



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

SSO Hearing: 2/8/06

January 25, 2006

Selica Potter, Acting Clerk to the Board
State Water Resources Control Board
Executive Office, 1001 I Street, 24th floor
Sacramento, CA 95814



COMMENT LETTER - 1/19/06 PUBLIC HEARING FOR SSORP

Dear Ms. Potter:

Region IX of the U.S. Environmental Protection Agency is writing to offer comments on the State Water Resources Control Board's December 5, 2005 proposed Statewide General Waste Discharge Requirements for Sewage Collection Agencies (WDR). Region IX is pleased that the Board is pursuing a statewide strategy to reduce sanitary sewer overflows from collection systems.

One issue facing the Board is whether it is appropriate to use a non-NPDES WDR to regulate publicly owned collection systems. While we do not agree with all the reasons given in the draft Fact Sheet for the Board's decision to implement its strategy through a WDR rather than an NPDES permit, we believe the Board's decision to rely solely on the Porter-Cologne Act is a reasonable one. The Board discussed various ways in which the Porter-Cologne Act is more comprehensive than the Clean Water Act (CWA), such as the way in which state law regulates all discharges to groundwater and addresses public nuisances. Those considerations, in our view, are far more pertinent and persuasive reasons for pursuing the WDR approach than the Board's concerns about the precise scope of CWA and NPDES authority.

A second issue is the impact of the new WDR on existing NPDES permits. As we indicated in our letter to the Board of August 25, 2005 (attached), continuing NPDES coverage is required for the 246 Publicly Owned Treatment Works (POTW) that currently have NPDES permits with provisions applicable to their collection systems. We are concerned that the Board's description of the proposed WDR as the "primary regulatory mechanism for sanitary sewer collection systems statewide" wrongly implies that the general WDR could supplant POTW NPDES permits for regulation of collection systems. In fact, regardless of what happens with the draft WDR, NPDES permits for POTWS must continue to cover permittee-owned collection systems. Thus, we see the WDR and NPDES permit requirements as complementary, working in tandem for those collection systems subject to both permitting schemes.

This interpretation - giving weight to both the WDR and NPDES permit - is consistent with the Board's recognition that NPDES permits must continue to (1) impose requirements on the entire POTW, including the treatment plant and the parts of the collection system owned or operated by the permittee, and (2) include the standard federal NPDES provisions found in 40 CFR 122.41. These standard provisions include the duty to mitigate discharges (122.41(d)), the requirement to properly operate and maintain facilities (122.41(e)), and requirements to report non-compliance (122.41(1)(6) and (7)). Some POTW NPDES permits also include discharge prohibitions applicable to the collection system, based on Basin Plan requirements. Lastly, the Board should ensure that nothing in the WDR precludes the State or Regional Boards from renewing NPDES permits for satellite systems or issuing new permits for them in appropriate circumstances.

A third issue the Board discussed in the draft Fact Sheet was whether or not to include an affirmative defense provision in the proposed WDR. We fully support the Board's decision to delete the affirmative defense provision that appeared in earlier drafts of the WDR. We believe the type of "enforcement consideration" reflected in draft Provision C.6 enables the Water Boards to make appropriate case-by-case determinations without potentially calling into question Clean Water Act liability for unauthorized discharges to surface waters. There is no allowance in the Clean Water Act or NPDES regulations for the kinds of affirmative defenses included in the earlier draft WDRs.

Finally, we suggest three specific modifications to the proposed WDR. In the second sentence in Finding #5 of the proposed WDR, we suggest deleting the phrase "while taking into consideration risk management and cost benefit analysis." This phrase is somewhat redundant of the SSMP requirement for "cost effective management" but, more importantly, we are concerned about the erroneous implication that liability for unauthorized discharges is dependent on a cost benefit analysis. Secondly, we suggest two modifications related to capacity assurance requirements to make clear that implementation of the design criteria will, in fact, result in adequate capacity. To that end, the second sentence in provision C.10 should be changed to read: "The Enrollee shall develop design criteria to assure that the collection system has sufficient capacity to convey peak flows," and the first paragraph of provision C.13(viii) should be changed to read "The Enrollee shall prepare and implement a capital improvement plan (CIP) that will provide adequate hydraulic capacity of key sewer system elements for dry weather and wet weather peak flow conditions. The Enrollee shall develop design criteria for conveyance of peak flows."

Please refer any questions to me or Ken Greenberg. Ken will be attending the upcoming State Board hearing on the WDR.

Sincerely,

Alexis Strauss 25 January 2006
 Alexis Strauss, Director
 Water Division

Enclosure



U.S. ENVIRONMENTAL PROTECTION AGENCY

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This transmission consists of 3 page(s) including this cover page.

ADDITIONAL MESSAGE: Region 9 Comments on
State Board SSO WDR
(w/o enclosure)

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