

5/2/06 - Item?
SSORP
deadline: 4/24/06



April 24, 2006

Via Electronic and U.S. Mail

Tam Doduc, Chair, and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Chair Doduc:

**COMMENTS ON STATEWIDE GENERAL WASTE DISCHARGE
REQUIREMENTS FOR PUBLICLY OWNED SANITARY SEWER SYSTEMS
MAY 2, 2006 STATE WATER BOARD MEETING – AGENDA ITEM 7**

On behalf of the Sanitation Districts of Los Angeles County, we appreciate the opportunity to comment on the revised Proposed Statewide General Waste Discharge Requirements for Wastewater Collection System Agencies (“WDR”). We appreciate many of the changes that were made in this version. However, a few key issues remain that require further changes to the WDR if it is to be successfully implemented. By way of background, the Districts serve over 5 million people in 78 cities and unincorporated areas of Los Angeles County. The Districts’ sewerage system consists of 11 wastewater treatment plants, approximately 1,300 miles of sewer, and 52 active pump stations. Additionally, there are nearly 10,000 miles of local city sewers that are tributary to our regional collection and treatment system.

Before turning to the implementation issues, we wish to express our strong disappointment that the State Water Board has chosen to propose a prohibition of SSOs in the revised WDR without an accompanying affirmative defense to liability for unavoidable SSOs that occur despite the enrollee’s best efforts. We have consistently stated from the inception of the SSO Guidance Committee process that any permitting scheme, whether a WDR or an NPDES permit, that incorporates a prohibition must recognize unpreventable SSOs by providing a limited affirmative defense. As was stressed at the February 8th hearing, the State Water Board has a duty to develop attainable standards. Imposing a prohibition without an affirmative defense threatens to place publicly owned collection systems throughout California in the untenable position of attempting to comply with a new unattainable standard. We urge the Board to reconsider the inclusion of a prohibition in the WDR unless accompanied by a limited affirmative defense, as described in the February 22, 2006 comment letter jointly submitted by the California Association of Sanitation Agencies, Bay Area Clean Water

Agencies, League of California Cities, Central Valley Clean Water Association, and Tri-TAC.

THE SIX MONTH SCHEDULE FOR COMPLIANCE WITH ONLINE REPORTING REQUIREMENTS IS INADEQUATE

The proposed WDR is a significant new regulatory program that will affect all of the cities and agencies that own satellite systems that are tributary to the Districts' regional collection system. None, if any, of these agencies currently have collection system permits and reporting requirements; currently they are responsible only for complying with statutory requirements for emergency notification. It is unrealistic to expect that all of these agencies, along with over a thousand other agencies throughout the state, can be trained and simultaneously begin reporting online within 6 months of WDR adoption.

In order to provide adequate training to facilitate successful implementation of the SSO reporting system, the WDR must be amended to phase-in compliance timelines. Equally importantly, the system must be fully tested and ready for implementation before any agency is required to utilize the system for compliance. It also makes sense to coordinate training for development and implementation of the Sewer System Management Plan (SSMP) components of the WDR with the training for online reporting. To implement this, we recommend that the timelines for preparation of the SSMP Development Plan and the tasks set forth in Section D be extended by at least 12 months to allow for the additional time needed to develop and implement the combined training program.

Therefore, we recommend that the WDR schedule be amended to provide for phased implementation of the reporting requirements. It is our understanding that CASA and other local government associations are prepared to work with the State Water Board to develop a training program to support implementation of the WDR, provided the state is committed to allow a reasonable time period and approach within which this can occur. We fully support that proposal, and believe that it will better serve the goals of the State Water Board because it will achieve better overall implementation success.

THE REPORTING SYSTEM MUST BE REVISED TO ELIMINATE THE REQUIREMENT TO REPORT LEGAL CONCLUSIONS

The electronic reporting system, while not set forth in the WDR, is an important aspect of WDR implementation. As currently designed, it is our understanding that the system requires collection system operators to respond to legal questions and then submit the report under penalty of perjury. When reporting an SSO, we understand the database requires the enrollee to answer, in yes or no fashion, whether the SSO reached "waters of the United States." Similarly, we understand the enrollee is required to answer, yes or no, as to whether the SSO created a "public nuisance." The issue of what is, and what is not, a water of the United States, is far from clear, as evidenced by the United States Supreme Court docket for the current term. Similarly, whether or not a nuisance exists is

a question determined by application of statutory and case law to specific facts. This is simply not the sort of question that can, or should, be answered by collection system workers responding to SSOs. Enrollees should be required to report the facts—what was the destination of the SSO, what was the volume, was it captured and contained—not questions of mixed law and fact, which are nuanced and evolving.

We urge the State Water Board to direct staff to revise the SSO reporting form to eliminate these questions and instead require enrollees to report the relevant facts that will enable the Regional Boards, the health officers and others charged with evaluating whether enforcement action is warranted to make these determinations.

THE WDR SHOULD BE THE STANDARD FOR ALL COLLECTION SYSTEMS EXCEPT IN RARE CIRCUMSTANCES

We agree with the statement in the Fact Sheet that “[I]n order to provide a consistent and effective SSO prevention program, as well as to develop reasonable expectations for collection system management, these General WDRs should be the primary regulatory mechanism to regulate public collection systems.” (Fact Sheet at p. 10.) The language in the WDR, however, does not reflect this intent. Instead, the WDR states that the Order “establishes *minimum requirements* to prevent SSOs. Although it is the State Water Board’s intent that this Order be the primary regulatory mechanism for sanitary sewer systems statewide, Regional Water Boards *may issue more stringent or more prescriptive WDRs* for sanitary sewer systems.” (Draft WDR at Finding 11.) In other words, the finding characterizes the requirements contained in the WDR as a floor rather than a consistent standard, and essentially invites Regional Boards to adopt differing requirements. This is potentially problematic for the State Water Board’s recent efforts to standardize NPDES permits in order to facilitate electronic reporting and enhance consistency across the state.

In addition, the WDR as drafted requires all collection systems to enroll for coverage within three months of adoption. Because a number of collection system agencies are already covered by WDRs or NPDES permits, some agencies will be faced with the prospect of having to comply with multiple, conflicting requirements.

The WDR should establish a standard to govern all collection systems, except where specific requirements are set forth in a consent decree or other enforcement order. This clarification can be accomplished by amending Findings 11 and Provision D.2 as follows:

Finding 11: Some Regional Water Boards have issued WDRs or WDRs that serve as National Pollution Discharge Elimination System (NPDES) permits to sanitary sewer system owners/operators within their jurisdictions. Although it is the State Water Board’s intent that this Order be the primary regulatory mechanism for sanitary sewer systems statewide, Thus, regional boards should rescind existing individual and general WDRs that are specific to collection systems upon adoption of this Order. While this Order does not supersede

existing NPDES permits governing sanitary sewer collection systems, or WDRs for POTWs that discharge to land, it is the State Water Board's intent that, at the time of renewal, existing NPDES permits be revised to include in the NPDES permit only those requirements specified in 40 CFR 141 (a) through (e). Any other requirements for the sanitary sewer collection system will be provided under this Order. Existing WDRs should be amended as soon as reasonable to remove collection system-related provisions. Where necessary to ensure compliance with the provisions of this Order, the regional boards may pursue enforcement actions including issuance of time schedule orders and cease and desist orders that supplement the requirements of the WDR. ~~This Order establishes minimum requirements to prevent SSOs. Regional Water Boards may issue more stringent or more prescriptive WDRs for sanitary sewer systems. Upon issuance or reissuance of a Regional Water Board's WDRs for a system subject to this Order, the Regional Water Board shall coordinate its requirements with stated requirements within this Order, to identify requirements that are more stringent, to remove requirements that are less stringent than this Order, and to provide consistency in reporting.~~

D. PROVISIONS

* * *

2. It is the intent of the State Water Board that sanitary sewer systems be regulated in a manner consistent with this WDR. Nothing in this WDR shall be:
- (i) Interpreted or applied in a manner inconsistent with the Federal Clean Water Act, or supersede a more specific or more stringent state or federal requirement in an existing permit, regulation, or administrative/judicial order or Consent Decree;
 - (ii) Interpreted or applied to authorize an SSO that is illegal under either the Clean Water Act, an applicable Basin Plan prohibition or water quality standard, or the California Water Code;
 - (iii) ~~Interpreted or applied to prohibit a Regional Water Board from issuing an individual NPDES permit or WDR, superseding this WDR, for a wastewater collection systems, authorized under the Clean Water Act or California Water Code; or~~
 - (iv) Interpreted or applied to supersede any more specific ~~or more stringent WDR~~ or enforcement order issued by a Regional Water Board.

In cases where an administrative or court-issued enforcement order or more stringent permit requirement already does apply to a collection system, the State Water Board should also clarify (either in the WDR itself or in the Fact Sheet) who will make the determination of whether the entity must also enroll under the WDR, and clarify when that determination will be made. Otherwise, local agencies face confusing and potentially duplicative (or conflicting) requirements, and have no clear way to resolve the issue.

THE DEFINITIONS OF MAJOR AND MINOR SSOS REQUIRE REVISION

The definition of major SSO is overly broad. We understand the desire to distinguish major SSOs from minor SSOs in order to identify and focus regulatory oversight on SSOs that significantly impact public health, safety, and the environment. The definition of major spills as written may result in insignificant low volume spills being classified as major when no negative impact to the public or environment has occurred.

We recommend that the definitions of major and minor SSOs in the Monitoring and Reporting Program be revised as follows

SSO Categories

1. Major - All discharges of sewage from an enrollee's sanitary sewer system that:
 - A. Equal or exceed 1000 gallons, or
 - B. Result in a discharge to a storm drain, drainage channel, or surface waters of the United States that is not captured or contained; or
 - C. Create ~~or threaten to create~~ a condition of pollution or nuisance as defined in the California Water Code section 13050.

2. Minor - All other discharges of sewage from an enrollee's sanitary sewer system, ~~that~~:
 - A. ~~Are less than 1000 gallons, and~~
 - B. ~~Do not result in a discharge to surface waters of the United States or tributary to waters of the United States; and~~

3. Private Lateral SSOs - SSOs that are caused by blockages or other problems within a privately owned lateral.

THE MONITORING AND REPORTING PROGRAM SHOULD EXPLICITLY STATE HOW THE ENROLLEE SHOULD REPORT SPILLS IF THE ONLINE REPORTING SYSTEM IS NOT AVAILABLE

The WDR and Monitoring and Reporting Program (MRP) currently direct the enrollee to report spills to the online reporting database. However, the WDR and MRP do not provide any direction in cases where the online system may be unavailable or inaccessible, whether due to system maintenance, server failure, power failure, or other reasons. The MRP should provide for telephone or hard copy reporting as a contingency, in the event that the enrollee is unable to access the online reporting system at the time that a spill needs to be reported.

In conclusion, we urge the Board to give very careful consideration to the comments contained herein, and to direct staff to make the revisions we have

recommended. Thank you for your consideration. If you have any questions regarding our comments, please contact me or Sharon Green of our staff at (562) 699-7411.

Very truly yours,

James F. Stahl

Philip L. Friess
Departmental Engineer
Sewerage Department

PF:sng

cc: Bryan Brock, Office of Statewide Initiatives