



## CITY OF EL CAJON

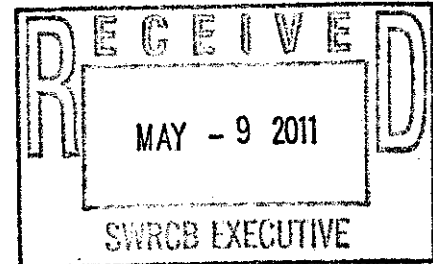
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CITY MANAGER

May 9, 2011

**Via email:** [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

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



**Subject: Comment Letter – SSS WDR's Review & Update**

Dear Ms. Townsend:

The City of El Cajon appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). Our City, located 16 miles east of San Diego in the San Diego River Basin, serves a population nearing 100,000 inhabitants, mostly low income earners with multiple families living under one roof. We maintain about 200 miles of sewer with over 4,000 manholes and 13 siphons without any pump stations or force mains. Much of our system was built in the 1960's. We were selected Small Collection System of the Year in 2007 by the CWEA for our outstanding record of achievement in reducing SSOs (Sanitary Sewer Overflows). Our annual SSO average is less than one per 100 miles.

We accomplished this stellar record by an aggressive preventative maintenance program combined with a compliant Sewer System Management Plan. We have identified our system capacity deficiencies, executed a successful smoke testing program in those basins experiencing the most inflow and infiltration, instituted a fog control and private lateral inspection ordinance, and implemented a system-wide inspection, rehabilitation and replacement program. We are also seeking a ten-million dollar loan from the CWSRF to correct capacity deficiencies and initiate a fee study to establish new sewer rates to boost the Sewer Enterprise Fund.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, our agency is very concerned about a number of the proposed revisions. We are especially concerned with the related onerous additions to Sewer System Management Plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. As requirements become more complicated and confusing, more agency staff time is directed towards preparing reports, re-organizing information and operating procedures; and, less time is spent actually managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system.

Also, we strongly oppose any kind of NPDES permitting approach.

**1. Sanitary sewer system regulations should not be adopted under a two-tiered WDR's and NPDES permit.**

We strongly oppose the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit. We agree with several points included in the Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDR's do not authorize sanitary-sewer overflows to waters in the United States, there is no need for an NPDES permit.

The result of triggering an NPDES permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSO's.

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. We understand that these staff resources are limited and believe that they should, instead, be used to further improve SSO reduction efforts under the existing SSS WDRs.

We believe the Water Board needs to spend more time on enforcement of existing SSMP requirements rather than layering more time consuming requirements.

**2. We support mandatory reporting of Private Lateral Sewage Discharges (PLSDs).**

Aside from this requirement being already mandated in Region 9, our City supports more regulation of private laterals. The single biggest source of spills in our City, including Class 1 spills, is private laterals. We experience over ten times more spills with private laterals than public spills. In the City of El Cajon, both upper and lower laterals are the responsibility of the property owner. Most of El Cajon's lower laterals are VCP and exceed 40 years in age. Private laterals are the single biggest source of inflow, infiltration and root intrusion. We use the tracking and reporting system to trigger orders for inspection and repair, if necessary. We require all non-residential properties to have their laterals inspected every ten years or sooner if we acquire evidence that the laterals are not working properly.

We believe that the State of California should pass a law requiring lateral inspection and repair at the transfer of property. We tried to include such a requirement in our ordinance update, but the real estate industry successfully lobbied against it.

**3. It is essential that State and Regional Water Board staff consider the reasons for each SSO in any enforcement action.**

The existing SSS WDRs included language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language read: "*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*" (emphasis added).

In the proposed revisions to the SSS WDRs, this language was changed to read: "*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*" (emphasis added).

The proposed revisions to the SSS WDRs would transform the existing enforcement discretion language which expresses a clear statement of the State Board's intent regarding enforcement priorities and responses into a purely advisory provision. Thus, individual regional boards would be free to follow or ignore this new provision as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its system. These factors should definitely be considered in enforcement actions.

It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

**4. Significant additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides guidance and funding.**

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

The proposed Risk and Threat Analysis of all sanitary sewer assets would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the Water Board can demonstrate that those agencies complying with current requirements have been ineffective in reducing SSOs. This program should also only be required if, and when, adequate Water Board guidance has been developed and funding is provided.

Requiring development and implementation of the proposed Staff Assessment Program on an agency-by-agency basis is unrealistic. The expectations outlined in the proposed revisions to the SSS WDRs suggest that agency staff would be responsible for developing a program similar to the existing Technical Certification Program offered by the California Water Environment Association. This would require a substantial investment of resources to perform redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities). **We would support a measure that requires collection system's workers to be certified by adoption of the CWEA Certification Program in lieu of the burdensome requirements of "Staff Assessment".**

The Water Board should not implement these new requirements until detailed program guidance is provided. Also, Water Board staff has not demonstrated that the current training requirements are deficient.

**5. SSMP Sections (i) and (j) should be combined because, otherwise, the requirements for routine review and revisions of the SSMP are redundant and contradictory.**

SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis while Section (j) specifies a minimum frequency of once every two years. We recommend that Water Board staff combine these two sections and clarify the requirements.

**Requiring de-chlorination of cleanup water is counterproductive.**

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill cleanup (in the event water used for cleanup is not fully recovered). Putting restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate

either of the first two prohibitions simply adds further unnecessary challenges. In addition, the amount of potable water used, combined with the distance it would have to travel to reach surface water (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in de-chlorination.

**Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.**

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of these WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on condition and severity of defects. Sewers should not be replaced automatically when they reach a certain age especially when they are in good condition and functioning as designed. This would not be a good use of limited public resources. For example, the useful life of certain types of high strength plastic pipe has yet to be determined. We think the existing WDR sufficiently addresses the need for inspection and repair, or replacement, if necessary.

**Definitions related to private laterals are confusing and contradictory.**

The following definitions are confusing and contradictory, as explained in the following paragraphs:

- *Lateral – Segment(s) of pipe that connect(s) a home, building, or satellite sewer system to a sewer main.*

This definition of a lateral includes both upper and lower laterals, regardless of whether or not the lower lateral is privately owned.

Also, the definition of a lateral should not include any reference to satellite sewer systems as the management and performance of each are very different. Satellite systems should have a separate and distinct definition.

- *Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement. (Emphasis added.)*

This definition does not make reference to upper and lower laterals and is, therefore, confusing. Also, it is misleading to state that sewer use agreements dictate lateral responsibility as these agreements seldom exist for individual homeowners.

- *Private Lateral Sewage Discharge (PLSD) – Wastewater discharges caused by blockages or other problems within laterals are the responsibility of the private lateral owner and not the Enrollee. Discharges from sanitary sewer systems which are tributary to the Enrollee's sanitary sewer system but are not owned by the Enrollee and do not meet the applicability requirements for enrollment under the SSS WDRs are also considered PLSDs. (Emphasis added.)*

This definition indicates that PLSDs include overflows from any portion of the lateral regardless of whether or not the lower laterals are privately owned. The definition of a "private lateral sewage discharge" is inconsistent with that describing a "private lateral" as one includes publically-owned lower laterals while the other does not.

These definitions should be reworked for clarity and accuracy.

**Revisions to SSMP requirements are premature.**

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. We strongly urge preservation of the existing SSMP requirements 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 their effectiveness can be properly identified. Further, it is recognized that dramatically changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff.

**Language describing SSMP requirements should be revised as follows (SSMP Sections are listed in the order in which they appear in the proposed revisions to the SSS WDRs):**

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* – Paragraph (c) (v) should be revised to read: "Restrict, condition or prohibit new connections under certain conditions." In addition, Paragraph (c) (vi) indicates that agencies must have legal authority to "limit the discharge of roots..." It is not clear if this phrase is intended to refer to limiting root intrusion (which would be covered by good standard specifications), or to limiting the illicit discharge of debris including cut roots (which is already included in paragraph (c) (i)). In any case, the word "roots" should be removed from this paragraph.
- *Operations and Maintenance Program*
  - *Map* - Updating sewer system maps to identify and include all backflow prevention devices would be too onerous as they are not owned by the agency; this requirement should be removed.
  - Also, the last section of paragraph (d) (i) should be revised to read: "A map illustrating the current extent of the sewer system shall be included in the SSMP or in a GIS." Also, this requirement needs to be clarified. It is not clear if "the current extent of the sewer system" refers to a one-page map of the service area, or the entire detailed map. The latter would be impractical to include in the SSMP.
  - *Rehabilitation and Replacement* - The third sentence in paragraph (d) (iii) should be revised to read: "Rehabilitation and replacement shall focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects." It is not correct to imply that age alone is problematic. We know that it does not, nor is it correct, to imply 'aging' is the same as 'deteriorating'.
  - *O&M and Sewer System Replacement Funding* – The first sentence in section (d) (vi) should be revised to read: "The SSMP shall include budgets for routine sewer system operation and maintenance, and for the capital improvement plan including proposed replacement of sewer system assets over time as determined by careful evaluation of condition of the system."

- *Design and Performance Provisions* – The addition of the phrase “all aspects of” in both paragraphs (i) and (ii) should be removed requiring each agency to update their standards and specifications to cover every possible minor detail of sanitary sewer system construction. Inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary as it is already implied.
- *FOG Control Program* – Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges may outweigh the benefits of *requiring* best management practices for residential FOG sources. We request that this existing language be preserved: “This plan shall include the following as appropriate:...The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG.”
- *Performance Targets and Program Modifications* – Progress towards improving sewer system performance and reducing impacts of SSOs is already described in the SSMP and will be adequately characterized by a review of SSO trends. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success or failure. All references to performance targets should be removed from paragraphs (i) and (j).
- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained as is.

**The four-year board recertification requirement is excessive.**

The proposed revisions to the SSS WDRs would also require each agency to bring its SSMP before its governing board for recertification at a minimum of every four years. This frequency is excessive considering that infrastructure projects typically occur over a longer timeframe. We request a recertification every five to ten years.

**Notification requirements need to be clarified.**

We support the Staff Report’s indication that only Cal EMA would need to be notified when spills to surface water of any volume occur. However, Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the Monitoring and Reporting Program and the Staff Report. Please clarify that notification shall only be made to Cal EMA, and indicate that Cal EMA will notify other agencies.

**Providing whole SSMPs in an electronic form is not always practical.**

Not every agency has their SSMP in one electronic document; and, in many cases, the SSMP makes reference to other documents which may only exist in hard copy form. These issues would make it difficult, or impossible, for some agencies to provide the whole SSMP in electronic format.

**Certain Monitoring and Reporting Program requirements need to be clarified.**

Several minor revisions should be made to clarify Monitoring and Reporting Program requirements:

- The second paragraph referring to other notification and reporting requirements is unnecessarily confusing and should be removed.
- Item 1.H under the description of mandatory information to be included in Category 2 SSO reports should be revised to read: "SSS failure point (main, lateral, etc.), if applicable."
- Item 3.I under the description of mandatory information to be included in Category 1 SSO reports should be revised to read: "Name of surface waters impacted (if applicable and if known)..."
- Item 1.D under the minimum records to be maintained by the Enrollee should be revised to read: "...and the complainant's name and telephone number, if known."

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In general, it is our view that significant proposed revisions to the SSS WDRs are premature and overly burdensome. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current permit rather than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs.

The City of El Cajon hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,

  
Kathi Henry  
City Manager

KH/DRK/cs

cc: Rob Turner, Deputy City Manager/Public Works Director/City Engineer