

EXECUTIVE OFFICER SUMMARY REPORT
February 14, 2007

- ITEM: 8
- SUBJECT: Waste Discharge Requirements: Sewage Collections Agencies in the San Diego Region. The Regional Board will consider adoption of an Order that will augment State Water Board Order No. R9-2006-003-DWQ and supersede current Regional Board Order No. 96-04 reaffirming the Regional Board's prohibition of sanitary sewer overflows. (Tentative Order No. R9-2007-0005, previously Tentative Order No. R9-2006-0121) (Joann Cofrancesco)
- PURPOSE: To adopt tentative Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.
- PUBLIC NOTICE: In a letter dated January 29, 2007, the federal and local sewer collection agencies were notified that this item was not heard at the January 24, 2007 Regional Board Meeting and had been rescheduled for the February 14, 2007 Regional Board Meeting.
- DISCUSSION: This item, initially presented to the Regional Board at its October 11, 2006 meeting, has been continued to today's meeting.
- State Water Resource Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, prescribes minimum requirements to prevent sanitary sewer overflows (SSOs) from publicly owned/ operated sanitary sewer systems. This Order allows each regional board to issue more stringent or more prescriptive Waste Discharge Requirements (WDRs) for sanitary sewer systems.
- Since 1996, this Regional Board has regulated sewage collection agencies under Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*. Order No. 96-04 goes beyond the State Board Order by prohibiting all sewage spills, unlike the State Board Order that only prohibits those sewage spills that either reach

surface water or cause a nuisance conditions. Consequently, Order No. 96-04 has provided strong incentive for collection agencies to implement effective spill prevention measures. In addition, Order No. 96-04 has required more timely reporting of significant spills than the State Board Order, which allows up to three-days to report significant spills. Compliance by the Region's sewage collection agencies with Order No. 96-04 has resulted in a dramatic decrease in the number and magnitude of sewage spills in the Region. The number of sewage overflows, for example, has dropped from over 427 reported in 2003 to 201 reported last year (please see Supporting Document No. 6, the December 2006 Monthly SSO Report).

On the other hand, State Board Order No. 2006-003-DWQ establishes a state-wide system for electronic reporting of sewage spills. The Order also provides a fuller description of the requirements for Sewer System Management Plans, addressing the goals and organization of the program, the components of an operation and maintenance program, the elements of an overflow emergency response plan, a system evaluation and capacity assurance plan, and if necessary, a special program for control of fats, oils and greases.

Tentative Order No. R9-2006-0121 would eliminate duplication of reporting spills by the sewage collection agencies to both the State Board and directly to the Regional Board. Tentative Order No. R9-2006-0121 would also continue this Regional Board's policy to prohibit all sewage spills and continue the 24-hour notification requirement of all sewage spills that are equal to or greater than 1,000 gallons and/or reach surface water.

In addition, tentative Order No. R9-2006-0121, adds a requirement for Sewage Collection Agencies to report any private sanitary sewer overflow that they become aware of. This requirement would allow the Regional Board to begin tracking the number of spills from private SSOs, which would give an indication of the magnitude of the problem and the threat of the discharges to public health and the environment.

On October 11th, the Regional Board suggested several changes that would clarify the findings, definitions, and reporting requirements. The enclosed revised tentative Order addresses those suggestions as follows:

- 1) Clarifies that Agencies, who were not previously regulated under Order No. 96-04, are subject to the State Board Order and the Tentative Order. (see Tentative Order Finding No. 5 on page 2)
- 2) Clarifies that agencies are required to report all known private lateral sewage spills, but are not responsible for the cause, clean-up, or repair of private lateral sewage spills. (see Finding No. 11 on page 3)
- 3) Clarifies that each Agency shall report all SSOs in accordance with the Monitoring and Reporting Program No. 96-04 until the Sewage Collection Agency notifies the Regional Board that they can successfully report the SSOs to the State Water Resource Control Board Online SSO System. (see Monitoring and Reporting Program Requirements, Section C.1, on page 5)
- 4) Modifies the definitions and terms in the Tentative Order to correspond with the language in the State Board Order. (see Definitions, Section A, on page 5)
- 5) Adds an additional prohibition from the Basin Plan and reinforces the need to retain the strict prohibition of SSOs. (see Finding No. 7.g on page 2)
- 6) Clarifies the monitoring and reporting required under this Tentative Order. (see Monitoring and Reporting Program Requirements, Section C, on page 5)
- 7) Corrects typographical errors.

The Regional Board has received four letters regarding this Tentative Order from Fallbrook Public Utility District; U.S. Marine Corps, Camp Pendleton; Eastern Municipal Water District; and Leucadia Wastewater District. In response to the comments received, several changes to the tentative Order have been made, which are described in the attached errata sheet. In addition, a Response to Comments document has been prepared and is also attached.

The revisions to the Tentative Order do not include revision in response to the Fallbrook Public Utility District objection to the continuation of the prohibition on all SSOs. This prohibition continues an existing prohibition against all SSOs that was established and justified by this Regional Board in 1996 with the adoption of Order No. 96-04 and implements the requirements contained in the Basin Plan, California

Water Codes and Federal Clean Water Act. Tentative Order Finding Nos. 6-9 references the Basin Plan, California Water Codes and Federal Clean Water Act. This prohibition has provided strong incentive for collection agencies to implement effective spill prevention measures as shown in supporting document no. 6, the December 2006 Monthly SSO Report. Lastly, this prohibition will eliminate the expenditure of resources necessary to determine whether a sanitary sewer overflow was a violation because it caused a nuisance.

Also, the revisions did not address the District's objection to the 24-hour reporting requirement for significant spills. The Tentative Order requires more timely reporting of significant overflows than the State Board Order, which allows up to three-days to report. This reporting requirement is an existing requirement in Order No. 96-04 and does not overlap or conflict with any reporting requirements in the State Board Order, any NPDES permits, or other WDRs.

Finally, Fallbrook Public Utility District, Eastern Municipal Water District, and Leucadia Wastewater District objected to being required to report private lateral sewage discharges. They contend that this reporting requirement would take up too much time and make them vulnerable to third party lawsuits. The dischargers, however, did not submit information supporting their contention. The requirement to report only known discharges involves a phone call and/or data entry to the State Board Online System and, thus, should not be a burden on the agencies. Also, the Tentative Order clearly states "The Sewage Collection Agency will not be responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, but only the reporting of those within their jurisdiction and for which they become aware of." Therefore, this requirement does not add any requirements to investigate, cleanup, or repair of these discharges.

This item was scheduled for the consent calendar at the January 24, 2007 Board Meeting. Speaker cards on the item were submitted by Fallbrook Public Utility District, Leucadia Wastewater District, Southern California Alliance of POTWs, CASA, and Winton Engineering Inc. The item was removed from the consent calendar and rescheduled for the February 14, 2007 Board Meeting.

The Regional Board has not received any written comments from Southern California Alliance of POTWs, CASA, and Winton Engineering Inc.

LEGAL CONCERNS: California Water Code Section 13243 provides that a Regional Board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste, or certain types of waste is not permitted.

SUPPORTING
DOCUMENTS:

- 1) Letter to Discharges dated January 29, 2007
- 2) Tentative Order R9-2006-0121, updated and distributed on November 2, 2006
- 3) Comment Letters Received:
 - a. Fallbrook Public Utilities District/ Downey Brand Attorneys LLP, November 22, 2006
 - b. United States Marine Corps, November 29, 2006
 - c. Eastern Municipal Water District, December 4, 2006
 - d. Leucadia Wastewater District, December 6, 2006
- 4) Response to Comments, posted to web site on December 7, 2006
- 5) Errata Sheet for Tentative Order No. R9-2006-0121
- 6) December 2006 Monthly SSO Report

RECOMMENDATION: Adoption of Tentative Order No. R9-2007-0005 is recommended.