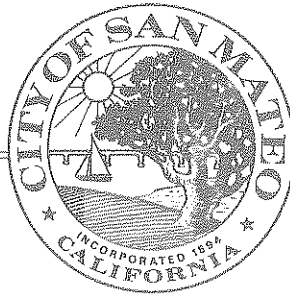


DEPARTMENT OF PUBLIC WORKS
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November 12, 2008

Dyan C. Whyte
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: *Administrative Civil Liability Complaint and Tentative Cease and Desist Order*

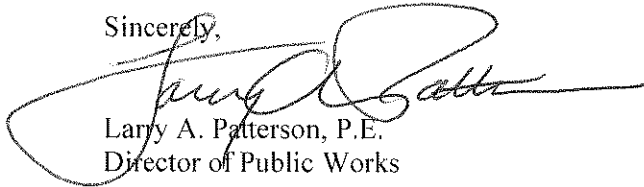
Dear Ms. Whyte,

The City of San Mateo waives its right to a hearing for the Administrative Civil Liability (ACL) issued on September 16, 2008. Enclosed you will find a signed waiver for that purpose. Also enclosed is a Supplemental Environmental Project (SEP) proposal, to address private sewer laterals. This project includes inspection and replacement of privately-owned sewer segments to reduce infiltration and inflow to the publicly-owned portion of the sewer system.

The City has also reviewed the tentative Cease and Desist Order (CDO), released with the ACL. Enclosed you will find the City's comments on this draft document. The City appreciates the opportunity to comment on the CDO and would be happy to answer any questions that Regional Water Board members or staff may have on the City's comments.

Thank you very much. Please let me know if you have any questions or would like additional information.

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
Mike Chee, Regional Water Quality Control Board
Jim Porter, San Mateo County Public Works Director
Martha DeBry, Town of Hillsborough Public Works Director
Susan M. Loftus, San Mateo City Manager
Shawn Mason, San Mateo City Attorney
Monica Oakley, Oakley Water Strategies
Darla G. Reams, San Mateo Deputy Director
Chron/File

Comments on Tentative Cease and Desist Order for Sanitary Sewer Overflows

11-10-08

Comments are provided roughly in order that they appear in the tentative Cease and Desist Order (CDO).

- 1. The NPDES Permit cited in Finding 2 on page 1 of the Cease and Desist Order indicates the specified coverage of the permit incorrectly.**

Page 1, Finding 1

The Name of the Facility indicated in the City of San Mateo's (City's) NPDES permit is "City of San Mateo Wastewater Treatment Plant", not the "San Mateo WWTP and associated sewage collection system". Language should be changed as follows:

- 1. NPDES Permit (2008–present).** On November 1, 2007, the Regional Water Board adopted Order No. R2-2007-0075 (NPDES Permit No. CA 0037541), reissuing the permit to the City of San Mateo for discharges from the San Mateo WWTP. Certain provisions in the Order pertain to the sanitary sewer system. Order No. R2-2007-0075 became effective on February 1, 2008, and superceded the requirements of Order No 01-071.
- 2. Language at the bottom of page 1 is missing from the publicly-noticed tentative order.**

Page 1, Finding 3

The last sentence on page 1 begins with the word "In" and does not complete the sentence. Either the word "In" should be removed or the remaining portion of the sentence should be included.

- 3. The State and Regional Water Board requirements stipulate that Sewer System Management Plans (SSMPs) must be developed but not submitted.**

Page 2, Finding 4

Regulatory agencies have been very clear to indicate that they do not want the SSMPs to be submitted, unless requested. Language in Finding 4 (page 2) should be revised as follows:

- 2. Sanitary Sewer Overflow (SSO) Requirements (2004–2006).** By letter dated November 15, 2004, the Regional Water Board notified sewer system authorities of new requirements for reporting SSOs including requirements to (1) electronically report SSOs to the Regional Water Board SSO eReporting Program, and (2) submit an annual report of all SSOs. By letter dated July 7, 2005, the Regional Water Board required sewer system authorities to each develop a Sewer System Management Plan (SSMP) by August 31, 2008.

4. The City of San Mateo's contribution to the Crystal Springs/El Cerrito Trunk Sewer is characterized incorrectly.

Page 3, Finding 9

There appears to be a misunderstanding about the contributions to the Crystal Springs/El Cerrito Trunk Sewer. The details in Table 1 show the total miles of sewer pipe in each agency altogether, rather than the miles of pipe that contribute to the Crystal Springs/El Cerrito Trunk Sewer. San Mateo has 4.43 miles (or 2 % of its system) that contribute to this trunk sewer. The population associated with this contribution is 774.

5. The Regional Water Board has inappropriately characterized violations in the CDO.

Page 4-5, Findings 11-13

City's NPDES permit contains the following language, "While the Discharger must comply with both the General Waste Discharge Requirements [WDR] for Collection System Agencies (General Collection System WDR) and this Order, the General Collection System WDR more clearly and specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows." In addition, the WDR states that SSOs are prohibited if they cause a nuisance. A nuisance is defined at Section 13070 of the California Water Code as:

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

It is therefore disingenuous for the Regional Water Board to state that all SSOs, no matter how big or small, no matter where they end up, are violations. This is unreasonable public policy and is inappropriate in a resource-limited society.

6. The Regional Water Board has not described how all the enforcement discretion factors were considered, as required under the State Water Board's Waste Discharge Requirements.

State Water Board Order No. 2006-0003 DWQ requires State and/or Regional Water Boards to consider seven enforcement discretion factors in any enforcement proceeding. This requirement exists because there is significant variability concerning the causes of sanitary sewer overflows (SSOs), impacts of SSOs, and also the degree to which the collection system agency has control over the occurrence of SSOs. The CDO does not include a reference to these enforcement discretion factors and how the Regional Water Board has addressed them.

7. The CDO Mischaracterizes Wastewater Treatment Plant (WWTP) Blending.

Page 7, Finding 18

Finding 18 essentially repeats the language in Order No. R2-2007-0075, which allows blending during wet weather events. However, this section is labeled “San Mateo WWTP Problems.” The City believes that this heading is a mischaracterization of the blending concept and current regulatory framework, because blending is specifically allowed, and the City has agreed in good faith to a series of steps to reduce blending. In addition, Regional Water Board staff have indicated that the City really should be conducting *more* blending, because blending can help prevent SSOs. This paragraph should be completely removed or else the Regional Water Board should communicate that the City should currently use blending more frequently in order to prevent SSOs. Alternatively, a new Finding 18, with more applicable content, could replace the draft one as follows:

18. **San Mateo Collection System Relief Lines.** Wet weather relief lines are necessary throughout the San Mateo collection system to prevent SSOs during rain events. In addition to these relief lines, improvements to the Dale Avenue pump station and the WWTP will be necessary. The City is currently preparing a Wastewater Treatment Plant and Dale Avenue Pump Station Wet Weather Capacity Analysis and Alternatives Evaluation. This study will form the basis of future Capital Improvements Plan (CIP) projects to bring the City into compliance for no overflows during a design storm. The projects will include a combination of relief lines, line rehabilitation, storage basins, an equalization basin at the WWTP, and upgrades to the Dale Avenue Pump Station, forcemains, and the WWTP.

8. The CDO Mischaracterizes the Crystal Springs/El Cerrito Trunk Sewer.

Page 7, Finding 19

Finding 19 is factually inaccurate. Inadequate capacity to the WWTP and Dale Avenue Pump Station operation does not currently contribute to backups on the Crystal Springs/El Cerrito Trunk Sewer because the trunk lines from Hillsborough to Dale Avenue cannot transmit the flow. The second and third paragraphs are likewise inaccurate and should be removed. Language should be revised in the first paragraph, as follows:

19. **Crystal Springs/El Cerrito Trunk Sewer.** The collection system, particularly along the Crystal Springs/El Cerrito Trunk Sewer, is significantly undersized to handle a rain event. In particular, surcharging of the Crystal Springs/El Cerrito Trunk Sewer is currently the result of inadequate trunk sewer capacity from Hillsborough to the Dale Avenue Pump Station. This restriction in the system will be removed by upgrading the trunk line in Hillsborough, at an estimated cost of \$8 million. In addition, approximately 10,300 lineal feet of parallel trunk lines will be installed in San Mateo, at an estimated cost of \$13.5 million. After these improvements, the flow will be able to reach the Dale Avenue Pump Station. To carry the flow from the Dale Avenue Pump Station to the WWTP, additional improvements will be necessary. The estimated current and future capacities of the downstream facilities are shown in the table below:

Facility	Current Capacity (MGD)	Needed Capacity (MGD)
Dale Avenue Pump Station	63	81
Force Mains to WWTP	56	81
Headworks	60	88

A very preliminary cost estimate for upgrading the Dale Avenue Force Main is \$18 million, and for upgrading the WWTP is \$80 million. These figures do not include upgrades to secondary treatment that would be necessary to eliminate blending.

9. The City of San Mateo does not own the lower lateral.

Page 8, Finding 20

The City does not own the lower laterals, although it does maintain them as a service to the property owner if a cleanout has been installed and inspected. Language for Finding 20 should be revised as follows:

20. **Background.** The City of San Mateo owns approximately 236 miles of sewer pipe which includes 229 miles of gravity sewer pipe and 6.8 miles of force mains. There are approximately 189 miles of sewer lateral pipe (upper and lower), owned by the property owners. The majority of San Mateo’s collection system was constructed between 1940 and 1959.

10. Cost estimates have changed for construction of the Los Prados Relief Line and the South Trunk System.

Page 20, Finding 22

New information has been obtained and the estimated cost of these capital improvements has changed significantly. Costs have escalated since the original estimates were made, and new geotechnical information shows that the nature of soils in the area will result in increased construction cost. Language should be revised as follows:

22. **Planned Collection System Improvements.** The City of San Mateo’s 20-year Capital Improvement Plan (CIP) includes significant improvements to its collection system. The City of San Mateo has budgeted \$2 million per year for sewer rehabilitation, \$12 million for the Los Prados relief sewer project, and \$15 million for the South Trunk system upgrade project. In addition, the City-Wide Sewer System Study (June 2005) identified several priority projects including the Dale Avenue Pump Station Easement Parallel Sewer (which would replace the current 39-inch diameter influent trunk sewer pipe with a 60-inch diameter pipe) and the El Cerrito Relief Line

11. Language regarding blending in the NPDES permit for the treatment plant is mischaracterized in the CDO.

Page 9, Finding 24

Some degree of liberty was taken in interpreting the language in Order No. R2-2007-0075, the City's NPDES permit adopted in November, 2007. In addition, it should be made very clear that the short term goal (2013) is to *reduce* blending, not eliminate it. It is not realistic to expect elimination of blending by 2013; the City would not be able to afford that (especially in this economic climate). Further, the *draft* USEPA national blending policy, upon which this requirement is based, focuses on the reduction of blending, not elimination. In order to remain consistent with the NPDES permit and the *draft* national blending policy, language should be revised as follows:

24. **Additional Future Needed Improvements.** As a condition to allowing blending, Order No. R2-2007-0075 (Provision VI.C.6) requires the City of San Mateo to evaluate the capacity of its collection system and the flows anticipated at the San Mateo WWTP after collection system improvements. The 2007 Order then requires the City of San Mateo to develop and evaluate alternatives to reduce I/I, expand the San Mateo WWTP, implement hydraulic improvements related to outfall capacity, and reduce the need for blending in the future. Order No R2-2007-0075 requires the City of San Mateo to complete this evaluation by August 1, 2009, and implement the recommendations by December 31, 2013.

Because the City of San Mateo operates the San Mateo WWTP, it is the only discharger named in Order No. R2-2007-0075. As such, only the City of San Mateo is required by this Order to implement the I/I reduction measures identified in its comprehensive evaluation. It is necessary to include similar requirements on satellites to the San Mateo WWTP to ensure that they do their parts to reduce I/I to reduce future blending. These measures are also expected to reduce SSO violations by the satellites.

12. It will be difficult if not impossible to obtain CEQA approval for the capital improvements suggested in the CDO.

Page 13, Section I.B

The CDO language specifies completion of the Crystal Spring/El Cerrito Trunk Sewer prior to installation of the downstream 10,300 lineal feet of trunk sewer. However, this will just move the SSOs from their current location to El Camino Real. The City does not believe that it will be possible to obtain environmental clearance on a project that would create overflows at a new location. It should be required instead that the District, Hillsborough and the City of San Mateo install relief trunk lines that will convey the storm peak flow to the Dale Avenue Pump Station.

13. It appears that section V.A., Short-Term Contingency Plan was placed in the CDO by mistake.

Page 19, Section V.A

There have not been any issues with bypasses from the San Mateo WWTP to San Francisco Bay or its tributaries. It appears that this paragraph may have been cut and pasted from the Sewerage Agency of Southern Marin compliance order by mistake. Based on discussions with Regional Water Board staff on October 14, we understand this paragraph will be removed.

14. The capacity assurance plan in section V.B. should identify a design storm for the system, and a schedule for improvements.

Page 19, Section V.B

The capacity assurance plan developed in this section needs to recognize that there are engineering limitations on the size of infrastructure. In addition, reporting requirements should recognize that the agencies are separate jurisdictions and be consistent with the removal of section A. Finally, it is impossible for all improvements to be constructed by 2013. Not all of the improvements have even been identified yet, but the general cost estimate is in excess of \$200 million. Therefore, the city can only commit to making significant progress by 2013, not completing all possible improvements. The plan and schedule could be revisited with Regional Water Board staff at that time to determine progress and results to date, to determine future actions and schedule.

B. Capacity Assurance Plan

1. By March 15, 2010, the City of San Mateo, Town of Hillsborough, and the District shall each propose and schedule improvements identified in the condition and capacity assessments completed in Provision IV. The plan(s) shall consider the effects that existing capacity limitations and future upgrades may have on the City of San Mateo WWTP and its other contributing collection systems. The plan(s) should be sufficient to eliminate spills from the collection system(s) during the specified design storms.
2. By November 15, 2013, the City of San Mateo, Town of Hillsborough, and the District shall each make significant progress on the improvements identified pursuant to Paragraph V.B.1. The improvements shall address preliminary inflow and infiltration control, conveyance of peak flows, storage of peak flows, and improvements to treatment plant capacity.

15. Private laterals are not within the jurisdiction of the City.

Page 20, Section VI.A.5

The City requests that section VI.A.5 be revised because private laterals are not within the jurisdiction of the City. The City cannot be held responsible for repair, rehabilitation and replacement of private laterals. Language should be revised as follows:

5. A plan to take measures already legally authorized by local statute to address private lateral repair, rehabilitation and replacement.

16. The schedule for infrastructure renewal for the City of San Mateo should be clarified.

Page 20, Section VI.C. (new section requested)

During discussions with Regional Water Board staff on renewal of the City's NPDES permit for the wastewater treatment plant, there appears to have been a misunderstanding about the language used in Provision VI.C.6, "Corrective Measures to Minimize Blending Events" (page 25 of

permit). In particular, City staff provided information about the City’s Capital Improvements Plan (CIP) budget, and the respective timing for budgeting of certain projects. In the City’s No Feasible Alternatives Analysis (NFAA), a range for the timing of implementation (or beginning of construction), was indicated in the context of CIP budgeting, for use by Regional Water Board staff. However, the City is concerned that the language that ended up in the permit, which is different from what was proposed in the NFAA, may be misinterpreted to mean that the dates the City provided were for completion of projects. In addition, some conditions have changed since the permit was adopted, including that improvements are more extensive than originally anticipated, and the costs have escalated as well (see also comment 10 above). Therefore, the City requests that a clarification be made in the CDO, by adding a new section as follows:

VI. INFRASTRUCTURE RENEWAL

C. San Mateo Tasks to Reduce Blending

The City of San Mateo shall begin implementation of capital improvements as follows:

- | | |
|--------------------------------------------|----------------------------------|
| a. Sewer Rehabilitation (\$2 million/year) | Ongoing |
| b. Las Prados Relief Sewers | December 31, 2010 |
| c. South Trunk System Upgrade | December 31, 2013 |
| d. El Cerrito Relief Line | December 31, 2011 |
| e. Force Main, Dale Avenue to WWTP | December 31, 2013 |
| Hydraulic Improvements/Outfall | According to Capacity Evaluation |
| Treatment Plant Capacity Improvements | According to Capacity Evaluation |

This schedule for capital improvements is in lieu of the schedule shown in Provision VI.C.6 of the City’s NPDES permit for the wastewater treatment plant (CA 0037541), adopted as Order No. R2-2007-0075.

17. Section VII, Options for Coordination, Language should be revised to address real coordination issues.

Page 21, Section VII

The City of San Mateo, Town of Hillsborough, and the Crystal Springs County Sanitation District have been meeting quarterly for several years to coordinate efforts on improvements to the El Cerrito Trunk Line, the one asset that is shared among the three agencies. All three agencies contribute flow to this trunk line. However, due to a lack of commitment by the Crystal Springs County Sanitation District to provide its financial share of the costs for improvements, recent coordination efforts on the El Cerrito Trunk Line have been only perfunctory. The original language in the CDO will not change this situation. In addition, Sections B and C are completely unrelated to SSOs. For these and other reasons, the City of San Mateo requests that this section be revised to be more specific to the El Cerrito Trunk Line, as follows:

VII. COORDINATION AMONG THE AGENCIES

By November 15, 2009, the City of San Mateo, Town of Hillsborough, and the District shall complete a study and submit a work plan that describes the process and actions for collaboration among the agencies on efforts to implement capital improvements to the El Cerrito Trunk Line. The work plan shall indicate which agency is responsible for which action along with the estimated schedule, and address the following items:

- A. Coordination among the agencies on completing the assessment of the El Cerrito Trunk Line;
- B. Coordination among the agencies on reaching sound engineering decisions on cost-effective and efficient delivery of the capital improvements needed for the El Cerrito Trunk Line; and
- C. Collaboration among the agencies to develop financial plans and secure funding needed to implement capital improvements for the El Cerrito Trunk Line. It is expected that each agency will be responsible for contributing funds for this project in a timely manner, and in proportion to the modeled 5-year storm event return frequency for each agency's flow within the El Cerrito Trunk Line (modeled for the condition occurring after improvements have been completed).

In addition, each agency shall submit separate annual progress reports, due on November 15 each year starting in 2010, describing their respective progress on actions described in the work plan submitted by November 15, 2009.