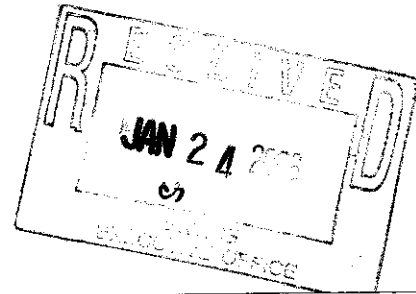


1/19/06



Ms. Tam Doduc, Chair
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814

SSO Hearing: 2/8/06

Attention: Selica Potter, Acting Clerk

Subject: Proposed SSORP Waste Discharge Requirement

Dear Chairperson Doduc:

The City of Glendora (City) is pleased to comment on the State Water Resources Control Board's (State Board) proposed Sewer System Overflow Requirement Program (SSORP).

1. WDR v. NPDES Permit

The City agrees with the State Board's determination that the SSORP should be implemented through a Waste Discharge Requirement (WDR) as opposed to an NPDES storm water permit. The City believes that this regulation requires specific regulatory attention. To include it in a storm water permit would only dilute its importance and would make a storm water permit, especially an MS4 permit, even more complicated than what it is now.

2. Potential for Excessive Compliance

The City appreciates the State Board's rationale for adopting the SSORP, which is course to reduce sewage releases in an effort to reduce or eliminate beach closures due to excess pathogens. It is concerned, however, with the mechanics of how this is to be achieved. Specifically, the City wishes to avoid having to implement a plan that calls for major capital, operation & maintenance costs to prevent what it is already achieving: releases to ocean waters.

As it appears to stand now, the City would be responsible for allocating resources to address infrequent releases to a non-ocean receiving water (e.g., a lined or unlined receiving water) that rarely, if ever, reach the ocean – even in the event of a release caused by a major storm event for which the sewer system

was not designed for in terms of capacity. To put it another way, the City would like the discretion to determine whether its SSORP is effective by using releases reaching ocean waters as the determinant as opposed to releases to a receiving water wherein such releases would not affect the beneficial use of that receiving water.

It should be noted that this City, because of its location relative to ocean waters and its current sewer operations and maintenance program, which is prevention-based, has not experienced and is not likely to ever experience a sewage release to an ocean water.

This should not be interpreted to mean, however, that the City should not make as its goal to reduce sewer releases to a non-ocean receiving water, such as a river that operates as a flood channel control and/or a ground water recharge basin. It merely wishes to avoid having to develop a SSORP to achieve zero discharges to such waters under any circumstances.

3. The Need to Re-include an Affirmative Defense Provision

The removal of the "affirmative defense" provision from the previous WDR draft seems unjustified and appears to be based on improbable worst case scenarios. The City, as other subject dischargers, are concerned about being exposed to litigation in the event of rare and exceptional sanitary sewer overflows that cannot be prevented. It should be made clear that the City does not seek an affirmative defense provision to evade the purpose of the proposed SSORP, which, once again, it supports. Instead, it wishes to be spared from liability in the event of an accidental sewage release caused by an earthquake or a rare intense storm event.

What is needed here is affirmative defense language that would effectively balance the interests of non-governmental organizations (NGOs) against legitimate concerns of subject dischargers. Therefore, the City asks the State Board to build into the WDR a provision that calls for a schedule to develop affirmative defense language that would be acceptable to both parties say no later than one year after the effective date of the WRD.

4. Non-Ocean Receiving Waters that Are Non-Navigable

Related to the above, the City would like the WDR and/or State Board staff to recognize that non-ocean receiving waters such as flood control channels and recharge basins are not navigable during the dry season. Therefore, a release to such waters during the dry season should not be construed as federal clean water violation.

5. Underestimation of Costs

The City is concerned about the possibility that the \$72.00 per year per household estimate that the State Board used in calculating the cost impact to municipal dischargers may be too low. Further, the City cannot ignore the possibility that this requirement is an unfunded mandate and may seek reimbursement if it determines that the estimate is in fact too low.

6. Implementation Schedule

The proposed **Sewer System Management Plan Time Schedule** (schedule) does not appear to give subject dischargers sufficient time to plan and budget for the large costs that are associated with the proposed WDR. Here are the City's specific objections:

- i. The **Monitoring and Reporting Program** appears to require implementation starting with the effective date of WDR adoption – which could be as soon as March. Cities, including this one, are already in the process of preparing budgets for FY 2006-2007. This time line does not provide enough time to prepare for the costs need to comply with this task, which includes developing an SSO data bases to contain information that must be transmitted to State Board; training City staff estimate spill volumes and record required information for adequate response and reporting to impacted public agencies. Therefore, the City requests that the deadline for implementing the monitoring and reporting tasks be re-set to July 1, 2007.
- ii. The **SSMP Development Plan and Schedule** which takes effect May 1, 2006 for dischargers with populations greater than 100,000; January 1, 2007 for cities with populations between 10,000 and 100,000; April 1, 2007, for cities with populations between 2,500 and 10,000; and July 1, 2007 for cities with populations under 2,500. This task requires the development of a plan for (a) identifying personnel that will be responsible, organizationally for implementing the SSMP program; and (b) a plan for establishing a chain of communication from reporting and responding to sewer system overflows. The schedule for complying with this requirement should be extended by a year for each of the population categories. This would give dischargers the adequate time to budget for a consultant, prepare an RFP, select a consultant and provide the consultant sufficient time to prepare the required work. Extra time is also needed to adopt and/or amend a discharger's sewer fee – a task that will require several months to complete, largely because a consultant will need sufficient time to determine the amount of funds that will need needed to comply with the SSORP WDR.
- iii. The **legal authority requirement** must be completed by June 1, 2006 for dischargers with populations over 100,000, by March 1, 2007 and for dischargers with populations between 10,000 and 100,000. Establishing legal

authority is a relatively simply matter. However, it should be done at the same the time the increase or creation of sewer fee is established, which is generally done through a new ordinance or ordinance revision. As mentioned above, developing a sewer fee or increasing that fee based on the proposed SSORP WDR will take more time. It should also be noted that the time line for establishing legal authority seems premature, given that the time lines for implementing major components such as the grease control program, which would require enforcement, is not called for until the following year. Therefore, legal authority should not be required until at least six months after the deadline for this task.

- iv. The **system evaluation and capacity assurance program**, schedule is too short. The deadline of December 1, 2007, does not really give dischargers with populations over 100,000 a great deal time. Again, time is needed to budget for this task, search for a consultant, select the consultant, and then allow the consultant to complete the work. Assuming that the proposed SSORP WDR is adopted in March, 9 months does provide enough time. The same is true cities with populations under 100,000. Therefore, it is requested that this task be extended by a year for all population categories.
- v. The **sewer rehabilitation plan** needs to be pushed back by a year because it is dependent on the results of the system evaluation and capacity assurance program, which as mentioned, needs to be delayed by at least one year.
- vi. The **final SSMP** needs to be pushed back by a year because of the need to reschedule the foregoing tasks.

The City appreciates the opportunity to comment on this very important environmental regulation and looks forwards to an affirmative response to its concerns. Should you require addition information and clarification regarding this request, please feel free contact me.

Sincerely,



David A. Davies
Deputy Public Works Director
City of Glendora