

From: <Greenberg.Ken@epamail.epa.gov>
To: <brockb@exec.swrcb.ca.gov>
Date: 11/29/04 3:45PM
Subject: Comments on Collection System WDR

Bryan - attached is the e-mail I sent to RB8 back in 2001 arguing that they should make their collection system general permit an NPDES permit.

Here is the formal comment letter we sent to RB 8.
(See attached file: sso-rb8wdr121401.wpd)

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Ken Greenberg

To: ken theisen
cc: sproul.chris@epa.gov
Subject: Comments on

12/12/2001 03:38

PM

Collection System WDR

Ken - I'll be sending you written comments on your draft WDR for Orange County collection systems. But I wanted to highlight one of the major comments that we'll make. EPA will urge the RWQCB to adopt the permit as both a Waste Discharge Requirement and as an NPDES Permit. It is acceptable to issue NPDES permits that prohibit discharge just as you do in your proposed WDR. Issuing "no discharge" NPDES Permits for collection systems is exactly what EPA proposes to do with our CMOM regulation. The practical benefit of making the permit an NPDES permit is that it would allow EPA to enforce the permit (either jointly with the RWQCB or in a separate action). With an NPDES permit, Citizen groups could also seek remedy in US District Court for any systems that violate the permit.

There are two legal arguments that EPA has crafted to justify the

issuance of "no discharge" NPDES Permits for collection systems. #1 below I copied from an e-mail sent to me by Chris Sproul of our Office of Regional Council. Chris was involved in EPA's work group that wrote the draft CMOM regulation. Argument #2 below is a summary of Chris' verbal explanation to me of the second argument formulated by EPA.

1. In the National SSO workgroup, we spent some time discussing the meaning and import of 40 CFR 122.21(a) for SSOs from sewer collection systems. The workgroup generally agreed that EPA and/or the authorized states could contend that a collection system operator that has spilled sewage that has reached waters of the US (and is likely to do so again) has a duty to apply for an NPDES permit under 40 CFR 122.21(a). The operator is "a person who discharges pollutants." This is true, even if the collection system operator does not otherwise have an NPDES permit, as would be the case for a satellite system that sends its sewage to a main or hub system owned and operated by another entity. The spills to waters is enough of a nexus to bring them into the universe of entities that should be within the NPDES universe. The NPDES permit for the SSOs should, of course, be no discharge permits as raw sewage discharges fail to meet either secondary treatment/technology based requirements or WQS. The permits further can and appropriately should include requirements related to proper O&M designed to avoid spills, as we typically require proper O&M as a permit condition.

2. Most collection systems (regional and satellites) discharge wastewater to waters of the United States. If properly operated, their wastewater is conveyed to a sewage treatment plant for treatment before discharge to waters of the US. (The only exception here is for collection systems that convey wastewater to nondischarging STPs.) Collection systems are part of the Publicly Owned Treatment Works. EPA and delegated states have authority to issue NPDES permits to discharging facilities. The permits should specify the permitted discharge point, impose effluent limits and require proper operation and maintenance. This structure allows EPA and delegated states to impose NPDES permit conditions on regional and satellite collection systems (all contributors to the permitted discharge). EPA or the delegated states can issue a single NPDES permit to an entire POTW or issue separate NPDES permits (or a general permit as proposed by RB8) to the regional system and each contributing satellite. These permits can prohibit discharges from the collection system (SSOs) because 1) SSOs are not authorized discharge points, and 2) SSOs are indicative of improper O&M.

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