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VIA E-MAIL AND U.S. MAIL

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 San Bruno

Dear Ms. Kathuria:

This letter sets forth the City of San Bruno's ("City") comments on Tentative Cease and Desist Order No. R2-2010-XXX Requiring the City of San Bruno in San Mateo County to Cease and Desist Discharging Waste in Violation of Requirements in Regional Water Board Order No. R2-2008-0094 (NPDES Permit No. CA 0038130) and State Water Board Order No. 2006-0003-DWQ ("Tentative CDO").

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 February 2010 and the Tentative CDO. The City greatly appreciates the time and effort Regional Board staff has devoted to these issues and thanks them for their courtesy. The City respectfully requests that the Tentative CDO be adopted with the modifications discussed below.

1. Findings 8 and 9

Findings 8 and 9 compare the City's Fats, Oils and Grease ("FOG") sanitary sewer overflow ("SSO") rate and the City's Root SSO rate for 2008 and 2009 to the median FOG and Root SSO rates for San Francisco Bay Region collection systems with greater than 100 miles of pipeline using data from the California Integrated Water Quality System ("CIWQS"). The City understands the Regional Board's desire to compare the City's collection system performance to other collection systems in the San Francisco Bay Region and does not object to the FOG and root control requirements in the Tentative CDO. However, the City believes that it is inappropriate and unnecessary to state the CIWQS data as a "Finding" in the CDO.

The FOG and Root SSO rates included in the Tentative CDO are for collection systems with greater than 100 miles of pipeline. This data does not provide a fair comparison of the City's collection system performance because the City's collection system has slightly under 100 miles and is being compared with much larger collection systems. Also, the CIWQS data may not accurately reflect median collection system performance in the San Francisco Bay Region. Given that the system is relatively new, some of the data is missing or inaccurate. Indeed, we are informed that several agencies in the San Francisco Bay Region

have not even begun reporting in CIWQS and that of those agencies that are reporting, several have inaccurately reported the number of miles of pipeline in their collection systems which affects the SSO rate calculations. Moreover, the number of SSOs from roots and FOG in CIWQS in the San Francisco Bay Region is likely understated due to the "other" category under the "cause of SSO" field in CIWQS, which is often used to report SSOs caused by multiple causes, such as SSOs caused by both roots and FOG.

Given that the FOG and Root SSO rates contained in Findings 8 and 9 are for collection systems that are larger than the City's and that the CIWQS database is not complete or entirely accurate, the City believes it is inappropriate to include this data as a "Finding" in the Tentative CDO. Accordingly, the City respectfully requests that Findings 8 and 9 be deleted from the Tentative CDO. Alternatively, the City requests that Findings 8 and 9 be revised to include median FOG SSO and Root SSO rates for San Francisco Bay Region collection systems with 50 - 150 miles of pipeline so that such rates will provide a fairer comparison of the City's collection system performance with systems of a similar size.

2. Paragraph 9

Paragraph 9 of the Tentative CDO requires the City to implement a private lateral program if the City's System Evaluation Capacity Assurance Plan ("SECAP") identifies private laterals as a source of inflow and infiltration ("I/I"). Because all collection systems experience some level of I/I from private laterals, Paragraph 9 undoubtedly requires the City to implement a private lateral program regardless of whether the SECAP suggests this is a high priority need.

While requirements for private lateral programs are becoming more common, the City believes that such a program may not be justified in the City. Elimination of I/I in the City's collection system is not necessary unless the SECAP determines that the City's collection system has inadequate capacity. Moreover, even if the SECAP concludes that the City's system has inadequate capacity, there are numerous measures available for addressing capacity issues, and elimination of I/I from private laterals may not be the most cost-effective means of addressing any capacity issues in the City's collection system.

The City's preliminary calculations indicate that it would cost the City approximately $233,000 per year to implement and enforce a private lateral program and would cost property owners approximately $5,900,000 per year collectively to comply with such a program.[1] Given that the average annual spill volume reaching surface waters from private laterals in San Bruno between 2007 and 2009 was only 250 gallons, this amounts to an estimated program cost of $24,000 per gallon of sewage that reaches surface waters due to private lateral overflows. This cost is not justifiable given the limited environmental benefit of a private lateral program and the community's limited resources, unless a private lateral program is justified as an

[1] The City's calculations are based on an estimated 1,300 property sales and remodels per year, which is based on the Multiple Listing Service data for the years immediately preceding the economic downturn; an estimated failure rate of 90%; and an estimated lateral replacement cost of $5,000 per lateral.

alternative to building needed new capacity. Therefore, the City respectfully requests that the Regional Board modify Paragraph 9 as follows to require the City to implement a private lateral program only if the SECAP demonstrates a need for, and the cost effectiveness of, a private lateral program:

> If the SECAP ~~identifies private laterals as a source of I/I~~ concludes that the Discharger's collection system does not have adequate capacity and identifies repair or replacement of private sewer laterals as a cost-effective measure for addressing capacity-related problems, the Discharger shall develop and implement a private ~~service~~ sewer lateral replacement program to reduce the addition of I&I from defective private ~~service~~ sewer laterals in accordance with this Paragraph. By February 15, 2014, the Discharger shall present to its City Council for adoption an ordinance requiring (a) testing of private ~~service~~ sewer laterals (portion of a lateral from the building foundation to the property line, or in some cases extending to the sewer main line that the private property owner is responsible for maintaining) upon sale of property, a major remodel (>$75,000), and any remodel that adds a bathroom or plumbing fixtures; (b) replacement of defective private sewer ~~service~~ laterals by a specified deadline; and (c) evidence from landowner that defective private sewer ~~service~~ lateral has been repaired, rehabilitated or replaced as condition to closing or the Discharger's sign-off on a permit.

3. Paragraph 11

Paragraph 11 of the Tentative CDO provides that the City shall "maintain an annual average response time of no greater than 30 minutes from the time the Discharger becomes aware of an SSO to the time the first responder arrives on scene to begin appropriate response actions to protect public health and the environment." While a 30-minute annual average response time is achievable during normal City business hours, non-business hour SSOs require more than 30 minutes. In order to respond to a non-business hour SSO, collection system staff members must be summoned on an "on call" basis and travel from their residence or other off-site location to the City's Corporation Yard to obtain a City vehicle. The time needed to complete these steps under the best "on call" circumstances exceeds 30 minutes, particularly for those staff members who do not live in San Bruno. Accordingly, the City respectfully requests that Paragraph 11 be modified to require the City to maintain an average annual response time of no greater than 30 minutes during business hours and 60 minutes during non-business hours.

4. Paragraph 17

The City understands the Regional Board's desire to reserve its enforcement authority in the Tentative CDO. However, the portion of Paragraph 17, 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, 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 respectfully requests that the Regional Board modify Paragraph 17 to provide that the City will not be subject to future administrative enforcement actions for violations related to spills from its collection system so long as it is in full compliance with the requirements set forth in the Tentative CDO.

Alternatively, Paragraph 17 should be revised to clarify that the City would only be subject to an enforcement action for an SSO if the SSO constitutes a violation of the discharge prohibitions in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (i.e., unauthorized discharges from its collection system that reach waters of the United States or that create a nuisance) and any use of an enforcement action would relate to matters not directly addressed by the work provisions in the CDO. A thoughtful revision of this section could reserve such enforcement authority as may be needed by the Regional Board, while providing the City with the benefits of protection from future enforcement arising from the very issues addressed in the CDO.

5. Term of Tentative CDO

The Tentative CDO does not contain a term, and therefore it is ambiguous as to when the City's obligations under the Tentative CDO will terminate. To provide certainty and ensure that the City's obligations under the Tentative CDO will not carry on indefinitely, the City respectfully requests that the Regional Board add a termination provision to the Tentative CDO that states that the Tentative CDO will terminate in 2020.

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

Sincerely,

Kenton L. Alm

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