



California Regional Water Quality Control Board

San Diego Region




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TO: Selica Potter,
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FROM: 
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SSO Hearing: 2/8/06

DATE: January 26, 2006

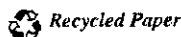
SUBJECT: Comments on December 5, 2005 Draft of Statewide General Waste Discharge Requirements for Sewage Collection Agencies

We have reviewed the December 5, 2005 Draft of the Statewide General Waste Discharge Requirements for Sewage Collection Agencies (draft SSO WDR) distributed December 7, 2005 with a Notice of Public Hearing. The San Diego Regional Board appreciates the State Water Board's and the SSO Guidance Committee's hard work and commitment in developing the draft SSO WDR and the accompanying Monitoring and Reporting Program to protect waters of the State from sanitary sewer overflows. We are providing the following comments for your consideration:

Comments on the Fact Sheet:

- The Need, Page 2:** We would like to provide the following information for possible inclusion in the fourth paragraph on page 2 which would further demonstrate that SSO regulatory programs that explicitly prohibit SSOs have very positive impacts on protecting waters of the State. The number of sewage spills within the San Diego Region, from public sewer agencies currently regulated under San Diego Regional Board Order No. 96-04, reported to the Regional Board have gradually declined from 747 SSOs in fiscal year 1996-1997 to 266 SSOs in fiscal year 2004-2005. Also, according to data compiled by County of San Diego Department of Environmental Health, the number of SSOs resulting in beach closures from regulated public sewer agencies in San Diego County have shown annual reductions from 35 closures in calendar year 2000 to 22 in calendar year 2005. We feel that these trends are due in part to the San Diego Regional Board's general SSO WDR and enforcement actions.
- NPDES vs. WDR, Page 2:** We support the issuance of the SSO WDR as state waste discharge requirements rather than NPDES requirements and believe it will result in protection of waters of the State (surface and ground water). As currently written, the draft SSO WDR does not appear to preclude enforcement of NPDES requirements related to the collection system contained within POTW NPDES permits, but at the same time extends

California Environmental Protection Agency



SSO regulatory coverage to those collection systems not covered by an NPDES permit or other regulatory program.

3. **Prohibition of Discharge, Page 4:** We recommend that the draft SSO WDR explicitly prohibit all SSOs to protect all waters of the State, both surface waters and groundwater. Currently, San Diego Regional Board Order No. 96-04 prohibits all SSOs, without regard to the SSO being discharged to surface waters or land, and seeks to protect all waters of the State from pollution due to SSOs. Our current prohibition implements and upholds several of our Basin Plan prohibitions including one which states that "the discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance . . . is prohibited." Additionally, as a region with significant year-round ocean recreation and with the majority of sewer facilities concentrated along the coast, all SSOs have great potential to impact water quality and beneficial uses of coastal waters. If the statewide SSO WDR is adopted without a prohibition, it is the intent of the San Diego Regional Board to continue its current SSO prohibition through the adoption of a more restrictive WDR or other regulatory measure to augment the statewide SSO WDR.
4. **SSO Reporting, Page 7:** The sentence that makes a distinction between SSOs that can impact the environment and those that are presumed to be just indicators of collection system performance should be removed. Instead, the Fact Sheet should point out that some SSOs are considered "major" and others "minor" based on their actual or potential impact to the environment. This change would then make the Fact Sheet consistent with the Monitoring and Reporting Program.

We also recommend that data collected from the Online SSO Database be made accessible to the public. Public access to the San Diego Region's SSO data has been one of the successful aspects of our SSO regulatory program.

5. **Incorporating Existing Permits, Page 8:** Expand on the last paragraph which discusses instances when regional water boards will need to impose more stringent or prescriptive requirements. We support including Provision C.2 in the SSO WDR that allows the regional boards to impose the more stringent or prescriptive requirements. However, this may result in future claims of inconsistency among the regions, particularly if one or more regions impose SSO prohibitions. The Fact Sheet should discuss this potential consistency issue in more detail. Also, how would additional fees be imposed to support the Regional Board's requirements?

Comments on the WDR

6. **Finding 4, page 1:** Clarify "contractor-caused damages." Is this meant to include overflows caused by contractors hired by a sewerage agency to perform construction projects? It may be more appropriate to include "construction activity-related damages" in the list of causes.
7. **Finding 4, page 2:** Recommend replacing last sentence with "SSOs are preventable, and adequate and appropriate source control measures and proper operation and maintenance of the sanitary sewer system should have the goal of preventing all SSOs." The fact that

affirmative defense provisions are not included in the draft SSO WDR support this change in the finding.

8. **Definitions, Page 5:** Recommend replacing "untreated wastewater" with just "wastewater" in the definition of "Sanitary Sewer Overflow". Recommend replacing the phrase "upstream of the headworks" in the definition of "Sanitary Sewer System" with "upstream of the headworks of a wastewater treatment plant". Also, recommend entirely deleting the definition of "Untreated Wastewater" because some collection systems include treatment facilities such as bar screens and settling basins which treat the wastewater prior to the headworks of a wastewater treatment plant.
9. **Definitions, Page 5:** Recommend adding a definition for "Surface Water" since that term is used in the draft SSO WDR. We suggest using the definition of "Surface Water" provided in San Diego Regional Board Order No. 96-04.
(see <http://www.waterboards.ca.gov/sandiego/programs/ss0/96-04a5.pdf>).
10. **Provision 3, Page 7:** Recommend replacing the second sentence of Provision 3 with "In the event that an SSO does occur, the Enrollee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from the SSO, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the SSO." This provision is adapted from San Diego Regional Board Order No. 96-04 and has been a useful provision.
11. **Provision 6, Page 7:** As written, this "enforcement discretion" provision applies to "any enforcement action" whereas California Water Code Sections 13327 and 13385 only apply to civil liability. We recommend limiting applicability of Provision 6 only to civil liability or formal enforcement actions.

There is also an underlying question with the appropriateness of including Provision 6 in the SSO WDR since it places requirements on the State or Regional Board within waste discharge requirements for Enrollees. It may be more appropriate to convert this provision into a Finding.

We also recommend that the Fact Sheet discuss the basis for the enforcement discretion criteria in more detail and how the criteria should be considered. For example, if a spill was caused by wet weather exceeding the collection system capacity documented in the SSMP, are Regional Boards directed to consider this as a reason to reduce liability?

12. **Provisions 11 and 13, Page 8-9:** We support the requirement for the development and implementation of a written Sewer System Management Plan (SSMP). The SSMP elements are well-considered and should result in improved SSO prevention and response.
13. **Provision 13, SSMP element (iv), Page 9:** Recommend replacing the phrase "and applicable stormwater conveyance facilities" with "associated stormwater conveyance facilities (e.g., street gutter drains, pipe discharge outfalls, etc.)".
14. **Provision 13, SSMP element (viii)(b), Page 13:** Define "design criteria" and its purpose before discussing the case "where design criteria do not exist or are deficient".

15. **Provision 14, Page 14:** Clarify what "the appropriate governing board" is. Should it be clarified as "the Enrollee's governing board or council"?
16. **Provision 14, Page 14:** Reference to "Finding number 15" should be corrected to "Provision 15".
17. **Provision 14, Page 14:** As written, the SSMP must be updated every five years. While we agree that the updating the SSMP every five years is appropriate, we also recommend that the SSO WDR also require the Enrollee to review the SSMP after each SSO and revise appropriate sections if, and as, necessary. This proposed requirement is adapted from a provision in San Diego Regional Board Order No. 96-04 which encourages sewer agencies to learn from past experiences, both positive and negative, in dealing with SSO prevention and response while the details are still fresh in their memories.
18. **Provision F.4, Page 17:** If the discharger does not make the reports to OES or County Health, then the discharger has violated the Order and the State or Regional Board must take enforcement action for any non-compliance. Is it the intent of these requirements that the State and Regional Boards implement and enforce the OES and county health reporting requirements of the Water Code and Health and Safety Code? We have been advised by our legal counsel in the past not to include similar provisions in our Order 96-04. Similar language in the Monitoring and Reporting Program should also be removed. OES and County Health reporting requirements may be better included as a Finding.

Monitoring and Reporting Program

19. Please clarify if the MRP is being issued as authorized by California Water Code Section 13267.
20. **Provision A.4, Page 1:** Please include an explanation in the Fact Sheet why this provision extends the initial reporting of major spills to no later than three business days after the Enrollee is aware of the SSO. In some situations, Regional Boards need to know about SSOs on the day of the SSO or at least within 24-hours. We recommend either revising the "three business day" period to "24 hours", or including an additional provision that requires Enrollees to report critical details regarding major spills to the appropriate Regional Board within 24 hours by phone, fax, or e-mail.
21. **Mandatory Information to be Included in SSO Online Reporting, Page 2:** We recommend requiring the reporting of latitude and longitude for the location of the spill and for spill destination. While not strictly required by CWC Section 13193, latitude and longitude are more accurate for GIS mapping purposes than street addresses. In our experience, street addresses are subject to multiple street name versions (Pacific Coast Highway, Highway 1) and misspellings.

General Comments

22. Include the International Boundary Water Commission as an Enrollee to address SSOs from Mexico to the Tijuana River which then flow into the US.
23. Address how fees will be collected and distributed to the Regional Boards to support implementation of the statewide SSO WDR.