



# California Regional Water Quality Control Board

## Central Valley Region

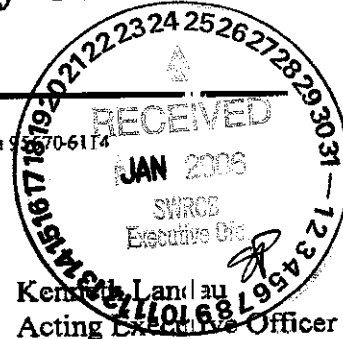
Robert Schneider, Chair



Arnold Schwarzenegger  
Governor

Alan C. Lloyd, Ph.D.  
Agency Secretary

Sacramento Main Office  
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
(916) 464-3291 • Fax (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>



**TO:** Selica Potter  
Acting Clerk of the Board  
State Water Resources Control Board

**FROM:** Kenneth Landrau  
Acting Executive Officer

**DATE:** 24 January 2006

**SIGNATURE:**

**SUBJECT:** *COMMENTS ON THE TENTATIVE STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR WASTEWATER COLLECTION SYSTEM AGENCIES*

The staff of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Regional Water Board) have reviewed the proposed statewide General Waste Discharge Requirements (WDRs) for Wastewater Collection System Agencies. We appreciate the opportunity to provide our comments.

1. Lack of Enforceability

Staff's greatest concern with this proposed WDR is that it is not enforceable. As State Water Board staff are aware, one of the items of CalEPA's recent Enforcement Initiative is that permits be written in a manner that allows enforcement. The proposed WDRs lack clear definition of a number of terms that are critical for enforcement of the Order. The WDRs rely on the terms "feasible", "reasonable", "unforeseen", "unintentional", or "appropriate". In addition, since there are no design criteria or operating standards, it is left to the Enrollee to decide what they believe is an appropriate program to prevent sanitary sewer overflows (SSOs).

For example, Provision No. C.3 specifies that the Enrollee shall take all "feasible steps" to eliminate SSOs. This permit condition is unclear and would be difficult to enforce since raw sewage overflows are frequently expensive to correct and are therefore viewed by some dischargers as infeasible to prevent. Also this requirement could be interpreted to authorize raw sewage discharges in communities where economics is an issue. In any case, the use of undefined terms such as "feasible" provides a basis for argument that weakens enforcement.

In another example, Provision No. 10 requires that the Enrollee shall provide "adequate" capacity to convey base flows and peak flows, and that capacity shall meet or exceed the design criteria as defined in the Enrollees's System Evaluation and Capacity Assurance Plan. However, when reviewing the information required by this Plan, one finds that the WDRs simply allow the Enrollee to decide its own design criteria. In addition to making the WDRs unenforceable, this provides for differing design standards and inequities throughout the State. One Enrollee may opt to spend significant resources to, for example, enlarge portions of its collection system or install larger pump stations in order to prevent

**California Environmental Protection Agency**

Selica Potter

- 2 -

24 January 2006

SSOs. Another Enrollee may decide that it doesn't want to increase the fees charged to its ratepayers, and therefore its Plan states that the current capacity is adequate – even though there are frequent SSOs from its collection system.

Although the Information Sheet states that the "Affirmative Defense" argument has been removed from the WDRs, the tentative Order still restricts Regional Water Boards' ability to enforce against SSOs. Provision No. 6 requires a Regional Water Board to consider certain actions by the Enrollee when issuing an Administrative Civil Liability (ACL). It is entirely inappropriate to include this Provision. First, California Water Code Sections 13268, 13350, and 13385 already state the factors to be considered in assessing an ACL. Second, the inclusion of specific items which the Regional Water Board "will consider" implies that if the Enrollee complied with these items then an ACL is not warranted. At a minimum, the term "will" should be changed to "may", a requirement should be added that the Enrollee must submit adequate information regarding all the factors in its spill report, and a statement should be added that the burden of proof is on the Enrollee. Finally, one of the items to be considered is whether the Enrollee followed its Sanitary Sewer Management Plan. Certainly if an Enrollee has not complied with the Plan, enforcement is warranted. However, because WDRs allow the Enrollee to dictate the design criteria of its system, its emergency response measures, the frequency of inspections and maintenance, and what constitutes adequate inflow/infiltration prevention, plans may be inadequate. It is much more appropriate for Regional Water Board staff to review the Plan to determine whether it meets a reasonable standard of care or whether it is inadequate to prevent SSOs. If inadequate, then it would be appropriate to consider an ACL.

The tentative WDRs create the appearance that violations will be excused under certain circumstances. This approach creates confusion, makes enforcement more difficult and places the public at risk. If this permit is adopted, the Regional Water Boards will be under pressure to consider a similar relaxation for all collection system permits. State regulatory agencies must have enforcement tools that allow swift action to correct serious threats to our environment. The proposed WDRs are not protective of water quality. We owe it to the public to make it clear we do not tolerate raw sewage in our surface water.

## 2. Conflict with statutes and regulations

Sanitary sewer overflows are one of the most serious threats to water quality and public health and as such must be specifically **prohibited**, as has been the practice of the Central Valley Regional Water Board for more than 35 years. The Fact Sheet seems to say the WDRs cannot prohibit untreated sewage discharges because such a requirement may be inconsistent with all basin plans. This argument does not seem to have a legal or technical basis. For example, while the Central Valley Regional Water Board's Basin Plans do not specifically prohibit raw sewage discharges to surface waters or to land, individual WDRs and NPDES permits adopted by our Board have consistently prohibited such discharges from sewage systems.

While the proposed WDRs acknowledge that SSOs will occur, unfortunately, the proposed Order does not contain a prohibition against a SSO discharge without an NPDES permit or WDR Order authorizing such discharge. The Fact Sheet points to Provision No. 2 as stating that SSOs are prohibited, but Provision No. 2 does not specifically state this fact. It leaves the interpretation open to the reader. The proposed WDR would be much more enforceable, and would fully comply with all statutes, if it contained such a prohibition.

Selica Potter

- 3 -

24 January 2006

### 3. Conflict with existing permits

WDR and NPDES permits previously issued by the Central Valley Regional Water Board to address collection systems are, in many cases, more stringent than the tentative WDRs proposed by the State Water Board. At this time we assume that existing more stringent Regional Water Board WDRs will remain in effect. However, we would like clarification as to which requirements would apply when there are conflicts, or how the State Water Board envisions that we deal with the conflicts – including annual fees for two Orders applying to the same discharger.

In addition, we are concerned about the reporting requirements in the tentative WDR. We strongly believe that our dischargers must continue providing telephone notification to Regional Water Board staff as soon as they have knowledge of a sanitary sewer overflow, in order to allow appropriate emergency response.

### 4. Compliance time schedules are too long

While we appreciate that the compliance time schedules have been reduced from those initially proposed, staff still believe that the timeframes are too long. The proposed WDRs allow up to 3 years for full compliance requirements for large dischargers, and up to 3 years and 9 months for small dischargers. A number of entities already properly operate and maintain their collection systems, suggesting that the measures required by the WDRs are already being taken. The delay in compliance allows continued sanitary sewer overflows for those dischargers who have not responsibly maintained their collection systems to date. In addition, the delay may complicate Regional Water Board enforcement actions. It is unclear whether State Water Board intends that no enforcement actions be taken for SSOs during the period that an Enrollee is allowed to prepare its plan.

### 5. Chlorinated Washdown Water

The WDRs appear to allow the unrestricted discharge of chlorine in potable water used for washdown of a spill. We are concerned that this could harm aquatic life, and could impede our ability to conduct enforcement for this violation.

We appreciate your consideration of our comments. If you have any questions, please contact Dave Carlson at (916) 464-4836 or Wendy Wyels at (916) 464-4835.

cc: Celeste Cantu, Executive Director  
Beth Jines, Deputy Director

## California Regional Water Quality Control Board Central Valley Region

11020 Sun Center Drive #200 ★ Rancho Cordova, CA 95670  
Phone: (916) 464-3291 Fax: (916) 464-xxxx



# FAX TRANSMITTAL PAGE

Date: 24 January 2006

To: Selica Potter

From: Kenneth Landau

Sender's Phone: 464-4602

Sender's E-mail:

Number of pages  
(including cover): 4

Original will follow by IMS Mail

Subject: Memo

Comments: Comments on the Tentative WDR Requirements for  
Wastewater Collection System Agencies.