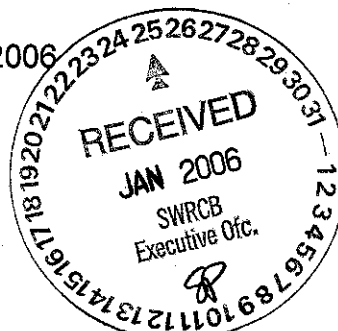


January 25, 2006

Tam Doduc, Chair, and Members
State Water Resources Control Board
Executive Office
P O Box 100
Sacramento, CA 95812
Attn.: Selica Potter, Acting Clerk to Board
Via Facsimile (916) 341-5620, e-mail and U.S. Mail



SSO Hearing: 2/8/06

Re: Comment Letter Regarding Draft Statewide General Waste Discharge Requirements for Wastewater Collection System Agencies and Monitoring and Reporting Program

Dear Chairwoman Doduc and Members:

The Cities of Alhambra and Banning ("Cities") submit these comments regarding the Draft Statewide General Waste Discharge Requirements for Wastewater Collection, System Agencies ("WDR") and the accompanying Monitoring and Reporting Program ("MRP"). The Cities support the State Water Resources Control Board's efforts to implement the Sanitary Sewer Overflow Reduction Program, which is intended to reduce the number and volume of Sanitary Sewer Overflows (SSOs) throughout the state. But because the WDR and MRP in their current form are flawed for myriad reasons, the Cities must object to the Draft WDR and Draft MRP.

Time Schedules Are Far Too Aggressive

A major flaw in the WDR and MRP is the overly aggressive time schedule for implementation. The Draft WDR requires all enrollees to prepare a detailed, technical and comprehensive Sewer System Management Plan ("SSMP"). Under the accompanying time schedule, all enrollees, even operators of small satellite collection systems, must do the following within twelve months after the WDR's adoption: (1) complete the SSMP Development Plan and Schedule; (2) complete the Goals and Organization Structure aspect of SSMP; and (3) complete an Overflow Emergency Response Program.

Twelve months is simply too short a period of time to satisfy these requirements. Satisfying the requirements will require capital outlays and approvals from the respective city councils. Many cities, would likely have to contract with a consultant to have these plans and programs completed and it will take time to determine the consultant's availability and qualifications. In addition, the Cities operate on budget cycles and existing budgets do not allow for the additional costs that would be incurred

in connection with hiring such consultants. At a minimum, these spending requirements should not be imposed until the next budget cycle.

Moreover, the Overflow Emergency Response Program would require, among other elements, considerable equipment procurement—all within twelve months of the WDR's adoption. Yet, as of today, equipment procurement by itself, without factoring in the other requirements of the emergency response program, often takes between 12 and 24 months, depending upon equipment specifications and construction time.

Some of the deadlines are even shorter than the 12 month deadline discussed above. The WDR requires the Application for Permit Coverage to be completed and submitted only three months after the WDR's adoption. Further, it requires the Reporting Program—which includes on-line spill reporting requirements—to be completed only four months after the WDR's adoption. Again, given the technical and comprehensive nature of the SSMP requirements, these deadlines are overly accelerated. Indeed, they do not recognize that several steps must be accomplished, including: (1) staff review and analysis of new requirements; (2) coordination of staff and budget; (3) legal review; and (4) city council review and approval.

Finally, the SSMP has too many individual milestones and is thus overly prescriptive. The SSMP Time Schedule is broken down into 11 separate milestones. Instead of numerous deadlines, there should be a single, reasonable deadline for complying with all SSMP elements.

The Cities therefore request that the time schedules be extended. Specifically, the Cities suggest that the deadline for SSMP Development Plan and Schedule, Goals and Organization Structure and Overflow Emergency Response Program be extended from 12 to 24 months after the WDR's adoption.

Draft WDR and MRP establish a major new regulatory program that far exceeds current standards.

The proposed WDR and MRP would establish a major new regulatory program and many of the new requirements exceed reporting requirements currently set under state law. For example, for the first time, *any* discharge to a storm drain, drainage channel or surface water, no matter how small, will be classified as a major spill that must be reported on-line within 3 days of the enrollee's knowledge of the spill. This new definition of a "major spill" exceeds existing regulations regarding reporting volumes. This new mandate would impact resources at enrollees, particularly small enrollees. In addition, the proposed WDR and MRP appear to shift responsibility for SSOs to the enrollees and away from the publicly-owned treatment facilities ("POTWs"). Under the

federal Clean Water Act, primary responsibility for SSOs lies with the POTWs. See, e.g., 33 U.S.C. § 1292(A).

Affirmative defense language should be included

Without affirmative defense language in the WDR, every missed deadline and every spill could arguably be considered an "unauthorized discharge to waters of the state," thereby forming the basis for a lawsuit and request for attorney's fees. Presumably, the point of the WDR is not to encourage litigation over every missed deadline or every spill, no matter how small and without regard to whether the SSO was caused by negligence or whether the SSO occurred despite full SSMP implementation.

Affirmative defense language should therefore be included in the WDR so that the WDR does not transform from an aspect of the SSO Reduction Program into a litigation tool.¹

The cost estimate is too low

The Draft WDR estimates that the projected cost to implement the WDR and MRP will be \$72 dollars a year per household. This amount represents a drastic increase in per household costs; for example, the current monthly cost for Alhambra's customers is approximately \$40 a month, making the cost to implement the WDR and MRP more than double the current cost.

Even worse, the Cities believe that the \$72 estimate is artificially low. The WDR cost estimate is derived from the costs of Orange County's aggressive SSO program—a program that has been evolving for more than a decade due to Orange County's focus on beach closures. The baseline for all other wastewater collections systems in the state should not be derived solely from the operating costs of one county's wastewater collection system.

In addition to this flaw in setting the baseline, the true cost is likely to be higher, especially for smaller cities that will be forced to incur significant new costs for infrastructure, equipment, and contractors. These costs have not been adequately considered in the WDR.

Finally, the WDR fails to consider that fines or third party litigation through Clean Water Act citizens' suits could increase the costs dramatically.

¹ For these same reasons, the Cities oppose the request made by some non-governmental entities to have the WDR issued as an NPDES permit.

Tam Doduc, Chair and Members
State Water Resources Control Board
January 25, 2006
Page 4

The WDR mandates duplicative reporting

The WDR layers on-line reporting onto existing reporting requirements. The WDR, however, fails to provide any evidence to support the conclusory claim that duplicative reporting is necessary.

Conclusion

The Cities appreciate the opportunity to provide comments on the crucial issue of SSOs and the draft WDR. Based on the legitimate flaws in the draft WDR discussed above, the Cities respectfully urge the Board to refrain from adopting the WDR and MRP as proposed and to instead revise the WDR and MRP to be consistent with the comments herein.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Amy E. Morgan

cc: Julio Fuentes, City Manager, City of Alhambra
Christine Montan, Director of Utilities, City of Alhambra
Joseph M. Montes, City Attorney, City of Alhambra
Randy Anstine, City Manager, City of Banning
Julie H. Biggs, City Attorney, City of Banning

Tam Doduc, Chair and Members
State Water Resources Control Board
January 25, 2006
Page 5

Bcc: James Cowan, City of Alhambra