



# ORANGE COUNTY SANITATION DISTRICT

January 25, 2006

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State Water Resources Control Board  
Executive Office  
1001 I Street, 24th Floor  
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SSO Hearing:  
2/8/06  
LATE

**SUBJECT: COMMENT LETTER - 1/19/06 PUBLIC HEARING FOR SSORP**

This Orange County Sanitation District (Sanitation District) and cities of Fullerton, Huntington Beach, Newport Beach and Santa Ana appreciate the opportunity to comment on the proposed waste discharge requirements (WDR) for sanitary sewer collection systems in California. The Sanitation District and its member cities and special districts are covered under waste discharge requirements (WDRs) for sanitary sewer overflows issued by the Santa Ana Regional Water Quality Control Board, and these local governments are experienced with many of the key elements proposed in the statewide order. These comments are based on the experience developed implementing the local WDR.

In general, we support the adoption of the statewide WDR. We believe that certain elements of the proposed order and monitoring and reporting program are necessary for a successful and workable program, but we also suggest modest changes that should be considered to improve the proposal. The efforts of Bryan Brock, John Norton and other State Water Resources Control Board (SWRCB) staff members should be commended in developing the WDR and for their commitment to work with disparate stakeholders to understand the various points of view. The following are our key issues for your consideration.

**Waste Discharge Requirements are the appropriate regulatory mechanism for statewide control of sanitary sewer overflows as opposed to a General National Pollutant Discharge Elimination System (NPDES) permit.**

The issuance of an NPDES permit would imply that there is a federal program for the control of sanitary sewer overflows (SSOs) similar to those for wastewater treatment, industrial dischargers, or stormwater. Despite attempts by the federal government to establish such a program, to date they have been unable to promulgate a rule or general permit for SSOs. An NPDES permit would allow the federal government some authority over the

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**Water Districts**

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requirements of the program. It is inappropriate to provide that authority until such time that the Environmental Protection Agency develops a nationwide program.

Furthermore, the requirements of the Clean Water Act remain unchanged as to the prohibition of dischargers to surface waters. Specifically regarding spills, the California Water Code contains a prohibition against the discharge of sewage to waters as well as reporting requirements for SSOs. These are unchanged by the WDRs. This provides the public with sufficient oversight for areas with repeated spills while maintaining professional control over the statewide scheme.

WDRs are the appropriate statewide mechanism to develop a program tailored to the goals of the State program: improving California's water quality and protecting the beneficial uses of waters. WDRs are authorized and their procedures implemented under the Porter-Cologne Water Quality Act as codified in the California Water Code. The SWRCB and the Regional Water Quality Control Boards are also authorized and implemented under the same act. This means that the requirements will be coordinated under the authority best able to manage the requirements, review of submittals, inspections, and compliance.

**The order should clarify that only one regulatory scheme for SSOs can exist. While the statewide order says that regions can implement more restrictive requirements, existing orders must be rescinded in their entirety or significantly revised to assure that such provisions as the Sewer System Management Plan (SSMP) and reporting programs are not in conflict with the statewide plan.**

Similar in many ways to the current WDR for SSOs in the Santa Ana region, the statewide program sets up a significant regulatory scheme. Both WDRs contain key Definitions, SSMPs, Operations and Maintenance Programs, Response requirements, Fats, Oils and Grease Control Programs, System Evaluation Plans, and Reporting Requirements. Rather than creating confusion by potentially subjecting local jurisdictions to two sets of sometimes inconsistent requirements, the SWRCB should either allow local regions to implement their own programs or operate under the statewide program.



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If the SWRCB does not allow local regions to operate their own programs, they should order the local regions to withdraw their existing SSO control programs in favor of the statewide scheme. While it might be possible for local regions to adopt specific requirements for local SSO control, it is not acceptable to have two overlapping schemes which repeat many of the same elements as described above

**An affirmative defense, or at a minimum appropriate enforcement discretion language, is necessary to protect collection systems from burdensome and expensive enforcement actions while agencies work to develop an effective Sanitary Sewer Management Plan (SSMP). This language should be coordinated with the SWRCB Enforcement Policy to assure consistency.**

The proposed WDRs establish a significant regulatory burden for collection system owners and operators. And as noted in the first provision of the WDRs, each enrollee must comply with all conditions of the order subject to violation of the law and enforcement action. Under the existing WDRs in the Santa Ana Region, the local government agencies are protected from some enforcement actions with affirmative defenses. The enforcement discretion language in the proposed WDRs is similar to those affirmative defenses. We urge the SWRCB to include affirmative defenses in the WDRs.

Collection system owners and operators must invest substantial money from local residents in infrastructure, operation and maintenance, and emergency response. And while many owners and operators have been spending substantial sums on these needs already, some will greatly increase their expenditures under the proposed WDRs. It is reasonable for publicly-owned collection systems to expect some relief from enforcement for SSOs which are not preventable or foreseeable during the development and implementation of the SSMP.

If publicly-owned collection systems are going to expend substantial resources to assure proper management, then those facilities should not face additional expenses for enforcement for SSOs that are not reasonably preventable. As has been stated by publicly-owned collection system owners throughout the State and federal discussions on SSOs, not all SSOs are preventable or avoidable. Indeed, the WDR recognizes this fact by



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establishing detailed response and reporting requirements for SSOs. If the SWRCB decides not to include affirmative defenses, it is important that enforcement discretion remain in the language of the WDRs. These provisions should also be included in the *SWRCB Water Quality Enforcement Policy*. Section III.D of the Enforcement Policy refers to a number of spills which should be considered for priority enforcement, but the policy does not similarly recognize the important considerations identified in Section C.6 of the proposed WDRs. At a minimum, the Enforcement Policy should refer to the language of the WDR in determining if a spill is a priority for enforcement.

**Flexibility in the development and implementation of each SSMP is necessary as collection systems come in a range of ages, sizes, and community types. This great variety of publicly-owned collections systems within the State means that the needs and capabilities of each owner/operator will vary greatly.**

Section C.13 of the WDRs states, "If the Enrollee believes that any element of this section is not appropriate or applicable to the Enrollee's sanitary sewer system, the SSMP program does not need to address it, but must contain an explanation as to why that element is not applicable." The Santa Ana WDRs for SSOs include the same flexibility, and agencies covered under the order have found this flexibility an important part of the WDRs. As an example, many agencies covered under the Santa Ana order have FOG control issues, but not all of them need an extensive program to properly maintain their systems.

Also the content of each element of the individual SSMPs will vary based on the situation of each publicly-owned collection system. Similarly situated agencies should be urged to work together to reduce the overall burden and enhance the quality of their response in developing their SSMPs. Emergency Response Plans are an example of an opportunity for collection system owners in proximity to each other to work together to the mutual benefit of their communities.

**The SWRCB needs to complete the construction and proper operation of the electronic reporting system before formal reporting begins.**



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Sanitary sewer overflow reporting is an important part of the program to reduce the frequency, duration, volume and impact from spills as it is a long term record on the total number of spills as well as a breakdown of the number of spills by agency. The SWRCB has indicated that this database of information will be subject to search by the participating agencies and the public. It is vital that the system is reliable and accurate. The Sanitation District has been participating in the beta testing of the online reporting system. During that testing period we have encountered some difficulties and flaws in the system. Before the formal reporting process begins to the statewide system, the SWRCB needs to make sure that the system is working correctly and reliably and that there is adequate security in place to protect the information.

Thank you for consideration of these comments. Please contact Dindo Carrillo from the Sanitation District at (714) 593-7476 if you have any questions regarding these comments.

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