

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

**ADMINISTRATIVE CIVIL LIABILITY FOR:
CITY OF SAN MATEO
SAN MATEO COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") investigation of sanitary sewer overflows ("SSOs") in the City of San Mateo (the "Discharger") and surrounding areas and the issuance of Administrative Civil Liability Complaint No. R2-2008-0067.

The Discharger has waived the right to a hearing and has agreed to pay \$950,000 in penalties to address the claims alleged in Complaint No. R2-2008-0067. The Discharger will pay that amount to the Waste Permit Discharge Fund, of which \$760,000 will be suspended provided it is satisfied through completion of a Supplemental Environmental Project ("SEP") as set forth in Attachment A.

Having provided public notice of the proposed supplemental environmental project and an opportunity for comment, the Executive Officer finds that:

1. The Discharger owns and operates the City of San Mateo Wastewater Treatment Plant (San Mateo WWTP) and its conveyance system. The San Mateo WWTP provides secondary and advanced secondary treatment for domestic and commercial wastewater from the City of San Mateo, the City of Foster City, the Town of Hillsborough, portions of the City of Belmont, and an unincorporated area of San Mateo County (Crystal Springs County Sanitation District). The San Mateo WWTP has an average dry weather design capacity of 15.7 million gallons per day (mgd) and a peak wet weather capacity of approximately 40 mgd. The Discharger's sanitary sewer collection system (collection system) consists of approximately 229 miles of gravity sewer pipe, 6.8 miles of forced mains, 74 miles (lower lateral) of the 189 miles of total lateral pipe (upper and lower), and 23 pump stations. The Discharger's collection system serves an approximate population of 94,650.
2. From December 1, 2004, through July 14, 2008, the Discharger reported 87 SSOs from its collection system. Notably, 84 of the 87 SSOs, representing over 3.5 million gallons of raw sewage, discharged to surface waters. The attached Tables 1A and 1B summarize the details of all 87 SSOs.
3. An SSO is a discharge from a collection system of raw sewage consisting of domestic, industrial, and commercial wastewater. An SSO contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-

demanding organic compounds, oil and grease, and other pollutants. An SSO causes a public nuisance when untreated wastewater is discharged to areas with public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. An SSO that discharges to land and is not fully cleaned up or contained, discharges to surface waters and/or seeps to ground waters. SSOs pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

4. On June 20, 2001, the Regional Water Board adopted Order No. 01-071 (NPDES Permit No. CA 0037541) prescribing waste discharge requirements to the Discharger for its discharges from the San Mateo WWTP and associated sewage collection system. Order No. 01-071 includes the following requirements:

- a. Discharge Prohibition A.4

“Discharges of water, material, or wastes other than stormwater, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.”

- b. Provision E.4, Standard Provisions and Reporting Requirements

“The discharger shall comply with all applicable items of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Standard Provisions).”

General Provision A.1 of Standard Provisions

“Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.”

5. On November 1, 2007, the Regional Water Board adopted Order No. R2-2007-0075 (NPDES Permit No. CA 0037541), reissuing the permit to the Discharger for discharges from the San Mateo WWTP and associated sewage collection system. Order No. R2-2007-0075 became effective on February 1, 2008. Order No. R2-2007-0075 includes the following requirements:

- a. Discharge Prohibitions III.E

“Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”

- b. Provision VI.A.2, Standard Provisions

“The Discharger shall comply with all applicable provisions of the Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993 (Attachment G).”

Attachment G, General Provision A.1 of Standard Provisions

“Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.”

6. The Discharger’s collection system is also regulated by Statewide General Waste Discharge Requirements, Order No. 2006-0003 DWQ, which was adopted by the State Water Resources Control Board (or State Water Board) on May 2, 2006. As owner of a collection system, the Discharger is required to comply with the requirements of Order No. 2006-0003 DWQ (or General WDR). The Discharger filed the Notice of Intent for coverage under the General WDR on July 26, 2006, and was assigned WDID No. 2SSO10183. The effective date of the General WDR is December 14, 2006. Order No. 2006-0003 DWQ includes the following prohibitions:

C. PROHIBITIONS

1. *Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.*
 2. *Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in CWC Section 13050(m) is prohibited.*
7. Pursuant to CWC Section 13350(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement. The Regional Water Board may impose civil liability administratively pursuant to CWC, Chapter 5, Article 2.5 (commencing at Section 13323) either on a daily basis or on a per gallon basis, but not both, as follows:
 - a. The civil liability on a daily basis may not exceed \$5,000 for each day in which a violation occurred.
 - b. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.
 8. All 87 SSOs are violations of either Order No. 01-071, Order No. R2-2007-0075, or the General WDR Prohibition C.2. Some SSOs violate both Order No. R2-2007-0075 and the General WDR depending on when the SSO occurred.
 9. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public, including the proposed Supplemental Environmental Project described in Attachment A and has determined

that the Discharger is subject to civil penalties. In determining the amount of civil liability to be assessed against the Discharger, the Executive Officer has considered the factors described in Water Code section 13327.

10. This issuance of this order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to section 15321 of Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Discharger shall pay a penalty of \$950,000 to the Waste Discharge Permit Fund to address the claims alleged in Complaint No. R2-2008-0067. The Discharger's obligation to pay \$760,000 of that amount will be suspended provided the Discharger satisfactorily completes an SEP as set forth in Attachment A. The Discharger shall initiate the SEP not later than 30 days following approval of this order. The payment to the Waste Discharge Permit Fund shall be made not later than 30 days following approval of this order. The time period for payment to the Waste Discharge Permit Fund shall be extended during the time in which any review is sought under Water Code sections 13320 or 13330.
2. Any information produced by the Discharger about or from the SEP shall indicate that the SEP is being performed as settlement of an enforcement action of the San Francisco Bay Regional Water Board.
3. In the event that any of the following occur, the Discharger shall pay the entire penalty of \$950,000 within 30 days to the Waste Discharge Permit Fund:
 - a. The Discharger determines that it does not wish to perform the SEP,
 - b. The Executive Officer determines that the SEP is not being performed in accordance with the specified terms and conditions of the SEP as approved through this order, or
 - c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another SEP proposal is not proposed to and accepted by the Executive Officer in a reasonable time frame.

Additionally, in the event that the SEP is completed but expenditures were less than \$760,000, the Discharger shall immediately pay the remaining balance to the Waste Discharge Permit Fund.

Date: _____

Bruce H. Wolfe
Executive Officer

ATTACHMENT A

Project Name: Private Lateral Replacement Project (PLRP)

Location: City of San Mateo

Name of Contact: Darla Reams, (650) 522-7304, dreams@cityofsanmateo.org

Category: Pollution Prevention and Reduction and Public Awareness

General Cost: \$620,000.00 for grant program
\$140,000.00 for loan program

Duration: 5 years from approval with provisions for extension for another 5 years if necessary.

Background

In 2005, the Regional Water Board adopted Resolution No. R2-2005-0059 - “In Support of Programs for Inspection and Rehabilitation of Private Sewer Lateral,” which officially recognized that sewer laterals in poor condition may cause surcharging of public sewers, overload pump stations and wastewater treatment plants, and potentially pose localized human health and environmental risks. Local programs for inspection and rehabilitation of private laterals represent one means of assuring that laterals are not a source of unreasonable amounts of inflow and infiltration or blockages. The Resolution states that the Regional Water Board supports and encourages local communities and sanitary sewer collection system agencies, especially those experiencing significant infiltration and inflow from private sewer laterals, to have a program that requires inspection and rehabilitation of private sewer laterals.

Wastewater flow is comprised of mostly residential and commercial wastewater. Flow to the City of San Mateo (City) Wastewater Treatment Plant can increase significantly during wet weather. This means that possibly several million gallons per day may enter the system from infiltration or inflow.

Once the initial grant program is completed, the City intends to continue the grant program at a rate of \$100,000 per year.

SEP Requirements

SEP proposals must conform to the requirements specified by the State Water Resources Control Board in the Water Quality Enforcement Policy (WQEP) and the Regional Water Board’s Standard Criteria and Reporting Requirement for SEPs.

Section IX.E of the WQEP states that a SEP(s) must have an appropriate nexus between the alleged violations and the SEP. The proposed SEP should be related both geographically and in violation type. Excessive infiltration and inflow into the collection system may contribute to sanitary sewer overflows (SSOs). The proposed SEP addresses this problem in the City’s service area.

The Private Lateral Replacement Project (PLRP) is designed to reduce the amount of inflow and infiltration (I&I) in the City's sanitary sewer system. This PLRP will benefit the people and water quality in the watershed by reducing SSOs and wet weather discharges to San Francisco Bay through incentivizing and enabling the replacement of privately owned sewer laterals. The City's service area consists of approximately 257 miles of sanitary sewer lines (gravity lines and force mains) owned and operated by the City. Studies have shown that as much as 50% of I&I can be attributed to private laterals. Excessive I&I have led to high wet weather flows at the City's wastewater treatment plant and may contribute to sanitary sewer overflows.

The City does not own the lateral lines that connect private properties to the sanitary sewer system, so this SEP will not directly benefit the City.

This PLRP fits the categories of pollution prevention and reduction and public awareness. In addition to funds directed at replacing, or assisting in the replacement, of private laterals, there will be educational material created and disseminated about the connections between private laterals and the public sewer system, and the problems that arise from defects in either.

The PLRP will consist of two programs: a grant program for lower income property owners and a low interest loan program. The details of each of these program elements of the PLRP are described in more detail below.

Description: Studies have shown that high I&I can be traced to poor lateral maintenance and repair by residents. Old pipes can be cracked, have open joints, or be misaligned, resulting in I&I. If this condition is not addressed, tree roots or materials traveling through the pipe get caught and cause surcharging of the system. If this condition exists past the sewer cleanout, if one exists, a backup will occur and potentially allow for spills into the street through the clean out. The cost to repair laterals is expensive and many residents opt to pay for regular cleaning or live with slow drains rather than replace lateral lines that have become susceptible to root intrusion and/or alignment problems.

As an incentive, the PLRP would provide grants and low interest loans to video inspect and replace the lateral. For the grant program, matching funds of 50% per lateral will be provided to property owners meeting the criteria until the set budget (\$620,000) for this program is expended. At an estimated \$250 for video inspection and \$6,000 for replacement or rehabilitation per connection at 50% grant funded, it is anticipated that this grant program would impact approximately 185 homes below the median household income level.

For the loan program, low interest loans of up to 2 percentage points below the prime rate will be made available to home owners, for a term of between 1 and 3 years at each homeowner's option. As this program progresses, the maximum term of new loans must be shortened accordingly to ensure full payment of loaned funds within the 5-year term of the PLRP. In addition, up to \$250 per lateral will be provided as a grant to incentivize the video inspection of private laterals. Some homeowners may choose to replace their defective laterals without further financial aid.

Loan payments received will be returned to the program to fund additional loans and video inspection grants until the set budget (about \$140,000) for this program is expended. For loans in default, the City shall make an effort to recover the funds. At an approximate cost of \$250 for video inspection and \$6,000 for rehabilitation per lateral and an estimated average loan term of 2 years, this loan program would enable the replacement of about 45 private laterals. Loan funds not spent by the 5-year deadline of the program shall be paid to the State's Cleanup and Abatement Account. Alternatively, the City may request to the Regional Water Board's Executive Officer that the distribution of funds for grants and loans be revised mid-term, or that the term of the project be extended. The request for a revised distribution or extension must identify the amount of funds remaining, specify the nature of the revised distribution or term of the extension being requested, which shall not go beyond 10 years from the initiation of the project. An extension must provide for additional third party oversight/audit costs.

To maximize the effectiveness of the grant and loan programs, the PLRP will include

- identification of target areas with high I&I,
- community outreach, and
- identification of qualified contractors who will perform video inspection and rehabilitation work at pre-set prices

Currently, the City is studying the "sewersheds" that make up the City's service area. Analysis will better determine the areas in most need of repair. The City will identify priority areas for I&I reduction and target them for the PLRP.

The community outreach and education will inform the homeowners in the targeted areas about I&I problems, how they can help resolve those issues, the grant and loan programs available to assist them, and a list of pre-qualified contractors with pre-set prices that can do the work. This component would start before and would continue during the time of the PLRP and may extend beyond the target areas depending on participation in the grant and loan program.

The City, at its own cost, will identify a short list of pre-qualified contractors that will agree to do work at a pre-set price. This will serve two purposes: (1) ensure that the work will be done correctly, and relieve the homeowners of the burden of finding his/her own contractor, and (2) it will also provide an opportunity for the City to negotiate pre-set prices for the work, which can be more competitive than market prices because of economies-of-scale. In other words, pre-qualified contractors can expect more work in a particular area because they will be identified in the City's outreach material, and can thus save costs for mobilization to that area to perform work for multiple homes.

If needed, an ordinance will be developed for the program to inspect and replace lateral sewer lines that will be presented to the City Council for adoption. Also, participation will be assessed mid-term, and if needed, pre-qualified plumbing

contractors and/or real estate agents may be contacted for providing assistance with public outreach for the program.

At its own cost, the City will compile information as to the length of pipe replaced, length of pipe rehabilitated, conditions found during replacement, and other conditions as appropriate.

Grant Criteria: The intent of the grant program is to provide funds to owner-occupied single family homeowners in the City’s sewer service area that are below the median household income for San Mateo County. For homes with joint ownership, this criterion will be met using the arithmetic average of the incomes of all the owners. Also, at least one of the owners must use the house as his or her primary residence. The U.S. Census Bureau reports that the median household income for San Mateo County in 2007 was \$81,573.

Loan Criteria: The intent of the loan program is to provide low interest loans to owner-occupied single family homeowners in the City’s sewer service area. The loan program would not be available for commercial multi-residential units (apartment buildings).

Education: As noted previously, the City will establish a public education program regarding private laterals, problems that can be encountered, routine maintenance and the homeowner’s responsibility. At the same time, this program will make the public aware of information through the City’s website, as well as individual mailers, that the City will be providing grants and loans to repair/replace lateral lines.

<i>Budget/Cost:</i>	<u>Task</u>	<u>Budget</u>
	Development and Implementation of Education and Promotion for PLRP	\$ 40,000
	Grants to low income homeowners*	\$578,000
	Low Interest Loans and video inspection grants to homeowners*	\$131,000
	Project Administration by City of San Mateo	\$ 0
	Third Party Oversight by San Francisco Estuary Project	<u>\$ 11,000</u>
	Total for PLRP	\$760,000

* 2 years after project initiation, the City may request shifting of funds from the grant program into the loan program or visa versa depending on the level of use of one program over the other.

*Project Timetable
and Milestones:*

<u>Task</u>	<u>Estimated Timeline</u>
Identify priority areas for I&I reduction from sewer system planning documents	Within 2 months of project initiation
Develop outreach material and strategy for implementation, and draft model lateral ordinance (if needed)	Within 4 months of project initiation
Complete list of pre-qualified plumbing contractors for video inspection and rehabilitation of private laterals at pre-fixed prices	Within 6 months of project initiation
Begin public education and outreach, and begin to accept and evaluate grant/loan applications	Within 7 months of project initiation
Begin video inspections of suspect laterals	Within 8 months of project initiation
Begin repair/rehabilitation of defective laterals	Within 9 months of project initiation
Determine if budget for grants and loans need adjustment and request Regional Water Board approval as appropriate	18 months after project initiation
Complete PLRP or pay Cleanup and Abatement the balance of unspent grant or loan funds	Within 5 years of project initiation**

** This 5-year term may be extended for up to 5 years for a total project term of 10 years if approved by the Regional Water Board's Executive Officer based on a request by the City as described above. Additional third party oversight costs will be determined by the Executive Officer for the remainder of the project at that time and shall not be from the original project budget, but shall be in addition to the budget and paid for by the City of San Mateo.

Reporting: Progress reporting will be made to the Regional Water Board and the oversight/audit organization identified below on a quarterly basis from the start of the PLRP for 2 years (a total of eight reports). After two years, progress reports will be made on an annual basis until project completion (for remaining 3 years). Progress reports are due on the 15th of the month following each calendar quarter; annual reports are due on January 15 of each year.

A final report shall be made to the Regional Water Board and the oversight/audit organization identified below by July 1st 5 years after project initiation. Records of project expenses and improvements shall be maintained by the City.

Each progress report shall describe the tasks completed along with their results (i.e., target areas identified, number of laterals videoed, etc.), monies expended for each task since the last report, and progress of compliance with the project timetable and milestones. The final report shall describe the tasks completed, an accounting of funds expended, and describe whether the measures of success detailed below were met, and if not met, identify possible reasons for why they were not met and suggestions for changes to project elements and strategies to guide future efforts by the City or others.

If the City requests and is granted an extension of the project, a final report for the first 5 years is still due on the date specified above, and the conditions of the extension will specify reporting requirements for the term of the extension.

Measures of Success:

The measures of success of this project will include the following:

- Replacing or rehabilitating 230 defective private sewer laterals in the City's service area
- Targeting specific areas within the City expected to have the most infiltration and inflow from private sewer laterals
- Awarding 185 grants to households below the City's median household income level and 45 loans to other households
- Performing video inspections of 256 laterals
- Providing program information on PLRP to 500 homeowners by direct mail in the targeted priority areas
- Developing a user-friendly website for program content
- Demonstrating a reduction of infiltration and inflow by tracking the length of private sewer lateral replaced by the PLRP

Project Oversight/Audit:

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Project. All reports must be sent to the following:

Carol Thornton
San Francisco Estuary Project
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2419
cThornton@waterboards.ca.gov