



October 15, 2008

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Floor 14
Oakland, CA 94612

Sent via electronic mail to MChee@waterboards.ca.gov, DWhyte@waterboards.ca.gov

RE: City of San Mateo, Town of Hillsborough, and Crystal Springs Sanitation District Cease and Desist Order and related Complaint for Administrative Civil Liability

Dear Chair Muller and Board Members:

We are writing to share our comments on the tentative cease and desist order (“CDO”) requiring the City of San Mateo, the Town of Hillsborough (“Hillsborough”) and the Crystal Springs County Sanitation District (“Crystal Springs”) to take immediate action to reduce sewage spills from their sanitary sewer collection systems. Please note that the scope of these comments also extends to the complaint for Administrative Civil Liability (“ACL”) for Crystal Springs’ violations of the Water Quality Control Plan for the San Francisco Bay Basin and the State Water Resource Control Board’s General Waste Discharge Requirements for Sanitary Sewer Systems, Complaint No. R2-2008-0065.

San Francisco Baykeeper (“Baykeeper”) is pleased that the San Francisco Bay Regional Water Quality Control Board (“Regional Board”) is taking this much-needed and long-overdue enforcement action to address systemic problems in the San Mateo Wastewater Treatment Plant (“WWTP”) sewershed, including woefully inadequate system capacity and maintenance. As described in more detail below, we have brought similar actions against the City of Burlingame, Hillsborough and the Burlingame Hills Sewer Maintenance District in order to address capacity problems in the nearby Burlingame WWTP sewershed. In the absence of enforcement or more stringent regulatory requirements, many cities have and will continue to neglect their systems, deferring the costs of necessary replacement and rehabilitation, and resulting in greater costs over the long term. Strong enforcement of existing laws and regulations—in the form of rigorous CDOs and meaningful penalties—is key to ensuring that our region’s sanitary sewer systems are performing well and are not contaminating local creeks or the Bay.

While this tentative CDO is a good first step towards compelling improvement of these communities’ sewer systems, it is lacking in several respects. Most notably, the proposed CDO fails to limit peak wet weather flow from Crystal Springs into Hillsborough and from Hillsborough into San Mateo. Without specific and enforceable limits on peak wet



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weather flow, each community may continue to escape accountability for causing or contributing to spills in other parts of the collection system.

Background

More than a decade ago, Baykeeper identified a need for enforcement actions to reduce the millions of gallons of raw and partially treated sewage spilling into the Bay every year. In the absence of rigorous Regional Board and EPA enforcement, Baykeeper used the Clean Water Act's citizen suit provisions to compel some of the worst-performing sanitation agencies to rehabilitate and repair their leaky and spill-prone systems. We filed our first citizen's lawsuit against the Vallejo Sanitation District in 1999, forcing the agency to address severe capacity problems. In the almost ten years since the Court entered our agreement, Vallejo has dramatically reduced its spill rate and believes that it has eliminated all capacity-related SSOs.

In 2006, Baykeeper brought an enforcement action against the City of Richmond, which had one of the highest spill rates in the Bay Area and which knowingly and illegally dumped more than 20 million gallons of raw sewage into the Bay from overflow pipes between 2000 and 2005. After many discussions with Richmond, we entered into an agreement that placed the City on track to inspect, via Closed Circuit Television ("CCTV"), its entire system and to dedicate \$20 million to repairing it, with the goal of eliminating the illegal overflows. Our agreement also provided financial assistance to low-income residents to help with rate increases and replacement of leaky lateral lines.

Most recently, Baykeeper identified the City of Burlingame for enforcement because of the City's high spill rate and its reliance on an illegal shallow water discharge point ("nearshore discharge") during wet weather. We successfully resolved our action against the City this past year. As a result, Burlingame has agreed to stop using the nearshore outfall except during rainfall events greater than a ten-year 24-hour storm. Burlingame's treatment plant, however, receives high peak wet weather flows from its satellites' sewer systems, which are the Burlingame Hills Sanitation District ("Burlingame Hills") and a portion of Hillsborough's collection system. Significant reductions in the satellites' peak wet weather flows are required for Burlingame to reduce its own spill rate and stop all nearshore outfall discharges.

Burlingame, through its Court-entered agreement with Baykeeper, is committed to working with Hillsborough and Burlingame Hills to reach sound engineering decisions on the most cost-effective means for ensuring adequate capacity throughout the Burlingame WWTP sewershed. To obtain reciprocal commitments from Hillsborough and Burlingame Hills, we initiated citizen suits against each of these entities this summer. Our goal, similar to that of the Regional Board in dealing with the San Mateo WWTP sewershed, is to get all the agencies in the sewershed to work collaboratively to reduce peak wet weather flows and ensure adequate capacity throughout the system as a whole. While we have had preliminary discussions with Hillsborough and Burlingame Hills, we have yet to come to an agreement.

CDO Recommendations

Rather than a detailed analysis of the problems specific to the dischargers' sanitary sewer systems, the tentative CDO is essentially identical to the administrative orders issued by the U.S. Environmental Protection Agency ("EPA") in the wake of the Southern Sewerage Agency of Marin spill earlier this year. Baykeeper's experiences in bringing enforcement actions for sanitary sewer overflows ("SSOs"), as described above, strongly suggests that a "one-size fits all" approach is less effective than imposing requirements based on a thorough analysis of each system. We believe that future CDOs should contain more specific requirements and, at a minimum, should impose peak wet weather flow limitations on each agency in the sewershed.

1. Peak Wet Weather Flow Reductions

As mentioned above, our greatest concern is that the tentative CDO fails to actually control peak wet weather flow or to provide the City of San Mateo with the means to limit flow to the San Mateo WWTP. Not only will unchecked flow from Hillsborough and Crystal Springs continue to cause sanitary sewer overflows ("SSOs") in the sewershed, it will force the San Mateo WWTP to continue discharging partially blended sewage during wet weather.

The CDO's general requirement that the dischargers "complete improvements necessary to eliminate conditions...that cause or contribute to SSOs" is too vague. CDO at p. 13. Instead, the order should impose numeric peak wet weather flow limitations on each collection system and make clear the Regional Board's intent to impose penalties for exceedances of those limitations. The CDO also should require the City of San Mateo, Hillsborough, and Crystal Springs to conduct a joint, rather than an individual, capacity assessment that includes flow monitoring and that describes an agreed-upon method for the allocation of peak wet weather flows and a mechanism for enforcing those allocations. By requiring a joint instead of individual capacity assessment and report, the Regional Board will compel the agencies to work out any disagreements amongst themselves and, ideally, renegotiate any existing contracts to also incorporate peak wet weather flow limitations.

2. Sanitary Sewer Overflow Reduction (¶I)

The CDO's requirements for reduction of SSOs should be made more explicit. Rather than requiring the dischargers to "substantially reduce the frequency and volume of SSOs," the CDO should require elimination of all capacity-related SSOs by a specific date. For all other types of spills (e.g., spills caused by roots), the CDO should require regular reductions in each system's spill rate (expressed as the number of spills per 100 miles of sewer) until each system achieves a "good" performance rate of between zero and two spills each year for each 100 miles of pipe. See Greenberg, Kenneth, Expert Report in *United States v. City of Los Angeles*, ¶ 10.0, p. 29 (October 15, 2003).

3. Inadequate Design Storm (§§ I.B.1, IV.B)

The CDO at I.B.1 requires that Hillsborough complete implementation of the capacity upgrade to the Crystal Springs/El Cerrito Trunk Sewer that is nearing design completion. The CDO at IV.B requires a capacity assessment be performed on Hillsborough's system. Neither of the above requirements defines a design storm for which the design and capacity assessment will be performed.

The 1999 I/I study performed by Hillsborough which serves as a basis for the capacity projects in its CIP was based on a 5-year 4-hour storm. Pursuant to the settlement agreement with Baykeeper, Burlingame has agreed to eliminate discharges from its Nearshore Outfall, and any capacity related SSOs, for all storms less than a 10-year 24-hour storm. Thus the CDO will allow capacity related SSOs and potential impacts to the San Mateo WWTP on a frequency more than twice that agreed to by Burlingame—discharges of sewage which are completely prohibited by federal law. Further, if this lesser standard is maintained in the CDO, Hillsborough will likely be held to the 10-year 24-hour standard for discharges to the Burlingame WWTP sewershed, while the lesser 5-year 4-hour standard will apply to discharges to the City of San Mateo WWTP sewershed—a nonsensical result. To achieve maximum protection of the Bay, and for consistent planning purposes, the CDO should require a 10-year 24-hour design storm.

4. Fats, Oils and Grease (§ III.D)

The CDO should establish the minimum requirements of a FOG program rather than merely requiring a summary of the dischargers' existing programs and proposals for modification. The minimum requirements should include the following: (a) an ordinance or regulation requiring installation of grease traps at all appropriate facilities (e.g., restaurants), (b) procedures for regular inspections of grease traps and enforcement if necessary, (c) procedures for identifying residential FOG hotspots and requiring homeowner action. If all of the dischargers, like the City of San Mateo, already have a FOG program that requires food service establishments to install and maintain grease traps, the CDO should also require that the "description of the effectiveness of the [FOG] program" include statistics on compliance with existing ordinances and on inspection and enforcement. CDO at p. 17.

5. Collection System Condition and Capacity Assessments (§IV)

In conducting their collection system condition and capacity assessments, the dischargers should be required to use the most current technology and procedures. Specifically, the system assessments should be conducted using closed circuit television ("CCTV") wherever feasible. CCTV can reduce costs because it requires only a small work crew and generates specific information on the exact condition and location of defects. Additionally, the CCTV footage provides a mechanism for verifying that the inspections have been completed and allows for problem areas to be revisited and evaluated multiple times without going into the field. Practically, this improves the quality of the

inspections by allowing multiple people with varying levels of experience and expertise to evaluate the system.

The CDO should also require the use of the Pipeline Assessment and Certification Program (“PACP”), or an equivalent, as the basis for scheduling and prioritizing repairs and replacements. The PACP standardizes pipeline inspection and evaluation procedures and can also be used to standardize corrective actions and timeframes for those actions. Standardization of coding and response should not only help the sanitation agencies be more efficient and consistent in managing their systems, it will also facilitate a comparison of a system’s performance at different points in time to gauge the adequacy of maintenance efforts.

6. Laterals (§VI.A.5)

Failing lateral lines can be responsible for a significant portion of inflow and infiltration in a system, meaning that they can contribute greatly to capacity-related spills. The tentative CDO, therefore, must require more than “a plan to address private lateral repair, rehabilitation and replacement as needed.” CDO at p. 20. It should require that each discharger adopt legal authority to require regular inspection of privately owned laterals (e.g., upon sale or remodel of property), and replacement or rehabilitation when necessary. If the City of San Mateo, Hillsborough and/or Crystal Springs already have adopted lateral line ordinances, they should be required to provide data on the number of lines inspected and replaced as a result. The CDO should also require each discharger to submit a plan for inspection of all of the laterals within its ownership within five years.

7. Anticipated Growth in the City of San Mateo

It is our understanding that the City of San Mateo is planning a mixed-use development, which will include more than 1,000 residential units, for the site of the Bay Meadows racetrack. We hope that the Regional Board will seek assurances from the City of San Mateo that all necessary capacity improvement projects will be implemented by the time this development is completed so that the increase in wastewater volume will not exacerbate the sewershed’s existing problems.

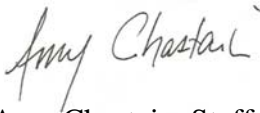
Complaint for Administrative Civil Liability Recommendations

While we strongly support the Regional Board’s decision to assess penalties against the dischargers, we believe that the penalties assessed against the Crystal Springs Sanitation District are too low. In 2006, the residents served by Crystal Springs intentionally blocked an increase in sewer rates that was necessary to fund some of the capital improvement projects identified in the District’s 1999 Sewer System Management Plan. While rates were increased in 2007, this was only after extensive outreach by the San Mateo County Department of Public Works and this increase is not even sufficient to fund capital improvements.

The recalcitrance of the Crystal Springs residents to pay the costs of conveying and treating their own waste is troubling. Their protest of rate increases necessary for system maintenance and capital improvements not only affects the residents themselves, it also affects those living in Hillsborough and the City of San Mateo, who experience more capacity-related SSOs because of Crystal Springs' inability to fix its system. If considered by the Regional Board, we believe that these factors—the refusal to increase rates and Crystal Springs' contribution to downstream spills—warrant imposition of a greater penalty.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Amy Chastain".

Amy Chastain, Staff Attorney

Sejal Choksi, Baykeeper & Program Director