

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED TENTATIVE ORDER

**ADMINISTRATIVE CIVIL LIABILITY FOR:
CITY OF SAN MATEO
SAN MATEO COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") investigation of sanitary sewer overflows ("SSOs") in the City of San Mateo (the "Discharger") and surrounding areas and the issuance of Administrative Civil Liability Complaint No. R2-2008-0067.

The Discharger has waived the right to a hearing and has agreed to pay \$950,000 in penalties to address the claims alleged in Complaint No. R2-2008-0067. The Discharger will pay that amount to the Waste Permit Discharge Fund, of which \$760,000 will be suspended provided it is satisfied through completion of a Supplemental Environmental Project ("SEP") as set forth in Attachment A.

Having provided public notice of the proposed supplemental environmental project and an opportunity for comment, the Executive Officer finds that:

1. The Discharger owns and operates the City of San Mateo Wastewater Treatment Plant (San Mateo WWTP) and its conveyance system. The San Mateo WWTP provides secondary and advanced secondary treatment for domestic and commercial wastewater from the City of San Mateo, the City of Foster City, the Town of Hillsborough, portions of the City of Belmont, and an unincorporated area of San Mateo County (Crystal Springs County Sanitation District). The San Mateo WWTP has an average dry weather design capacity of 15.7 million gallons per day (mgd) and a peak wet weather capacity of approximately 40 mgd. The Discharger's sanitary sewer collection system (collection system) consists of approximately 229 miles of gravity sewer pipe, 6.8 miles of forced mains, 74 miles (lower lateral) of the 189 miles of total lateral pipe (upper and lower), and 23 pump stations. The Discharger's collection system serves an approximate population of 94,650.
2. From December 1, 2004, through July 14, 2008, the Discharger reported 87 SSOs from its collection system. Notably, 84 of the 87 SSOs, representing over 3.5 million gallons of raw sewage, discharged to surface waters. Tables 1A and 1B (Attachment B) summarize the details of all 87 SSOs.
3. An SSO is a discharge from a collection system of raw sewage consisting of domestic, industrial, and commercial wastewater. An SSO contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets or surface waters

used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, discharges to surface waters and/or seeps to ground waters. SSOs pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

4. On June 20, 2001, the Regional Water Board adopted Order No. 01-071 (NPDES Permit No. CA 0037541) prescribing waste discharge requirements to the Discharger for its discharges from the San Mateo WWTP and associated sewage collection system. Order No. 01-071 includes the following requirements:

- a. Discharge Prohibition A.4

“Discharges of water, material, or wastes other than stormwater, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”

- b. Provision E.4, Standard Provisions and Reporting Requirements

“The discharger shall comply with all applicable items of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Standard Provisions).”

General Provision A.1 of Standard Provisions

“Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.”

5. On November 1, 2007, the Regional Water Board adopted Order No. R2-2007-0075 (NPDES Permit No. CA 0037541), reissuing the permit to the Discharger for discharges from the San Mateo WWTP and associated sewage collection system. Order No. R2-2007-0075 became effective on February 1, 2008. Order No. R2-2007-0075 includes the following requirements:

- a. Discharge Prohibitions III.E

“Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”

- b. Provision VI.A.2, Standard Provisions

“The Discharger shall comply with all applicable provisions of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Attachment G).”

Attachment G, General Provision A.1 of Standard Provisions

“Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.”

6. The Discharger’s collection system is also regulated by Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Resources Control Board (or State Water Board) on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ (or General WDR). The Discharger filed the Notice of Intent for coverage under the General WDR on July 26, 2006, and was assigned WDID No. 2SSO10183. The effective date of the General WDR is December 14, 2006. Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*
 2. *Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC Section 13050(m) is prohibited.*
7. Pursuant to CWC Section 13350(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) either on a daily basis or on a per gallon basis, but not both, as follows:
 - a. The civil liability on a daily basis may not exceed \$5,000 for each day in which a violation occurred.
 - b. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.
8. All 87 SSOs are violations of either Order No. 01-071, Order No. R2-2007-0075, or the General WDR Prohibition C.2. Some SSOs violate both Order No. R2-2007-0075 and the General WDR depending on when the SSO occurred.
9. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public, including the proposed Supplemental Environmental Project described in Attachment A and has determined that the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has considered the factors described in Water Code section 13327.
10. This issuance of this order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to section 15321 of Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Discharger shall pay a penalty of \$950,000 to the State Water Board's Waste Discharge Permit Fund to address the claims alleged in Complaint No. R2-2008-0067. The Discharger's obligation to pay \$760,000 of that amount will be suspended provided the Discharger satisfactorily completes an SEP as set forth in Attachment A. The Discharger shall initiate the SEP not later than 30 days following approval of this order. The payment to the Waste Discharge Permit Fund shall be made not later than 30 days following approval of this order. The time period for payment to the Waste Discharge Permit Fund shall be extended during the time in which any review is sought under Water Code sections 13320 or 13330.
2. Any public outreach or final report information produced by the Discharger about or from the SEP shall indicate that the SEP is being performed as settlement of an enforcement action of the San Francisco Bay Regional Water Board.
3. In the event that any of the following occur, the Discharger shall pay the entire penalty of \$950,000 within 30 days to the Waste Discharge Permit Fund:
 - a. The Discharger determines that it does not wish to perform the SEP,
 - b. The Executive Officer determines that the SEP is not being performed in accordance with the specified terms and conditions of the SEP as approved through this order, or
 - c. The Executive Officer determines that the SEP as set forth in Attachment A does not qualify as a SEP in accordance with the State Water Board's Enforcement Policy and another SEP proposal is not proposed to and accepted by the Executive Officer in a reasonable time frame.

Additionally, in the event that the SEP is completed but expenditures were less than \$760,000, the Discharger shall immediately pay the remaining balance to the Waste Discharge Permit Fund.

Date: _____

Bruce H. Wolfe
Executive Officer

Attachments:

A – Supplemental Environmental Project

B – Tables 1A and 1B