



City of Morro Bay

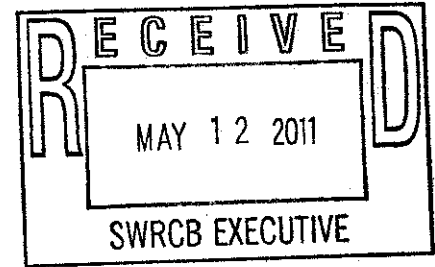
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May 11, 2011

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Public Comment
Sanitary Sewer System WDR
Deadline: 5/13/11 by 12 noon



Subject -Comment letter –Sanitary Sewer System Waste Discharge Requirements Review and Update

Mrs. Townsend,

The purpose of this letter is to provide comments on the Draft Waste Discharge Requirements for Sanitary Sewer Systems (WDR). As the Utilities/Capital Projects Manager for the City of Morro Bay, I have witnessed the reductions in spill rates that proper operations and management of a system can provide. However, all systems, even the best managed ones, will eventually spill. These spills can be due to acts of God and/or events beyond the control of the system operators. In many cases the spill is the first indicating event of a problem that has occurred in a system.

Also, as the manager of a small system, I have observed the costs for implementing the first round of this regulatory program. It has more than doubled the cost for us to staff our system while failing to provide meaningful impacts to the quality of the State's water through spill reduction. Quite simply, the huge investment by the rate payers in Morro Bay will never be recouped in either environmental or public health benefits.

Based on the lack of benefits from, and the high costs of this regulatory program, I am opposed in principal to issuing Statewide WDR for the operations of collection systems. It is an unproven, wasteful, and expensive process. Since the financial interests of the regulatory body (SWRCB/State) are being pitted directly against the citizens of the state, who have no direct voice in this process, I have no doubt that the State's regulatory program will continue to expand. In opposition to that costly and continuous regulatory expansion, I am providing the following comments.

General Comments on the Concept of Adoption State Wide Discharge Requirements for an illegal class of unintentional discharges.

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

PUBLIC SERVICES
955 Shasta Street

HARBOR DEPARTMENT
1275 Embarcadero Road

CITY ATTORNEY
955 Shasta Avenue

POLICE DEPARTMENT
850 Morro Bay Boulevard

RECREATION AND PARKS
1001 Kennedy Way

The State had previously proposed and is now expanding an expensive regulatory scheme to regulate the infrequent and accidental discharge of wastes from collection systems which has been and remains an illegal activity when or if it does occur. Most of the time, and under all but extreme conditions, collection systems discharge to the environment via a treatment work with an NPDES permit. The purpose of these NPDES permits is to provide discharge limitations to protect receiving body water quality. Many of the NPDES permits have pretreatment requirements that effectively regulate the associated collection systems. There is no need, therefore, to directly regulate collection systems. The State uses this very argument in deciding not to regulate combined systems.

The third finding for this regulatory arrangement includes the statement that "Many SSOs and PLSD can be prevented by having adequate facilities, source control measures, and proper operation and maintenance of the system." This is a misleading statement. Proper maintenance, operations, and source control measures of public collection system will not materially reduce the frequency and occurrence of PLSD. Proper maintenance activities of collection systems can indeed reduce the frequency of SSOs but cannot ensure that they never happen. In fact the State recognizes in Finding 3 that the data collected and analyzed by the Data Collections Committee demonstrates, that spills are extremely infrequent occurrences and that in general, collection systems have an extremely low failure rate. The potential for spilling is not only based on the distance and volume of material that travels in the system but any number of potential factors. For the most part, collection systems in the State of California have an impressive success rate at conveying wastewater to treatment plants negating the need for this regulatory intervention by the State.

Following the State's premise that there is a need to regulate collection systems and that spills are directly related to the volume of material conveyed, the State has frustrated its own efforts to improve water quality by deciding that only those systems most at risk of spilling (combined systems since they carry greater volumes than separate systems) will be exempt from this regulatory burden. The reason given for exempting combined systems is that "These combined sanitary systems are owned by entities that also own publically owned treatment works that have been issued National Pollution Discharge Elimination System (NPDES) permits." This same exemption should be applied to all agencies that own and operate both publically owned treatment systems and collection systems. Uncombined systems have a lesser risk of spilling than the combined systems, due to the lower volumes of waste conveyed per area served.

The State's approach to penalize those parties that operate both a larger and smaller systems by requiring regulation of the smaller systems, when they otherwise would not have to, as a penalty for operating a large system appears to be inconsistent and unwarranted.

The WDR and the associated costs of implementation will not prevent the accidental discharge of wastes to the environment from spills from collection systems, nor will it provide legal protection for

enrollees. It is unclear what benefits, if any, the average system owner receives through enrollment in this costly regulatory scheme. Unintended discharges from a collection system will continue to be illegal with or without enrolling in the program. The WDR will not prevent nor will they necessarily reduce the occurrence of SSOs in any given collection system.

This regulatory scheme causes significant impacts to private property rights, violates individual constitutional rights (for example it directly requires private parties to self-incriminate), and does very little if anything to improve water quality in the State of California. Furthermore, the entire basis for the issuance of WDR appears to be the prevention of public nuisances under the Porter-Cologne Act. It is unclear that the potential discharge from collection systems create a nuisance as defined by 13050 of the Water code because spills from collection systems do not result from the treatment or disposal of wastes. Collection systems simply convey material from one location to the next (see the included definitions).

There are many requirements in the SSMP that for the average system will be difficult or potentially impossible to achieve. For example, many sewer agencies may not be responsible for backflow prevention devices or storm water conveyance facilities. It seems odd to require sewer system operators to map infrastructure owned and or operated by a different agency. Many sewer systems operate without the benefit of historical records. While some of this data may be able to be recreated, it is unclear what benefit the average sewer operator would receive from a detailed map showing backflow prevention devices when backflow prevention is regulated through drinking water providers already. The frequency and prevalence of these costly and ineffective mandatory requirements undermine the credibility of the State Board and this process.

Reporting Private Lateral Spills

By requiring the reporting of spills from private laterals, the State is making a strong effort to ensure that ownership of laterals will become the responsibility of private homeowners. Furthermore, by requiring reporting of private spills to Cal EMA and recommending that collection system operators either directly contact or push homeowners to contact the state, damage will be done to the relationship between the homeowners and system operators. Over time it will be interesting to see if the data collected from these required reporting efforts offsets the negative aspects of the proposed scheme. Due to the small volume of spills (less than 5% of the total spill volume) and high cost of reporting the large number of small events (there are likely as many PLSD and SSOs), the City of Morro Bay recommends removing the option of reporting PLSD from the WDR.

Since homeowners and plumbers will be less likely to call collection system operators, it is likely that root balls and other plugs will be simply pushed into the main leading to an increased rate of system spills. In our system, we have worked diligently to get local plumbers to contact us when working on

clearing private laterals. This practice enables us to place a rake at the downstream manhole preventing the plug from getting stuck somewhere further into the system. As plumbers become aware of these new reporting requirements, they will face mounting pressures to not contact collection system operators. Higher incidents of "chain" problems where a private lateral problem gets pushed into a main creating a system problem are a likely outcome of this private lateral reporting effort. This regulatory action could lead to greater spill volumes reaching the environment through unintended consequences.

The State Board's philosophical approach to collection systems could be extended to each individual homeowner in the state, since homeowners are likely to spill to the environment and when they spill, it is just as illegal as when operators of collection systems spill. The State could require each property owner to prepare a SSMP for each private system. Preparing an SSMP for each home would be a boon to professionals writing these plans. The state would also increase the available base for both the collection of fines for non-compliance and the filing of third party lawsuits. Just as logically, and probably with greater accuracy, the state could use licensed plumbers in the enforcement of PLSD rather than collection system operators.

Operator Certification

Perhaps the single greatest measure the State could take to ensure excellent performance of collection system would be requiring certification of operators of public systems. While an individual community can readily manage their collection system to minimize SSOs without the need for WDR, no individual community can set standards for collection system operators throughout the state. Currently the State requires that all operators of treatment plants be licensed which means the criteria and objectives of licensing could be readily extended to the operation of collection systems. The California Water Environment Association currently has a certification for Collection System Maintenance which could serve as the template for the State's program.

Implementation of operator certification standards would likely be a more cost effective means of ensuring proper collection system operation than expanding the WDR. This approach would allow individual communities to target programs to their communities through certified staff versus the "one-size-fits-all" approach the current and proposed WDR take.

Notifications

It is unclear what the relationship is between Water Code section 13271 which requires reporting of spills to OES and Health and Safety Code section 5411.5 which requires that the local health department be contacted for spills that reach surface water. The law states that agencies must contact both but the staff report states that OES (Cal EMA) will notify the local public health departments. It is also

unclear from the MRP, if the reporting pertains to PLSD or just Category 1 spills. The State Board is proposing modifying the requirements so that agencies will only report to Cal EMA but this proposal appears inconsistent with the Health and Safety Code. It is unclear which section of State law will have primacy, or whether the State will revise the Health and Safety Code as part of this process?

The requirement to report spills within the two-hour window has impacted the ability of smaller agencies in responding to spills. This is a case where the side effects of a rule cause more harm than the good the rule produces. Rather than adding unclear explanatory language in order to resolve this inconsistency, a better solution would be to eliminate the two-hour time limit. The notification requirement could simply be to notify as soon as possible without hindering containment and clean-up efforts.

The notification and subsequent spill reporting process is time consuming and can detract from efforts to contain and control spills. The inclusion of the requirement to report PLSD could create a significant economic burden to agencies and will be particularly acute for small and disadvantaged communities since there are a large number of PLSD and the State is not currently providing funding to carry out these mandates.

De Minimis Spill Volume

In the staff report, the State Water Board's staff state, "all spills from collection systems are relevant since they are failures that prevent proper system functioning. In addition, they provide valuable information regarding the physical condition and adequacy of collection system operation and maintenance." A spill can be a symptom of a system failure but does not necessarily constitute a system failure. Spills can be caused by any number of factors external to the system such as flooding events, vandalism, earth movement, etc. A system can function exactly as designed and still spill due to externalities. For example, recent events in Japan have shown that acts of god can cause circumstances beyond a reasonable designer's expectations. A system being surcharged by a tsunami may perform better than designed, yet it could still spill. While this may seem to be arguing semantics, the State's position that regulating agencies with collection systems will lead to better protection of the environment is not universally true. In systems that are currently well-managed and maintained, like most are, there will be no noticeable reduction in spill volume or frequency as a result of the WDR. The effect of these regulations will only be a large increase in reporting, documentation, and operational costs. Only where collection systems are being mismanaged might there be any meaningful reduction in spills due to regulation. Even under cases of mismanagement, a cost-benefit analysis would not likely support the current regulatory scheme and the State can pursue negligent systems through enforcement processes.

It seems logical that small volume spills that do not reach waterways and do not create a nuisance have reduced reporting requirements. In the interest of the public health and the environment, the State should recognize that in all systems, the operators can either be out maintaining the system or on the internet reporting spills, but not both. Reducing the time required for inputting data into the State's system, while helpful, does not eliminate the staffing levels necessary to do so. Reporting in and of itself does nothing to prevent or minimize spill events, since it only occurs after the fact and competes directly with the resources that communities invest to prevent spills in the first place. Reporting spills provides a benefit to the State, so perhaps the State could fund an Operator position in each regulated community to carry out these reporting requirements. An example of this type of arrangement is the OES fire engines that are located in the local jurisdictions but remain the property of the State.

Private Collection Systems

Municipalities are political subdivisions of the state, and as such, do not have the same constitutional rights that operators of private collection systems do. The current regulatory program requires that operators, under penalty of perjury, certify that they either did not spill, or they must provide certification of the location and amount of the spill, amongst other information. This mandatory reporting seems to violate the principle of law outlined in the fifth amendment of the constitution against self-incrimination, which should extend to operators of private systems.

Enrollees are not granted a positive defense in actions against them through enrolling under the permit. Perhaps this is because the State recognizes that the efforts outlined in the SSMPs will do little or nothing to reduce spill frequency in well-managed systems. In other words, any party can expertly maintain their system, by meeting or exceeding all of the requirements outlined in the WDR, and will still be held liable should an event outside their control cause a spill to occur. If the State is insistent on including private systems in the WDR, then compliance with the WDR needs to provide a positive defense against liabilities for spills. In this way, private enrollees will get some benefit in return for the huge investments being required by this regulatory scheme.

Staff uses some inconsequential equity arguments in order to encourage inclusion of private parties. Elimination of the program would also resolve these equity arguments. However, public agencies and private individuals are not now, nor are they intended to be, entirely equal entities in terms of the law.

Prohibitions

It is and always has been a violation of the federal Clean Water Act to discharge pollutants from a point source to waters of the United States unless authorized under an NPDES permit. Collection systems convey wastes from dispersed sources and convey them to wastewater treatment plants for discharge under an NPDES permit. Collection systems are not designed to be direct discharges to the environment

and typically only do so in emergency conditions. The California Water Code also generally prohibits the discharge of waste to land without the necessary WDR.

The expanded prohibition against spills will provide redundant legal prohibition that will do nothing to reduce what are essentially accidental releases from collection systems to the environment. They may, however, increase the number of legal actions available to parties wishing to sue the agencies or operators of collection systems. In addition when sued, the State has set the highest possible standard of care as the minimum legal requirement for operating a collection system. These changes will result in increased legal costs that will be particularly impactful to small communities that cannot shoulder large legal expenses.

NPDES Permit Option

The discussion of providing NPDES permit coverage indicates that NPDES permit coverage cannot be extended to potential discharges. The WDR are ignoring that legal framework and rationale in order to regulate accidental and potential discharges from collection systems. It is important to note that only 35% of systems have reported a spill, yet all systems are being regulated. The costly process of developing revised SSMPs is being imposed in recognition that even with perfect management and maintenance, spills can still occur.

The intent of wastewater collection systems is not to discharge to the environment, although they may when spills occur. The thought of issuing NPDES permits seems to conflict with the purpose and intent of collection systems which is not to discharge but transport materials for treatment to the permitted discharge point. Likewise issuing WDR based on the possibility of spills with both stringent and costly implementation requirements does not make economic sense. The full implementation of the WDR will do nothing to reduce the frequency of spills from well-managed collection systems. The only practical effect will be to increase liability to, and facilitate the collecting of fines from, collection system operators. Pursuing another costly program that will provide very little benefit to the public at large may not be prudent given the State's current financial condition.

Two-Tiered System

Regulating under a two-tiered system seems unreasonable as well. Of course, The State Water Resource Control Board staff's economic interest to preserve their employing agencies revenues, through greater ease in collecting fines, is listed as an advantage. However, it is incumbent on the State Board acting to protect the public trust, to recognize that the fines will do little to improve water quality from inadvertent discharges, and will come at great expense to the citizens of the state. Facilitating third-party lawsuits is also listed as an advantage. Apparently the State Water Board's staff believes that technical violations of a complicated regulatory scheme should be litigated more frequently. Perhaps

the State would do well to recognize that lawsuits over technical violations, where no damage has been done to the environment, will only come at great expense to the average ratepayer (citizens of the State) for the benefit of several non-governmental agencies (private associations).

The expectation under the two-tiered system would be that all agencies, through the SSMP, are adopting the highest and best available management requirements, but when these mandated management measures fail to preclude a spill, even the best managed system will be subjected to additional scrutiny and the expense of a new permit for a fugitive discharge. Neither the State nor the individual agencies should intend to have, or legalize, routine discharges from collection systems, and therefore the concept of issuing NPDES permits authorizing those discharges, even if one has occurred, is both illogical and a misuse of resources.

WDR

Staff states that regulating under WDR carry the disadvantages of a higher burden of proof, lower potential fines for agencies when they are unfortunate enough to spill, and the inability for NGOs to sue collection systems for minor technical violations. It is very clear from this language that the agencies that operate collection systems on behalf of the public are viewed in an antagonistic fashion by the staff of the State Water Resources Control Board. This hostile approach fails to recognize the facts that collection agencies generally do an excellent job at precluding spills to the environment (The Board should ask what is the average spill rate in terms of total volume conveyed? And, what are the best in-class benchmarks for conveyance facilities?), and collections agencies are the first line of defense for the protection of water quality in the State. Collection system operators should be considered the State Board's greatest allies in its mandate to protect the water quality of the State. Instead, the State Board under recommendation from its staff is considering pursuit of a semi-hostile working relationship.

It would be beneficial for the health and welfare of the State, to have collection systems operators contact their regulators during spill events and use that relationship to develop mutually agreeable solutions to these rare events as they arise. The WDR and mandatory reporting requirements largely preclude healthy and proactive types of relationships from developing. Approaching collection systems in this fashion will encourage collection system operators to avoid contact with SWRCB staff as much as possible. Instead of working toward the common goal of minimizing spill frequency and volumes, the State has taken a condescending approach that does little to recognize the unique circumstances that many systems operate under and in which spills occur.

Sanitary Sewer Management Plans

The preparation of a Sanitary Sewer Management Plan by each agency in the State is an expensive and time consuming proposition. In well-managed systems this mandate will do nothing to reduce the frequency and volume of spills.

Making significant and costly changes to the requirements as most larger systems are approaching or in process of their first SSMP review, and as many smaller agencies are in the process of developing their plans, seems to undermine the stakeholder driven approach of the WDR adopted in 2006. The State does not have data supporting the positions taken for many of the changes being recommended. Making changes at this time is at best premature, will be expensive, and is not based on objective standards.

Specific comments on the proposed WDR including the SSMP requirements and the Monitoring and Reporting Program are included hereafter.

Specific Comments on the WDR

Findings

Finding 1: The data collected to date provides compelling evidence that collection systems have a very high success rate at conveying wastewater for treatment. Average spill percentages, as a minute fraction of the amount conveyed, should be provided in the findings to provide the Board the background information which doesn't support this expensive regulatory approach.

Finding 2: The WDR as proposed prohibit certain cleanup/abatement efforts with the prohibitions on discharging chlorinated water in cleanup activities. So, reference to Water Code Section 13304 should be removed from this finding.

Finding 3: The State is making the observation that greater travel lengths and volumes result in increased risk of spilling. This logic is clear and unmistakable, yet several findings later, the State exempts combined systems that per unit of service area convey much greater volumes of material. Perhaps nothing so clearly conveys the flaws in the regulatory approach being expanded as this single discrepancy.

Finding 5: This finding should be deleted. Accepting the State's premise that volume and length determine spill frequency, why would systems which are normally exempt be included in the WDR only because they are owned by an enrollee who also owns a large system? There is no logical explanation provided for this approach.

Finding 6: The State should either exempt all collection systems connected to a publically owned treatment work, not just combined systems. It appears the State is attempting to incentivize combined systems even after recognizing them as being at greater risk of spilling.

Finding 7: This needs to be rewritten since by definition PLSD are not overflows from sanitary sewer systems.

Finding 8: The first sentence should be revised as follows, "Sanitary Sewer systems may experience periodic failures resulting in discharge that can potentially reach the waters of the state." Revise the second to last sentence as follows, " A proactive approach to maintenance of sanitary sewer systems may reduce the number and frequency of SSOs within the state. The purpose of this program is to require all systems in the state to employ specific mandatory best management practices, which to the extent that systems are not already proactively managing their systems, has the potential to decrease the number and frequency of SSOs." How many, if any, SSOs caused documented impacts to human health? What was the documented cost to the public health from SSOs in the State of California? Are the benefits of minimally reducing exposure risks worth the high costs of implementing the program? Where is the evidence that the State followed the economic consideration requirements as required by the Porter Cologne Act?

Finding 9: Of the 15 sources listed as major causes of SSOs only 4 appear to be preventable through proper O&M (grease, root, debris blockages and lack of proper O&M), five may be preventable to some degree (manhole structural failures, pipeline failures, pump station mechanical failures, excessive I&I, and contractor caused damage), and the remainder operators have little ability to influence (sewer line flood damage, vandalism, power outages, age , construction related material failures, and insufficient capacity. Since this regulatory approach will not prevent all SSOs, what is the anticipated reduction in SSOs from these efforts? What will the costs of implementing the SSMP and MRP be? Will the anticipated reduction in spills be worth the cost?

Finding 11: Uniform PLSD reporting is not being required by this order. Enrollees are only required to notify the state of any PLSD of which they become aware. Perhaps the state, since it wishes to receive the benefit of collecting data on PLSD, can directly incur and potentially reduce the costs of implementing the data collection effort by excluding enrollees from this task. This could be accomplished by directly pursuing data collection on PLSD through other means (direct regulation of citizens in the state, or licensed plumbers, etc).

Finding 12: Data collection and reporting efforts will compete directly with O&M activities for most enrollees. Following the logic that proper O&M will provide meaningful public health benefits, any activity which pulls resources from O&M activities will increase the risk to the public health. Therefore,

the state should not require the enrollees to fill this data reporting role because it would directly lead to more frequent discharges from enrolled systems.

Finding 13: Enrollees following the requirements of the WDR will not prevent SSOs. Stating that this program establishes minimum criteria to prevent SSOs is an absolutist position for the State to take. At best, the many costly and prescriptive requirements of the WDR will reduce the frequency and occurrence of SSOs in poorly managed systems. For the majority of communities with well-managed systems, following the WDR only adds cost.

Finding 14: The State is requiring enrollees to consider risk management and cost benefit analysis but then through the program's excessive mandatory measures precludes the enrollees ability to do so. Enrolled communities should be able to opt out of provisions of the SSMP that are not locally cost effective.

Finding 15: How does the state plan to reimburse current enrollees for this unfunded mandate? What funding mechanism will the State use to fund the creation of the SSMPs for new enrollees?

Finding 16: How does the state define the term technically qualified and experienced person when there are no licenses or State pre-defined qualifications required to operate a collection system? Either this finding should be struck or the State should define the minimum qualifications necessary to prepare the SSMP. Does the document need to be stamped by a professional engineer (PE), or only portions thereof? Can an experienced person without a PE prepare an SSMP? Will the State create a whole new level of certifications for preparing these plans, as it has with stormwater (QSP) and disqualify anyone that does not enroll in the new certifications?

Finding 17: Including Federal law prohibiting discharges weakens the state's position for requiring WDR. Effectively, the state admits that the WDR are imposing a costly regulatory process on an already illegal event.

Finding 19: This finding indicates that SSOs are a uniform type of discharge throughout the state. However, where in Finding 9 a list of unique causes for SSOs are given and in Finding 17, discharges from collection systems are categorized as illegal. Why regulate fugitive, uncommon, and unintentional discharges through either a general order or individual discharge requirements?

Finding 20: The WDR do more than facilitate consistent enforcement for violations, they create a whole new class of violations to enforce. The legality of discharges from collection systems will remain unchanged. The reporting requirements in the WDR will certainly facilitate the enforcement of discharge violations by requiring self incrimination of enrollees. The program also creates a new class of technical violations. These technical violations will be violations of failing to follow the specific

requirements, or not enrolling in the WDR, which while they do not cause any harm to the people of the state, will create an opportunity for State Board fine revenues and third party lawsuits.

Finding 22: Since the State contends that, "implementation of the requirements set forth in the SSS WDR will ensure the reasonable protection of past present and probable future beneficial uses of water and the prevention of public nuisances" Why not provide complete legal liability protection to enrollees that are in compliance with the WDR? Of course implementation of the WDR will not preclude SSOs as is admitted elsewhere in the document, so it is unclear how these regulations ensure these beneficial outcomes. The arguments presented in the document do not support this position. The State Water Board also claims to have considered the "costs associated with compliance with these requirements". Will that analysis be made publically available with time to review and comment prior to the adoption of the WDR? Does that analysis reflect costs to both the enrollees as well as to the state for implementation of the program?

Finding 23: Do collections operators cause or permit sewage to be discharged from collection systems? (They don't, spills are usually caused by events out of their direct control.) Do most spills reach the waters of the state? (They don't.) Is anyone proposing to consistently discharge from their collection system? (They aren't.) So it is unclear as to how the SSS WDR implement sections 13271, 13236, 13304, 13267, and 13383 of the water code. It is unclear how this implements section 5411 of the Health and Safety code since full implementation of this program will only provide benefits to systems that are currently improperly managed. Based on the statistic from the state that only 35% of agencies have spilled, the WDR do not implement these sections of law for the vast majority of enrollees.

Finding 24: Is the statement that the "SSS WDR impose conditions to prevent impacts to water quality" true? Should the state board be taking actions based on potentially false findings? A factually correct statement would be, "SSS WDR impose conditions that, in some circumstances, may reduce the potential for impacts to water quality..." Some of the Monitoring and Reporting provisions will compete directly with O&M resources and will thereby negatively impact the water quality of the State.

Finding 25: The Monitoring and Reporting program is significantly expanding and does nothing to protect the environment. As such, can it be exempted from CEQA analysis? Where is the analysis that shows that implementation of the MRP will provide positive benefits to the environment?

Definitions

The definition of "Sanitary Sewer System" does not contain the terms "treatment or disposal of waste". These are the terms used in the definition of "Nuisance". Therefore, since Sanitary Sewer Systems are not involved in the treatment and disposal of wastes, only in the collection and conveyance thereof, by definition, can a discharge from a collection system create a nuisance?

The definition of "Sanitary Sewer System" is broad enough to include combined systems. This point should be clarified. The definition should exclude private systems.

The definition of "Combined System" should be clarified as well, for example can an agency with one storm drain line attached be considered a combined system and thereby be exempt from the WDR, or is there a numerical threshold of flow percentages or State determination that must be met?

The definition of "Enrollee" should not include private parties.

Prohibitions

The WDR prohibit the discharge of waste from Sanitary Sewer Systems that either reach the water of the state or create a nuisance. What then, are the discharges that the state is regulating through the issuance of the WDR?

The public health and environmental benefits of using chlorine or other disinfectants in the cleanup of sewage spills far outweighs the minimal risks to the environment from any residual disinfectant. The State should revise Prohibition 3 from a Prohibition to an allowance.

Provisions

Provision 1: This provision creates a new class of legal offences for technical violations of the Water Code which have no impact on the public or environmental health of the state. Clear constraints should be placed on the liability created by these WDR so that no third party liability is created by technical violations and so that any fines collected for technical violations are not punitive. In addition, an agency adopting and implementing the WDR should be entitled to positive defense.

Provision 5: (f) Adequate public notice should be clearly defined. (g) This paragraph is redundant with the first paragraph and should be deleted, but if not deleted, the word "factors" should be replaced with "actions".

Provision 6: Enrollees complying with the requirements of the SSS WDR should have a positive defense in all actions arising from sewer spills public or private. This positive defense need not extend to liabilities for private party damages caused by SSOs. (d) Will not most if not all SSOs meet this requirement? (e) There are some very vague and subjective terms used in this section such as "proper", "adequate", "appropriate" and "practicable". Since the state intends to manage every system in the state using this centralized management approach, specific, rational expectations should be defined. For example "proper funding" could be defined as "the level of funding required to implement all of the requirements of the SSMP as well as capital replacement funding equal to at least 2% of the value of the system." "Adequate treatment facilities" could be more clearly defined as "facilities of sufficient capacity

to convey all flows, including I&I entering the system during a five year storm event". These types of specific numerical criteria will reduce confusion about what levels of funding and reserve capacity are "adequate".

Provision 7: Has or will the State define what adequate knowledge, skills, and abilities for collection systems operators are? In the absence of state action, each agency will make a unique determination on the meaning of this requirement. These unique definitions will not be reviewed except potentially by the State or Regional Boards during a hearing after the event occurs. A single set of statewide criteria for collection system operators would eliminate huge redundancies of effort amongst the State and Regional Boards and the thousands of potential enrollees. Defining minimum qualifications for collection operators is perhaps the single best arena for state efforts regarding the regulation of collection systems and could certainly be implemented more successfully and less expensively than the alternate regulatory approach currently being expanded. Creating a class of workers with the investment required to remain licensed and with personal liability for negligent acts would do more to protect the interest of the public health, by reducing the frequency of spills, than any other regulatory scheme. This more logical approach would be consistent with the State's practice in other areas such as wastewater treatment plant operation and consumer protection.

Provision 8: What is adequate funding? See comments on provision 6.

Provision 12: (c) (iv) Requires that agencies have the legal authority to limit flows from service laterals and satellite systems. Provision 9 requires adequate capacity to convey base and peak flows. These appear to be inconsistent. Perhaps this section should be revised so that utilities reserve the right to interrupt service or terminate service for unlawful users. (d)(ii) How can an agency know in advance which contractors it may use on emergency repair projects? Why is this information necessary? (d)(iii) This section is very important in that this appears to be the only place in the document that recognizes that not all known deficiencies can be fixed instantly. Agencies should prepare CIP plans that address the work in a logical order. Regulatory agencies need to recognize that there are historic deficiencies or knowledge gaps that cannot all be overcome at once and could take years or decades of dedicated effort to address. In some cases it may never be cost effective to fix known minor deficiencies. (d)(iv) Having each agency responsible to determine what adequate training is will lead to a wide range of results. Having a statewide standard would reduce the collective effort and achieve superior results. (d)(vi) Certainly, the state must recognize that agency budgets are not consistent from year to year. Can the State of California certify that its budget allows it to operate into perpetuity? This seems to be an unreasonable burden on enrollees and the language should be revised or removed. With the passage of Proposition 218, and subsequent legal decisions, a rate structure cannot have an escalation clause that goes into perpetuity. This means that every rate structure will eventually have to be revised to address the rampages of inflation. No public agency then can comply with this requirement as written. (e)

Rather than require rigid documented procedures that in the face of an actual dynamic emergency are almost always found lacking, the state should require that staff be trained in ICS and that a generic all hazards emergency response plan be prepared. This would better prepare agencies to deal with emergencies than spending the time drafting specific and often inadequate procedures. This would decrease the effort required to prepare and would increase the ability of agencies to respond when an actual emergency occurs. (e)(vi) The requirement to prepare a risk and threat analysis for each system asset is an extremely costly requirement. The work effort required to carefully, identify, catalogue, assess the condition of, assign a risk probability and quantifying the consequence of failure for each asset in the system in prioritized fashion will cost more for many systems than their annual operating budgets. This hyper awareness of a system goes beyond the effort necessary for proper system maintenance. The results of this analysis will become less meaningful after a few years as conditions in the system change. To keep the analysis relevant it would require herculean data collection and analysis efforts well beyond the reach of many systems. It simply sets the bar out of reach of nearly every agency and demonstrates the need for State Board staff to put down the asset management primers and deal with the multiple constraints real system operators face in a pragmatic manner. This unrealistic and crushingly expensive requirement should be deleted since it pushes the minimal standards beyond the level necessary for operation of the average system and beyond the reach of almost all systems. If the State wishes to pursue this level of analysis it should provide significant amounts of grant funding. This would allow the State to understand both the costs associated with the effort and a realistic understanding of how the results might be put to use. After a demonstration project or two, I doubt that this recommendation would be deemed either cost effective or beneficial in terms of return on invested effort. (i) The programmatic reviews should be scheduled at the same two year interval as the SSMP updates to avoid duplication of effort. (k) Formal communications efforts should be at the same two year interval as the SSMP update to avoid duplication of effort.

Provision 13: The State should allow the programmatic updates to occur on approximately two year intervals to allow limited resources to prioritize workloads. For example the City of Morro Bay's 2010 Urban Water Management Plan, required by DWR, will be due at the same time as the first SSMP program audit. Since it is the same staff person performing both functions, the plan was to push the SSMP programmatic review to later in the calendar year to ensure adequate staff availability. These new more rigidly enforced timelines will preclude those kinds of adaptive work balancing arrangements. In some locations the conditions in the system do not change rapidly and the SSMP may not require as frequent performance reviews. This requirement should be softened to allow for local adaptation.

Section F: This creates new rights of entry for State and Regional Water Quality Control Board staff. There are some potentially interesting liability issues to having State and Regional Board staffs entering manholes, lift stations, etc... Will the State agree to indemnify the local jurisdictions for actions caused by or damages to their employees acting in this fashion? The ability for the State to enter any private

property at any time to inspect for any parameters at any location seems to violate the unreasonable search and seizure clause of the Fourth Amendment of the Constitution and will likely not stand up to future legal challenge. In the SSMP Plan Time Schedule, using the methods detailed in note one, a community for compliance purposes can have a lower population than it actually does. Is this an acceptable outcome for the State Board?

Section H: Changes in Ownership may impact private property rights where the ability to transfer or exchange a property are limited because of the notification requirements. In the era of foreclosures and with ex post facto laws still being illegal, will mortgages, deeds of trust and other debt instruments need to be revised to allow for these foreclosure time lines concurrent with WDR time lines? How will these timelines interact with other property transfer requirements, and what is the intent of the Board in adopting these? Can these be legally enforced? Why doesn't the Board make the noticing requirements due within a reasonable time after the transfer eliminating these concerns? Having the notifications occur after the fact would not interfere with the ability of property owners to transfer property while maintaining the objective of enrolling new operators into the program.

Section I: How can enrollees be held accountable for the reliability of the State's database? The State needs to allow for the transmission of information by other means rather than inputting directly into the database because database programs are not 100% reliable and there are specified timelines mandated.

Section K: The State plans to collect monetary fines where no damage has been done to the public health or welfare. This seems to be a case of a policing agency using its powers to collect revenue which violates virtually every expectation of representative government. It further goes on to state that refusing to provide information, which in the case of private individuals may be self incriminating, will be punishable by civil monetary penalties.

Section L: (2) is inconsistent with the new rights of entry being granted for inspection purposes, as well as the limitation of the right of private property owners to transfer their property and as such should be eliminated or revised to be factual. Further since this program clearly states it creates no right to discharge, and creates no legal protections for enrollees, the only benefit provided to an enrollee of the program is the potential avoidance of monetary civil fines.

Specific Comments on the MRP

The MRP grants the Executive Director the power to revise the program with neither notice nor opportunity to comment for the enrollees. The addition of monitoring and reporting by the Director will increase the costs of compliance for enrollees without those being "taxed" by the program having a voice in the process.

Section A: The requirement to report spills within the two hour window has impacted the ability of smaller agencies to respond to spills. This is a case where the side effect of a rule causes more harm than the good the rule produces. Rather than adding unclear explanatory language in order to resolve this inconsistency, a better solution would be to eliminate the 2 hour time limit. The notification requirement could be to notify as soon as possible without hindering containment and clean up efforts.

Section B: 1.B Why are discharges to drainage channels that are tributary to the waters of the state being regulated as a Category 1? Aren't all drainage channels ultimately tributary to the waters of the state? The language should be revised to match B.1.C so that any waters reaching a drainage channel that are not recovered are considered to have reached the waters of the state. The same comment applies to the PLSD category as well.

SSO Reporting Timeframes 3. Using existing collection system staff to police private lateral spills and encouraging collection system operators to contact CalEMA may damage community relationships.

SSO Reporting Timeframes 4. Thank you for clarifying that the certification of a PLSD does not constitute a no spill certification. This along with no clear definition for a PLSD had caused confusion previously.

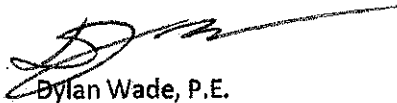
Mandatory Information to be included in SSO Online Reporting. The inclusion of a major milestone schedule and plan for future steps to prevent Category 1 SSOs should not be included as a requirement for reporting the event. In cases of significant system failures the three days reporting window may be insufficient to develop a detailed repair plan with a milestone schedule. Preparing this plan as a function of reporting the event will compete in small systems with the resources necessary to respond to the event.

Record Keeping Requirements. 1 This section modifies the requirements for the collection of data from SSOs. These extensive data collection efforts require that in response to a spill, operators have onsite a camera, a gps device, and record keeping equipment. The required photographic efforts capturing the extent of the spill and recovery efforts will directly compete with the response activities. The Mandatory Information to be included in SSO Online Reporting section does not include the requirement to document SSO events photographically. This conflict should be resolved by deleting the photographic requirements. Does the State's database constitute an electronic record of each SSO for reporting purposes? How will the significant data collections and tracking efforts for all aspects of SSMP implementation be funded? Section 5 decreases the probability of voluntary monitoring during events. Rather than acting proactively, agencies with the mandatory reporting and record keeping requirement will be more likely to wait to capture samples until directed to do so by a superior agency. With the notification requirements as they are, direction from superior agencies to collect samples will often be so long after the spill as to provide limited utility.

Conclusion

In conclusion, the State has embarked on an extremely costly regulatory program that can only assure revenues for the State from the enrollees, the facilitation of third-party lawsuits, and the collection of fines from enrollees when spills inevitably occur. This regulatory scheme will provide secondary enhancements to the protection of water quality only in the limited instances of current mismanagement. As the responsible figure for the operation of an enrolled system, it has been my experience that costs for the current program have already far exceeded the benefits to either the environment or the average citizen. This proposed expansion founded on further prohibiting what is already an illegal and unintentional event is irresponsible given the current economic climate in the State. The State should be using its influence to create uniform standards for operation of these systems and then leave the specific details of the system programs to the professionals who understand and operate the systems. This alternate approach using the State's resources to define and administer collection system operator requirements, and leaving the management of local systems to those qualified operators, would apply the limited available resources of all involved in the most economical and beneficial fashion. I encourage the State Board to reject the current overly burdensome approach proposed and to adopt a more logical one.

Sincerely,



Dylan Wade, P.E.

Utilities/Capital Projects Manger

City of Morro Bay