

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
SEPTEMBER 21, 2010**

ITEM 9

SUBJECT

REVIEW AND UPDATE OF THE GENERAL WASTE DISCHARGE REQUIREMENTS FOR SANITARY SEWER SYSTEMS (WATER QUALITY ORDER NO. 2006-0003-DWQ)

DISCUSSION

In 2009-2010, State Water Resources Control Board (State Water Board) staff conducted extensive public outreach to review the Sanitary Sewer System Waste Discharge Requirements (Sanitary Sewer System WDR) adopted by the State Water Board as [Water Quality Order No. 2006-0003](#).

In all, 341 comments in 22 categories were received from two staff public meetings, a workshop with Regional Water Quality Board (Regional Board) staff, a coordination meeting with California Emergency Management Agency (Cal EMA), solicited comment letters, and a survey of local health department staffs. Many of the comments received were the same as those received and considered before the original adoption of the Sanitary Sewer System WDR.

The comments that recommend the most significant changes in the Sanitary Sewer System WDR include comments in the following categories: "Private Laterals", "Operator Certification", "Notification", "De-minimis Spill Volume", "Private Collection Systems", "Prohibitions", and "WDR-NPDES". A brief summary of comments received in these categories and staff recommendations for addressing them in the Sanitary Sewer System WDR update are provided below.

Private Laterals

Commenters suggested that:

- (1) the Sanitary Sewer System WDR should be updated to require mandatory reporting of private lateral sewage discharges (PLSDs);
- (2) PLSD reporting should remain voluntary; and
- (3) the option of reporting PLSDs, voluntary or otherwise, should be removed from the WDR.

Based on data from the San Diego Regional Water Board, where PLSD reporting has been mandatory, and a study of Orange County PLSDs occurring from 2002 through 2006:

- there are likely as many PLSDs as Sanitary Sewer Overflows (SSOs);
- the total volume of sewage from PLSDs is about 5% of the total volume of sewage from SSOs;
- and PLSDs cause similar impacts to surface waters as SSO events.

In addition, the current provisions for optional reporting of PLSDs in the Sanitary Sewer System WDR, the fact that these spills are loosely associated with the reporting collection system, and the tracking of collection system spill rates have created disincentives for enrollees to report PLSDs. This has caused a perception amongst enrollees that these spills will be viewed by the public as reflecting on their collection system performance. The result has been inconsistent participation in PLSD reporting.

To get a better picture of the magnitude of private lateral spills in California, to better identify collection systems with systemic issues with private laterals, and to level the field of enrollee reporting, staff recommends that the Sanitary Sewer System WDR mandate reporting of PLSDs when enrollees become aware of them, instead of keeping or eliminating voluntary reporting provisions in the Sanitary Sewer System WDR. Staff will streamline the PLSD reporting form and make feasible changes to the California Integrated Water Quality System (CIWQS) SSO Reports module to clarify that these spills are not from enrollee owned sewer pipes.

Operator Certification

Commenters suggested that the Sanitary Sewer System WDR:

- (1) should be updated to require certification of collection system operators; and
- (2) should not be updated to do this.

Commenters noted that collection system performance improves when certified operators are employed, but issues of union bargaining, compensation, and cost and availability of training may be significant.

State Water Board staff recognizes that collection system operator certification can improve collection system performance and Sanitary Sewer System WDR compliance. However, State Water Board staff has concluded that collection system operator certification requirements should not be added to the Sanitary Sewer System WDR at this time due to the lack of availability of standardized training and certification programs, and the potential local economic burden of increased costs to small communities.

Notification

Commenters suggested that the Sanitary Sewer System WDR spill notification requirements:

- (1) should be simplified, because they are burdensome; and
- (2) should be made more stringent.

In addition to the stakeholder comments, conflicts exist with respect to current SSO notification requirements in California law. Specifically, Health and Safety Code § 5411.5 requires the local health department to be contacted directly for all spills that reach surface water. However, the Water Code § 13271 established Office of Emergency Services (OES) (now Cal EMA) as the only point of contact for "reportable amounts", as defined in the California Code of Regulations Title 23, § 2250 (i.e., 1,000 gallons or more), and Cal EMA is specified as the entity that subsequently notifies the Regional Water Board and the local health department. The Sanitary Sewer System WDR requires notification of Cal EMA, the local health department, and Regional Water Board for any spill amount.

Staff recommends resolving the conflicts in reportable quantity of sewage and notification requirements in the California Code of Regulations, Health and Safety Code, the Water Code, and the Sanitary Sewer System WDR. The notification requirements for spills would be changed to eliminate the duplicative notifications by requiring that only Cal EMA be notified when a spill of a reportable amount of sewage occurs. The reportable amount would be made consistent in California Law and changed to any amount of sewage spilled.

De-minimis Spill Volume

Commenters suggested that the Sanitary Sewer System WDR should be updated to either significantly simplify or eliminate notification and reporting requirements for low volume spills.

Staff does not concur that the requirement that all spills be reported should be eliminated nor does it concur that notification should be required only for spills with the potential to significantly effect human health or the environment. 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.

Currently, Category 1 SSOs are defined as spills of any volume to surface water or a drainage channel, a discharge of any volume to a storm drain that is not fully captured and, spills 1,000 gallons or more regardless of spill destination. Category 2 SSOs are defined as all other SSOs.

Several approaches can be taken to address this issue including:

- Option 1: Make no change and enhance training efforts to clarify the reporting and notification requirements.
- Option 2: Change all Category 2 spill reporting requirements by streamlining them. This would simplify reporting requirements for 92% of reported spills. Notification is not required for Category 2 spills, so notification requirements would remain unchanged.
- Option 3: Create a third spill category by adopting a de-minimis spill volume for Category 2 SSOs for which streamlined reporting requirements would apply.
- Option 4: Create a third spill category by adopting a de-minimis spill volume for Category 1 and 2 SSOs for which streamlined notification and reporting requirements would apply.

Options 1 and 2 would require no or minimal change in the program requirements and would minimize enrollee confusion that could result from changing the SSO notification and reporting requirements at this early stage in the SSO Reduction Program.

Staff recommends Option 2, streamlining the report requirements for all Category 2 SSOs. Staff can streamline the Category 2 SSO report by reducing data entry by 30-40%.

Private Collection Systems

With respect to requiring private collection systems to be enrolled under the Sanitary Sewer System WDR, commenters recommend:

- (1) that the Sanitary Sewer System WDR should be amended to require private collection systems to be covered under the WDR; and
- (2) that the Sanitary Sewer System WDR should not be amended to do this.

Private collection systems include satellite systems connected to enrollee collection systems (e.g., shopping malls, private gated communities) and other private collection systems that have NPDES or WDR permitted treatment systems. Currently, some spills from private collection systems, where the private collection system is connected to an enrollees system, are reported as PLSDs.

Regulating private collection systems will bring equity to the SSO Reduction Program and resolve issues with federal facility participation in the Sanitary Sewer System WDR. Staff recommends requiring coverage of private collection systems in the revised Sanitary Sewer System WDR. Applicability requirements should be based on the miles of pipe and/or the potential volume of sewage conveyed.

Prohibitions

Commenters suggest that the Sanitary Sewer System WDR should be amended to prohibit all SSOs, not just those to surface waters and those that create a nuisance.

SSO data collected to date indicates that spills that do not reach surface water are high frequency but low volume (i.e., 87% of reported SSOs have not reached surface water and account for 18% of the total reported volume of sewage spilled, whereas 13% of SSOs reach surface water and account for 82% of the total reported volume of sewage spilled). As can be seen in this data, the highest risk spills are covered by explicit prohibition with the current formulation of SSO prohibitions.

Staff recommends that the current formulation of prohibitions and emphasis on enforcement discretion for all spills in the Sanitary Sewer System WDR remain unchanged.

WDR-NPDES

Commenters recommend:

- (1) adopting the Sanitary Sewer System WDR as a National Pollutant Discharge Elimination System (NPDES) permit;
- (2) not adopting the Sanitary Sewer System WDR as an NPDES permit; and
- (3) adopting the Sanitary Sewer System WDR as a two tiered permit. (Enrollees that discharge treated effluent directly to waters of the United States or that have had SSOs that have reached waters of the United States would be covered under an NPDES permit. Other enrollees would be covered under a WDR.)

If the United States Environmental Protection Agency (U.S. EPA) adopts national requirements for SSO notification and reporting, these may require the State Water Board to adopt the Sanitary Sewer System WDR as an NPDES or NPDES/WDR hybrid permit. The U.S. EPA is considering developing regulations for SSO notification, reporting, and collection system asset management.

To date, 35% of enrollees have reported spills that reached surface water. Hence, under the tiered permit proposal, approximately a third of current enrollees would be subject to an NPDES version of the Sanitary Sewer System WDR.

Advantages of adopting the Sanitary Sewer System WDR as an NPDES or NPDES/WDR hybrid permit include:

- This will simplify enforcement somewhat by allowing the State Water Board to cite Water Code § 13385 in enforcement actions and allow for the imposition of higher monetary penalties,
- This would allow U.S. EPA to enforce the requirements of the Sanitary Sewer System WDR and would allow citizens to file lawsuits for violations of the requirements,
- This would expand the State Water Boards partnership with U.S. EPA and the public.

Issues with adopting the Sanitary Sewer System WDR as an NPDES or NPDES/WDR hybrid permit are:

- Since not all SSOs result in a discharge to surface water, not all SSOs violate the Federal Clean Water Act's NPDES permitting requirements. Porter-Cologne, on the other hand, covers all existing and proposed waste discharges that could affect the quality of state waters, including both surface waters and groundwater (Water Code §§13050(e), 13260). In addition, WDRs under Porter-Cologne can address both protection of water quality as well as the prevention of public nuisance associated with waste disposal (Id. §13263).
- A past court decision has called into question the states' and U.S. EPA's ability to regulate discharges that are only "potential" under an NPDES permit. While this decision may not be widely followed, especially in the area of SSOs, these are clearly within the jurisdiction of the California Water Code.
- Satellite sewer collection systems (i.e. systems not owned or operated by the POTW) have not been typically regulated as part of the POTW and therefore have not generally been subject to NPDES permit requirements.

There are many wastewater treatment facilities within California that do not have discharges to surface water, but instead use percolation ponds, spray irrigation, wastewater reclamation, or other means to dispose of the treated effluent. These facilities and their satellite collection system, are not subject to the NPDES permitting process, but they can be regulated under Porter-Cologne with WDRs.

Conditions leading the State Water Board to adopt the Sanitary Sewer System WDR as a WDR have not changed in the past four years. In light of this, as well as the early stage of implementation of the Sanitary Sewer System WDR, staff recommends not changing the Sanitary Sewer System WDR to an NPDES general permit.

POLICY ISSUE

None; information item.

FISCAL IMPACT

None

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

None; information item.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2000 listed waterbodies by 2030.