



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

August 25, 2005

Bryan Brock  
Office of Statewide Initiatives  
California State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Dear Bryan:

We are writing to offer comments on the August 1, 2005 draft Statewide General Waste Discharge Requirements for Sewage Collection Agencies (WDR) and the State's strategy for regulating sewage collection agencies throughout the State. Initially, we want to thank you for the consideration you have already given to the concerns Region IX raised, in particular the inclusion of Provision B.2 in the draft WDR. We are pleased that the Board is pursuing a statewide strategy to reduce sanitary sewer overflows from all collection systems and encourage that effort. Recapping our concerns, however, EPA wants to ensure that the Board's strategy of issuing the WDR as a non-NPDES permit neither supplants nor undermines NPDES requirements, nor undercuts EPA's ability to enforce the CWA. To that end, and to respond to some of the questions that have arisen in the SSO Committee stakeholder meetings regarding the intersection of the WDR and NPDES requirements, we discuss several issues below.

First, regardless of what happens with the draft statewide WDR, NPDES permits for Publicly Owned Treatment Works (POTWs) must continue to cover permittee owned collection systems. Under the Clean Water Act, POTW is defined to include the treatment plant as well as the collection system used to convey sewage to the POTW treatment plant. Accordingly, and as the Board has recognized, NPDES permits for POTWs impose requirements on the entire POTW including the treatment plant and the parts of the collection system owned or operated by the permittee. Further, NPDES authorized states must include the standard federal NPDES provisions found in 40 CFR 122.41 in all such permits. The major provisions applicable to permittee owned collection systems include the duty to mitigate discharges (40 CFR 122.41(d)), the requirement to properly operate and maintain facilities (40 CFR 122.41(e)), and requirements to report non-compliance (40 CFR 122.41(l)(6) and (7)). At a minimum, to meet NPDES requirements and to avoid potential antibacksliding issues under 40 CFR 122.44(l), these provisions must be retained in POTW NPDES permits. Upon their reissuance, the Board may decide either to incorporate by reference any more stringent requirements from the WDR into the NPDES permit or keep the more general NPDES requirements and clarify that the WDR requirements elaborate and expand upon them. (Careful drafting of the WDR and all NPDES permits will be necessary to avoid language that unintentionally leaves the applicable requirement ambiguous or unenforceable.)

Second, recognizing that the State's general practice has been not to issue NPDES permits for satellite collection systems, some Regional Boards have done so where appropriate. Region 9 encourages the State to retain NPDES permit coverage for such satellite collection systems and ensure that nothing in the WDR precludes the State or Regional Boards from renewing or issuing new NPDES permits for satellite systems in appropriate circumstances.

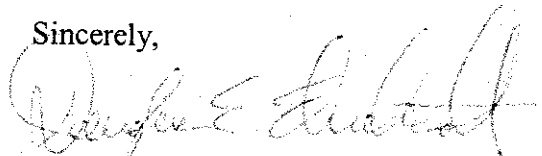
Third, we fully support the SWRCB's decision to delete the affirmative defense provision that appeared in earlier drafts of the WDR. Instead, the draft now includes Provision B.6 which delineates factors that must be considered by the Water Boards in any enforcement action against a collection system under the WDR. We prefer this type of "enforcement consideration" or "enforcement discretion" approach to the previously proposed affirmative defense provision for two reasons. First, we believe enforcement discretion - especially when the WDR lists specific matters the Boards must consider - enables the Boards to make appropriate case by case determinations. Secondly, there is a close relationship between POTW NPDES permit provisions related to collection systems and the draft statewide WDR. As you know, there is no allowance in the Clean Water Act or NPDES regulations for the kinds of affirmative defenses included in the earlier draft WDRs. While affirmative defense provisions in a non-NPDES WDR would not and cannot usurp EPA's Clean Water Act authority, contrary state authority dealing with the same type of discharge could confuse permittees and undermine Clean Water Act enforcement.

Fourth, Provision B.16 of the draft WDR requires collection systems to self-certify to completion of their Sewer System Management Plans (SSMPs). We agree with the switch to self-certification from the earlier proposals for the certification of SSMPs by an independent certification board. After hearing the discussion in the stakeholder groups, we have reached the conclusion that implementation of a third-party certification program is impractical at this time. We encourage the State to continue exploring options for developing sewage collection system engineering standards and best practices that would inform collection system operators and help to promote development of better SSMPs. Such standards could eventually serve as the basis for an independent SSMP certification program.

Finally, our last comments pertain to various provisions concerning enforcement. We request that you delete the reference in Provision B.9 to the Clean Water Act since the WDR will not be issued under the Clean Water Act. Secondly, while not critical for NPDES purposes, we are confused about enforcement discretion regarding SSMPs appears in both Provisions 7 and 9.

Please call Ken Greenberg at 415-972-3577 if you have any further questions.

Sincerely,



Douglas E. Eberhardt, Chief  
CWA Standards and Permit Section  
Water Division