

July 28, 2010

*VIA E-MAIL AND FEDERAL EXPRESS*

Gina Kathuria  
California Regional Water Quality Control Board,  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**Re: Tentative Cease and Desist Order under California Water Code Section 13301 for the City of Pacifica**

Dear Ms. Kathuria:

This letter sets forth the City of Pacifica's ("City") comments on Tentative Cease and Desist Order No. R2-2010-XXX Requiring the City of Pacifica Calera Creek Water Recycling Plant and Collection System in San Mateo County to Cease and Desist Discharging Waste in Violation of Requirements in Regional Water Board Order No. R2-2006-0067 (NPDES Permit No. CA 0038776) and State Water Board Order No. 2006-0003-DWQ ("Tentative CDO") issued by the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") on June 25, 2010.

City representatives have had numerous communications with Regional Board staff and State enforcement counsel regarding the City's collection system, including the pending Administrative Civil Liability Complaint ("ACL") issued by the Regional Board in October 2009, the pending citizen suit against the City by Our Children's Earth Foundation ("OCE") for sanitary sewer overflows ("SSOs") and the Tentative CDO. Regional Board staff has worked cooperatively with the City to address the issues outlined in the Tentative CDO in a manner which is substantially consistent with the remedial actions sought by OCE in the federal lawsuit. The intent has been to minimize the possibility that the City will be subject to conflicting obligations or deadlines. We greatly appreciate the time staff and counsel have devoted to these issues, and we thank them for their courtesy. Nevertheless, the City respectfully asserts that the Tentative CDO should not be adopted without three modifications, each of which is described in Section A below. In addition, the City respectfully raises some additional issues with the Tentative CDO in Section B merely to preserve its rights to raise these issues in the future.

**A. Proposed Modifications to Tentative CDO**

**1. Fifteen Minute Response Time Should be Increased to at Least Thirty Minutes**

The requirement in Paragraph 13 of the Draft CDO to "maintain a response time of no greater than 15 minutes from the time the Discharger becomes aware of an SSO to the time it has response crews arrive on scene to begin appropriate response actions to protect public health and the environment" is infeasible. An approximate 15 minute response time to SSOs may often be achievable during normal City business

hours because staff should already be available at the wastewater treatment plant or in the field. However, such a response time is not achievable on a routine basis during non-business hours because collection system staff members must be summoned on an "on call" basis and travel from their residence or other off-site location to the wastewater treatment plant to obtain the vactor truck and any other necessary equipment before driving to the location of the SSO and commencing response actions. The time needed to complete these steps under the best "on call" circumstances certainly exceeds fifteen minutes, particularly for those staff members who do not live in Pacifica. Accordingly, the City respectfully requests that the SSO response time in the Tentative CDO be increased to at least 30 minutes and preferably 60 minutes during non-business hours. A 15 to 30 minute response time during normal City business hours would be acceptable.

## **2. Requirement to Clean Force Mains Should be Removed**

Paragraph 4 of the Tentative CDO requires the City to "develop and implement an enhanced system-wide cleaning program for the collection system and its ancillary equipment that details all cleaning activities scheduled for gravity, force mains, pump stations and ancillary equipment as deemed necessary to prevent future SSOs." The City objects to the requirement to detail cleaning activities for force mains because the City's force mains cannot be shut off for cleaning and it is not practical to clean a force main while it is running. The only practical way the City could fully comply with a requirement to clean its force mains would be to City install redundant force mains or employ complex pump around strategies, both of which would be very expensive. City staff further contends that the City's force mains are essentially self-scouring and typically should not require cleaning. Therefore, the City respectfully requests that the Regional Board eliminate the requirement to clean the City's force mains from the Tentative CDO.

## **3. Deadline for Adoption of Private Lateral Ordinance Should be Extended**

Paragraph 11 of the Tentative CDO requires the City to present a private lateral ordinance to its City Council for adoption by March 15, 2011. The City currently has a private lateral program which requires property owners who apply for a building permit to expand or remodel an existing building to obtain a closed circuit television inspection of the sewer lateral prior to the issuance of a building permit and to repair or replace defective laterals as a condition of the City's issuance of a Certificate of Occupancy. While the City does not object to the requirement to adopt a more aggressive private lateral program, the March 15, 2011 deadline is not practical because the City is pursuing a program with elements that will need more time to develop around that time frame. Accordingly, the City respectfully requests that the March 15, 2011 deadline be extended until the fall of 2011.

## **B. Additional Comments on CDO**

The City understands the Regional Board's desire to reserve its enforcement authority in Paragraph 25 of the Tentative CDO. However, the City is concerned that the portion of Paragraph 25, which authorizes the Regional Board to bring an enforcement action against the City for SSOs regardless of whether the City is in compliance with the Spill Performance Standards in Section VI, is contrary to the fundamental purpose of

a CDO with a time schedule. A CDO with a time schedule for compliance, as compared to a CDO that requires compliance forthwith, is issued in acknowledgement of the fact that a discharger cannot achieve immediate compliance and therefore allows the discharger to achieve compliance in accordance with a time schedule. In addition, a discharger's compliance with a CDO is typically a "shield" to future administrative enforcement actions for expected violations of its waste discharge requirements which are addressed by the CDO. However, under the Tentative CDO, it appears that the City could be subject to a future enforcement action regardless of whether the City timely complies with all of the requirements of the Tentative CDO, including the Spill Performance Standards in Section VI. Given that the City will pay a significant penalty as part of the pending ACL, and will be required by the final CDO to undertake several costly remedial actions to improve the performance of its collection system, the City believes it should not be subject to future administrative enforcement actions for violations related to the operation and maintenance of its collection system so long as it is in compliance with the requirements set forth in the Tentative CDO.

The City is also concerned that the Tentative CDO does not clearly acknowledge the distinction in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems ("General WDR") between the definition of SSO for reporting requirements and the definition of SSO for purposes of the discharge prohibitions. The definition of SSO in the General WDR for reporting requirements is very broad and includes all SSOs. Notably, the definition of SSO in the General WDR for purposes of the discharge prohibitions is much narrower and only includes SSOs to waters of the United States and SSOs that create a nuisance. The Tentative CDO, however, defines SSOs broadly as "sanitary sewer overflows," (Tentative CDO, p. 2, ¶ 3), for all provisions in the Tentative CDO except for Paragraph 14 which provides that the City must achieve compliance with the discharge prohibitions in the General WDR by January 1, 2020. While the City recognizes that the Regional Board wants to evaluate the City's collection system performance based on the broader definition of SSOs used for reporting requirements, the City would expect and hope that for purposes of enforcement, it would only be subject to an enforcement action for SSOs that constitute a violation of the discharge prohibitions in the General WDR, i.e., unauthorized discharges from its collection system that reach waters of the United States or that create a nuisance.

Thank you for the opportunity to comment on the Tentative CDO. Please contact me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenton L. Alm". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

Kenton L. Alm  
KLA:SSW  
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