

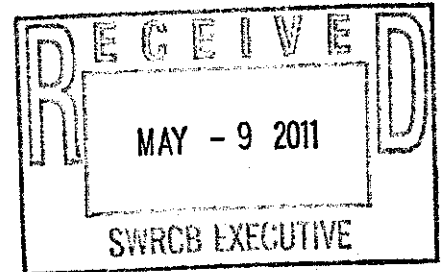
LIVERMORE

CALIFORNIA

Submitted via email to commentletters@waterboards.ca.gov

May 9, 2011

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comment Letter – SSS WDRs Review & Update

Dear Ms. Townsend:

The City of Livermore appreciates the opportunity to comment on the State Water Resources Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). All of the sewage generated by the City's population of approximately 83,000 is collected and treated at the Livermore Water Reclamation Plant, which is operated and maintained by the City's Water Resources Division. The Division also operates and maintains the sanitary sewer system which consists of 285 miles of public sewer, 29,300 sewer service connections, and 5,360 manholes and cleanouts. There are also two lift stations and two siphons. The City implements an active sewer system management program; stoppages and overflows have declined since 1995, when the City began scheduled video inspections of all sewer mains. Aggressive line cleaning, continuous video inspection and dedicated funding for repairs have resulted in a minimum of service interruptions within the system.

We offer the following comments on the draft statewide SSS WDRs.

1. The proposed revisions represent a major departure from the approach developed by the Stakeholder SSO Guidance Committee in 2005-2006.

While we appreciate the State Water Board's efforts to address certain issues by updating the existing SSS WDRs, we are very concerned about proposed revisions, particularly those related to reporting of private lateral sewer discharges (PLSDs) and additions to the sewer system management plan (SSMP), that would require greater staffing and resources at a time when public agencies are facing personnel and budget cutbacks. It is not readily apparent how the additional information that would be required

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by the revised SSS WDRs would produce corresponding environmental or public health benefits.

2. The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is not justified and creates an inappropriate burden for public agency staff.

According to the Staff Report, available data indicates that, while there are likely as many PLSDs as SSOs, the total volume of sewage from PLSDs is only about 5% of the total volume of sewage from SSOs. The State Water Board is proposing to mandate that Enrollees report PLSDs, but it has not first provided adequate justification. The Staff Report notes that requirements have been included to mandate the reporting of PLSDs when Enrollees become aware of them so that the State Water Board can "get a better picture of the magnitude of private lateral spills in California, to better identify collection systems with systemic issues with private laterals, and to level the field of Enrollee spill reporting." The "Mandatory Information to be included in SSO Online Reporting" in the draft Monitoring and Reporting Program is the same for both PLSDs and SSOs, which means public agencies will need to divert limited resources to track down detailed spill information from systems over which they have no control. Public agencies should only be held accountable and responsible for activities within their jurisdiction, and not be burdened with reporting PLSDs.

We recommend the State Water Board work with the California Department of Public Health and local environmental health officers to determine if the desired information can be obtained through their mutual agency cooperation; public health agencies have the best knowledge of overflows from laterals on private property and are, in most instances, the most appropriate agencies to respond to these events.

3. The proposed definition of sanitary sewer system, and the lack of a de minimis spill volume, means there will be an SSO almost every time a sewer main or lateral is repaired or replaced.

The existing SSS WDRs include construction trenches in the definition of a sanitary sewer system: "Temporary storage and conveyance facilities (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, etc.) are considered to be part of the sanitary sewer system, and discharges into these temporary storage facilities are not considered to be SSOs." The definition has been revised in the draft SSS WDRs and construction trenches have been deleted.

Even if always using plugs, bypass pumping, or restricting water use, there will still be small amounts of sewage entering a construction trench. Without a de minimus spill volume, a single drop of sewage entering a construction trench would constitute an SSO. By deleting construction trenches from the sanitary sewer system definition, the State Water Board is essentially requiring public agencies to report and certify an SSO every time they perform construction to repair or replace any part of the sanitary sewer system.

The State Water Board should instead be encouraging Enrollees to proactively maintain their sewer system, including repairing or replacing parts of the system as needed. This proposed change to the definition of sanitary sewer system will have the opposite effect. We recommend the State Water Board continue to include construction trenches as temporary storage and conveyance facilities when defining a sanitary sewer system.

4. Proposed definition of sanitary sewer system must be clarified.

The proposed definition reads, in part: "Any system of publicly or privately owned pipes, pump stations, sewer lines..." This should be revised to clarify that the system includes only the facilities owned by the Enrollee. As worded in the draft SSS WDRs, it is unclear whether, for public collection system agencies, the reference to "publicly or privately" owned pipes, etc. includes privately owned laterals and other facilities that are not the public agencies' responsibility. Similarly, for private entities, it is unclear whether the reference includes publicly owned laterals and facilities that are not the private entities' responsibility. The definition should be revised to read: "Any system of Enrollee-owned pipes, pump stations, sewer lines..."

5. Revisions to the SSMP requirements are premature.

We strongly urge the State Water Board to preserve SSMP requirements as they are in the existing SSS WDRs. As the Staff Report indicates, development and implementation of SSMPs by SSS WDRs Enrollees has just been completed and these plans need to be fully implemented so that their effectiveness can be properly identified. Changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirement among Enrollees, the public, and the Water Board staff.

6. It is essential that Water Board staff consider all factors surrounding the SSO in any enforcement action.

The existing SSO WDRs includes language in Provision D.6 that provides some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Boards will consider factors surrounding why the SSO might have occurred and to what extent it could have been reasonably possible for the Enrollee to have prevented it. Existing language reads: "In addressing these factors, the State and/or Regional Water Boards will also consider whether. . ."

In the proposed revisions to the SSS WDRs, the word "will" has been changed to "may." This change would transform the existing enforcement language, which expresses a clear statement of the State Water Board's intent regarding enforcement priorities and responses, into a purely advisory provision which individual regional boards are free to choose to follow or ignore. The factors outlined in parts (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its collection system, and these factors should definitely be considered in enforcement

actions. The existing language should be retained; Enrollees should not be penalized or suffer consequences for conditions outside their reasonable control.

7. Notification requirements must be clarified.

We strongly support the State Water Board's proposed change to require Enrollees to notify only the Cal EMA when spills to surface water of any volume occur. This change is reflected in the proposed language in Section A of the draft Monitoring and Reporting Program. However, paragraph G.4 in the draft SSS WDRs indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health. Paragraph G.4 should be clarified to be consistent with the proposed language in Section A of the draft Monitoring and Reporting Program and indicate that notification shall be made only to Cal EMA.

8. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit.

The State Water Board asked for comments specifically on whether the SSS WDRs should be revised to a two-tiered WDRs and NPDES permit. We strongly oppose the two-tiered alternative. Both the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize SSOs to waters of the United States; coverage under an NPDES permit instead of WDRs would not result in fewer SSOs.

Coverage under an NPDES permit has the potential to subject local public agencies to additional, more egregious non-governmental organization (NGO) lawsuits, and higher administrative penalties, with absolutely no demonstration that this would improve water quality or further reduce SSOs. Several NGOs in the San Francisco Bay Region have already taken advantage of municipal government agencies and, through the use of aggressive tactics, pocketed precious funds that would have been better used to reduce SSOs. Devoting public funds or staff resources to respond to this type of behavior is not appropriate.


As proposed by the State Water Board, Enrollees who have had at least one SSO that has reached waters of the United States would be required to seek coverage under the NPDES permit; an Enrollee covered under the WDRs would need to switch coverage to the NPDES permit once it reports an SSO that has reached waters of the United States. As noted in the Staff Report, "the current SSS WDRs are functioning well as WDRS" and "administering a two-tiered WDRs and NPDES permit would create administrative complexities because agencies would be subject to different orders depending upon their history of SSOs and, agencies would need to be transitioned from WDRs to an NPDES permit when the NPDES triggers occur." We agree with State Water Board staff that the additional staff resources necessary to implement a more complex two-tiered WDRs and NPDES permit would be better utilized toward improving the current SSO Reduction Program and conducting enforcement of the SSS WDRs.

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U.S. EPA is developing national regulations for SSO notification, reporting, and collection system asset management; it makes more sense for the State Water Board to wait until after U.S. EPA develops its regulations for sanitary sewer systems before making a decision on changing the SSS WDRs to an NPDES permit or a two-tiered WDRs and NPDES permit.

Again, we appreciate this opportunity to provide comments on the draft statewide SSS WDRs. If you have any questions, please call me at (925) 960-8100.

Sincerely,



Darren Greenwood
Asst. Public Works Director

cc: Dan McIntyre, Public Works Director
Mike Wells, Collection System Supervisor
Helen Ling, Regulatory Compliance Officer

