

Comment #	Comment	Staff Response
<i>Comments from Downey Brand Attorneys LLP on behalf of Fallbrook Public Utility District regarding Tentative Order No. R9-2006-0121 (Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region) as contained in cover letter dated November 22, 2006</i>		
1	“The proposed justification for the Regional Board’s new tentative order is that the State Board’s SSO WDRs ‘may allow some SSOs that are currently prohibited under Order No. 96-04.’ . . . the Regional Board is going beyond the statewide policy without adequate justification as to the need for more stringent requirements than any other region in the State.”	Tentative Order No. R9-2006-0121 continues an existing prohibition against all Sanitary Sewer Overflows (SSOs) that was established and justified in 1996 with the adoption of Order No. 96-04. The State Board’s SSO Waste Discharge Requirements (WDRs) does not negate this decision.
2	“The new proposed Order will create confusion as it uses similar terminology to the SSO WDR, but proposes new names for similar items. For example, the “Category 1 Private Lateral Sewage Discharges” defined on page 5 of tentative Order No. R9-2006-0121 uses the same criteria a.-c. as the definition of Category 1 SSOs in the Monitoring and Reporting Program (“MRP”) for the statewide SSO WDR to apply to a different term.”	To avoid any confusion between Public SSOs and Private Lateral Sewage Discharges, the Tentative Order has been modified as follows: <ol style="list-style-type: none"> 1. All references to “Category 1 Private Lateral Sewage Discharges” has been changed to “Major Private Lateral Sewage Discharges”. 2. All references to “Category 2 Private Lateral Sewage Discharges” has been changed to “Minor Private Lateral Sewage Discharges”.
3	“In addition, the tentative Order also includes new requirements for Category 1 SSOs as defined in the SSO WDR, which adds to the confusion. The use of similar language to apply to different concepts creates confusion, which should be avoided.”	The reporting requirement in the Tentative Order for Category 1 Sanitary Sewer Overflows (SSOs) is not new. The same requirement for 24-hour notification of Category 1 spills is also contained in Order No. 96-04. The reporting requirement in the Tentative Order does not overlap or conflict with any of the reporting requirements in the State Board Order.

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4	<p>“Moreover, the requirements related to reporting SSOs from lateral sewers not owned by Collection System Agency are not necessary. The SSO WDR requires that ‘all SSOs must be reported in according with Section G of the general WDRs.’ See Order No. 2006-003-DWQ at pg. 8, para 5. Section G requires compliance with the MRP for the SSO WDR as well as immediate notification (as soon as the person has knowledge) of discharges of untreated wastewater pursuant to Health and Safety Code section 5411.5. <i>Id.</i> at pg 18, para. G.4. The MRP also includes provision related to private lateral discharges authorizing reporting of such spills, which would include all of the information required under paragraphs 9 and 10 of the MRP at pgs. 2-3, where such information is applicable and known.”</p>	<p>The State Board Order states “Pursuant to Health and Safety Code section 5411.5, any person who, without regard to intent or negligence, causes or permits any untreated wastewater or other waste to be discharged in or on any waters of the State, or discharged in or deposited where it is, or probably will be, discharged in or on any surface waters of the State, as soon as that person has knowledge of the discharge, shall immediately notify the local health officer of the discharge. Discharges of untreated or partially treated wastewater to storm drains and drainage channels, whether man-made or natural or concrete-lined, shall be reported as required above.”</p> <p>The Health and Safety Code section 5411.5 applies to the responsible party, which, in the case of Private Lateral Sewage Discharges, is the private party not the Sewage Collection Agency. Since sewage collection agencies are typically notified and/or are the first responders to Private Lateral Sewage Discharges, requesting the Sewage Collection Agency to report all known private lateral sewage discharges is reasonable. Also, the Health and Safety Code section 5411.5 requires reporting to the local health officer, not the Regional Board.</p> <p>The Monitoring and Reporting Program No. 2006-0003-DWQ authorizes the reporting of Private Lateral Sewage Discharges , but does not require it. Because Private Lateral Sewage Discharges are numerous and are a potential threat to public health and the environment, there is a need to have a reliable reporting system for Private Lateral Sewage Discharges for similar reasons as the public SSOs.</p>

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5	<p>“The tentative Regional Board Order would mandate such reporting, where known, even though the spills being required to be reported are not caused by or the responsibility of the Collection System Agency.”</p>	<p>The Tentative Order clearly states that “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.” in Finding No. 11 and Monitoring and Reporting Program Requirements, Section C.4.</p>
6	<p>“page 6, paragraph 2 of the tentative Order requires that the Collection System Agency provide 24-hour notice of the SSO to the Regional Board. Many Collection System Agencies that also have POTWs must already comply with a 24-hour requirement under 40 C.F.R 122.41(l)(6). Therefore, this requirement is duplicative and subjects an agency to two violations of the same requirement.”</p>	<p>Sewage Collection Agencies, that also own and operate a publicly-owned treatment works (POTW), have separate requirements that apply to the POTW, but not to the Sewage Collection System. The 24-hour requirement under 40 C.F.R 122.41(l)(6) applies to the NPDES permit for the POTW, not to the Sewage Collection System, even when both are owned and operated by the same agency. Therefore, the 24-hour requirement in the Tentative Order is not duplicative and is needed.</p>

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7	<p>“The termination trigger for Order No. 96-04 is not clear. How would the Regional Board be notified of compliance with Provision C.1. such that the termination is clear as to that agency? The previous draft at least had a mechanism for written notice. Without that notice, no one will be clear as to who is covered by which Order.”</p>	<p>To clarify how the Regional Board should be notified, Monitoring and Reporting Program Requirements, Section C.1, has been modified as follows:</p> <p>Each Sewage Collection 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. <u>The notification shall be a letter signed and certified by a person designated, for a municipality, state, federal or other public agency, as either a principal executive officer or ranking elected official.</u></p> <p>To clarify when the Sewage Collection Agency has been terminated from Order No. 96-04, Notification, Section D.1, has been modified as follows:</p> <p>Upon completion with Monitoring and Reporting Program Requirement C.1, <u>the Regional Board will give written notice to the Sewage Collection Agency stating that regulation of the Sewage Collection Agency under Order No. 96-04 is terminated.</u></p>

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8	<p>“Finally, it is unclear that the Regional Board has complied with Water Code sections 13263, 13267(b), and 13225(c) prior to imposing these waste discharge requirements, and additional monitoring and reporting requirements. The Regional Board must consider the factors set forth in Water Code sections 13263 and 13241 prior to imposing waste discharge requirements solely under state law.”</p>	<p>The factors presented in section 13241 were considered in establishing the Basin Plan water quality objectives, which potentially could be exceeded by SSOs.</p> <p>Section 13267(b) and 13225 (c) pertain to the burden and benefits of the reporting requirements. Tentative Order No. R9-2006-0121 adds only one minor reporting requirement that the Sewage Collection Agencies report known spills from private laterals, which should not be a burden.</p> <p>The factors presented in Section 13263, (beneficial uses, the water quality objectives, other waste discharges, the need to prevent nuisance, were all considered during the development of the Basin Plan prohibitions and Order No. 96-04, which tentative Order No. R9-2006-0121 implements.</p>
9	<p>“Further, for any monitoring and reporter requirements, the Regional Board must point to evidence in writing justifying the additional monitoring burden, and demonstrate that the burden, including cost, is reasonable given the benefits to be obtained. These analyses are missing from the body of this Order.”</p>	<p>Tentative Order No. R9-2006-0121 adds only one minor reporting requirement that the Sewage Collection Agencies report known spills from private laterals, which should not be a burden.</p>
10	<p>“This authorization [Order No. 2006-0003-DWQ . . . allows each regional board to issue more stringent or more prescriptive Waste Discharge Requirements (WDRs) for sanitary sewer systems within their respective jurisdiction.] is limited to situations where adequate findings and evidence are presented to justify additional regulation.”</p>	<p>Finding No. 11 in State Board Order No. 2006-0003-DWQ does not place limits on the authorization to issue more stringent or more prescriptive WDRs for sanitary sewer systems within their respective jurisdiction. Order No. R9-2006-0121 continues an existing prohibition of a discharge.</p>

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11	<p>“This finding [Finding No. 4, see below] is inadequately explained. Such a prohibition is not required by any of these laws or regulations.”</p> <p>4. SAN DIEGO REGION SANITARY SEWER OVERFLOW REGULATIONS: Order No. 96-04 has been an effective regulatory mechanism in reducing the number and magnitude of sewage spills in the Region. The Order is more stringent and prescriptive than Order No. 2006-0003-DWQ in that Order No. 2006-0003-DWQ may allow some SSOs that are currently prohibited under Order No. 96-04. In order to maintain regulation of Sanitary Sewer Systems in the San Diego Region consistent with the provisions of Order No. 96-04, this Order reaffirms the prohibition on all SSOs upstream of a sewage treatment plant. This strict prohibition implements the requirements contained in the Basin Plan, California Water Code, and Federal Clean Water Act.</p>	<p>A fundamental goal of the Basin Plan, California Water Code, and Federal Clean Water Act is to preserve the quality of water resources. Discharges of untreated sewage are inconsistent with meeting that goal.</p>
12	<p>State Board is previously defined above in paragraph 1.</p>	<p>The abbreviation for State Water Resource Control Board will be changed to State Board throughout the Tentative Order for uniformity.</p> <p>Also, the abbreviation for California Regional Water Quality Control Board, San Diego Regional will be changed to Regional Board throughout the Tentative Order for uniformity.</p>

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13	Typographical error – Finding 7.c “The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies <u>complies</u> with applicable receiving water quality objectives, is prohibited. ...”	The typographical error was corrected.

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14	<p>All of these prohibitions [Finding 7.a-e] apply only to discharges to waters directly and do not work to prohibit all SSOs, particularly those only to land that are cleaned up.</p>	<p>The commenter is correct that the prohibition, stated in Findings 7.a-c, apply to discharges of waste to waters directly and support a prohibition for some of the SSOs. The prohibition to prohibit all SSOs are explained in Findings 7.d-g.</p> <p>The prohibition, stated in Finding 7.d (see below), also applies to the dumping, deposition, or discharge of waste adjacent to waters of the state in any manner which may permit its being transported into the waters.</p> <p><i>“The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board.”</i></p> <p>The prohibition, stated in Finding 7.e (see below), also applies storm water conveyance systems, not just discharges to waters directly.</p> <p><i>“The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.”</i></p>
15	<p>This provision [Finding No. 7.f] would allow SSOs so long as authorized by WDRs.</p>	<p>If SSOs were authorized by WDRs, they would be allowed. However, SSOs are prohibited by this Regional Board pursuant to Order No. 96-04.</p>

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16	This [Finding No. 7.g] also would not prohibit SSOs if authorized by the Regional Board.	See Response to Comment No. 15.
17	[Comment regarding Finding No. 8] Findings and evidence must be included to justify such a prohibition.	Order No. R9-2006-0121 extends an existing prohibition that is supported in the Finding.
18	[Comment regarding Finding No. 9 – “In general, any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards, at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements.”] Since the collection system is not a treatment system, arguably BAT would be the applicable technology-based requirement.	Commenter is correct that the discharge of sewage effluent is applicable to secondary treatment. However, the Finding underscores the minimum criteria established for controlled discharges to water of the U.S. Clearly uncontrolled discharges of sewage to waters of the U.S. poses an unreasonable risk to water quality.
19	[Comment regarding Finding No. 9 – “Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the Clean Water Act.”] Such discharges could be permitted and in fact, for Combined Sewer Overflows (CSOs), such discharges are permitted in this state and others.	Discharges from Combined Sewer Overflows are an unfortunate reality and should not be encouraged, just as SSOs should not be encouraged by allowing them to occur under certain scenarios.

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20	<p>[Comment regarding Finding No. 11]</p> <p>By making it a requirement to report lateral spills, the Regional Board is punishing good behavior of those who provided this information voluntarily as a courtesy.</p>	<p>Rather than punish the good behavior of the Sewage Collection Agencies that have been providing this information voluntarily, this requirement provides an even playing field, so that sewage collection agencies are not unjustly criticized for having higher numbers of private lateral spills.</p>
21	<p>[Comment regarding Finding No. 11]</p> <p>Given the large number of courtesy reports, it is unclear of the need for a mandated reporting requirement.</p>	<p>Although the number of courtesy reports for private lateral sewage discharges appears high, it is unknown what percentage of private lateral sewage discharges are not reported and how significant the problem is throughout the Region.</p>
22	<p>[Comment regarding Finding No. 11]</p> <p>Equally, or more, reasonable steps would be to require homeowners or businesses to report spills directly, or to encourage lateral inspection and replacement programs to avoid spills in the first place.</p>	<p>It is not viable at this time to require homeowners or businesses to report spills.</p> <p>We agree that lateral inspection and replacement programs should be encouraged and look forward to voluntary efforts by the Sewage Collection Agencies to develop them.</p>

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23	<p>[Comment regarding Finding No. 13]</p> <p>This exemption for disapproved projects does not apply to this permitting action. A permit is a project (see 14 C.C.R. 15378(a)(3)) and WDRs that are not also NPDES permits are not exempted from CEQA under Water Code section 13389. Another applicable exemption must be founded or the Regional Board must comply with CEQA requirements.</p>	<p>Finding No. 13 has been replaced with the following:</p> <p>“The action to adopt this Order is exempt from the California Environmental Quality Act (Public Resources Code §21000 et seq.) because it is an action taken by a regulatory agency to assure the protection of the environment and the regulatory process involves procedures for protection of the environment. (Cal. Code Regs., tit. 14, §15308). In addition, the action to adopt this Order is exempt from CEQA pursuant to Cal.Code Regs., title 14, §15301 to the extent that it applies to existing sanitary sewer collection systems that constitute “existing facilities” as that term is used in Section 15301, and §15302, to the extent that it results in the repair or replacement of existing systems involving negligible or no expansion of capacity.”</p>
24	<p>[Comment regarding Notification, Section D.2]</p> <p>How will anyone know when this happens?</p>	<p>The following will be added to Notification, Section D.2:</p> <p><u>The Regional Board will give written notice to all of the Sewage Collection Agencies stating that all Sewage Collection Agencies under Order No. 96-04 was terminated and, thus, Order 96-04 is rescinded.</u></p>

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Comments from the United States Marine Corps regarding Tentative Order No. R9-2006-0121 (Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region) as contained in cover letter dated November 29, 2006		
25	<p>Tentative Order R9-2006-0121 contains a provision to report sanitary sewer overflows (SSOs) from private laterals that sewerage collection agency becomes aware of. Under Order 96-04, Camp Pendleton reported and accounted for all SSOs that occurred within the Base Boundaries, to include those from lateral to single and multi-family structures, in contrast to most other sewage collection agencies in the region where a public/private property reporting destination naturally existed. Although SSOs from single and multi-family housing lateral consisted less than 20 percent of all Camp Pendleton's SSOs, the accounting of such events inflated Camp Pendleton's SSO statistics relative to the other sewage agencies in the region. Over the last couple of years, the management and maintenance of Camp Pendleton's family housing areas has transferred to private contractors under the Department of Navy's public private venture (PPV). Under this long-term (i.e., 50 year) contractual arrangement, the PPV partner owns the housing structures – to include the building laterals – and in effect has become a private property within the confines of Camp Pendleton. Accordingly, Camp Pendleton intends to report future SSO event that occur from single and multi-family structures as Private Lateral Sewage Discharges in accordance with the reporting requirements of Tentative Order No. R9-2006-0121.</p>	Comment Noted.
26	<p>Camp Pendleton accepts and treats sewage generated from the CALTRANS Rest Area facilities that transit Camp Pendleton along Interstate 5 (I-5). A preliminary review of our GIS database indicated that CALTRANS may maintain more than one-mile of collection system infrastructure within the confines of their easement before connecting to Camp Pendleton's sewage collection system. Although we are unaware whether CALTRANS has sought, or extends to seek, coverage under State Water Resources Control Board (SWRCB Order 2006-003-DWQ as a satellite collection system over one mile in length, we intend to initiate formal dialogue with CALTERANS over the matter. If CALTRANS maintains grate than one mile of sewage collection system infrastructure, we anticipate that future SSO events from their satellite collection system would be attributed to CALTRANS, vice Camp Pendleton, in contrast to the SSO that occurred from I-5 Rest Area on May 18, 2006.</p>	Comment Noted.

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Comments from the Eastern Municipal Water District regarding Tentative Order No. R9-2006-0121 (Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region) as contained in cover letter dated December 4, 2006		
27	Eastern Municipal Water District comment states that the requirement to report Private Lateral Sewage Discharges “an unfair burden”.	Please see Response to Comment No. 9 from Downey Brand Attorneys LLP.
28	Eastern Municipal Water District is concerned about receiving fines for not reporting Private Lateral Sewage Discharges.	Sewage Collection Agencies would only be responsible for reporting spill that they become aware of.
29	Eastern Municipal Water District is concerned about the significant financial burden to investigate and report Private Lateral Sewage Discharges. Reporting Private Lateral Sewage Discharges on a voluntary basis allows public agencies to report Private Lateral Sewage Discharge when and if pertinent information is available and complete.	The Sewage Collection Agencies’ plan to respond/investigate known Private Lateral Sewage Discharges should not change if the Tentative Order is adopted. The only change that should result from the Tentative Order is that the Sewage Collection Agencies are required to report all known information regarding Private Lateral Sewage Discharges.

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Comments from the Leucadia Wastewater District regarding Tentative Order No. R9-2006-0121 (Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region) as contained in cover letter dated December 6, 2006		
27	Leucadia Wastewater District was concerned about the sewage collection system being regulated under three different waste discharge requirements (Order No. 96-04, State Board Order No. 2006-0003-DWQ, and Tentative Order No. R9-2006-0121).	If Tentative Order No. R9-2006-0121 is adopted, each sewage collection agency will be terminated from Order No. 96-04 after they can report to the State Board SSO Online System and Order No. 96-04 will be terminated after all sewage collection agencies under Order No. 96-04 have been terminated.
28	Leucadia Wastewater District was concerned about how to report Private Lateral Sewage Discharges in the State Board SSO Online System and the similar terminology for SSOs in the State Board Order No. 2006-0003-DWQ (i.e. Category 1 and 2).	Please see Response to Comment No. 2 from Downey Brand Attorneys LLP. The State Board SSO Online System should have an option to indicate if the SSO was a Private Lateral Sewage Discharge but will not have an option to indicate if the Private Lateral Sewage Discharge was major or minor.
29		See Response to Comment No. 9 from Downey Brand Attorneys LLP