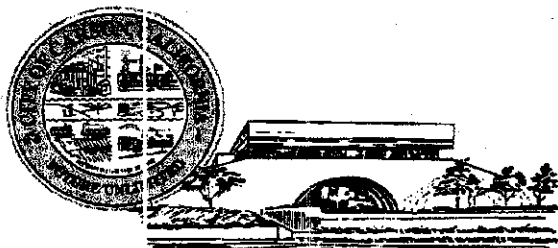


OFFICE OF THE CITY MANAGER



CITY OF CARSON

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

Attention: Selica Potter, Acting Clerk

January 23, 2006

SSO Hearing: 2/8/06



Subject: Proposed Sanitary Sewer Overflow Reduction Program Waste Discharge Requirements

Dear Chairperson Doduc:

The City of Carson is supportive of the goals of the State Water Resources Control Board (State Board) to implement the Sanitary Sewer Overflow Reduction Program (SSORP) to reduce the number and volume of Sanitary Sewer Overflows (SSO) throughout the state. However, the Statewide General Waste Discharge Requirements (WDR) for Wastewater Collection System Agencies and the accompanying Monitoring and Reporting Program (MRP) in their current form will not provide for a fair, cost effective or efficient method of achieving the desired goals.

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 of course to reduce sewage releases in an effort to reduce or eliminate beach closures. 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, and operation & maintenance costs to prevent releases to ocean waters.

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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.

This should not be interpreted to mean, however, that the City should not make as its goal to reduce sewer releases to non-ocean receiving waters, such as a river that operates as a flood control channel 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 is, as are other subject dischargers, 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 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 within 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 a 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

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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 (SSMP) 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 needed to comply with this task, which includes developing an SSO data base to contain information that must be transmitted to the State Board and training City staff to estimate spill volumes and record the 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** 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) establishing a chain of communication for 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 needed 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 be 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, and by March 1, 2007 for dischargers with populations between 10,000 and 100,000. Establishing legal authority is a relatively simple matter. However, it should be done at the same time the increase or creation of a 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

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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, 2006, twenty-one months does not provide enough time to perform these tasks. The same is true for 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. The City urges the Board not to adopt the WDR and MRP without cost support, protection for our ratepayers from potentially unfair and unreasonable regulatory fines and third party litigation, and additional time for program implementation.

Sincerely,



Jerome G. Groomes
City Manager