA cleanups necessitated by contamination from that product).

³² Defined as "a treatment works (as defined by CWA section 212) that is owned by a state or municipality (as defined by CWA section 502(4))."

³³ Defined as "a conveyance or system of conveyances that is: owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.; designed or used to collect or convey stormwater (e.g., storm drains, pipes, ditches); not a combined sewer; and not part of a sewage treatment plant or POTW. See 40 C.F.R. § 122.26(b)(8)."

³⁴ Defined as "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. See 40 C.F.R. § 141.2."

³⁵ The memo also directly applies to publicly owned airports and local fire departments, and states that EPA will consider applying it to additional entities (presumably contractors) working on behalf of state, local, and tribal governments to perform public services related to drinking water, stormwater, wastewater, residuals, biosolids, and solid waste management. When determining applicability to the later group, EPA states that it will consider whether the entity manufactured or used PFAS, and to what degree the entity is actively involved in the use, storage, treatment, transport, or disposal of PFAS.

EPA; and (2) entering into settlements³⁶ with passive receivers which would then legally protect them from contribution claims by other PRPs³⁷ seeking to make them pay more.

EPA notes in the memorandum that this enforcement discretion policy does not apply to PFAS reporting requirements (see Question 3 below), nor does it extend to enforcement actions taken under any other EPA programs or statutes. And it includes the familiar disclaimer language that it is non-binding and “is intended solely for the guidance of employees of the Agency.”³⁸ Nevertheless, the memorandum provides a clear, helpful statement that EPA does not believe the water sector should be held accountable under CERCLA for PFAS cleanups.

Obtaining such a clear enforcement discretion policy was a major goal of NACWA’s administrative advocacy. NACWA thanks our member utilities who diligently and successfully conveyed to EPA the critical need for such a policy and were instrumental to its adoption.³⁹

Question 3: What do I need to do immediately to comply with the new rule?

Importantly, PFOA and PFOS CERCLA cleanups will not start overnight. For new EPA-led cleanup actions, site evaluation and selection alone will likely take years or more. Other actions, including private party cleanups, reopening of existing cleanup plans to address PFOA and PFOS, and short-term removal actions, could begin sooner, but are still not automatically triggered by the rule. The only requirements the rule directly puts into place

³⁶ The memo notes that these settlements can include *de minimis* or *de micromis* settlements, limited “ability to pay” settlements that address undue financial hardships, and settlements requiring in-kind services including monitoring and implementation of institutional controls.

³⁷ The memo also points out that passive receivers can themselves seek settlement with EPA so as to be able to take action to address contamination while obtaining protection from potential contribution claims from other PRPs.

³⁸ In other words, EPA, courts, and other PRPs are not bound by it.

³⁹ In particular, NACWA thanks NACWA Board of Directors members Mike Witt, General Counsel, Passaic Valley Sewerage Commission, and Tom Sigmund, Executive Director, NEW Water, as well as NACWA’s Legal Affairs Committee Co-Chairs, Devon Goodrich, Senior Counsel, New York City Department of Law, and Emily Jackson, Chief Legal Officer, Metro Water Recovery, for their tireless advocacy on this issue on behalf of the NACWA membership.

which may immediately impact utilities once the designations take effect on July 8, 2024, are those related to reporting.

New Reporting Requirements

Under CERCLA Sections 103 and 111(g), facilities – including clean water utilities – must report releases of any PFOA, PFOS, their salts or structural isomers at or above the reportable quantity (RQ) of one pound or more within a 24-hour period⁴⁰ to the National Response Center as soon as they have knowledge of the release. Facility owners or operators must also provide reasonable notice to potentially injured parties.

Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) separately requires facility owners or operators to immediately notify their community emergency coordinator for the local emergency planning committee (LEPC) about any area likely to be affected by the RQ release, notify the State Emergency Response Commission (SERC) of any State or Tribal region likely to be affected, and submit a follow-up written report to their SERC and LEPC as soon as practicable after the release.

Application to Clean Water Utilities

As noted above, effluent discharges (including end-of-pipe, CSOs, SSOs, and stormwater) and biosolids management activities (including land application, landfilling, and incineration) can all be considered “releases” under CERCLA subject to these reporting requirements. However, the same exclusions that may shield utilities from cleanup liability for certain releases – including those for “federally permitted releases”⁴¹ and the “normal application of fertilizer” – also exempt those releases from CERCLA and EPCRA reporting requirements.

Even where utility releases are not covered by an exemption, NACWA does not anticipate that most utility effluent discharges or biosolids management activities will release enough PFOA or PFOS to trigger the one pound within 24-hours reportable quantity threshold. Additionally, non-exempted releases can qualify for reduced reporting

⁴⁰ This is the statutory default RQ. While EPA may change the RQ for either PFOA or PFOS under CERCLA, it must do so through a formal notice-and-comment rulemaking process, and EPA has not indicated that it intends to set a different RQ for either PFOA or PFOS at this time.

⁴¹ EPA notes in its response to comments that “generally, any release that violates a standard or limit specified in a facility’s NPDES permit must be reported pursuant to CERCLA section 103 and EPCRA section 304. If the permit limit is below the RQ for these substances, those releases are not required to be reported.” See 89 Fed. Reg. 39175.

obligations if they are “continuous releases.”⁴² However, NACWA notes that EPA did not provide answers in the final rule to questions posed by NACWA and others concerning how to consider simultaneous releases across plants or systems, or how to determine release quantities when inputs of PFOA or PFOS into a system fluctuate.

To help determine whether your effluent discharges or biosolids management practices may trigger reportable releases, you can utilize NACWA’s [Reportable Quantity Calculator](#). The calculator includes information on average concentrations of PFOA and PFOS in wastewater and biosolids from recent research, but utility-specific data is recommended if there is a likelihood that your utility may be exceeding the RQ due to high daily flows or large daily quantities of land application. Utilities should use the calculator as a screening tool only, not for making regulatory determinations. NACWA also encourages utilities who may have PFOA or PFOS in their effluent discharges or biosolids to consult with counsel to ensure they are complying with CERCLA’s reporting requirements.

Duty to Investigate

Importantly, the rule is unclear with respect to whether utilities need to affirmatively investigate whether a reportable quantity of PFOA or PFOS has been released. In response to questions concerning whether the designations effectively require monitoring under certain circumstances, EPA states that “this rule does not require monitoring and analysis specifically.”⁴³

Generally speaking, both CERCLA and EPCRA require the person in charge of a facility to notify the applicable authorities when they have *knowledge* that there has been a release in excess of an RQ. Some courts and administrative law judges have interpreted this to

⁴² See 42 U.S.C. § 9603(f); 52 Fed. Reg. 13381, 13384 (Apr. 22, 1987). Facilities may report releases that are “continuous” and “stable in quantity and rate” either on a per occurrence basis or as a “continuous” release. Reporting as a “continuous release” includes the following three steps: (1) initial notification by phone, (2) follow-up written report within 30 days after initial notification, and (3) additional written report on the first anniversary of the initial 30-day written report. No additional reporting is required, unless there is a statistically significant increase in the hazardous substance released or there are other changes to the character of the release. Detailed guidance regarding the requirements and criteria for this exemption can be found in EPA’s [Reporting Requirements for Continuous Releases of Hazardous Substances](#).

⁴³ We could have done without the “specifically.” However, EPA does later state that “EPA does not intend to require any further testing beyond that which is already required by other statutes and their implementing regulations,” though “testing may be required on a site-specific basis, consistent with CERCLA section 104(b).”

require reporting where there is either *actual* or *constructive* knowledge.⁴⁴ As such, where a utility has a strong reason to believe that PFOA or PFOS are present in a non-exempt discharge, it is possible that the utility could have an obligation to investigate and, where applicable, report.⁴⁵

Utilities should also note that, if reporting is required, notification must be made *immediately*⁴⁶ upon knowledge of a release of a hazardous substance in excess of the reportable quantity.⁴⁷

State Laws

Some state environmental laws cross-reference CERCLA's hazardous substances list, and their requirements may therefore apply to PFOA and PFOS once the designations take effect. NACWA encourages utilities to review and discuss with counsel their applicable state laws, as what, if any, additional state requirements may become immediately applicable for utilities will vary by state.

Indirect Impacts

While difficult to predict and not specifically required by the final rule, some utilities may also face more immediate indirect impacts upon its finalization. For example, just as utilities will be looking at taking steps to mitigate their own potential liability under CERCLA, landfill operators, farmers and other biosolids partners will likely be doing the same, and as a result may change their own policies and practices with respect to municipal biosolids. Likewise, pressure from the media and citizen groups, as well as local political pressure, may impact utility next steps. NACWA has and is continuing to develop resources to help utilities navigate these issues, including a [communications toolkit for PFAS and biosolids](#).

⁴⁴ See, e.g., *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693, 707 (W.D. Ky. 2003) (quoting *In the Matter of Thoro Products Co., Respondent*, No. EPCRA VIII-90-04, 1992 WL 143993, at *11 (May 19, 2002)).

⁴⁵ This could include, for example, an SSO that a POTW knows or has reason to know is downstream from a facility that uses or manufactures PFAS.

⁴⁶ The rule did not provide information concerning how to account for delays in analytical reports.

⁴⁷ See EPA, [Emergency Release Notifications: EPCRA Section 304 and CERCLA Section 103](#).

Question 4: Does the fact that PFOA and PFOS are “hazardous substances” mean that, legally, I now have to manage biosolids or treat effluent containing PFOA or PFOS differently?

No, it does not. Before we explain why, we feel the need to give a public service warning. What we are about to say will make you want to shred the next few paragraphs to pieces. That is understandable, we simply ask that you not blame the messenger.⁴⁸

As previously mentioned, CERCLA is primarily a backwards-looking statute that addresses legacy contamination. While utilities will want to consider what actions they are currently taking that may expose them to potential CERCLA liability in light of the designations – and may ultimately be required to take certain actions as part of an adopted removal or remediation plan under CERCLA – CERCLA does not impose general substantive requirements on the handling or disposal of “hazardous substances.”

There is a federal statute that imposes cradle-to-grave requirements on certain dangerous substances: the Resource Conservation and Recovery Act (RCRA). Under RCRA, “hazardous wastes”⁴⁹ – which are different from CERCLA hazardous *substances*⁵⁰ – are subject to substantive transportation, treatment, storage, and disposal requirements.⁵¹

⁴⁸ In case you don’t believe us – which we really couldn’t fault you for – EPA’s website includes information on all of these topics: <https://www.epa.gov/hw/frequent-questions-about-hazardous-waste-identification>.

⁴⁹ RCRA hazardous wastes are solid wastes that have properties that make them dangerous or capable of having a harmful effect on human health or the environment. Under RCRA, wastes are designated as hazardous either under a hazardous waste listing (which are wastes from specified manufacturing or industrial processes), or under a characteristic determination (which looks at the waste’s ignitability, corrosivity, reactivity, and toxicity).

⁵⁰ And just to confuse everything a little bit more, as we mentioned above, all RCRA hazardous wastes are automatically designated as CERCLA hazardous substances. But CERCLA hazardous substances are not automatically designated (or regulated) as RCRA hazardous wastes. It’s a one-way street.

⁵¹ We note that wastes within wastewater utility collection and treatment systems are generally excluded from RCRA’s requirements pursuant to RCRA’s domestic sewage exclusion. However, wastes, including biosolids, outside of such facilities typically must be independently evaluated to determine whether they meet the definition of “hazardous waste” and are thereby subject to RCRA’s management and disposal requirements. We will leave further explanation of that for another day – we’ve done enough damage to your sanity for now.

EPA has not yet proposed to designate any PFAS as RCRA hazardous wastes. Therefore, federal requirements related to how to handle and dispose of them do not apply at this time. However, in what may ultimately be a precursor to a RCRA hazardous waste designation, EPA has proposed to list nine PFAS, including PFOA and PFOS, as RCRA “hazardous constituents.”⁵² EPA considers RCRA hazardous constituents to be chemicals of concern that may be appropriate for a hazardous waste designation. So, stay tuned, but for now no PFAS are subject to regulation as RCRA hazardous wastes.⁵³

Nor are there currently other federal PFAS-specific requirements that would, for example, directly dictate what types of landfills⁵⁴ you can bring your biosolids to. But utilities should be aware that EPA is taking a number of actions that could ultimately lead to such requirements. For example, the Agency is undertaking risk assessments for PFOA and PFOS in biosolids.⁵⁵ If risk is found, EPA will develop appropriate limits and compliance requirements for biosolids management under CWA Part 503. Likewise, with respect to effluent discharges, EPA is developing recommended aquatic life⁵⁶ and human health⁵⁷ water quality criteria under CWA Section 304(a) which, once adopted into state water

⁵² RCRA hazardous constituents are chemicals that have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. They can be assessed and addressed as part of RCRA “corrective action” processes at permitted and non-permitted hazardous waste treatment, storage and disposal facilities (TDSFs).

⁵³ NACWA has already expressed serious concerns to EPA over any RCRA rulemaking that would cause biosolids containing PFAS to meet the definition of “hazardous waste.” In addition to the significant problems that would cause for utilities beneficially land applying biosolids – which accounts for the management of 60% of biosolids across the country – RCRA subtitle C hazardous waste landfills cannot accept organic wastes, including biosolids, because they were not constructed with methane treatment.

⁵⁴ Interestingly, EPA states in its responses to comments that it “rejects the assertion that it has not evaluated if sufficient capacity exists for disposal and storage of PFOA and PFOS contaminated materials,” and points to the Biennial Hazardous Waste Report capacity assessment which “indicated that there is adequate capacity nationwide through 2044.” See 89 Fed. Reg. 39179.

⁵⁵ EPA has stated that it anticipates proposing these risk assessments in late summer or early fall of 2024 and finalizing them by the end of 2024.

⁵⁶ EPA proposed 304(a) aquatic life criteria for [PFOA](#) and [PFOS](#) in May 2022 and anticipates finalizing them in the coming months. The Agency has indicated that the final criteria are likely to be more stringent than originally proposed.

⁵⁷ EPA will likely propose human health water quality criteria in late summer 2024, utilizing the reference doses and cancer slope factors established in the SDWA PFAS MCLs.

quality standards, could lead to directly enforceable effluent limitations in utility NPDES permits. And of course, as noted above, even absent EPA legally mandating certain conduct, external local pressures or actions taken by biosolids partners or landfills in response to the designations could effectively require changes in utility practices.

Question 5: The Biggie – Are utilities going to have to pay for PFOA and PFOS cleanups under the new rule?

It depends on who you ask.

EPA's Position

EPA takes the position that, because CERCLA has not ensnared utilities around the country in costly litigation and imposed on them massive cleanup costs in the context of other listed hazardous substances, fears that PFAS designations will do so are overblown. Rather, EPA “expects that those parties that are primarily responsible for contamination will bear the brunt of costs to address PFOA and PFOS releases while parties that are not primarily responsible can rely on statutory protections to limit liability, settlement with EPA to secure contribution protection, and EPA enforcement discretion to provide additional comfort.”⁵⁸

EPA in fact gets a little sassy in response to the (we think legitimate) concerns the water sector raised during the rulemaking process, stating in the preamble that:

CERCLA will continue to operate as it has for decades. Indeed, CERCLA’s liability framework, coupled with EPA enforcement policies, has operated in a rational way for the more than 800 CERCLA hazardous substances already within its purview, some of which are similar to PFOA and PFOS in terms of ubiquity, mobility, and persistence...Forty years of CERCLA experience indicates that designation should not result in unusual CERCLA liability or litigation outcomes for parties who did not significantly contribute to the contamination.⁵⁹

While that does beg the question of why, if passive receivers have nothing to worry about, EPA felt the need to immediately issue a memorandum outlining its intention to undertake actions to shield them from CERCLA liability, EPA eventually concedes that “some parties that do not bear primary responsibility for litigation may be sued and face

⁵⁸ See 89 Fed. Reg. 39160.

⁵⁹ See 89 Fed. Reg. 39130.

uncertain litigation costs as a consequence.”⁶⁰ Because of this, EPA “developed the enforcement discretion policy.”⁶¹ However, EPA insists throughout the final rule’s preamble that issuance of the policy was “unnecessary,” and that utilities are at no greater risk of being exposed to unwarranted CERCLA liability as a result of the final designations.

NACWA’s Position

NACWA remains very concerned that these designations could subject utilities to extensive liability for PFAS cleanups, thereby turning CERCLA’s “polluter pays” model on its head and requiring communities to foot the bill for legacy pollution caused by companies that profited from PFAS sales and use for decades.

NACWA greatly appreciates EPA’s enforcement discretion memo and supports utilities seeking to avail themselves of both its terms and existing CERCLA exclusions. We also acknowledge that, in certain situations, they can provide utilities with important protections against CERCLA liability. However, as we have seen in numerous examples,⁶² despite its very good intentions, EPA’s ability to protect utilities – and even, possibly, itself⁶³ – from third party litigation is statutorily limited under CERCLA.⁶⁴

The Agency cannot shield utilities from suits initiated by private parties seeking cost recovery for voluntary cleanups, which NACWA is concerned could become more

⁶⁰ Unsurprisingly, EPA also asserts that, in terms of accounting for such costs in the “totality of the circumstances” analysis, these potential litigation costs “cannot be known at this juncture with reasonable certainty.” See 89 Fed. Reg. 39163.

⁶¹ See 89 Fed. Reg. 39161.

⁶² See, e.g., the Newark, N.J. Diamond Alkali Superfund Site example outlined in [NACWA's comments](#) on EPA’s enforcement discretion policy. See also, the Fox River, WI case cited in [NACWA's comments](#) on the proposed PFOA and PFOS designations.

⁶³ The U.S. Chamber of Commerce previously [called](#) EPA’s stated intention to utilize its enforcement discretion to shield clean water agencies from CERCLA PFAS liability a potential “protection racket,” arguing that limiting the ability of PRPs to sue “any entity, public or private” for cleanup costs raises “due process and takings issues” as well as other “policy concerns.” NACWA continues to closely monitor whether any impacted stakeholders intend to challenge EPA’s issuance of the enforcement discretion policy.

⁶⁴ As noted above, the policy is also discretionary, non-binding, and can be changed at any time.

common in the context of PFAS.⁶⁵ Furthermore, even in situations where EPA can exercise its enforcement discretion, that exercise involves bringing utilities into highly complex litigation, determining their potential liability, and entering into a settlement agreement. In the best of circumstances, those lengthy legal and technical processes can consume significant community funds that would be better spent on utility projects benefiting human health and the environment. And “cleanup funding cage matches” that can involve hundreds of massive corporations with teams of attorneys fighting EPA and utilities every step of the way are, to put it mildly, not the best of circumstances.

NACWA also is concerned that EPA has systemically failed to recognize that the ubiquity of PFAS, their constant introduction into POTWs and MS4s from domestic sources which cannot be controlled under the CWA’s pretreatment program, the lack of effective and affordable treatment technologies, and the fact that most utility NPDES permits do not yet contain PFAS limits (and therefore provide at best a very limited shield against CERCLA liability) all present unique challenges for utilities in the context of the PFOA and PFOS designations. Likewise, the rule’s indirect impacts, including the additional strains it will likely put on the availability of already scant biosolids management options, cannot be overstated. These impacts were woefully underacknowledged, where acknowledged at all, in EPA’s cost analysis.⁶⁶ This is of significant concern to NACWA and is an area where future legal challenges to the final rule may be appropriate.

We also find it troubling that the preamble to the designations lists seven broad categories of entities that may be potentially affected by the designations: (1) PFOA and

⁶⁵ EPA downplays issues raised by NACWA and others related to cost recovery actions, as such actions are limited to recovery of costs “consistent with the National Contingency Plan” and would only be brought by parties who would have the financial means to conduct cleanups in the first place. See 89 Fed. Reg. 39162. NACWA acknowledges these points, but they do not address the underlying issue: it is possible that private cleanups may be conducted with more frequency at sites with PFAS contamination given the ubiquity of PFAS and the low levels at which they may be found to pose risks. As such, utilities may face increased liability in terms of funding such cleanups than has been the case in the past with other hazardous substances.

⁶⁶ The Minnesota Pollution Control Agency developed a report, [Evaluation of Current Alternatives and Estimated Cost Curves for PFAS Removal and Destruction from Municipal Wastewater, Biosolids, Landfill Leachate, and Compost Contact Water](#), estimating that, while PFAS can be purchased for between \$50-\$1,000 per pound, it would cost between \$2.7 million - \$18 million per pound to remove PFAS from municipal wastewater depending on the size of the facility in question. NACWA acknowledges that estimating indirect costs of Agency actions can be challenging, but the fact that states have worked to appreciate the potential impacts their own PFAS-related actions could have on wastewater utilities underscores the need for EPA to do so for such an impactful national rulemaking.

PFOS manufacturers; (2) PFOA and PFOS processors; (3) manufacturers of products containing PFOA or PFOS; (4) downstream users of PFOA and PFOS; (5) downstream users of PFOA or PFOS products; (6) waste management facilities; and (7) wastewater treatment facilities. Two of those things are not like the others but, unfortunately, CERCLA often does not make such distinctions.

Question 6: It really sounds like Congress should step in to shield utilities and the communities they serve from liability for PFAS cleanups. What is the status of efforts to obtain a statutory exemption from CERCLA PFAS liability for the water sector?

Urging Congress to enact legislation amending CERCLA to ensure that clean water utilities and other “passive receivers” of PFAS⁶⁷ do not shoulder the costs of funding PFAS cleanups remains the top priority of the Water Coalition Against PFAS, which, in addition to NACWA, includes the American Water Works Association, Association of Metropolitan Water Agencies, National Rural Water Association, and National Association of Water Companies. And we are making progress!

In the Senate, S. 1430, the Water Systems PFAS Liability Protection Act, was introduced by Sen. Cynthia Lummis (R-WY) in May 2023. That legislation would shield stormwater, wastewater, and drinking water agencies from CERCLA PFAS liability. The Senate Environment and Public Works (EPW) Committee held a hearing in March 2024, *Examining PFAS as Hazardous Substances*, during which NACWA Board of Directors member Mike Witt, General Counsel at Passaic Valley Sewerage Commission, gave strong testimony on behalf of the Coalition in support of S. 1430. Bipartisan talks are now underway among EPW committee members concerning potential compromise legislation.

On the House of Representatives side, the companion to S. 1430, H.R. 7944, was introduced on a bipartisan basis in April 2024 by Reps. John Curtis (R-UT) and Marie Gluesenkamp Perez (D-WA).

NACWA firmly believes clean water agencies should be viewed as part of the solution for PFAS, not the problem, and should be treated as such through the enactment of both statutory protections from unwarranted liability and increased funding to help develop

⁶⁷ In April 2023, EPA took comment on whether it should also designate seven additional PFAS – PFBS, PFHxS, PFNA, HFPO-DA (Gen X), PFBA, PFHxA, or PFDA – as CERCLA hazardous substances, as well as whether it should designate precursors (of the seven additional PFAS or PFOA or PFOS) or categories of PFAS as hazardous substances. In other words, the PFOS and PFOA designations are likely only the beginning of potential PFAS CERCLA liability for utilities, with precursors and PFAS that have not been subject to phase out programs posing additional concerns.

and implement critical treatment technologies and meet emerging regulatory requirements.

NACWA thanks the membership for their ongoing outreach to their representatives in support of these legislative efforts. That outreach directly contributed to the Senate EPW holding its hearing earlier this spring and continues to create momentum for Congressional action. We also thank the NACWA Board for their continued support of the Association's coordination across the water sector on Congressional advocacy through the Water Coalition Against PFAS. Through these efforts, please trust that NACWA staff is working every day to advance this issue on Capitol Hill.

Question 7: What resources does NACWA have to help me think through next steps in light of these designations?

NACWA is currently working with outside counsel to develop a "checklist" of issues utilities should be considering in light of the PFOA and PFOS CERCLA hazardous substance designations. Those include things like discussing potential liabilities with your biosolids partners and insurance providers, taking steps to limit future liability under the CWA's pretreatment program and other authorities, reviewing contracts and insurance policies, and developing communications plans. The checklist will be available in the coming weeks and will be distributed to all members once finalized.

NACWA also has the following resources available for utilities:

[PFAS Considerations Document](#) – designed to help utilities navigate the quickly evolving, challenging PFAS federal and state regulatory landscape.

[Communications Toolkit for PFAS and Biosolids](#) – intended to help utilities navigate PFAS issues with your local media and customers.

[Reportable Quantities Calculator](#) – designed to help determine whether a utility's effluent discharges or biosolids generation could trigger CERCLA PFAS reporting requirements.

[Legal Affairs Committee CERCLA Presentation](#) – provides background information on CERCLA and PFAS hazardous substance designations.

ITEM NO. RA7 OCEAN PROTECTION COUNCIL REPORT ON MICROPLASTICS REMOVAL

Recommendation

For the Committee's information only; no action is required.

Strategic Plan Linkage

1. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
 - a. Represent EBDA and the Member Agencies' interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
 - e. Track and share scientific and regulatory developments related to emerging contaminants, and advocate for source control.

Background

Microplastics are tiny bits of plastic five millimeters or smaller, and they are a ubiquitous pollutant that have been found nearly everywhere researchers have looked. In a landmark [study](#) published in 2019, San Francisco Estuary Institute found microplastics throughout San Francisco Bay's water, sediment, and fish. Additionally, the researchers found that approximately 130 million microparticles are discharged per day to the Bay in treated wastewater effluent, or approximately 47 billion microparticles annually, of which 17 billion are estimated to be plastic. While this sounds like a lot, it is notable that researchers found estimated microplastic loads from stormwater to be approximately 300 times greater than the estimated annual discharge from all wastewater treatment plants discharging into San Francisco Bay.

Discussion

In June 2020, the California Ocean Protection Council awarded \$225,236 to the Southern California Coastal Water Research Project Authority (SCCCWRP) to conduct a study assessing the efficacy of microplastic removal with various wastewater treatment methods. The study involved extensive sampling effort at seven wastewater treatment facilities, including EBDA's combined outfall.

The findings conform with prior research conclusions that treatment successfully removes the vast majority of microplastics from effluent. Primary treatment accounted for the majority of the removal efficiency, with secondary treatment removing over 90% of the microplastic particles remaining after primary treatment. Plants with tertiary treatment have even higher removal efficiency. Microplastics removed in the treatment process likely partition to the solids, and this study did not look at microplastics present in biosolids.

Another important finding of this study is that the levels of microspheres present in wastewater appears to have decreased since previous studies were conducted. This suggests that microbead bans enacted through legislation at the state and federal level have been effective.

The study therefore provides further support for the wastewater community's position that the most effective way to address microplastics in effluent is through upstream source control.

Lastly, this study demonstrated that current methods for microplastics sampling in wastewater are incredibly challenging to implement. Considerable staff time is involved in monitoring the sampling apparatus to address clogging filters and other issues. EBDA staff wishes to extend appreciation to San Leandro lab staff for the time and dedication they devoted to participating in this study.

Characterizing the Removal of Microplastics by California Wastewater Treatment Plants: Implications for Management Strategies

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EXECUTIVE SUMMARY

This report details a screening-level study to ascertain levels and compositions of microplastics in selected wastewater treatment plants (i.e., Publicly Owned Treatment Works or POTWs) in coastal California. This information is used to predict initial estimates of removal efficiencies for microplastics at various levels of wastewater treatment (e.g., primary, secondary, tertiary). Seven POTWs in major coastal urban areas of the state participated in this study. Wastewater samples were collected in influent (n = 7), primary effluent (n = 6), secondary effluent (n = 13), tertiary effluent (n = 4), and biosolids (n = 5) at various locations at these POTWs between November 2022 and December 2023. For each of two sampling events per POTW, 1400-5760 L of effluent water was collected using online filtration, and 19-52 L of influent water was collected using standard integrative autosamplers. Microplastic particles were extracted from these samples using an acid/alkaline digestion technique to destroy interferences from organic particulate matter and density separation to remove inorganic particulates, and quantified and identified using visual microscopy and Fourier-transform infrared spectroscopy. Concentrations and compositions of microplastics in wastewaters and biosolids were measured, from which initial broad estimates of removal efficiencies across stages of treatment (primary, secondary, tertiary), and discharge from final effluent could be computed.

Microplastics levels were variable amongst POTWs and treatment levels, and decreased substantially in the first treatment stage with further removal over each subsequent treatment stage. Median total concentrations of microplastic particles (>125 μm) were 11.6 particle/L in influent (range 4.4-52.4), 1.0 particles/L in primary effluent (range 0.09-3.4), 0.3 particles/L in secondary effluent (range 0.01-1.5), and 0.05 particle/L in tertiary effluent (range 0.002-0.1). Overall removal efficiencies between influent and final effluent averaged $95.3 \pm 6.7\%$, $99.1 \pm 0.7\%$, and 99.9% for primary, secondary, and tertiary treatment, respectively. Primary treatment accounted for the majority of the removal efficiency, with secondary treatment removing an average of $91.8 \pm 10.7\%$ of microplastic particles remaining after primary treatment, and tertiary treatment removing $85.0 \pm 7.1\%$ of microplastic particles remaining after secondary treatment. The levels of microplastics observed at these coastal California POTWs were in the general range of those observed at POTWs earlier in the state and throughout the world, as were removal efficiencies. Biosolids had levels ranging from 3 to 52 microplastic particles/gram, also in keeping with other measurements from the literature; however, some microplastics removed during the various wastewater treatment steps are not transferred to biosolids, as some collected solids from both primary and secondary treatment are incinerated or landfilled instead, depending on the POTW. These observations suggest that California POTWs are removing most of the microplastic contaminants from wastewaters with existing treatment techniques. For the most part, the size distributions, morphologies, colors, and

polymer types of microplastic particles differed in each POTW and treatment stage, as observed elsewhere. This is likely due to a complex combination of factors, including the composition of incoming sewage to each facility and various treatment processes in play, as well as challenges with sample collection procedures.

The seven POTWs in this study were estimated to discharge daily an average of 114 ± 71 million microplastic particles for each POTW discharging final primary effluent, 124 ± 150 million particles for each POTW discharging secondary effluent, and 0.38 ± 0.39 million particles for each POTW discharging tertiary effluent. These calculations were based on measured total microplastic concentrations in final effluent and monthly and annual average final effluent water flow rates at the time of sampling. For example, a secondary POTW's final effluent had 0.02 plastic particles/L in the first sampling event and 0.08 in the second, resulting in estimates of 2.4-9.3 million microplastic particles/day depending on which measured flow rate (low of 30.8 million gallons/day or MGD, high of 32.5 MGD) was used in the calculation. These estimates are in keeping with other estimated exports of microplastics from wastewater sources worldwide, and are subject to considerable variability given the fluctuations and variability inherent in wastewater and in contaminants therein, including microplastics.

Only 6 microspheres were observed in wastewaters in this study, compared with previous work that found 111 plastic spheres that were mostly polyethylene and between 250-500 μm in diameter. This observation suggests that federal and state bans on microspheres that went into effect in the interim were an effective means by which to address reducing this specific type of microplastic in wastewater. Other upstream microplastic mitigation strategies, such as washing machine and dryer filters may be effective at reducing levels of these contaminants in wastewaters.

Overall, this study provides initial data and insights into the levels and compositions of microplastics at some California coastal POTWs. Given logistical constraints arising from the significant time and expense associated with microplastics sampling and analysis, a robust statistical study design to address the questions noted above and to account thoroughly for estimates of variability is beyond the scope of this study. In addition, the contribution of microplastics from wastewaters to California's coastal waters relative to other significant pathways such as stormwater is not clear without further focused studies using standard and consistent methodology. Previous study has estimated that the contribution of secondary and tertiary wastewater effluent of microplastics to San Francisco Bay are a fraction of a percent of that from stormwater, which is untreated. However, further study is needed to compare the relative importance of these two pathways, and their potential loadings, to California's coastal waters statewide. This study provides regional data beyond the San Francisco Bay region that can be refined through further study. Monitoring of wastewaters and urban stormwater runoff

can inform the statewide strategy for managing microplastic contamination in the state's coastal waters.



ITEM NO. 13

FINANCIAL MANAGEMENT COMMITTEE AGENDA

Monday, July 15, 2024 at 11:00 AM

**East Bay Dischargers Authority
2651 Grant Avenue, San Lorenzo, CA**

Committee Members: Andrews (Chair); Toy

- FM1. Call to Order**
- FM2. Roll Call**
- FM3. Public Forum**
- FM4. Disbursements for June 2024**
(The Committee will review the Lists of Disbursements.)
- FM5. Treasurer's Report for June 2024**
(The Committee will review the Treasurer's Report.)
- FM6. Review of the Authority's Investment Policy and Strategy**
(The Committee will review the policy.)
- FM7. Motion to Approve Revisions to the Authority's Conflict of Interest Policy**
(The Committee will consider the motion.)
- FM8. Motion to Approve Revisions to the Authority's Audit Policy**
(The Committee will consider the motion.)
- FM9. Adjournment**

Any member of the public may address the Committee at the commencement of the meeting on any matter within the jurisdiction of the Committee. This should not relate to any item on the agenda. Each person addressing the Committee should limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Committee on any agenda item should do so at the time the item is considered. Oral comments should be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available and are to be completed prior to speaking.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the Juanita Villasenor at juanita@ebda.org or (510) 278-5910. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Agenda Explanation
East Bay Dischargers Authority
Financial Management Committee
July 15, 2024

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are also posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Financial Management Committee is
Monday, September 16, 2024 at 11:00 am**

ITEM NO. FM4 DISBURSEMENTS FOR JUNE 2024

Disbursements for the month of June totaled \$306,353.01.

Reviewed and Approved by:

Angela Andrews, Chair	Date
Financial Management Committee	

Jacqueline T. Zipkin	Date
Treasurer	

EAST BAY DISCHARGERS AUTHORITY
List of Disbursements
June 2024

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
26482	06/14/2024	196827	ENVIRONMENTAL SCIENCE ASSOCIATES	FIRST MILE PROJECT WORK ORDER NO. 3	52,000.33	56,879.33
26482	06/14/2024		ENVIRONMENTAL SCIENCE ASSOCIATES	FIRST MILE PROJECT WORK ORDER NO. 3	4,879.00	
26496	06/28/2024	42785245081	GARLAND / DBS INC	ROOF REPLACEMENT PROJECT	25,457.03	25,457.03
26496	06/28/2024	42785245732	GARLAND / DBS INC	ROOF REPLACEMENT PROJECT RETAINAGE	25,080.30	25,080.30
26479	06/14/2024	396295	CITY OF SAN LEANDRO	MDF O&M - APR	23,344.90	23,344.90
26501	06/28/2024	16885	REGIONAL GOVERNMENT SERVICES	MANAGEMENT AND ADMINISTRATIVE SERVICES	8,228.86	8,228.86
26501	06/28/2024	16280	REGIONAL GOVERNMENT SERVICES	REISSUE PAYMENT	7,146.70	7,146.70
26495	06/28/2024	047	CURRIE ENGINEERS, INC	PROJECT / CONSTRUCTION MANAGER SVCS - WORK ORDER NO. 2	6,851.25	6,851.25
26502	06/28/2024	772783	SOUTHERN COUNTIES LUBRICANTS LLC	OLEPS & HEPS DIESEL FUEL	5,849.81	5,849.81
26498	06/28/2024	218815	MEYERS NAVE	LEGAL SERVICES - MAY	5,003.20	5,003.20
26478	06/14/2024	6/7/2024	AZYURA	WATERBITS LICENSING AND SMR/EDMR REPORT SERVICES	5,000.00	5,000.00
26487	06/14/2024	EBDA-24/1	RAINWATER & ASSOCIATES	FIRST MILE PROJECT	4,365.00	4,365.00
26481	06/14/2024	Jan-24	DEBORAH QUINN	ACCOUNTING SERVICES - JAN	4,014.06	4,014.06
26488	06/14/2024	4246-0445-5568-7627	U.S. BANK	PURCHASING CARD EXPENSES	2,521.97	2,521.97
26499	06/28/2024	SW240198252	PETERSON POWER SYSTEMS	HEPS GENERATOR BLOCK HEATER REPLACEMENT	2,365.14	2,365.14
26483	06/14/2024	EA06-0524	EOA, INC	CONSULTING SERVICES	1,580.00	1,580.00
26500	06/28/2024	10638	REDWOOD PUBLIC LAW, LLP	LEGAL SERVICES - MAY	1,474.90	1,474.90
26484	06/14/2024	217664	MEYERS NAVE	LEGAL SERVICES - BRINE PROJECT	1,451.95	1,451.95
26494	06/28/2024	52205712	CITY OF HAYWARD	EMPLOYEE BENEFIT PROGRAMS - JUN	1,370.66	1,370.66
26490	06/28/2024	56714	CALCON	OPS & MDF SCADA BACKUP AND PROGRAMMING	1,280.20	1,280.20
26491	06/28/2024	720373	CALTEST	LAB TESTING SERVICES - MAY	976.36	976.36
26493	06/28/2024	8432	CAYUGA INFORMATION SYSTEMS	IT SERVICES	630.00	630.00
26486	06/14/2024	531762	R-COMPUTER	COMPUTER SOFTWARE	596.00	596.00
26489	06/28/2024	42929	BA MORRISON	HEPS HVAC SERVICE	410.00	410.00
26489	06/28/2024	42927	BA MORRISON	ADMIN HVAC SERVICE	290.00	290.00
26485	06/14/2024	3106664612	PITNEY BOWES INC	DIGITAL MAILING SYSTEM QUARTERLY LEASE CHARGE	150.55	150.55
26480	06/14/2024	56264	COMPUTER COURAGE	WEBSITE HOSTING	150.00	150.00
26497	06/28/2024	10231	MBC CUSTODIAL SERVICES INC	JANITORIAL SERVICES - MAY	130.00	130.00
26492	06/28/2024	4105160	CALTRONICS	COPIER USAGE AND MAINTENANCE	55.67	55.67
26422			ENVIRONMENTAL SCIENCE ASSOCIATES	VOID CHECK	(4,879.00)	(4,879.00)
26398			REGIONAL GOVERNMENT SERVICES	VOID CHECK	(7,146.70)	(7,146.70)
					180,628.14	180,628.14

EAST BAY DISCHARGERS AUTHORITY
List of Disbursements
June 2024

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
ELECTRONIC PAYMENTS						
	06/05/2024	5105948980-0	PG&E	GAS & ELECTRIC SERVICE	44,434.68	44,434.68
	06/10/2024	100000017547400	CALPERS	HEALTH PREMIUMS - JUN	8,247.28	8,247.28
	06/03/2024	100000017514612	CALPERS	PENSION CONTRIBUTION, CLASSIC 5/16 - 31/2024	5,710.87	5,710.87
	06/18/2024	100000017544115	CALPERS	PENSION CONTRIBUTION, CLASSIC 6/01 - 15/2024	5,710.87	5,710.87
	06/04/2024	6642756	MISSION SQUARE	DEFERRED COMPENSATION CONTRIBUTION 5/31/2024	2,106.70	2,106.70
	06/18/2024	6899129	MISSION SQUARE	DEFERRED COMPENSATION CONTRIBUTION 6/15/2024	2,106.70	2,106.70
	06/20/2024	1001649294	STATE COMPENSATION INSURANCE FUND	WORKERS COMPENSATION PREMIUM - JUN	878.00	878.00
	06/14/2024	51048304397166	AT&T	MDF TELEPHONE SERVICE	277.43	277.43
	06/05/2024	2406204916	INTERMEDIA.NET INC	EMAIL EXCHANGE HOSTING	101.53	101.53
	06/20/2024	9965528433	VERIZON WIRELESS	WIRELESS PHONE SERVICES - MAY	63.12	63.12
TOTAL ELECTRONIC PAYMENTS					69,637.18	69,637.18
PAYROLL						
	06/27/2024		ADP, LLC	PAYROLL PERIOD: 06/16-30/2024	31,957.53	31,957.53
	06/13/2024		ADP, LLC	PAYROLL PERIOD: 06/01-15/2024	23,940.24	23,940.24
	06/07/2024		ADP, LLC	PAYROLL FEES, 5/16-31/2024	102.06	102.06
	06/21/2024		ADP, LLC	PAYROLL FEES, 6/01-15/2024	87.86	87.86
TOTAL PAYROLL					56,087.69	56,087.69
TOTAL DISBURSEMENTS					306,353.01	306,353.01

ITEM NO. FM5 TREASURER'S REPORT FOR JUNE 2024

The cash balance as of June 30, 2024 is \$3,810,392.69. EBDA's LAIF balance is \$1,299,193.19, and the average monthly effective yield for June is 4.480%. EBDA's CAMP balance is \$1,568,593.06, and CAMP's 7-day yield is 5.43%.

Approval is recommended.

**EAST BAY DISCHARGERS AUTHORITY
TREASURER'S REPORT
June 2024**

FUND	FUND DESCRIPTION	BEGINNING CASH BALANCE	DEBITS (INCREASE)	CREDITS (DECREASE)	ENDING CASH BALANCE
12	OPERATIONS & MAINTENANCE	\$ 1,262,896.21	\$ -	\$ 185,933.95	\$ 1,076,962.26
13	PLANNING & SPECIAL STUDIES	167,303.12	-	57,945.33	109,357.79
14	RECLAMATION O & M (SKYWEST)	81,955.75	-	125.00	81,830.75
15	BRINE ACCEPTANCE	121,875.68	-	4,960.15	116,915.53
31	RENEWAL & REPLACEMENT	2,475,530.15	7,184.79	57,388.58	2,425,326.36
<hr/>					
TOTALS		\$ 4,109,560.91	\$ 7,184.79	\$ 306,353.01	\$ 3,810,392.69

Jun-24

7/11/2024

SUPPLEMENTAL TREASURER'S REPORT

DATE	TRANSACTION	RECEIPT	DISBURSEMENT CHECKING	DISBURSEMENT PAYROLL	PAYROLL TRANSFER	LAIF	CAMP	WELLS FARGO CHECKING BALANCE	WELLS FARGO PAYROLL BALANCE	LAIF BALANCE	CAMP BALANCE	TOTAL CASH
05/31/24	BALANCE							1,206,467.28	42,492.17	1,299,193.19	1,561,408.27	4,109,560.91
06/03/24	DIVIDENDS	7,184.79					7,184.79	1,206,467.28	42,492.17	1,299,193.19	1,568,593.06	4,116,745.70
06/03/24	ELECTRONIC BILL PAY		5,710.87					1,200,756.41	42,492.17	1,299,193.19	1,568,593.06	4,111,034.83
06/04/24	ELECTRONIC BILL PAY		2,106.70					1,198,649.71	42,492.17	1,299,193.19	1,568,593.06	4,108,928.13
06/05/24	ELECTRONIC BILL PAY		101.53					1,198,548.18	42,492.17	1,299,193.19	1,568,593.06	4,108,826.60
06/05/24	ELECTRONIC BILL PAY		44,434.68					1,154,113.50	42,492.17	1,299,193.19	1,568,593.06	4,064,391.92
06/07/24	PAYROLL FEES			102.06				1,154,113.50	42,390.11	1,299,193.19	1,568,593.06	4,064,289.86
06/10/24	ELECTRONIC BILL PAY		8,247.28					1,145,866.22	42,390.11	1,299,193.19	1,568,593.06	4,056,042.58
06/10/24	VOID CHECK 26398		(7,146.70)					1,153,012.92	42,390.11	1,299,193.19	1,568,593.06	4,063,189.28
06/10/24	VOID CHECK 26422		(4,879.00)					1,157,891.92	42,390.11	1,299,193.19	1,568,593.06	4,068,068.28
06/13/24	PAYROLL			23,940.24				1,157,891.92	18,449.87	1,299,193.19	1,568,593.06	4,044,128.04
06/14/24	DISBURSEMENT		100,053.76					1,057,838.16	18,449.87	1,299,193.19	1,568,593.06	3,944,074.28
06/14/24	ELECTRONIC BILL PAY		277.43					1,057,560.73	18,449.87	1,299,193.19	1,568,593.06	3,943,796.85
06/18/24	ELECTRONIC BILL PAY		2,106.70					1,055,454.03	18,449.87	1,299,193.19	1,568,593.06	3,941,690.15
06/18/24	ELECTRONIC BILL PAY		5,710.87					1,049,743.16	18,449.87	1,299,193.19	1,568,593.06	3,935,979.28
06/20/24	ELECTRONIC BILL PAY		878.00					1,048,865.16	18,449.87	1,299,193.19	1,568,593.06	3,935,101.28
06/20/24	ELECTRONIC BILL PAY		63.12					1,048,802.04	18,449.87	1,299,193.19	1,568,593.06	3,935,038.16
06/21/24	PAYROLL FEES			87.86				1,048,802.04	18,362.01	1,299,193.19	1,568,593.06	3,934,950.30
06/27/24	PAYROLL			31,957.53				1,048,802.04	(13,595.52)	1,299,193.19	1,568,593.06	3,902,992.77
06/28/24	PAYROLL TRANSFER				200,000.00			848,802.04	186,404.48	1,299,193.19	1,568,593.06	3,902,992.77
06/28/24	DISBURSEMENT		92,600.08					756,201.96	186,404.48	1,299,193.19	1,568,593.06	3,810,392.69

TOTAL	7,184.79	250,265.32	56,087.69	200,000.00	-	7,184.79	756,201.96	186,404.48	1,299,193.19	1,568,593.06	3,810,392.69
CURRENT BALANCE							①	②	③	④	

Reconciliation - 06/30/2024

① Bank Statement Balance	\$ 855,122.10
Less: Outstanding Checks	98,920.14
	<u>\$ 756,201.96</u>
② Payroll Bank Statement	\$ 186,404.48
③ LAIF Statement	\$ 1,299,193.19
④ CAMP Statement	\$ 1,575,575.00
Less: Accrual Income Dividend	6,981.94

The Supplemental Treasurer's Report is prepared monthly by the General Manager. It also serves as EBDA's cash and investments reconciliation.

ITEM NO. FM6 REVIEW OF THE AUTHORITY'S INVESTMENT POLICY AND STRATEGY

Recommendation

Review the Authority's existing Investment Policy and Strategy and provide input to staff.

Background

The Authority engaged PFM Asset Management (PFM) in late 2018 to assist in the development of an Authority Investment Policy, in compliance with applicable law regarding public agency investments in California. The Policy was originally approved by the Commission in 2019 and updated as necessary to stay compliant with State law. The most recent review and reapproval occurred in July 2023. Staff reviews the Policy on an annual basis. No changes are recommended at this time, but the Policy is attached for the Committee's review and comment.

As part of the 2018 engagement, PFM also performed detailed cashflow modeling and analysis using five years of EBDA financial data. The purpose of this analysis was to establish EBDA's liquidity needs and inform the Authority's Investment Strategy. The attached Investment Strategy was originally adopted in March 2019 and most recently reviewed in July 2023.

Discussion

Staff is recommending no changes be made to the Authority's Investment Strategy, and no substantive changes to the Investment Policy. The recommendation continues to be informed by PFM's 2018/2019 analysis, which concluded that the administrative burden of investing EBDA's liquid funds in diversified and/or more volatile financial instruments significantly outweighed the benefits and potential gains. That conclusion, supported by the Financial Management Committee at the time, led to the Authority's strategy of investing its idle long-term funds in certificates of deposit (CDs), California's Local Agency Investment Fund (LAIF), or California Asset Management Program (CAMP). LAIF and CAMP are both pooled investments by public agencies.

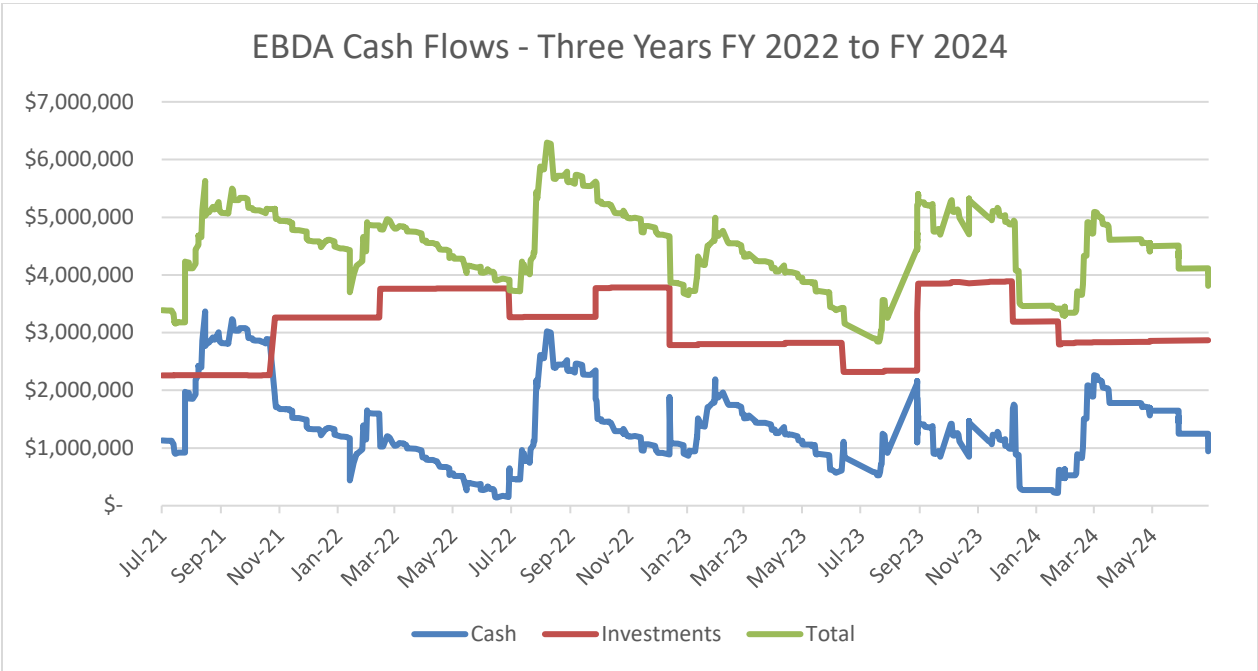
Staff does not believe that any material changes have occurred that lead to a different conclusion today. In addition, EBDA's liquidity needs have slightly increased as the Authority performs reimbursable work under the Cargill and grant-funded Nature-based Solutions projects.

EBDA had a series of laddered CDs through Wells Fargo Advisors that have been moved to the Authority's cash accounts as they have matured. The last CD matured in June 2021. The Authority has not reinvested in CDs because interest rates have been so low. EBDA's advisor with Wells Fargo Advisors indicated that he does not currently have any offerings that are expected to out-perform the pooled investments. Therefore, all of EBDA's long-term funds are currently invested in LAIF and CAMP.

Over the past year, since the last review of this policy, CAMP has significantly out-performed LAIF. As of July 9, 2024, CAMP's current seven-day yield is 5.43%, whereas

LAIF's is 4.48%. CAMP and LAIF use slightly different investment strategies with regard to the maturity periods of their investments, with CAMP's shorter-term investments leading to higher yields in a current market environment of increasing interest rates. Staff has therefore placed a larger portion of EBDA's funds in CAMP during the preceding twelve-month period. Both LAIF and CAMP are fully liquid and therefore funds can easily be moved in and out of each pool as interest rates change.

For the Committee's information in assessing staff's recommendations, the following graphs show EBDA's recent cash flows.



POLICY NUMBER: 1.1

NAME OF POLICY: Finance - Investments

LAST REVIEWED: July 18, 2024

LAST REVISED: December 16, 2021

PREVIOUSLY REVISED: May 13, 2020

PURPOSE: All financial assets, including special revenue funds, capital project funds, internal service funds and other funds that may be created from time to time, shall be administered in accordance with the provisions of this Policy and are accounted for in the Annual Financial Report. This Investment Policy is used to guide Authority staff in investment decisions and transactions.

POLICY: It is the policy of East Bay Dischargers Authority (Authority) to invest public funds in a manner which prioritizes security over investment return, while meeting the daily cash flow demands of the Authority, and conforming to California Government Code Sections 53601 through 53686 and other statutes governing the investment of public funds.

DETAILED DISCUSSION:

A. OBJECTIVES:

When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing public funds, the primary objectives, in priority order, of the investment activities shall be:

- 1. Safety:** Safety of principal is the foremost objective of the investment program. Investments of the East Bay Dischargers Authority shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.

2. **Liquidity:** The investment portfolio will remain sufficiently liquid to enable the East Bay Dischargers Authority to meet all operating requirements which might be reasonably anticipated.

3. **Return on Investments:** The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and the cash flow characteristics of the portfolio. (CGC 53600.5)

B. STANDARD OF CARE:

- **Prudence:** All investments shall be made within the policy framework of liquidity, safety, and investment return, with the judgment and care a person of prudence and intelligence would, under the circumstances then prevailing, exercise in the management of his/her affairs.
- **Ethics and Conflict of Interest:** District officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Officers and employee involved in the investment process shall abide by CGC Section 109, et seq. and the California Political Reform Act.
- **Delegation of Authority:** The authority to manage investment programs is granted to the Investment Committee which is comprised of the two members of the Financial Management Committee appointed by the Commission, and the General Manager/Treasurer. The responsibility for the operation and day-to-day maintenance of the investment program is delegated to the Authority's General Manager/Treasurer. The General Manager/Treasurer shall file with the Authority an official bond. The Authority shall pay the cost of said bonds.

C. PROCEDURES:

The General Manager/Treasurer shall establish written procedures and a system of internal controls for the operation of the investment program consistent with this investment policy to be incorporated into the Authority's Financial Management System Policy and Procedures Manual. Procedures should include references to: safekeeping, PSA repurchase agreements, wire transfer agreements, collateral/depository agreements and banking services contracts, as appropriate. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy

and the procedures established by the Financial Management Committee. The Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. The General Manager/Treasurer is a trustee and a fiduciary subject to the prudent investor standard. (CGC 53600.3)

D. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS:

The General Manager/Treasurer will maintain a list of financial institutions, selected on the basis of credit worthiness, financial strength, experience and minimal capitalization that are authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers who are authorized to provide investment and financial advisory services in the State of California. No public deposit shall be made except in a qualified public depository as established by state laws.

For brokers/dealers of government securities and other investments, the General Manager/Treasurer shall select only broker/dealers who are licensed and in good standing with the California Department of Securities, the Securities and Exchange Commission, the National Association of Securities Dealers or other applicable self-regulatory organizations and familiar with the Government Code restrictions on public agency investments and have a substantial experience with other public agency investments.

Before engaging in investment transactions with a broker/dealer, the General Manager/Treasurer shall have received from said firm a signed Certification Form. This form shall attest that the individual responsible for the Authority's account with that firm has reviewed the Authority's Investment Policy and that the firm understands the policy and intends to present investment recommendations and transactions to the Authority that are appropriate under the terms and conditions of the Investment Policy.

E. AUTHORIZED AND SUITABLE INVESTMENTS:

- The allowable investment instruments applicable to all local agencies, including the East Bay Dischargers Authority, are shown in the documents listed below and included by reference in this investment policy. California Government Code Section 5920-5924
- California Government Code Section 16429.1-16429.4
- California Government Code Section 53500-53505
- California Government Code Section 53600-53609

- California Government Code Section 53630-53686

See CGC 53601 for a detailed summary of the limitations and special conditions that apply to each of the above listed investment securities. A table summarizing allowable investments is included as Figure 1 in the California Debt and Investment Advisory Commission's Local Agency Investment Guidelines, available at the following website: <https://www.treasurer.ca.gov/cdiac/laig/guideline.pdf>. The Guidelines and table are updated periodically to reflect changes in law. The most recent version at the time of Policy adoption is attached here for reference.

F. PROHIBITED INVESTMENTS:

Under the provisions of CGC 53601.6 and 53631.5, the Authority shall not invest any funds covered by this Investment Policy in inverse floaters, range notes, interest-only strips derived from mortgage pools or any investment that may result in a zero interest accrual if held to maturity.

G. COLLATERALIZATION:

All certificates of deposits and repurchase agreements must be collateralized by U. S. Treasury Obligations. Collateral must be held by a third party and valued on a monthly basis. The percentage of collateralization on Repurchase Agreements will adhere to the amount required under CGC 53601(i)(2).

H. DIVERSIFICATIONS:

It is the policy of the Authority to diversify its investment portfolio. With the exception of funds invested in LAIF, United State Treasury Bills, notes, and bonds, the Authority will diversify its investments by security type and, within each type, by institution. Invested assets shall be diversified to eliminate the risk of loss resulting from over concentration of assets in a specific maturity, a specific issuer or a specific class of securities. Diversification shall be determined and revised periodically by the Treasurer in consultation with the Financial Management Committee. In establishing specific diversification strategies, the following guidelines shall apply:

- 1) Portfolio maturities shall be matched against projected liabilities to avoid an over concentration in a specific series of maturities.
- 2) Maturities selected shall provide for stability and liquidity.

- 3) Disbursement and payroll dates shall be covered by the scheduled maturity of specific investments, marketable U. S. Treasury Bills or Notes or other cash equivalent instruments, such as money market mutual funds.

I. PERFORMANCE STANDARDS:

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs of the Authority. The Authority shall establish a performance benchmark. Benchmarks may change over time based on changes in market conditions, investment preferences, or cash flow requirements.

J. INTERNAL CONTROLS:

The Authority shall establish a set of internal controls which shall be documented in writing. The internal controls will be reviewed by the Authority and with the independent auditor. The controls shall be designed to prevent employee error, misrepresentations by third parties, and unanticipated changes in financial markets or imprudent actions by officers or employees of the Authority.

K. SAFEKEEPING & CUSTODY:

All security transactions entered into by the Authority shall be conducted on delivery-versus-payment (DVP) basis. All securities purchased or acquired shall be delivered to the Authority by book entry, physical delivery or by third party custodial agreement. (CGC 53601). The Treasurer shall deposit securities in which the Authority holds funds in a safe deposit box in the name of East Bay Dischargers Authority.

L. REPORTING:

The Treasurer shall submit to the Commission a monthly report. The report shall include a complete description of the portfolio, the type of investment, the issuers, maturity dates, par values and the current market values of each component of the portfolio, including funds managed by third party contractors. The report will also include the source of the portfolio valuation. In the case of funds invested in The Local Agency Investment Fund (LAIF), FDIC Insured accounts or county investment pools, current statements from those institutions will satisfy the above reporting requirement. The report will also include a certification that (1) all investment actions executed since the last report have been made in full compliance with the Investment Policy and, (2) the Authority will meet its expenditure obligations for the next six months. [CGC 53646(b)]. The Treasurer shall maintain a complete and timely record of all investment transactions.

M. INVESTMENT POLICY ADOPTION:

The Investment Policy shall be adopted by the Commission of the East Bay Dischargers Authority. Moreover, the Policy shall be reviewed on an annual basis, and modifications must be approved by the Commission.

GLOSSARY:

ASK PRICE: The price at which a seller offers to sell a security to a buyer.

ASSET-BACKED SECURITIES: Bonds created from various types of consumer debt.

Returns on these securities come from customer payments on their outstanding loans. The primary types of asset-backed securities are mortgages, home equity loans, auto loans, leases, credit card receivables and student loans.

BANKERS' ACCEPTANCE: A letter of credit issued in a foreign trade transaction which allows exporters to receive payment prior to importation of their goods. Banks provide short-term financing to facilitate the transaction and may sell the obligation to a third party. Bankers' Acceptances are secured by the issuer of the bill, while the underlying goods also serve as collateral.

BANK DEPOSITS: Collateral in the form of currency that may be in the form of demand accounts (checking) or investments in accounts that have a fixed term and negotiated rate of interest.

BENCHMARK: A comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

BID PRICE: The price at which a buyer offers to purchase a security from the seller.

BOND: A debt investment in which an investor loans money to an entity (corporate or governmental) that borrows the funds for a defined period of time at a fixed interest rate called a coupon payment. Bonds are used by companies, municipalities, states and the U.S. government to finance a variety of projects and operating activities.

BROKER: A broker aligns buyers and sellers of securities and receives a commission when a sale occurs. Brokers generally do not hold inventory or make a market for securities.

CALIFORNIA LOCAL AGENCY OBLIGATIONS: Bonds that are issued by a California county, Authority, Authority and county, including a chartered Authority or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

CD (CERTIFICATE OF DEPOSIT): Time deposits issued by a bank, savings or federal credit union, or state-licensed branch of a foreign bank. Negotiable Certificates of Deposits rely on the credit rating of the issuing entity.

COLLATERAL: Securities, evidence of deposit, or other property that a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COLLATERALIZATION: Process by which a borrower pledges securities, property, or other deposits for the purpose of securing the repayment of a loan and/or security.

COMMERCIAL PAPER: Short-term unsecured promissory note issued by a company or financial institution. Commercial paper is issued at a discount and matures at face value. Usually a maximum maturity of 270 days, and given a short-term debt rating by one or more nationally recognized statistical rating organizations (NRSROs).

COUNTY POOLED INVESTMENT FUNDS: The aggregate of all funds from public agencies placed in the custody of the county treasurer or chief finance officer for investment and reinvestment.

COUPON: The annual rate of interest that a bond's issuer promises to pay the bondholder, expressed as a percentage of the bond's face value.

CREDIT RISK: Credit risk is the likelihood that an issuer will be unable to make scheduled payments of interest or principal on an outstanding obligation.

CUSTODIAN: An agent such as a broker or a bank that stores a customer's investments for safekeeping. The custodian does not have fiduciary responsibilities.

DEALER: A dealer, as opposed to a broker, acts as a principal in security transactions, selling securities from, and buying securities for his/her own position.

DEFAULT: To default is to fail to repay principal or make timely interest payments on a bond or other debt investment security, or failure to fulfill the terms of a note or contract.

DELIVERY VERSUS PAYMENT (DVP): A securities industry procedure whereby payment for a security must be made at the time the security is delivered to the purchaser's agent.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

DURATION: The weighted average time to maturity of a bond where the weights are the present values of future cash flows. Duration measures the price sensitivity of a bond to changes in interest rates.

FIDUCIARY: An individual who holds something in trust for another and bears liability for its safekeeping.

FLOATING RATE INVESTMENTS: Notes whose interest rate is adjusted according to the interest rates of other financial instruments. These instruments provide protection against rising or falling interest rates, but may pay lower yield than fixed rate notes.

FUTURES: Commodities, which are sold in the present time and are to be delivered at a future date.

INTEREST ONLY STRIPS: Securities with cash flow based entirely on the monthly interest payments received from a mortgage, Treasury, or bond payment. No principal is included in these types of securities.

INVERSE FLOATING RATE INVESTMENTS: Variable-rate notes (such as inverse floating rate notes) whose coupon and value increase as interest rates decrease.

INVESTMENT PROGRAM: The process of modern portfolio management. The process includes establishing investment policy, analysis of the economic and capital markets environment, portfolio monitoring and rebalancing, and measuring performance.

LIQUIDITY: The ease with which investments can be converted to cash at their present market value. Liquidity is significantly affected by the number of buyers and sellers trading a given security and the number of units of the security available for trading.

LOCAL AGENCY BONDS: These bonds are issued by a county, Authority, Authority and county, including a chartered Authority or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

LOCAL AGENCY INVESTMENT FUND (LAIF): A voluntary investment fund open to state and local government entities and certain non-profit organizations in California in which organization pools their funds for investment. LAIF is managed by the State Treasurer's Office.

MARKET RISK: Market risk is the risk that investments will change in value based on changes in general market prices.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract which includes provisions specific to the governmental agency that is signed by an authorized officer with each counterparty. A master agreement will often specify details to the nature of transactions, the relationship of the parties to the agreement, parameters pertaining to the ownership and custody of collateral, and remedies in the event of default by either party.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MEDIUM TERM NOTES (MTN): Unsecured, investment-grade senior debt securities of major corporations that are sold either on a continuous or an intermittent basis. MTNs are highly flexible debt instruments that can be structured to respond to market opportunities or to investor preferences.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

MORTGAGE-BACKED SECURITIES: A debt instrument with a pool of real estate loans as the underlying collateral. The mortgage payments of the real estate assets are used to pay interest and principal on the bonds.

MORTGAGE PASS-THROUGH SECURITIES: A securitized participation in the interest and principal cash flows from a specified pool of mortgages. Principal and interest payments made on the mortgages are passed through to the holder of the security.

MUTUAL FUNDS: An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments. **Money market mutual funds** invest exclusively in short-term (1-day to 1-year) debt obligations such as Treasury bills, certificates of deposit, and commercial paper. The principal objective is the preservation of capital and generation of current income.

OFFER: The price asked by a seller of securities. See Ask Price and Bid Price.

OPTION: A contract that provides the right or obligation, depending on the buyer or seller's position within the contract, to buy or to sell a specific amount of a specific security within a predetermined time period at a specified price. A call option provides the right to buy the underlying security. A put option provides the right to sell the underlying security. The seller of the contracts is called the writer.

PORTFOLIO: A collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRINCIPAL ONLY STRIPS: Securities with cash flow based entirely on the principal payments received from an obligation.

RANGE NOTES: A range note is a bond that pays interest if a specified interest rate remains above or below a certain level and/or remains within a certain range.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price.

REPURCHASE AGREEMENT (RP, Repo): A contractual transaction between an investor and an issuing financial institution (bank or securities dealer). The investor exchanges cash for temporary ownership or control of collateral securities, with an agreement between the parties that on a future date, the financial institution will repurchase the securities.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held by the bank in the customer's name.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES AND EXCHANGE COMMISSION (SEC): A federal government agency comprised of five commissioners appointed by the President and approved by the Senate. The SEC was established to protect the individual investor from fraud and malpractice in the marketplace. The Commission oversees and regulates the activities of registered investment advisers, stock and bond markets, broker/dealers, and mutual funds.

STATE OBLIGATIONS: Registered treasury notes or bonds of the 50 United States, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the 50 United States.

STRIPS: Bonds, usually issued by the U.S. Treasury, whose two components, interest and repayment of principal, are separated and sold individually as zero-coupon bonds. Strips are an acronym for Separate Trading of Registered Interest and Principal of Securities.

SUPRANATIONALS: International financial institutions that are generally established by agreements among nations, with member nations contributing capital and participating in management. Supranational bonds finance economic and infrastructure development and support environmental protection, poverty reduction, and renewable energy around the globe.

TRUSTEE: An individual or organization, which holds or manages and invests assets for the benefit of another. The trustee is legally obliged to make all trust-related decisions with the trustee's interests in mind, and may be liable for damages in the event of not doing so.

U.S. AGENCY OBLIGATIONS: Federal agency or United States government-sponsored enterprise obligations (GSEs), participations, or other instruments. The obligations are issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises. Issuers include: Fannie Mae, Farmer Mac, Federal Farm Credit Banks, Freddie Mac, Federal Home Loan Banks, Financing Corporation, Tennessee Valley Authority, Resolution Trust Funding Corporation, World Bank, Inter-American Development Bank, and PEFCO.

U.S. TREASURY OBLIGATIONS (TREASURIES): Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States. Treasuries are considered to have no credit risk and are the benchmark for interest rates on all other securities in the U.S. and overseas. The Treasury issues both discounted securities and fixed coupon notes and bonds.

Treasury Bills: All securities issued with initial maturities of one year or less are issued as discounted instruments, and are called Treasury Bills (T-bills). The Treasury currently issues 3-month and 6-month T-bills at regular weekly auctions. It also issues "cash management" bills as needed to smooth cash flows.

Treasury Notes: All securities issued with initial maturities of 2- to 10-years are called Treasury Notes (T-notes), and pay interest semi-annually.

Treasury Bonds: All securities issued with initial maturities greater than 10-years are called Treasury Bonds (T-bonds). Like Treasury Notes, they pay interest semi-annually.

WAL: Weighted Average Life: The average life of all the securities that comprise a portfolio, typically expressed in days or years.

YIELD: The rate of annual income return on an investment, expressed as a percentage. Yield does not include capital gains.

Income Yield is obtained by dividing the current dollar income by the current market price for the security.

Net Yield or Yield to Maturity is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

ZERO-COUPON BOND: A bond on which interest is not payable until maturity (or earlier redemption), but compounds periodically to accumulate to a stated maturity amount. Zero-coupon bonds are typically issued at a discount and repaid at par upon maturity.

FIGURE 1

ALLOWABLE INVESTMENT INSTRUMENTS PER STATE GOVERNMENT CODE (AS OF JANUARY 1, 2024)^A APPLICABLE TO ALL LOCAL AGENCIES^B

See "Table of Notes for Figure 1" on the next page for footnotes related to this figure.

INVESTMENT TYPE	MAXIMUM MATURITY ^C	MAXIMUM SPECIFIED % OF PORTFOLIO ^D	MINIMUM QUALITY REQUIREMENTS	GOV'T CODE SECTIONS
Local Agency Bonds	5 years	None	None	53601(a)
U.S. Treasury Obligations	5 years	None	None	53601(b)
State Obligations— CA And Others	5 years	None	None	53601(c) 53601(d)
CA Local Agency Obligations	5 years	None	None	53601(e)
U.S Agency Obligations	5 years	None	None	53601(f)
Bankers' Acceptances	180 days	40% ^E	None	53601(g)
Commercial Paper—Non-Pooled Funds ^F (under \$100,000,000 of investments)	270 days or less	25% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper—Non-Pooled Funds ^I (min. \$100,000,000 of investments)	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper— Pooled Funds ^J	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53635(a)(1)
Negotiable Certificates of Deposit	5 years	30% ^K	None	53601(i)
Non-negotiable Certificates of Deposit	5 years	None	None	53630 et seq.
Placement Service Deposits	5 years	50% ^L	None	53601.8 and 53635.8
Placement Service Certificates of Deposit	5 years	50% ^L	None	53601.8 and 53635.8
Repurchase Agreements	1 year	None	None	53601(j)
Reverse Repurchase Agreements and Securities Lending Agreements	92 days ^M	20% of the base value of the portfolio	None ^N	53601(j)
Medium-Term Notes ^O	5 years or less	30%	"A" rating category or its equivalent or better	53601(k)
Mutual Funds And Money Market Mutual Funds	N/A	20% ^P	Multiple ^{Q, R}	53601(l) and 53601.6(b)
Collateralized Bank Deposits ^S	5 years	None	None	53630 et seq. and 53601(n)
Mortgage Pass-Through and Asset-Backed Securities ^T	5 years or less ^T	20%	"AA" rating category or its equivalent or better ^T	53601(o)
County Pooled Investment Funds	N/A	None	None	27133
Joint Powers Authority Pool	N/A	None	Multiple ^U	53601(p)
Local Agency Investment Fund (LAIF)	N/A	None	None	16429.1
Voluntary Investment Program Fund ^V	N/A	None	None	16340
Supranational Obligations ^W	5 years or less	30%	"AA" rating category or its equivalent or better	53601(q)
Public Bank Obligations	5 years	None	None	53601(r), 53635(c) and 57603

TABLE OF NOTES FOR FIGURE 1

- ^A Sources: Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53630 et seq., 53635, 53635.8, and 57603.
- ^B Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- ^C Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years from the settlement date. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year remaining maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- ^D Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- ^E No more than 30% of the agency's money may be in bankers' acceptances of any one commercial bank.
- ^F Applies to local agencies, other than counties or a city and county, with less than \$100 million of investment assets under management. Includes agencies defined as a city, a district, or other local agency that do not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body.
- ^G Local agencies, other than counties or a city and county, may purchase no more than 10% of the outstanding commercial paper and medium-term notes of any single issuer.
- ^H Issuing corporation must be organized and operating within the U.S., have assets in excess of \$500 million, and debt other than commercial paper must be in a rating category of "A" or its equivalent or higher by a nationally recognized statistical rating organization, or the issuing corporation must be organized within the U.S. as a special purpose corporation, trust, or LLC, have program wide credit enhancements, and have commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical rating organization.
- ^I Applies to counties or a city and county, and the City of Los Angeles that have \$100 million or more of investment assets under management.
- ^J Includes agencies defined as a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set forth in Section 53601(h)(2)(C).
- ^K No more than 30% of the agency's money may be in negotiable certificates of deposit that are authorized under Section 53601(i).
- ^L Effective January 1, 2020, no more than 50% of the agency's money may be invested in deposits, including certificates of deposit, through a placement service as authorized under 53601.8 (excludes negotiable certificates of deposit authorized under Section 53601(i)). On January 1, 2026, the maximum percentage of the portfolio reverts back to 30%. Investments made pursuant to 53635.8 remain subject to a maximum of 30% of the portfolio.
- ^M Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- ^N Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- ^O "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States."
- ^P No more than 10% invested in any one mutual fund. This limitation does not apply to money market mutual funds.
- ^Q A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Sections 53601 and 53635.
- ^R A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years' experience investing in money market instruments with assets under management in excess of \$500 million.
- ^S Investments in notes, bonds, or other obligations under Section 53601(n) require that collateral be placed into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, among other specific collateral requirements.
- ^T Security types authorized under Section 53601(o) that are issued or guaranteed by an issuer identified in subdivisions (b) or (f), are not subject to the limitations placed on privately issued securities authorized in Section 53601(o)(2)(A)(B).
- ^U A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).
- ^V Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.
- ^W Only those obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less.

East Bay Dischargers Authority Investment Strategy

Last Updated: March 21, 2019

Subsequently Reviewed and Confirmed without Changes: July 20, 2023

In the interest of prudent investment of EBDA's funds, and to preserve the primary investment objectives of safety, liquidity and yield, EBDA adopts the following strategy:

- Within the framework of California Government Code Section 53601-53606 detailing allowable investments, EBDA will invest its idle long-term funds in Certificates of Deposits (CDs), the State of California's Local Agency Investment Fund (LAIF), and California Asset Management Program (CAMP).
- Staff may select which of the above instruments in which to invest and in what quantities, as long as there is less than a 50 basis point (0.5%) differential between the instruments. If the differential is higher, staff shall direct funds to the instrument with higher returns.
- Individual securities such as CDs will have a maturity of no longer than three (3) years and be FDIC insured.
- The portfolio mix will be adjusted as needed to react to changes in liquidity requirements, market changes, and legal constraints.

This strategy will be evaluated and reviewed at least annually for cost-effectiveness. Guidance on permissible investment instruments, standards of care for invested funds, and the role of staff in the investment program are located in EBDA's Investment Policy.

**ITEM NO. FM7 MOTION TO APPROVE REVISIONS TO THE AUTHORITY'S
CONFLICT OF INTEREST POLICY**

Recommendation

Approve revisions to the Authority's Conflict of Interest Policy.

Strategic Plan Linkage

3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.

Background

The Political Reform Act requires every local government agency to review its Conflict of Interest Code (Code) for accuracy biennially and to notify the County Board of Supervisors whether it does or does not need to be amended. Updates to the Authority's Code were last approved by the Alameda County Board of Supervisors on September 20, 2022. The Biennial Notice must be submitted to the County Board of Supervisors no later than October 1, 2024.

Discussion

Staff and legal counsel have reviewed the Authority's Conflict of Interest Policy and recommend very minor changes to capitalization. The proposed Policy is attached in tracked changes and clean versions for the Committee's review. Upon approval by the Commission, the Policy will be submitted to the County.

CONFLICT OF INTEREST CODE

OF EAST BAY DISCHARGERS AUTHORITY OF ALAMEDA COUNTY

SECTION 1. Purpose. Pursuant to the provisions of Government Code sections 87300 et seq., EAST BAY DISCHARGERS AUTHORITY (“AUTHORITY”) OF ALAMEDA COUNTY hereby adopts the following Conflict of Interest Code. Nothing contained herein is intended to modify or abridge the provisions of the California Political Reform Act of 1974.

SECTION 2. Incorporation of Regulation. The California Fair Political Practices Commission adopted a regulation (Title 2 California Code of Regulations section 18730) which contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency’s code. Therefore, the terms of Title 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the California Fair Political Practices Commission are hereby incorporated herein by this reference. The provisions of Title 2 California Code of Regulations section 18730 and the provisions below, designating officials and employees and establishing disclosure categories, along with the applicable sections of the California Political Reform Act, shall constitute the Conflict of Interest Code of the Authority.

SECTION 3. Designated Positions and Disclosure Categories. Persons holding a Designated Position listed below shall file a Statement of Economic Interest in the form of a Form 700. Those individuals holding a Designated Position are deemed to be in a position to make, or participate in the making of, decisions on behalf of the AUTHORITY which may foreseeably have a material effect on their economic interests.

<u>Designated Position</u>	<u>Disclosure Category</u>
Commission Member	1
General Manager	1
Treasurer/Controller	1
Legal Counsel	1
Consultant	2

Disclosure Category 1: Designated Positions in this category shall disclose all of the following interests: investments, interests in real property within the AUTHORITY’s jurisdiction*, personal income, business entity income, and business positions held or received during the previous calendar year.

Disclosure Category 2: Persons in this category shall disclose investments and business positions in business entities, and income from business entities of the type to provide bids, supplies, vehicles and equipment of the type used by the AUTHORITY.

Disclosure Category 3: Consultants shall disclose all of the interests required to be

disclosed pursuant to Disclosure Category 2, subject to the following limitation: The General Manager may determine in writing that a particular consultant, although a “~~D~~esignated ~~P~~osition,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager’s determination is a public record and shall be retained for public inspection in the same manner and location as this ~~C~~onflict of ~~I~~nterest ~~C~~ode.

*The AUTHORITY’s “jurisdiction” as set forth above in the disclosure categories is Alameda County. For the purposes of this Conflict of Interest Code, an interest in real property is located within the jurisdiction of the AUTHORITY if any part of the property is located in, or within two miles of, Alameda County, or if the property is located within two miles of any land owned or used by the AUTHORITY.

SECTION 4. Place, Manner and Time of Filing.

(a) Individuals holding a Designated Position shall file their Statements of Economic Interests with the AUTHORITY, which will make the statements available for public inspection and reproduction (Government Code Section 81008). The AUTHORITY will retain copies of the Statements of Economic Interests and file the original statements with the Alameda County Clerk of the Board of Supervisors.

(b) All designated filers shall comply with the provisions of Title 2 California Code of Regulations section 18730 along with the applicable sections of the California Political Reform Act, (and as that section may be amended), which contains detailed instructions regarding the scope and types of interests to be reported as well as the manner of reporting them. The regulation can be found online at:
<https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730Provisions-of-Conflict-of-Interest-Codes.pdf>.

(c) Initial Statements. All designated filers shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an Initial Statement within 30 days after the effective date of the amendment.

(d) Assuming Office Statements. All persons assuming Designated Positions after the effective date of this code shall file an Assuming Office Statement within 30 days after assuming the ~~D~~esignated ~~P~~ositions.

(e) Leaving Office Statements. All persons who leave ~~D~~esignated ~~P~~ositions shall file a Leaving Office Statement within 30 days after leaving office.

(f) Annual Statements. All designated filers shall file an Annual Statement no later than April 1 every calendar year.

SECTION 5. Disqualification. No designated filer shall make, participate in making, or in any way attempt to use their position to influence the making of any governmental decision which they know or has a reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of the official's immediate family or on any reportable interest of the public official as defined in Title 2 California Code of Regulations section 18730(b)(9).

CONFLICT OF INTEREST CODE

OF EAST BAY DISCHARGERS AUTHORITY OF ALAMEDA COUNTY

SECTION 1. Purpose. Pursuant to the provisions of Government Code sections 87300 et seq., EAST BAY DISCHARGERS AUTHORITY (“AUTHORITY”) OF ALAMEDA COUNTY hereby adopts the following Conflict of Interest Code. Nothing contained herein is intended to modify or abridge the provisions of the California Political Reform Act of 1974.

SECTION 2. Incorporation of Regulation. The California Fair Political Practices Commission adopted a regulation (Title 2 California Code of Regulations section 18730) which contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency’s code. Therefore, the terms of Title 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the California Fair Political Practices Commission are hereby incorporated herein by this reference. The provisions of Title 2 California Code of Regulations section 18730 and the provisions below, designating officials and employees and establishing disclosure categories, along with the applicable sections of the California Political Reform Act, shall constitute the Conflict of Interest Code of the Authority.

SECTION 3. Designated Positions and Disclosure Categories. Persons holding a Designated Position listed below shall file a Statement of Economic Interest in the form of a Form 700. Those individuals holding a Designated Position are deemed to be in a position to make, or participate in the making of, decisions on behalf of the AUTHORITY which may foreseeably have a material effect on their economic interests.

<u>Designated Position</u>	<u>Disclosure Category</u>
Commission Member	1
General Manager	1
Treasurer/Controller	1
Legal Counsel	1
Consultant	2

Disclosure Category 1: Designated Positions in this category shall disclose all of the following interests: investments, interests in real property within the AUTHORITY’s jurisdiction*, personal income, business entity income, and business positions held or received during the previous calendar year.

Disclosure Category 2: Persons in this category shall disclose investments and business positions in business entities, and income from business entities of the type to provide bids, supplies, vehicles and equipment of the type used by the AUTHORITY.

Disclosure Category 3: Consultants shall disclose all of the interests required to be

disclosed pursuant to Disclosure Category 2, subject to the following limitation: The General Manager may determine in writing that a particular consultant, although a “Designated Position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager’s determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

*The AUTHORITY’s “jurisdiction” as set forth above in the disclosure categories is Alameda County. For the purpose of this Conflict of Interest Code, an interest in real property is located within the jurisdiction of the AUTHORITY if any part of the property is located in, or within two miles of, Alameda County, or if the property is located within two miles of any land owned or used by the AUTHORITY.

SECTION 4. Place, Manner and Time of Filing.

(a) Individuals holding a Designated Position shall file their Statements of Economic Interests with the AUTHORITY, which will make the statements available for public inspection and reproduction (Government Code Section 81008). The AUTHORITY will retain copies of the Statements of Economic Interests and file the original statements with the Alameda County Clerk of the Board of Supervisors.

(b) All designated filers shall comply with the provisions of Title 2 California Code of Regulations section 18730 along with the applicable sections of the California Political Reform Act, (and as that section may be amended), which contains detailed instructions regarding the scope and types of interests to be reported as well as the manner of reporting them. The regulation can be found online at:
<https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730Provisions-of-Conflict-of-Interest-Codes.pdf>.

(c) Initial Statements. All designated filers shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an Initial Statement within 30 days after the effective date of the amendment.

(d) Assuming Office Statements. All persons assuming Designated Positions after the effective date of this code shall file an Assuming Office Statement within 30 days after assuming the Designated Positions.

(e) Leaving Office Statements. All persons who leave Designated Positions shall file a Leaving Office Statement within 30 days after leaving office.

(f) Annual Statements. All designated filers shall file an Annual Statement no later than April 1 every calendar year.

SECTION 5. Disqualification. No designated filer shall make, participate in making, or in any way attempt to use their position to influence the making of any governmental decision which they know or has a reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of the official's immediate family or on any reportable interest of the public official as defined in Title 2 California Code of Regulations section 18730(b)(9).

ITEM NO. FM8 MOTION TO APPROVE REVISIONS TO THE AUTHORITY'S AUDIT POLICY

Recommendation

Approve revisions to the Authority's Audit Policy.

Strategic Plan Linkage

4. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.

Background

In May 2019, the Commission adopted Policy 1.3 Finance – Audit. Review of this policy has been conducted annually, with no changes recommended since the initial adoption.

Beginning with the audit of the year ended 6/30/2021, the Authority contracted with Cropper Accountancy Corporation for annual audit services; those services were to provide an audit of the Authority's annual Financial Statements through the 6/30/2023 statements. Cropper's engagement was extended by the Commission last month to include the audit of the Authority's 6/30/2024 and 6/30/2025 Financial Statements.

Discussion

In June 2024, the Committee reviewed a revised version of the Audit Policy that incorporated two recommended changes:

1. Improve the precision of the language referencing Generally Accepted Accounting Principles (GAAP) and U.S. Government Accountability Office's *Generally Accepted Government Auditing Standards (GAGAS)*.
2. Affirm the Commission's approval of using the Authority's auditors for the preparation of the Financial Transactions Report to the State Controller's Office when it is in the best interest of the Authority to do so. This report is commonly, but not exclusively, prepared for local agencies by their auditors because the auditors often have the information at hand if they assist in the publication of statements.

The Committee supported approval of the Policy with these proposed revisions. Redline and clean versions of proposed Audit Policy revisions are attached for Commission consideration.

POLICY NUMBER: 1.3

NAME OF POLICY: Finance - Audit

LAST REVISED: June 20, 2024~~May 16, 2019~~

PREVIOUSLY REVISED: May 16, 2019 (N/A – New Policy/Initial Adoption of a New Policy)

PURPOSE: The purpose of the Audit Policy is to ensure that EBDA's financial information adheres to Generally Accepted Accounting Principles (GAAP), and that the independent auditors conform to the independence Standard promulgated in the U.S. Government Accountability General Accounting Office's Generally Accepted Government Auditing Standards (GAGAS).

POLICY: It is the policy of the Authority that an annual financial audit will be performed by an independent public accounting firm with an Independent Auditor's Report to be included along with EBDA's fiscal year-end financial statements.

The audit will consist of review of EBDA's financial records and procedures in accordance with GAAP. The audit shall take place as soon as practical after EBDA staff closes the books for the fiscal year. The results of the audit will be presented to the Commission within six months of the end of the fiscal year.

The independent audit firm will be selected through a competitive bidding process at least once every five years. In no case will price serve as the sole criterion for the selection of an independent auditor or firm.

Professional standards allow independent auditors to perform certain types of non-audit services for their clients. A common example of this would be the annual preparation of the Financial Transactions Report to the State Controller's Office; preparation of this report by the independent audit firm is approved within this policy when this is the most efficient means of generating the Financial Transactions Report. Any other significant non-audit services —will be approved in advance by the Commission.

POLICY NUMBER: 1.3

NAME OF POLICY: Finance - Audit

LAST REVISED: June 20, 2024

PREVIOUSLY REVISED: May 16, 2019 (Initial Adoption of a New Policy)

PURPOSE: The purpose of the Audit Policy is to ensure that EBDA's financial information adheres to Generally Accepted Accounting Principles (GAAP), and that the independent auditors conform to the Independence Standard promulgated in the U.S. Government Accountability Office's *Generally Accepted Government Auditing Standards (GAGAS)*.

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ITEM NO. 16

OPERATIONS & MAINTENANCE COMMITTEE AGENDA

Monday, July 15, 2024

4:00 PM

**East Bay Dischargers Authority
2651 Grant Avenue, San Lorenzo, CA**

**This meeting will be teleconferenced from the following location:
Library Entry Patio, 5630 N Lincoln Avenue, Chicago, IL**

**Teleconference link: <https://us02web.zoom.us/j/81674664794>
Call-in: 1(669) 900-6833 and enter Webinar ID number: 816 7466 4794**

Committee Members: Simon (Chair); Azevedo

OM1. Call to Order

OM2. Roll Call

OM3. Public Forum

OM4. EBDA Permit Compliance

(The Committee will be updated on EBDA's NPDES compliance.)

OM5. Status Report

(The Committee will be updated on EBDA's O&M activities.)

OM6. Adjournment

Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available in the Boardroom and are to be completed prior to speaking.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, contact Juanita Villasenor at juanita@ebda.org or (510) 278-5910. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Agenda Explanation
East Bay Dischargers Authority
O&M Agenda
July 15, 2024

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Operations and Maintenance Committee is
Monday, September 16, 2024, at 4:00 pm**

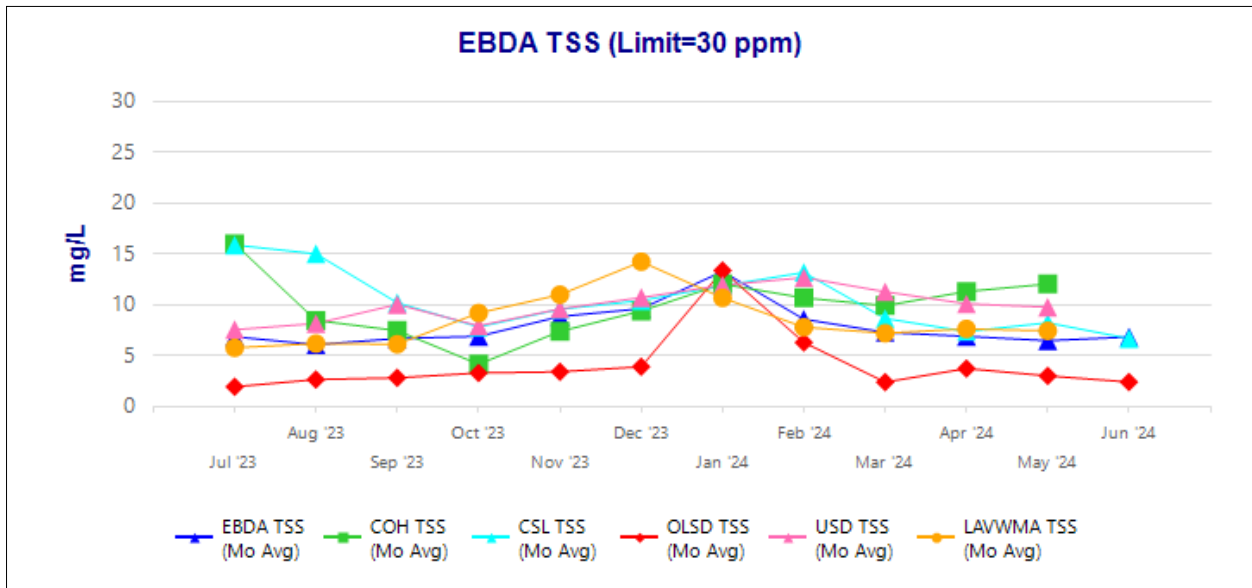
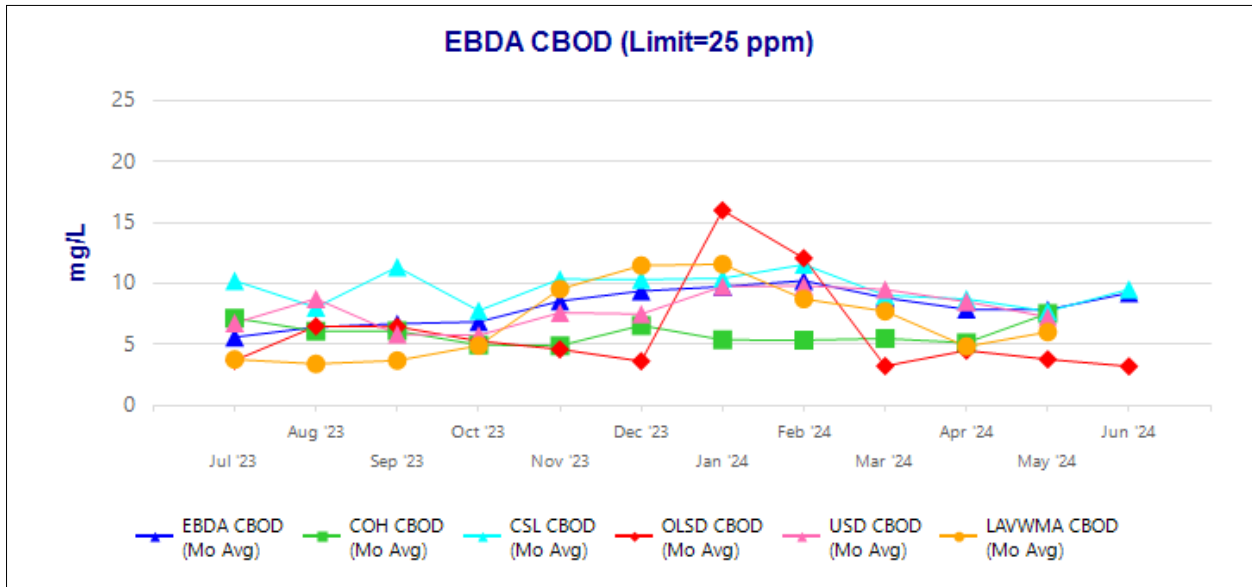
ITEM NO. OM4 EBDA PERMIT COMPLIANCE

Recommendation

For the Committee’s information only; no action is required.

Discussion

EBDA and its members continued our NPDES compliance in May, and preliminary June data indicates compliance as well. Member Agency CBOD and TSS performance are shown below. A table with bacterial indicators follows.



EBDA Bacterial Indicators

Date	FECAL	ENTERO
	MPN/ 100mL	MPN/ 100mL
Limit (90th Percentile)	1100	1100
Limit (Geomean)	500	280
June 2023 Geomean	8	83
July 2023 Geomean	7	18
August 2023 Geomean	17	5
September 2023 Geomean	47	4
October 2023 Geomean	18	3
November 2023 Geomean	8	8
December 2023 Geomean	7	5
January 2024 Geomean	12	4
February 2024 Geomean	8	15
March 2024 Geomean	6	7
5/1/2024	NA	8
5/6/2024	< 2	6
5/7/2024	13	2
5/8/2024	NA	4
5/13/2024	4	< 2
5/14/2024	70	6
5/20/2024	33	< 2
5/21/2024	13	6
5/27/2024	13	4
5/28/2024	11	8
May 2024 Geomean	12	4
6/3/2024	49	6
6/4/2024	40	15
6/5/2024	NA	13
6/10/2024	1600	< 2
6/11/2024	4	15
6/12/2024	NA	6
6/17/2024	130	4
6/18/2024	920	91
6/24/2024	8	6
6/25/2024	14	6
June 2024 Geomean	60	9

ITEM NO. OM5 STATUS REPORT

Union Effluent Pump Station (UEPS)

No change; all equipment is operational.

Hayward Effluent Pump Station (HEPS)

Effluent Pump Replacement Project

On May 10, the new Effluent Pump No. 4 was placed on the new concrete pump pad. Unfortunately, the pump contractor ordered the wrong length discharge couplings, so the pump could not be permanently installed. The correct length discharge couplings were ordered and recently arrived. EBDA staff is waiting for an installation date from the contractor. Once the couplings are installed, the new pump will be electrically connected, and then the new pump will be put in service and tested for several weeks. Because wet weather has ended, work to install the second new pump will begin as soon as the first new pump is operational.

Pond 3 Valve Actuator Replacement

As part of the FY 2022/2023 RRF project list, EBDA agreed to split the cost of a new Pond 3 valve actuator with the City of Hayward (City). The actuator is the property of the City, but replacing it will benefit both the City and EBDA. The current actuator does not have a feedback loop, so the information displayed on SCADA is limited. During wet weather storm events, having better information on SCADA will greatly improve EBDA operations. The ability to automatically divert flow to Pond 3 will save EBDA the cost of pumping the flow to Pond 7, which requires using the HEPS pumps. The ability to automatically divert flow to Pond 3 will also save the City the cost of adding sodium hypochlorite to the diverted flow. This project also includes the programming necessary to add the valve operations to SCADA.

In June, the City's maintenance staff began installation of the new Pond 3 valve actuator. Calcon, EBDA's contract electrical and instrumentation contractor, is scheduled to complete the installation on July 17 & 18. Calcon's work includes installing new radios and a new Programmable Logic Controller (PLC) that will communicate with and control the new valve actuator, as well as associated SCADA programming.

Oro Loma Effluent Pump Station (OLEPS)

Automatic Transfer Switch Upgrade

Todd Beecher, EBDA's contract electrical engineer, has commenced the design of two new automatic transfer switches (ATs) at OLEPS. The two new ATs will improve reliability of the pump station in the event of a power outage. If PG&E power fails, the OLEPS emergency generator is the primary source of backup power. Currently, if the emergency generator fails to start, operators can manually switch to the secondary source of backup power from OLSD. The installation of two new ATs will allow the switch

from primary to secondary backup to occur automatically. This ATS work is being completed as part of Phase 2 of the OLEPS Electrical Upgrades. Replacement of the breakers and refurbishment of the Main Switchboard was completed in Phase 1 of the OLEPS Electrical Upgrades last year.

Skywest Pump Station

Recycled Water Production

During the month of June 2024, the Skywest Recycled Water System operated for three days and produced 1.6 million gallons of recycled water.

Marina Dechlorination Facility (MDF)

Main Breaker Replacement

On June 28, 2024, a PG&E power shutdown was scheduled at MDF to replace the facility's main breaker. The shutdown was scheduled for 4 hours, but the breaker was replaced without any issues, and the PG&E power was restored within 1 hour and 45 minutes. This was the first phase of the MDF Electrical Upgrade Project. The next phase includes replacement of the Automatic Transfer Switch (ATS) electronic controls.

Force Main

No change; all equipment is operational.

Operations Center

No change; all equipment is operational.

Miscellaneous Items

Underground Service Alerts

EBDA received eight (8) Underground Service Alert (USA) tickets during the month of June 2024. Two required an Electronic Positive Response (EPR), calls/emails to the excavators, and field verification.

Special Projects

Cargill Brine Project

As discussed at previous Commission Meetings, following certification of the Final Environmental Impact Report (EIR) for the proposed project, Cargill informed EBDA staff that they have made the decision to re-evaluate the "Bayside" pipeline route. Cargill is continuing to refine the route and expects it to be very similar to the Bayside alternative outlined in the EIR. Cargill is continuing to meet with landowners along the new proposed route. Cargill is also investigating an alternative that would upgrade and repurpose a former Shell pipeline.

Cargill’s preliminary schedule shows revised CEQA analysis in 2025, and construction beginning sometime between 2027 and 2030 depending on permitting, with operation commencing between 2031 and 2033. Cargill has requested that EBDA consider an interim Project Approval Agreement between the parties that would allow Cargill to begin construction on elements of the project that do not directly affect EBDA, such as reconfiguration of intakes and pond structures at Cargill’s Newark salt facility. Staff is currently working with Meyers Nave to review and revise a draft agreement and expects to bring it to the Commission for consideration in the coming months. The Project Approval Agreement would be superseded by the final Operating Agreement, once negotiated.

Advanced Quantitative Precipitation Information (AQPI) Project

The regional AQPI project continues to move forward with a goal of improving prediction of rainfall events in the Bay Area. Following a series of delays, the East Bay radar was installed at [Rocky Ridge](#) in Las Trampas Regional Wilderness Park in December 2022. Data from the Rocky Ridge site finally became available in early December 2023, and can be viewed and downloaded from the AQPI [website](#). Commissioners and staff attended a site visit at Rocky Ridge on the afternoon of June 28, 2024 (see photo below) and were able to see the radar close up.



Program Management of AQPI has shifted from Colorado State University to the Center for Western Weather and Water Extremes (CW3E) at Scripps Institution of Oceanography, UC San Diego. CW3E will be developing an updated website and data management tools, which they expect to make available before the 2024-2025 wet season. A user feedback meeting to inform development of the website and tools is planned for August 27, 2024.

ITEM NO. 17 MOTION APPROVING AMENDMENTS TO THE GENERAL MANAGER'S AMENDED AND RESTATED EMPLOYMENT AGREEMENT

Recommendation

Approve the Amended and Restated General Manager Employment Agreement.

Background

Jacqueline Zipkin was first employed by the Authority as General Manager on February 28, 2018. Her Agreement has been amended in 2019 to add severance provisions, and in 2023 to enhance deferred compensation and add administrative leave.

Discussion

The attached Amended and Restated Employment Agreement, presented in tracked changes and clean versions, includes the following changes:

- Salary revision to conform with the Authority's Compensation Plan adopted in May 2024, which included a 2.6% cost-of-living-adjustment.
- Revision of retiree health benefits to conform with the Authority's Compensation Plan.
- Increase in vacation leave to align with leave provided to staff under the Authority's Personnel Policy.

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

JACQUELINE ZIPKIN

THIS AGREEMENT is made and entered into on this _____, by and between the East Bay Dischargers Authority, hereinafter called “Authority,” and Jacqueline Zipkin, hereinafter called “General Manager” (collectively, the “Parties”).

AGREEMENTS

WHEREAS, the Authority desires to hire Jacqueline Zipkin as General Manager of the Authority; and

WHEREAS, the Authority desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of said General Manager; and

WHEREAS, Ms. Zipkin desires to serve as Authority General Manager; and

WHEREAS, it is the desire of the Authority to (1) retain the services of General Manager and to provide incentive for her to remain in such employment; and (2) make possible full work productivity by assuring General Manager’s morale and peace of mind with respect to future security; and

WHEREAS, the Authority and General Manager entered into an Employment Agreement dated February 15, 2018, wherein the Authority hired General Manager and General Manager accepted employment as General Manager of the East Bay Dischargers Authority (“Employment Agreement”); and

WHEREAS, the Employment Agreement was amended on March 21, 2019 to provide severance benefits to the General Manager upon termination if the Authority ceases to exist or is otherwise no longer in need of a General Manager; and

WHEREAS, the ~~Employment Agreement was amended on November 15, 2023. Authority and General Manager now desire to enter into an Amended and Restated Employment Agreement~~ to increase the General Manager’s annual salary by \$1500 and annual Authority contribution to General Manager’s deferred compensation by \$14,292, thereby maxing out the annual deferred compensation contribution under current IRS regulation; ~~and-~~

WHEREAS, the Authority and the General Manager now desire to enter into an Amended and Restated Employment Agreement to increase the General Manager’s vacation leave and retiree medical benefits to match those provided to other Authority staff.

THEREFORE, the Parties hereby agree to the following terms and conditions of employment.

SECTION 1. DUTIES

Authority hereby agrees to employ Jacqueline Zipkin as General Manager to perform the functions and duties of that classification as described in the approved job description. The Commission may update the job description at any time to include additional or different duties.

General Manager shall perform the job duties to the best of General Manager's ability in accordance with the highest professional and ethical standards of the professions, and shall comply with all general rules and regulations established by the Authority.

General Manager shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law or that is otherwise prohibited by law.

SECTION 2. COMPENSATION

Effective ~~October 1, 2023~~ July 1, 2024, the Authority agrees to compensate General Manager for her services as General Manager at the monthly rate of ~~\$23,539.48~~ \$24,151.50 per month (~~\$135.81~~ \$139.34/hr.). This position is an FLSA-exempt position, meaning that General Manager shall not be eligible to earn overtime.

On July 1 of each year, salary shall be adjusted by cost of living, as measured by the National Consumer Price Index Pacific Cities; the base figure for comparison shall be the SF-Oakland-Hayward region for the period of January 1 through December 30 of the previous year, within the range established by the Authority's Personnel Policy, currently 2-5%.

Upon satisfactory performance reviews, the Authority may consider additional merit-based salary increases or bonus payments.

SECTION 3. BENEFITS

In addition to the compensation set forth in Section 2 of this Agreement, General Manager shall receive the same benefits provided to all other Authority employees as described in the Compensation Plan, last revised January 17, 2019. The key elements are summarized as follows:

General Manager shall be enrolled in the CalPERS retirement system. As of the date this letter is executed, the Authority participates in the CalPERS 2.5% at age 55 formula retirement plan for CalPERS classic members employed by the Authority. General Manager shall make contributions to CalPERS consistent with the Authority's Personnel Policy and the Authority's contract with CalPERS (Currently 8% for classic members). These benefits may change for a number of reasons, including if the Authority amends its contract with CalPERS, changes to existing retirement law, or adopts a new policy changing the employee's contribution rate.

The Authority currently pays 100% of medical insurance premiums up to the Kaiser California Bay Area family rate. Employees are provided dental and vision services through group plans provided by the City of Hayward, and the Authority pays 100% of the premium. In the event the General Manager chooses a more expensive PERS plan, the General Manager is responsible for paying the additional amount over the Kaiser rate.

The Authority currently provides a life insurance policy for the General Manager with a value of General Manager's salary. The Authority provides for a Disability Insurance Program (2/3 salary) for the General Manager.

The Authority shall contribute to the General Manager's Deferred Compensation Plan (as provided for in the Personnel Policy, Section 4, Deferred Compensation Plan) up to \$22,500 annually, the maximum elective deferral limit in 2023, as set by the IRS.

The Authority shall pay a stipulated amount, currently \$502 per month, directly to CalPERS for post-retirement medical under the Public Employees' Medical and Hospital Care Act.

Additionally, based on the General Manager's thirteen (13) years of CalPERS service and more than five (5) years of EBDA service as of the date of this Agreement, the Authority shall issue quarterly reimbursement to the General Manager for 65% of Kaiser's one-party member rate, increasing by 5% for each additional year of CalPERS service, up to 100% at 20 years.

Per Section 13 of the Personnel Policy, the General Manager will accrue sick leave at the rate of four (4) hours per payroll period, up to 96 hours per calendar year.

In addition to the benefits provided under the Compensation Plan, the General Manager will receive the Authority's maximum vacation accrual allowance of ~~160~~200 hours per year. General Manager shall also receive 80 hours per year of administrative leave in recognition of the fact that General Manager is to observe her regular work schedule and perform any further hours needed to satisfactorily execute the duties and responsibilities of her position.

SECTION 4. PROFESSIONAL DEVELOPMENT AND BUSINESS EXPENSES

If consistent with annual budgetary proceedings, the Authority agrees to pay reasonable: (i) travel and subsistence expenses of General Manager for professional and official travel to and from attendance at conferences, seminars, and meetings; and (ii) professional certifications and licenses including engineering registration, dues, books, and subscription expenses necessary and desirable to continue the professional development of General Manager, and (iii) expenses incurred to adequately pursue necessary official and other functions for the Authority, including national, regional, state, and local governmental groups and committees thereof which General Manager and/or the Authority serves as a member. Such organizations may include, but are not limited to the National Association of Clean Water Agencies (NACWA), California Association of Sanitation Agencies (CASA), Water Environment Federation (WEF), Water Environment & Reuse Foundation (WERF), California Water Environment Association (CWEA), and the Bay Area Clean Water Agencies (BACWA). Consistent with annual budgetary proceedings, the Authority agrees to pay such other reasonable business expenses related to General Manager's performance of the duties described in the attached job description.

SECTION 5. EQUIPMENT

The Authority shall provide the General Manager with the equipment necessary to perform the duties described in the attached job description. This includes provision of a cell phone or stipend commensurate with business use of General Manager's personal cell phone, provision of a laptop capable of connecting remotely to the Authority's business and SCADA systems, and provision of a tablet. Laptop computer and tablet may be combined to the extent that one piece of equipment can meet both functions. The Authority will replace equipment periodically to ensure current functionality.

SECTION 6. TERMINATION

The term of this Agreement shall be from February 28, 2018 until terminated by either party. The Parties agree that the General Manager is "at will," meaning that she serves at the pleasure of the Commission and that this Agreement may be terminated by either the General Manager or the Commission with or without cause at any time upon written notice to the General Manager during its term.

To the extent practicable, General Manager shall make her best effort to provide Authority at least sixty (60) days advance written notice of termination of this agreement.

In the event the Authority terminates the General Manager's employment without cause, the General Manager shall be entitled to the following severance: three months' salary at the rate in effect at the date of termination, COBRA payments to cover three months of full medical coverage, and compensation for unused but accrued vacation at the salary rate effective at the date of termination. In the event that the Authority ceases to exist or is otherwise no longer in need of a General Manager, the General Manager shall be entitled to the following severance: six months' salary at the rate in effect at the date of termination, COBRA payments to cover six months of full medical coverage, and compensation for unused but accrued vacation at the salary rate effective at the date of termination. Severance is conditioned on the General Manager signing and executing a comprehensive settlement and release of all claims against Authority.

SECTION 7. GENERAL PROVISIONS

1. This Agreement, including the attached Addendum to General Manager Employment Agreement, shall constitute the entire agreement between the Parties.
2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of General Manager.
3. If any provision of this Agreement or the application of such provision should be rendered or declared invalid by any decree of court of competent jurisdiction, or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.
4. This Agreement shall become effective upon approval by the East Bay Dischargers Authority Commission.

IN WITNESS WHEREOF, the above parties have executed this Agreement as of the date first written above.

East Bay Dischargers Authority

Date

Jacqueline Zipkin

Date

Approved as to form:

Eric S. Casher
Authority Legal Counsel

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

JACQUELINE ZIPKIN

THIS AGREEMENT is made and entered into on this _____, by and between the East Bay Dischargers Authority, hereinafter called "Authority," and Jacqueline Zipkin, hereinafter called "General Manager" (collectively, the "Parties").

AGREEMENTS

WHEREAS, the Authority desires to hire Jacqueline Zipkin as General Manager of the Authority; and

WHEREAS, the Authority desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of said General Manager; and

WHEREAS, Ms. Zipkin desires to serve as Authority General Manager; and

WHEREAS, it is the desire of the Authority to (1) retain the services of General Manager and to provide incentive for her to remain in such employment; and (2) make possible full work productivity by assuring General Manager's morale and peace of mind with respect to future security; and

WHEREAS, the Authority and General Manager entered into an Employment Agreement dated February 15, 2018, wherein the Authority hired General Manager and General Manager accepted employment as General Manager of the East Bay Dischargers Authority ("Employment Agreement"); and

WHEREAS, the Employment Agreement was amended on March 21, 2019 to provide severance benefits to the General Manager upon termination if the Authority ceases to exist or is otherwise no longer in need of a General Manager; and

WHEREAS, the Employment Agreement was amended on November 15, 2023 to increase the General Manager's annual salary by \$1500 and annual Authority contribution to General Manager's deferred compensation by \$14,292, thereby maxing out the annual deferred compensation contribution under current IRS regulation; and

WHEREAS, the Authority and the General Manager now desire to enter into an Amended and Restated Employment Agreement to increase the General Manager's vacation leave and retiree medical benefits to match those provided to other Authority staff.

THEREFORE, the Parties hereby agree to the following terms and conditions of employment.

SECTION 1. DUTIES

Authority hereby agrees to employ Jacqueline Zipkin as General Manager to perform the functions and duties of that classification as described in the approved job description. The Commission may update the job description at any time to include additional or different duties.

General Manager shall perform the job duties to the best of General Manager's ability in accordance with the highest professional and ethical standards of the professions, and shall comply with all general rules and regulations established by the Authority.

General Manager shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law or that is otherwise prohibited by law.

SECTION 2. COMPENSATION

Effective July 1, 2024, the Authority agrees to compensate General Manager for her services as General Manager at the monthly rate of \$24,151.50 per month (\$139.34/hr.). This position is an FLSA-exempt position, meaning that General Manager shall not be eligible to earn overtime.

On July 1 of each year, salary shall be adjusted by cost of living, as measured by the National Consumer Price Index Pacific Cities; the base figure for comparison shall be the SF-Oakland-Hayward region for the period of January 1 through December 30 of the previous year, within the range established by the Authority's Personnel Policy, currently 2-5%.

Upon satisfactory performance reviews, the Authority may consider additional merit-based salary increases or bonus payments.

SECTION 3. BENEFITS

In addition to the compensation set forth in Section 2 of this Agreement, General Manager shall receive the same benefits provided to all other Authority employees as described in the Compensation Plan, last revised January 17, 2019. The key elements are summarized as follows:

General Manager shall be enrolled in the CalPERS retirement system. As of the date this letter is executed, the Authority participates in the CalPERS 2.5% at age 55 formula retirement plan for CalPERS classic members employed by the Authority. General Manager shall make contributions to CalPERS consistent with the Authority's Personnel Policy and the Authority's contract with CalPERS (Currently 8% for classic members). These benefits may change for a number of reasons, including if the Authority amends its contract with CalPERS, changes to existing retirement law, or adopts a new policy changing the employee's contribution rate.

The Authority currently pays 100% of medical insurance premiums up to the Kaiser California Bay Area family rate. Employees are provided dental and vision services through group plans provided by the City of Hayward, and the Authority pays 100% of the premium. In the event the General Manager chooses a more expensive PERS plan, the General Manager is responsible for paying the additional amount over the Kaiser rate.

The Authority currently provides a life insurance policy for the General Manager with a value of General Manager's salary. The Authority provides for a Disability Insurance Program (2/3 salary) for the General Manager.

The Authority shall contribute to the General Manager's Deferred Compensation Plan (as provided for in the Personnel Policy, Section 4, Deferred Compensation Plan) up to \$22,500 annually, the maximum elective deferral limit in 2023, as set by the IRS.

The Authority shall pay a stipulated amount, currently \$502 per month, directly to CalPERS for post-retirement medical under the Public Employees' Medical and Hospital Care Act. Additionally, based on the General Manager's thirteen (13) years of CalPERS service and more than five (5) years of EBDA service as of the date of this Agreement, the Authority shall issue quarterly reimbursement to the General Manager for 65% of Kaiser's one-party member rate, increasing by 5% for each additional year of CalPERS service, up to 100% at 20 years.

Per Section 13 of the Personnel Policy, the General Manager will accrue sick leave at the rate of four (4) hours per payroll period, up to 96 hours per calendar year.

In addition to the benefits provided under the Compensation Plan, the General Manager will receive the Authority's maximum vacation accrual allowance of 200 hours per year. General Manager shall also receive 80 hours per year of administrative leave in recognition of the fact that General Manager is to observe her regular work schedule and perform any further hours needed to satisfactorily execute the duties and responsibilities of her position.

SECTION 4. PROFESSIONAL DEVELOPMENT AND BUSINESS EXPENSES

If consistent with annual budgetary proceedings, the Authority agrees to pay reasonable: (i) travel and subsistence expenses of General Manager for professional and official travel to and from attendance at conferences, seminars, and meetings; and (ii) professional certifications and licenses including engineering registration, dues, books, and subscription expenses necessary and desirable to continue the professional development of General Manager, and (iii) expenses incurred to adequately pursue necessary official and other functions for the Authority, including national, regional, state, and local governmental groups and committees thereof which General Manager and/or the Authority serves as a member. Such organizations may include, but are not limited to the National Association of Clean Water Agencies (NACWA), California Association of Sanitation Agencies (CASA), Water Environment Federation (WEF), Water Environment & Reuse Foundation (WERF), California Water Environment Association (CWEA), and the Bay Area Clean Water Agencies (BACWA). Consistent with annual budgetary proceedings, the Authority agrees to pay such other reasonable business expenses related to General Manager's performance of the duties described in the attached job description.

SECTION 5. EQUIPMENT

The Authority shall provide the General Manager with the equipment necessary to perform the duties described in the attached job description. This includes provision of a cell phone or stipend commensurate with business use of General Manager's personal cell phone, provision of a laptop capable of connecting remotely to the Authority's business and SCADA systems, and provision of a tablet. Laptop computer and tablet may be combined to the extent that one piece of equipment can meet both functions. The Authority will replace equipment periodically to ensure current functionality.

SECTION 6. TERMINATION

The term of this Agreement shall be from February 28, 2018 until terminated by either party. The Parties agree that the General Manager is "at will," meaning that she serves at the pleasure of the Commission and that this Agreement may be terminated by either the General Manager or the

Commission with or without cause at any time upon written notice to the General Manager during its term.

To the extent practicable, General Manager shall make her best effort to provide Authority at least sixty (60) days advance written notice of termination of this agreement.

In the event the Authority terminates the General Manager's employment without cause, the General Manager shall be entitled to the following severance: three months' salary at the rate in effect at the date of termination, COBRA payments to cover three months of full medical coverage, and compensation for unused but accrued vacation at the salary rate effective at the date of termination. In the event that the Authority ceases to exist or is otherwise no longer in need of a General Manager, the General Manager shall be entitled to the following severance: six months' salary at the rate in effect at the date of termination, COBRA payments to cover six months of full medical coverage, and compensation for unused but accrued vacation at the salary rate effective at the date of termination. Severance is conditioned on the General Manager signing and executing a comprehensive settlement and release of all claims against Authority.

SECTION 7. GENERAL PROVISIONS

1. This Agreement, including the attached Addendum to General Manager Employment Agreement, shall constitute the entire agreement between the Parties.
2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of General Manager.
3. If any provision of this Agreement or the application of such provision should be rendered or declared invalid by any decree of court of competent jurisdiction, or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.
4. This Agreement shall become effective upon approval by the East Bay Dischargers Authority Commission.

IN WITNESS WHEREOF, the above parties have executed this Agreement as of the date first written above.

East Bay Dischargers Authority

Date

Jacqueline Zipkin

Date

Approved as to form:

Eric S. Casher
Authority Legal Counsel

ITEM NO. 18 ITEMS FROM THE COMMISSION AND STAFF

The Commission and staff may comment on items of general interest.

ITEM NO. 19 CLOSED SESSION

The Commission will meet in closed session to discuss the following:

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Gov. Code § 54956.9(d)(2)

Number of Potential Cases: 1

ITEM NO. 20 RECONVENE OPEN SESSION

ITEM NO. 21 ADJOURNMENT