

**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 Pacifica
Calera Creek Water Recycling Plant and its associated collection system
170 Santa Maria Avenue, Pacifica. San Mateo County
NPDES Permit No. CA0038776

Written comments were received from the following parties on a draft Tentative Cease and Desist Order that was distributed in June 2010 for public comments.

I. City of Pacifica (City or Discharger) – July 28, 2010

II. BACWA – July 28, 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.

In addition to the changes described in responses below, the Regional Water Board's Prosecution Staff revised deadlines in the June 2010 draft Tentative Cease and Desist Order in consideration of the time frame for when a revised Tentative Cease and Desist Order would be presented to the Regional Water Board for consideration.

I. City of Pacifica (City or Discharger) – July 28, 2010

City, Comment 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 offsite 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.

Response 1

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

13. To minimize the volume of SSOs, the Discharger shall maintain a response time of no greater than ~~45~~30 minutes during business hours, and a response time of no greater than 60 minutes during non-business hours, 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 (e.g., containment, cessation, cleanup, recovery, notification and reporting).

City, Comment 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.

Response 2

We agree and revised the Tentative CDO as suggested and shown below. Cleaning of the forced mains is no longer required in the revised Tentative CDO. Because this requirement was removed, however, language was added to clarify that conditional assessment of the collection system must include assessment of the forced mains.

4. System-Wide Cleaning Program. By June 30, 2011, the Discharger shall 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 SSO.

...

7. Condition Assessment. By September 1, 2012, the Discharger shall complete a condition assessment of 100% of its collection system including force mains. The

condition assessment shall be based on closed circuit television (CCTV) inspection and employ a system for ranking the condition of sewer pipes that meets National Association of Sewer Service Companies (NASCO), or other industry-accepted standards. The Discharger shall use the results of the CCTV inspection and condition assessment to identify and prioritize collection system deficiencies requiring repair, rehabilitation, or replacement and shall incorporate identified sewer repair, rehabilitation, and replacement projects into the CIP (defined below) based on the ranking and resulting prioritization. The Discharger shall develop and implement a schedule for re-inspection of all gravity and forced main sewers lines based on the condition of such lines.

City, Comment 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 amore 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.

Response 3

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

11. The Discharger shall develop and implement a private service lateral replacement program to reduce the addition of I&I from defective private service laterals. By ~~March~~November 15, 2011, the Discharger shall present to its city council for adoption an ordinance requiring (a) testing of private sewer service 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 4

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.

Response 4

Comment noted.

City, Comment 5

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.

Response 5

We disagree with the City's assertion that the Regional Water Board's enforcement authority is limited to SSOs that reach waters of the United States or that create a nuisance. The City is subject to Waste Discharge Requirements Order No. R2-2008-0067 which includes the following:

Section III. Discharge Prohibitions

A. Discharge of wastewater at a location or in a manner different from that described by this Order is prohibited.

This prohibition includes any discharge of waste for which the City has not properly applied for waste discharge requirements pursuant to California Water Code section 13260. Accordingly, the Regional Water Board's enforcement authority is not limited in the manner that the City asserts.

II. BACWA – July 28, 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 the City to maintain a SSO response time of no greater than 15 minutes from the time of becoming aware of the SSO to the time the crew arrives on the scene. BACWA acknowledges an efficient and timely response is highly desirable to minimize the volume of SSOs, however, allowing only 15 minutes to arrive on site is impractical and even infeasible. Accounting for safe travel time within City limits (12 square miles) alone could easily exceed the allotted 15 minutes. Also, 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. An appropriate and more realistic response time - included in other recently issued San Francisco Bay Area enforcement orders - is 60 minutes from SSO notification.

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 (September 2008), and Administrative Orders to the City of Oakland and the City of Emeryville (November 2009) requiring a 60 minute response time after notification of the overflow

Response 6

See response 1.

BACWA, Comment 2

The Financial Plan should be for a shorter planning horizon

The Tentative Order requires the City to develop a 10-year Financial Plan by November 1, 2011 and a 20-year Financial Plan by November 1, 2014. However, financial planning to identify current and projected future financial resources customarily occurs in five

and/or ten year increments. The Financial Plan should therefore be for a shorter planning horizon.

Response 7

We disagree and revised the CDO to provide clarification. Compliance with the Tentative CDO requires long term financial planning because of the significant capital improvements and funding that will be necessary for the Discharger to identify and eliminate inflow and infiltration into the collection system. We consulted with the Discharger in regards to financial planning to implement the tasks in this Tentative CDO and State Water Resources Control Board Order No. 2006-0003-DWQ *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Sanitary Sewer Order). The Discharger believes it can comply with this requirement and agrees that general long term financial planning will be necessary. We have added the following language to clarify that periodic changes and update to such plans are anticipated.

10. By November 1, 2011, the Discharger shall develop a 10-year Financial Plan and by November 1, 2014, a 20-year Financial Plan. Each shall evaluate (i) the costs of implementing the tasks required by the Sanitary Sewer Order and this Order; (ii) current and projected future financial resources available to implement such tasks; and (iii) whether the Discharger's current wastewater rates need to be increased to ensure adequate financial resources to implement such tasks. The Discharger shall provide periodic updates and/or amendments to these financial plans as necessary to achieve the tasks required by the Sanitary Sewer Order and this Order.

BACWA, Comment 3

Publication of SSMP progress on the City's website should be sufficient.

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 overly burdensome, inconsistent with a green approach, and may not be an effective communication tool. BACWA requests the following changes to Section 17 to clarify that publication on the City's website is adequate.

17. Beginning July 1, 2010, 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 developed and implemented.~~ The Discharger shall document its communication program in its SSMP.

Response 8

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:

17. Beginning July 1, 2010, 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 developed and implemented. The Discharger shall document its communication program in its SSMP.

We also added Section XI 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.

XI. Regulatory Changes

26. 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 waste discharge requirements.

BACWA, Comment 4

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

The Tentative Order establishes an aggressive timeline for many of the provisions contained within the order. While BACWA acknowledges the value and necessity of implementing the corrective measures in a timely fashion, the institutional capabilities must be considered in establishing program implementation timelines. In particular, 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 9

The Discharger was given an opportunity to comment on the Tentative CDO, and the Discharger provided further information to adjust one of the deadlines (i.e., timelines). As such, we did adjust one deadline based on Discharger comments (see Response 3). The Discharger did not comment on the other deadlines, so we believe it can meet all the other deadlines in the Tentative CDO.

Discharger, Comment 5

The Tentative Order should identify all sources of information contained therein

The tentative order contains numerous places where data and information are cited as having been compiled, or requirements previously issued. However, in many cases, the sources for these data and information are not provided. For example, “Whereas” No. 11 indicates 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 the data that serve as the basis for this Tentative Order, therefore, are important and should be identified. Similarly, the bases of the requirements enumerated in Section VIII, Paragraph No. 23, are not identified. The requirements with which Bay Area agencies must comply result from various regional and State requirements and are not codified in any single document. Clearly stating the regulatory basis for each requirement is necessary to provide a sound basis for the Tentative Order’s claims and requirements.

Response 10

In regards to BACWA’s comment on Paragraph 11, the Tentative CDO was modified to cite the source of these data.

11. The number of SSOs due to root blockages from the Discharger’s collection system per 100 miles of pipeline (Root SSO Rate) is high. In 2008 and 2009, the Discharger’s Root SSO Rate was 20.6 and 10.3, respectively. This rate is above the median Root SSO Rate of 2.0 and 3.0 for all San Francisco Bay Region collection systems with greater than 100 miles of pipeline in 2008 and 2009, respectively. All SSO rates and comparative metrics stated above are dynamic and based solely on certified SSO data entered by dischargers into CIWQS.

In regards to BACWA’s comment on Section VIII, Paragraph No. 23, we have revised the Tentative CDO to cite the regulatory basis for the March 15th submittal of SSO Annual Reports. However, the 2012 and future annual reports for this Discharger must contain additional information than requested in the Regional Water Board 13267 Letter dated November 15, 2004, so that we can assess compliance with the CDO requirements.

23. By March 15th of each year, the Discharger shall submit an Annual SSO Report covering the previous calendar year. As currently required by the Regional Water Board’s 13267 letter dated November 14, 2004, the Annual SSO Report shall: (1) summarize number, volume, general location and causes of SSOs during the reporting period, (2) summarize sewer system cleaning statistics for the entire system and for hot spots (i.e. number of miles cleaned per year and cleaning frequency), (3) perform a trend analysis showing a comparison of data for the current reporting period with previous years, and (4) provide a status of SSMP development. In addition, starting March 15, 2012, the Annual SSO Report shall include additional information so the Regional Water Board can evaluate ongoing compliance with this CDO. The additional information includes: (5) based on the trend analysis conducted, identify areas of concern in the collection system, (6) provide a list of actions to be taken over the next calendar year to address areas needing improvement including a list of needed capital improvement projects if

applicable, (7) provide a list of any capital improvement projects completed during the reporting period to address areas of concern previously identified, (8) summarize actions taken over the previous calendar year and actions planned over the next calendar year to meet the SSO Performance Standards in Section VI of this Order, and (9) document all training received by Discharger's employees during that reporting period in accordance with the Discharger's Training Program.