



**CITY OF SIGNAL HILL**

SSO Hearing: 2/8/06

2175 Cherry Avenue • Signal Hill, California 90755-3799

January 24, 2006

Tam Doduc, Chair  
State Water Resources Control Board  
Executive Office  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Att: Selica Potter, Acting Clerk to the Board

**Re: Opposition Letter to SSORP – 1-19-06 Public Hearing**

Dear Chairwoman Doduc:

The City of Signal Hill supports the goals of the State Water Control Board to implement the Sanitary Sewer Overflow Reduction Program throughout the State. We have operated an effective program and have minimal sewer spills and overflows. Our effective program to prevent sewer spills and overflows includes enhanced cleaning programs, as well as \$1.4 million in physical upgrades to our sewer lines and lift stations. However, we are very concerned by several aspects of the proposed statewide Waste Discharge Requirement (WDR) and the changes requested to the WDR by some environmental organizations.

**NPDES Permits Not Necessary**

The State Board should resist calls from some members of the environmental community (in their January 19, 2005, letter to the Board) to require NPDES permits for local sewer lines. NPDES permits are required for treatment plants, since they directly discharge into the State's waterways. We believe that NPDES permits are not required for cities to operate local sewers.

Cities do not and should not have a blanket absolution from liability for sewer overflows, so we understand the need for accountability. We believe that the statewide WDR will provide this accountability, including an administrative review by the Regional Board in the public hearing venue. The Regional Board and State Board also have the ability to levy fines against recalcitrant agencies and to pursue civil litigation. These fines and civil court actions can result in awards of

Ms. Tam Doduc  
January 24, 2006  
Page 2

thousands to millions of dollars. Additionally, converting the WRD to an NPDES permit is not only unnecessary, but is also legally questionable, based on a 2005 federal court decision regarding confined animal feeding facilities. For all of these reasons, we strongly urge you to keep the proposed permit, a WDR, issued under the authority of the Porter-Cologne Act of 13263.

### **Section C 6 – Enforcement Actions & Affirmative Defense**

The current draft of the permit provides eight factors that Regional Boards are directed to take into consideration if a sewer spill or overflow occurs from an “act of God” or an accident beyond the collection system operator’s control. However, the WDR does not provide for an “affirmative defense” for these unavoidable spills.

The WDR must strongly differentiate between preventable and unavoidable sewer spills and overflows. For instance, our community is bisected by the Newport-Inglewood earthquake fault, which could potentially rupture our sewer lines. Beyond earthquakes, there are clearly other acts beyond the control of any community that could cause a sewer spill or overflow. It is critical that the proposed WDR include an affirmative defense of these types of instances.

The Santa Ana Regional Water Quality Control Board adopted collection system general permit for the cities in Orange County and San Diego County in 2002. It is our understanding that this permit is very similar to the proposed statewide WDR. This permit contains an “affirmative defense.” We understand that the State Board’s own staff included a limited “affirmative defense” language in an earlier draft of this permit, however, this language has been omitted from the current draft WDR.

The statewide permit must provide a provision that affords California’s local governments the ability to defend the rare and exceptional sanitary sewer spill and overflow before the Regional Board and in a court of law. ***The proposed WDR must provide our residents and businesses with protection against the cost impact of fines and lawsuits based on sewer overflows that occur even after our collection system is managed, operated and maintained in strict compliance with this new regulatory program.*** Without an affirmative defense provision, residents and businesses will be double paying – paying for sewer system upgrades and paying for attorney’s fees and other costs associated with litigation.

Ms. Tam Doduc  
January 24, 2006  
Page 3

We have attached a copy of the language contained in the prior draft of the permit, which included the affirmative defense provisions (D. Provision 1-3). We respectfully request that this language be inserted back into the proposed WDR.

### **Financial Impacts Understated/ Financial Assistance Requested**

We have reviewed the "Costs of Implementing Sanitary Sewer Overflow (SSO) Regulations" provided by the State Board staff as attachment to the proposed WDR. We are concerned that this document severely underestimates the cost impacts of the program at **"\$5.99 per month, a very manageable sum."** Perhaps \$72.00 annually is "a very manageable sum" for the author of the report, but the report provides no basis for making this statement. This would amount to an increase in \$326,000 annually for Signal Hill's residents and businesses.

The report does not contain a written description of the assumptions it is relying upon. It appears to be based on the growth in sewer system O&M and capital improvement budgets for five-year period, for a group of Orange County cities and the combined budget of the Los Angeles County Sanitation Districts. However, we do not know from this review if the listed cities have implemented the new programs anticipated in the proposed WDR and that these new costs are included in the report.

The cost analysis should not include numbers from regional wide entities, such as the Los Angeles County Sanitation Districts, since they are so large, that their costs skew the entire analysis. We believe that that \$72.00 annual per user charge is understated. Signal Hill has recently invested over \$1.4 million in sewer system upgrades in the last three years. These investments came from the City's general fund and were not passed on to our residents and businesses for a variety of reasons.

Signal Hill is a small community, with a population of 11,000. We have difficulty in spreading costs of new programs over a user base of 4,535, with 3,381 residential users. Our annual single-family fee is \$128 and our annual single-unit condominium fee is \$96.38. The proposed annual fee of \$72.00 per user would double the existing fees.

Additionally, the report does not include an examination of household incomes and poverty rates in communities impacted by the new fees. For example, a recent study completed by the Gateway Cities Council of Government documented that over 936,320 persons in the Los Angeles River watershed are living at or below the poverty level (20.4%). There is no explanation in the staff report on how these families will be impacted.

Ms. Tam Dudoc  
January 24, 2006  
Page 4

Congress is reviewing the viability of extending the State Revolving fund, which could severely limit the financial options for local communities to meet these new regulations. The State Board should be actively seeking sources of funding to assist communities in helping to pay for the capital costs of this new program.

We look forward to working with the State Board on revisions to the proposed SSORP in order that the new program will be cost-effective and reasonable.

Sincerely,



Kenneth C. Farfising  
City Manager

cc: Mayor and City Council  
Honorable Alan Lowenthal, 27<sup>th</sup> Senate District  
Honorable Betty Karnette, 54<sup>th</sup> Assembly District  
Board Member Arthur Baggett  
Board Member Richard Katz  
Board Member Jerry Secundy  
Ms. Yvonne Hunter, League of Cities  
Ms. Bobbie Larsen, CASA  
Mr. Bryan Brock, SWRCB Staff

Attachment: Proposed Affirmative Defense Language

## **B. PROHIBITIONS**

1. The discharge of untreated sewage to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface water streams, is prohibited.
2. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spills, to any surface water body is prohibited. (This prohibition does not apply to the chlorine in the potable water used for final wash down and clean up of sewage spills.)

## **C. IMPLEMENTATION AND ENFORCEMENT OF PROHIBITION B.1**

1. The Discharger shall make every practicable effort to eliminate SSOs. In the event that an SSO does occur, the Discharger shall make every practicable effort to contain and mitigate the impacts of an SSO.
2. In any enforcement action Regional Boards will consider the efforts of the discharger to contain, control, and clean up sewage spills from its sanitary sewer system as part of its consideration of the factors required by Section 13327 of the California Water Code. The discharger shall make every effort to contain sewage spilled from their sanitary sewer systems and prevent the sewage from entering storm drains and surface water bodies.
3. The discharger shall also make every effort to prevent sewage from discharging from storm drains into flood control channels and open ditches by blocking the storm drainage system and by removing the sewage from the storm drains. The use of the storm drain pipe system to contain the sewage by blocking the drain pipes, and recovering and cleaning up the spilled sewage, in order to prevent the sewage from being discharged to a surface water body.
4. An SSOs is not a violation of Prohibition A.1, if the SSO is fully contained within a storm drain, is pumped back into the sanitary sewer system, and the storm drain that came into contact with sewage is adequately disinfected to prevent environmental or public health risks.
5. All SSOs, however, must be reported in accordance with Section E of this WDR.

## D. PROVISIONS

1. The discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action.
2. Discharges Caused by Severe Natural or Other Unforeseen Conditions – the permittee may establish an affirmative defense to an action brought for noncompliance if the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) The discharge was caused by severe natural conditions (such as hurricanes, tornadoes, flooding, earthquakes, tsunamis, and other similar natural conditions);
  - (ii) The discharge was caused by unforeseen vandalism, terrorism, or illegal discharge of pollutants;
  - (iii) New sources of grease that have not or could not have been foreseen given acceptable and appropriate procedures (including CCTV, adequate FOG Program, coordination with building department, etc...) for identifying new sources;
  - (iv) Roots that are pushed into the publicly owned section of a lateral from a private lateral source;
  - (v) Unforeseen failure of electronic equipment (including electronic switches, circuit boards, etc...); and
  - (vi) Other reasonable and potential occurrences above and beyond the control of the Discharger, which are acceptable to the permitting authority.
3. In order to establish an affirmative defense, the discharger must prove that:
  - (i) The permittee can identify the cause or likely cause of the discharge event;
  - (ii) There were no feasible alternatives to the discharge, such as retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, or an increase in the capacity of the system. This provision is not satisfied if, in the exercise of reasonable engineering judgment, at the time that the facilities were planned, the discharger should have installed auxiliary or additional sanitary sewer system components,

wastewater retention, adequate back-up equipment or should have reduced inflow and infiltration. This provision is also not satisfied if the agency does not undergo a periodic or continuing planning process to identify and correct problems;

- (iii) The discharge was exceptional, unintentional, temporary and caused by factors beyond the reasonable control of the permittee;
- (iv) The discharge could not have been prevented by the exercise of reasonable control, such as proper management, operation and maintenance; adequate treatment facilities or sanitary sewer system facilities or components (e.g., adequately enlarging treatment or collection facilities to accommodate growth or adequately controlling and preventing infiltration and inflow); preventive maintenance; or installation of adequate backup equipment; and
- (v) The permittee took all reasonable steps to stop, and mitigate the impact of the discharge as soon as possible.

