DATE: August 4, 2014

TO: Mayor and Council

FROM: Paul Benoit, City Administrator


RECOMMENDATION
This is an informational item, therefore no action is required.

BACKGROUND
Consent Decree (CD) negotiations have been ongoing since early 2013 related to the sanitary sewer systems in the East Bay. Negotiations were between the United States of America (EPA and the US Department of Justice) and the State of California (Water Resources Control Board and the California Regional Water Quality Control Board, San Francisco Bay Region) as Plaintiffs, San Francisco Baykeeper as Intervenor-Plaintiff and as Defendants: East Bay Municipal Utility District (EBMUD), City of Alameda, City of Albany, City of Berkeley, City of Emeryville, City of Oakland, City of Piedmont, and Stege Sanitary District. Negotiations concluded earlier this summer and on July 28, 2014, the Consent Decree was lodged in United States District Court and will be under a 30-day public comment period upon notice in the Federal Register. The Consent Decree is to resolve all outstanding claims related to the sanitary sewer collection systems and the EBMUD interceptor sewer and wet weather facilities (WWFs).

EBMUD built three WWFs in the 1980's with authorization of the EPA. The purpose of the WWFs was to provide primary treatment and disinfection of excess flows coming into the EBMUD system (from throughout the entire service area) resulting from the infiltration of groundwater into the sanitary sewer system during heavy rains. In essence, these facilities were constructed to protect the San Francisco Bay waters from the discharge of excess untreated wastewater. While infiltration and inflow (I&I) is common across the wastewater industry, the amount of I&I in the EBMUD system has historically been very high. In 2003, the State Water Resources Control Board and the EPA modified their previous position and ruled that the operation of the WWFs was illegal and had to be eliminated by 2009. Since that time, both EBMUD and each of the cities and district (Satellites) which discharge to EBMUD have been under orders to reduce the amount of WWF discharges. During 2010 and 2011, additional actions were taken by the regulatory agencies including the issuance of permits prohibiting any wet weather flow from a Satellite that contributes to the need for EBMUD to operate a WWF. This essentially puts each Satellite in violation of its National Pollutant Discharge Elimination System (NPDES) permit every time EBMUD needs to operate the WWFs. In addition, sanitary sewer overflows (SSOs) have occurred in violation of the Clean Water Act and NPDES permits. Subsequently federal Clean Water Act lawsuits were filed against EBMUD and each of the Satellites, including Piedmont. The Satellites have been under a Stipulated Order (SO) since 2011 and EBMUD...
since 2009. The CD is intended to provide an expanded period of time (22 years) to allow the Satellites to rehabilitate their collection systems in order to substantially reduce the amount of I&I in the EBMUD system, thereby eliminating the use of the WWFs. This approach has been considered strongly preferable to building large storage basins at a cost in excess of a billion dollars, when the collection system infrastructure is generally in need of rehabilitation throughout the East Bay due to the age and condition of the sewers.

**Basic Provisions of the Consent Decree**

**Basic Requirements for All Defendants**

1. All Defendants have a specified asset management work program to complete in accordance with the CD to reduce wet weather flows in the system and work to eliminate SSOs.

2. Term of the CD: Defendants shall achieve final compliance with all terms no later than December 15, 2036.

3. Eliminate discharges from Point Isabel WWF by December 31, 2033; and discharges from Oakport WWF by December 31, 2035. Piedmont, Oakland and Alameda are the satellites that discharge through the San Antonio Creek and Oakport WWFs. The northern satellites (Albany, Berkeley and Stege) discharge through the Point Isabel WWF. Emeryville discharges to the EBMUD interceptor directly to the main treatment plant.

4. Two "Mid-Course Check-In" WWF output tests will occur. These tests are to determine whether the Defendants are on track toward eliminating all discharges from the WWFs by the end of the CD term. The first Mid-Course output test will be applied to all three WWFs in 2022, and the second output test will be applied only to the Point Isabel and Oakport WWFs in 2030. A "Final Compliance" WWF output test will occur by April 15, 2028, for San Antonio Creek WWF; by April 15, 2034, for Point Isabel WWF; and by April 15, 2036, for the Oakport WWF.

5. If the Defendants fail to meet the requirements of the Mid-Course Check-In WWF output tests, then they will be required to adjust the scope of the work to ensure that they get back on track to achieve the requirement of eliminating all discharges from the WWFs by the end of the CD. The Defendants will need to determine what additional work is necessary, and create a plan of implementation.

6. Jointly develop and implement Regional Standards for sewer installation, rehabilitation and repair.

7. A dry weather Urban Runoff Diversion Project is to be implemented and funded by EBMUD as mitigation. This is a dry weather, storm water treatment program designed to divert summer runoff from a large storm water pump station in Oakland to the EBMUD treatment plant.

8. EBMUD is to develop a Regional Technical Support Program (RTSP). The goal of the RTSP is to identify and characterize sources of inflow and rapid infiltration that might provide opportunities to decrease the rate of I&I in a more cost-effective manner to support the elimination of WWF discharges. Each Satellite shall eliminate sources of inflow and rapid infiltration within 24 months of being identified as a high priority source. Notification and enforcement is required for property owners if a private, high priority source is discovered. Non-high priority sources are to be added to the capital improvement plan for elimination within 24 months.
9. Stipulated Penalties provide the Plaintiffs with discretion to penalize one or more Defendants for failure to complete certain requirements in the CD, including failure to eliminate discharges from the three WWFs by the given deadlines. However, these penalties are not automatic and are imposed at the Plaintiff's discretion. Some of the stipulated penalty provisions also set forth certain limited exemptions. However, if the Plaintiffs choose to impose stipulated penalties on a Defendant, then the Defendant will be liable for such penalties. The following is a summary of the key or more significant penalties:

   a. WWF discharges during a storm that does not exceed the December 5, 1952 design storm that occur after the compliance deadline for the particular WWF = $30,000 during the first fiscal year after compliance deadline; $50,000 during second fiscal year; $70,000 during third fiscal year; and $150,000 during fourth or later fiscal years after the compliance deadline. There is the ability to submit an explanation to Plaintiffs why a Defendant should not be held responsible for the discharge in question.

   b. For each SSO that reaches waters of the United States = $200 if less than 1,000 gallons; $1,000 if 1,000 to 9,999 gallons; and $25,000 if 10,000 gallons or more. There are exclusions for Act of God, vandalism, or for an SSO caused by a contractor not working directly or indirectly for Defendant, and the Defendant demonstrates it has used all reasonable measures to prevent the SSO.

   c. Failure to rehabilitate required footage of mains, manholes and lower laterals: $6 per foot for the first 5,000 feet and $12 per foot for every foot over 5,000 feet (beginning July 1, 2016), based upon a 3-year rolling average or cumulative total.

   d. Failure to eliminate high-priority sources from the RTSP within 24 months: $3,000 per month per source if 1 month late; $7,000 per month per source if 2 or more months late; $500 per month for private sources not notified and enforced within 24 months.

   e. Failure to clean sewer mains or failure to inspect and assess sewer mains: $0.20 per foot for the first 10,000 feet not cleaned based upon a 3-year rolling average or cumulative total; $0.40 per foot above 10,000 feet.

   f. Failure to timely submit deliverables: penalties per day range from $100 for 1-15 days late to $2,000 per day if more than 60 days late.

   g. Late payment of civil penalty: $500 per day for each day payment is late.

   h. Other stipulated penalties are related to participation in the Regional Sewer Lateral Program and for failure to update Capital Improvement Plans.

10. Filing of an Annual Report is required to document each Defendant's compliance with the work requirements.

11. Payment of attorneys' fees to both the State Attorney General’s office and Baykeeper is required in the agreed upon amounts of $100,000 to State and $210,000 to Baykeeper. Oakland and EBMUD will split 50 percent of the costs and the remainder is divided via a formula developed between the other Defendants. Piedmont's share is $1,935 for the State and $4,065 for Baykeeper.

Summary of Piedmont-Specific Requirements
1. Pay civil penalties in the amount of $20,519 to the United States and $20,519 to the State Water Board within 30 days of the effective date of the CD.

2. Implement existing programs set forth in the Sewer System Management Plan (SSMP) and Asset Management Implementation Plan (AMIP) for controlling SSOs and reducing Inflow and Infiltration.

3. Complete rehabilitation of at least 3,062 feet of sewer main and associated manholes per fiscal year until all sewer mains in the system are rehabilitated. Thereafter, continue to rehabilitate the system as necessary based upon condition assessment.

4. Continue Closed Circuit Television (CCTV) and a condition assessment of the sewer collection system. The annual rate shall not be less than 10% of sewer lines each year during the first 10 years of the CD.

5. Cooperate with EBMUD in the administration of the Regional Sewer Lateral Program. Continue practice of replacing defective lower laterals when mains are rehabilitated.

6. Inspect, repair and rehabilitate, as necessary, all upper sewer laterals owned by the City within 10 years (e.g. City Hall, Recreation Center, Corporation Yard, park facilities, etc.), and work with EBMUD to develop an education and outreach program designed to encourage property owners of upper sewer laterals to do the same.

7. Continue to repair acute defects (failed sewer pipe with imminent risk of an SSO) within one year of identification.

8. Continue cleaning of the collection system. The rate shall be such that the entire system is cleaned every 5 fiscal years (20% of the system each year).

**Schedule of Final Proceedings**

- Notice is published in Federal Register for 30-day comment period (anticipated within one week of the lodging). This should end around the first week of September.

- After comment period closes, DOJ will file a motion with the Court seeking Court approval and execution of CD. The motion is anticipated to be filed within days after the review period is closed, provided there are no substantive objections which may require briefing and a contested court hearing on the CD.

- Court hearing on approval and execution of CD by Court (“effective date”), possibly around the end of September.

---

By: Chester Nakahara, Public Works Director  
Mark N. Obergfell, Deputy City Engineer