CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESPONSE TO WRITTEN COMMENTS

ON THE ADOPTION OF CEASE AND DESIST ORDER FOR DISCHARGE IN VIOLATION OF NPDES PERMIT FOR:

City of San Bruno
Sanitary Sewer Collection System
567 El Camino Real, San Bruno, San Mateo County
NPDES Permit No. CA0038130

The following parties submitted comments on a Tentative Cease and Desist Order that Water Board Prosecution staff noticed for public review on August 2, 2010.

I. City of San Bruno (City or Discharger) – August 31, 2010
II. BACWA – September 1, 2010

Note: The format of this staff response begins with a brief introduction of the party's comment, followed with staff's response. Interested persons should refer to the original letters to ascertain the full substance and context of each comment.

I. City of San Bruno (City or Discharger) – August 31, 2010

City, Comment 1

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.

Response 1

The SSO rates comparison in the Tentative CDO is appropriate. We used certified data reported by dischargers, and SSO rates were normalized per 100 mile (i.e., the rates are expressed as SSO/100-mile/year). We understand the SSO rates are skewed for collection systems below 100 miles but that does not apply to the City. The City reports (in CIWQS) owning 118 miles of sanitary sewer lines (2 miles of force main, 75 miles of gravity lines, and 41 miles of lower laterals). Whereas statements 8 and 9 of the Tentative CDO were modified to add the following sentence to the end of the statements:

"All SSO rates and comparative metrics stated above are dynamic and based solely on certified SSO data entered by dischargers into CIWQS."

City, Comment 2

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 collection systems experience some level of III 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 III 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 1/1 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. 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 alternative to building needed new capacity. Therefore, the City respectfully requests that the Regional Board modify Paragraph 9as 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.

Response 2

We agree and revised the Tentative CDO as suggested and as shown below.

9. 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 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 sewer ~~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

City, Comment 3

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 a3D-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 anon-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.

Response 3

We agree and revised the Tentative CDO as suggested and as shown below.

11. To minimize the volume of SSOs, the Discharger shall maintain an average annual response time of no greater than ~~30~~60 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 (e.g., containment, cessation, cleanup, recovery, notification and reporting).

City, Comment 4

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.

Response 4

No changes to the Tentative CDO will be made based on this comment. The Tentative CDO is not meant as a “shield” from future Regional Water Board enforcement actions. Instead the Tentative CDO provides a mechanism to drive the City towards compliance with its NPDES permit and the State Water Board’s Sanitary Sewer Order. Also, any future Regional Water Board enforcement actions against the City will consider compliance with the CDO as a factor.

City, Comment 5

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.

Response 5
The Board must take action to terminate an adopted CDO. At any time, Board staff may initiate, or the City may request, Board consideration of termination of the CDO based on the City's compliance with the CDO and other applicable permits and requirements.

II. BACWA – September 1, 2010

BACWA, Comment 1
The SSO Performance Standards should allow at least 60 minutes from the time the City becomes aware of an SSO to the time response crews must arrive at the scene.

The Tentative Order requires that the City respond on scene within 30 minutes of notification of an SSO. A rapid response time is highly desirable to minimize the volume of SSOs and potential human exposure; however, allowing only 30 minutes to respond on-site may be infeasible in many situations. For example, mobilizing responders and equipment outside of normal business hours demands added time for staff to travel from their place of residence, which may be outside the City limits. Based on our member agencies' experience, a 60-minute response time is both appropriate and more realistic.

In addition to being infeasible in some situations, a 30-minute response time is inconsistent with the standard established in other recently-issued enforcement orders. For example, the Regional Water Board issued Cease and Desist Order No. R2-2009-0020, in which the City of San Mateo, Town of Hillsborough, and Crystal Springs County Sanitation District are all required to submit an overflow response plan with procedures for responders to arrive at the SSO location, with equipment, within 60 minutes from notification. In addition, the United States Environmental Protection Agency (USEPA) issued an Amended Order for Compliance to the Sewerage Agency of Southern Marin and its member agencies (September2008), and Administrative Orders to the City of Oakland and the City of Emeryville (November2009) requiring a 60 minute response time after notification of the overflow

Response 6
See response 3.

BACWA, Comment 2
Publication of SSMP progress on the City's website should be sufficient for public notification purposes.

The City should be allowed to provide the public with information about its SSMP progress on the City's website. Written or other notification to individual customers is costly, unnecessarily generates waste, and is not necessarily an effective communication tool. BACWA requests the following changes to Section 15.

15. Beginning January 1, 2011, the Discharger shall communicate on an annual basis with the public ~~by notifying all customers billed by the Discharger~~ placing information on the City's website about the development, implementation and ~~performance, and~~ costs of its SSMP. The communication system must provide the public the opportunity to provide input and comments to the Discharger ~~as~~ on the SSMP ~~is revised and implemented~~. The Discharger shall document its communication program in its SSMP

Response 7

We agree that publication of SSMP progress on the City's website should be sufficient to comply with the Sanitary Sewer Order and revised the Tentative CDO in part as suggested. Because the communication will be through the City's website, the City can provide more current and relevant communications to the public about its SSMP progress. Accordingly, these communications can and should be more frequent than on an annual basis. The Tentative CDO is revised as follows:

15. Beginning January 1, 2011, the Discharger shall communicate at a minimum on an annual basis with the public ~~by notifying all customers billed by the Discharger~~ placing information on the City's website about the development, implementation and performance, and costs of its SSMP. The communication ~~system~~ must provide the public the opportunity to provide input and comments to the Discharger as the SSMP is revised and implemented. The Discharger shall document its communication program in its SSMP.

We also added Section X as follows to clarify that the City is still required to comply with subsequent amendments to the Sanitary Sewer Order that impose more stringent requirements, such as SSMP Communication Program requirements that the City provide notification directly to billed customers.

X. Regulatory Changes

18. Nothing in this Order shall excuse the Discharger from meeting any more stringent requirements that may be imposed hereafter by changes in applicable and legally-binding legislation, regulations, or generally applicable statewide or regional requirements.

BACWA, Comment 3

The Tentative Order should consider the institutional capabilities of meeting program implementation timelines.

The Tentative Order establishes rigorous timeline for completing many of the proposed requirements. While BACWA acknowledges the value and necessity of implementing the corrective measures in a timely fashion, the City's institutional capabilities and capacity should be considered in setting program implementation timelines. For example, the Computerized Maintenance Management System tied together with a GIS, the Condition

Assessment, and the Capacity Assurance Plan may have more aggressive schedules than can realistically be complied with.

Response 8
The City was given an opportunity to comment on the Tentative CDO and the City did not comment on the deadlines. So we believe it can meet all deadlines in the Tentative CDO.

BACWA, Comment 4
The Tentative Order should identify all sources of information contained therein

The Tentative Order contains numerous provisions where data and information are cited as having been compiled, or requirements previously issued. However, in some cases, the sources for these data and information are not provided. For example, "Whereas" No. 9 states a number of root-caused SSOs for the City, and compares it to a Bay Area average, however the source for these data is not indicated. BACWA member agencies, and our counterparts across the State, have identified errors in the data available via the California Integrated Water Quality Systems (CIWQS) and, in some cases, have had difficulty getting these errors corrected. The sources of data that serve as the basis for this Tentative Order, therefore, are important and should be identified. Similarly, clearly identifying the regulatory basis for the various requirements would ensure a better and more complete understanding of the order

Response 9
See response 1.