

DEPARTMENT OF PUBLIC WORKS
Larry A. Patterson, P.E., Director



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February 20, 2009

BY EMAIL

Mr. Bruce Wolfe, Executive Officer
Ms. Dyan Whyte, Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: *City of San Mateo, San Mateo County - Administrative Civil Liability
Complaint No. R2-2008-0067*

Dear Mr. Wolfe and Ms. Whyte:

The City of San Mateo (City) appreciates the opportunity to provide comments on the above-referenced Administrative Civil Liability (ACL). The City supports Regional Water Board approval of the ACL if the following comments can be addressed as requested:

- 1. "Information" produced for the Supplemental Environmental Project (SEP) should only be qualified if the audience for a publication is the public.**

The City appreciates the Regional Water Board's acceptance of the SEP proposed by the City. However, the SEP is fairly complicated in nature and will involve significant coordination and cooperation among various City agencies and consultants. This coordination will entail a variety of communications and transfer of "information". In order to prevent an inordinate burden in implementing the SEP, the City requests that requirement No. 2 of the ACL be modified as follows:

- 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.**
- 2. The City should not be held liable for costs incurred resulting from a subsequent decision by the Executive Officer which is inconsistent with this ACL and SEP.**

Requirement No. 3.c. states that if the Executive Officer later decides that the SEP being adopted as part of this ACL is not acceptable, then the City is liable for the entire \$950,000 penalty. This statement is a significant problem because if a decision such as this is made after the City has

started implementing the SEP, then the City would have expended public funds, up to \$760,000, in good faith and be penalized through no fault of its own. This approach to spending public funds is completely inappropriate. Requirement 3.c. should be removed, or at a minimum, language should be revised as follows:

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:

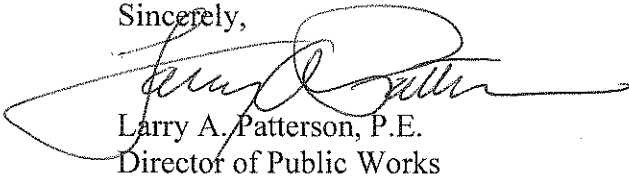
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- c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another SEP proposal is not proposed to and accepted by the Executive Officer in a reasonable time frame. However, any City funds expended up to and including 30 days following the date of receipt of the SEP termination notice provided by the Executive Officer will be counted toward the ACL penalty as a valid SEP.

The City greatly appreciates the cooperation and assistance of your staff in developing the Private Lateral Replacement Project as a SEP. The SEP will assist the City in meeting its long-term goals of improving its wastewater collection system.

The City is concerned with the magnitude of the ACL, particularly in view of these troubling economic times. Nevertheless, the City is committed to meeting the terms and conditions of the ACL and looks forward to working with Regional Water Board staff as the SEP is implemented.

Please feel free to contact me if you have any questions or would like to discuss our comments.

Sincerely,



Larry A. Patterson, P.E.
Director of Public Works

- c: Lila Tang, Regional Water Quality Control Board
- Gina Kathuria, Regional Water Quality Control Board
- Michael Chee, Regional Water Quality Control Board
- Shawn Mason, San Mateo City Attorney
- Darla G. Reams, San Mateo Deputy Director
- Monica Oakley, Oakley Water Strategies
- File/Chron