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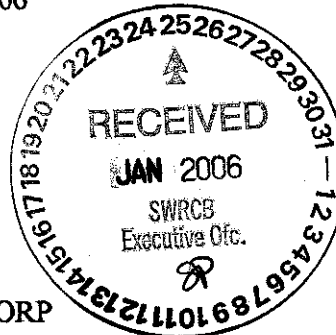
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January 25, 2006

Ms. Tam Dudoc, Board Chair  
State Water Resources Control Board  
Executive Office  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
Attention: Selica Potter, Acting Clerk to the Board



SSO Hearing: 2/8/06

Re: Comment Letter – 1/19/06 Public Hearing For SSORP

## COMMENTS ON STATEWIDE WASTE DISCHARGE REQUIREMENTS FOR WASTEWATER COLLECTION SYSTEM AGENCIES

Dear Ms. Dudoc:

The City of Los Angeles Bureau of Sanitation (Bureau) thanks the State Water Resources Control Board (SWRCB) for the opportunity to comment on the proposed Statewide General Waste Discharge Requirements (WDRs) and Monitoring and Reporting Program (MRP) for collection systems. Recognizing the need for consistent and clear regulatory requirements for the operation and management of collection systems throughout the State, the Bureau supports the proposed WDRs and MRP. The Bureau hopes that the proposed WDRs will help to streamline compliance efforts and reduce administrative burdens for both the regulatory agencies and the Permittees. As you may already know, the Bureau has been very effective and successful in its collection system management and spill reduction programs. The Bureau has worked proactively with regulators, industry representatives, and other community stakeholders in reducing the number of sanitary sewer overflows (SSOs) and in curbing their impact on the environment. Over the last several years, SSOs are steadily declining. The overall SSOs in Fiscal Year (FY) 2004-05 were approximately 45 percent less than those of the baseline FY of 2000-01. Over the last two years, as a result of a focused chemical root control and sewer cleaning activities, root-caused SSOs have been reduced by 53 percent. SSOs caused by fats, oils, and grease (FOG) were reduced by 79 percent since the inception of the FOG control program in Fiscal Year 2000-01.



While the Bureau is supportive of the proposed WDRs and MRP, the enclosed attachment is provided in hopes of improving and streamlining the proposed WDRs and MRP. We believe the changes enumerated herein will result in a more effective and successful program.

The Bureau thanks the SWRCB in advance for considering our comments. The Bureau is committed to protecting public health, beneficial uses, and the environment and believes that the proposed WDRs will help to reduce the number of SSOs statewide. The Bureau looks forward to working with the SWRCB in reducing the number of SSOs in a manner that is cost effective, fair, and reasonable. The suggestions proposed in the Attachment 1 of this comment letter will help to make the WDRs for collection systems workable, consistent, and fair throughout the entire state.

If you should have any additional comments or questions, please contact Adel Hagekhalil of the Wastewater Engineering Services Division at (323) 342-6225 or Omar Moghaddam of the Regulatory Affairs Division at (310) 648-5423.

Sincerely,



RITA L. ROBINSON, Director  
Bureau of Sanitation

Attachment 1- Comments on the Proposed Statewide WDRs and MRP for Collection Systems

- C: Cynthia M. Ruiz, Board President, Board of Public Works  
Paula A. Daniels, Commissioner, Board of Public Works  
Daniel Hackney, Mayor's Office  
Rafael Prieto, City Legislative Analyst Office  
Christopher Westhoff, City Attorney Office  
Joe Mundine, Bureau of Sanitation/EXEC  
Varouj Abkian, Bureau of Sanitation/EXEC  
Traci Minamide, Bureau of Sanitation/EXEC  
Omar Moghaddam, Bureau of Sanitation/RAD  
Adel Hagekhalil, Bureau of Sanitation/WESD  
Barry Berggren, Bureau of Sanitation/WCSD  
Masahiro Dojiri, Bureau of Sanitation/EMD  
Shahram Kharaghani, Bureau of Sanitation/WPD  
Gus Dembegiotes, Bureau of Sanitation/RAD  
  
Jonathan Bishop, Los Angeles Regional Water Quality Board

## ATTACHMENT 1

### CITY OF LOS ANGELES BUREAU OF SANITATION COMMENTS ON THE PROPOSED STATEWIDE WDRs AND MRP FOR WASTEWATER COLLECTION SYSTEMS

#### **NPDES or WDRs**

The City of Los Angeles Bureau of Sanitation (Bureau) supports the State Water Resources Control Board's (SWRCB's) decision to adopt Waste Discharge Requirements (WDRs) instead of NPDES permits. Typically NPDES permits contain language regulating Publicly Owned Treatment Works (POTW) collection systems, and the use of another NPDES permit specifically for collection systems would result in confusion and increase the administrative burden on all parties involved. Furthermore, the use of WDRs allows for inclusion and control of satellite collection systems directly by the SWRCB without placing the legal burden of requiring the POTW to regulate a satellite collection system in which it has no jurisdiction.

As discussed in the Fact Sheet of the proposed WDRs, the Bureau urges the SWRCB to implement the necessary mechanisms as part of the adoption of the proposed WDRs to ensure that all redundant and inconsistent requirements currently in place in other existing regulatory permits or requirements be cleared and resolved quickly. The Bureau is concerned with the potential layering of these requirements, which could be different for each of these governing permits or agreements.

**The Bureau requests that its collection system be governed by a single permit to avoid duplicative and conflicting requirements.**

#### **Affirmative Defense and Enforcement Discretion**

The Bureau would like the SWRCB to allow an affirmative defense for SSOs contained and collected before reaching a body of water. The inclusion of limited affirmative defense language is both lawful and necessary to protect POTWs against enforcement action based on Regional Water Quality Control Board's discretion from region to region. The Statewide General WDRs are intended to be the primary mechanism for regulating collection systems by facilitating consistent enforcement for Sanitary Sewer Overflow (SSO) violations throughout the state, but as written, it will not achieve its objective.

By denying POTWs the ability to plead an affirmative defense for exceptional, unintentional, and temporary SSOs that do not reach a body of water and that are beyond the control of the permittee, the SWRCB has essentially defeated the stated purpose of the WDRs. Enforcement discretion from region to region will still be prevalent and result in inconsistent enforcement from RWQCB to RWQCB. Permittees who exercise reasonable care in the operation, maintenance, and management of collections systems; who take all

reasonable steps to stop and mitigate the impact of SSOs; and who have fully implemented an approved and certified Sanitary Sewer Management Plan (SSMP) should be allowed to affirmatively plead these elements as a complete defense to SSOs litigation if the spill does not reach a water of the state.

Furthermore, the WDRs should explicitly state that the use of the storm drain 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 is not considered a discharge to surface waters of the state.

By including affirmative defense language instead of enforcement discretion language for spills that do not reach a body of water, the SWRCB would be sending a clear message that protection of public health, beneficial uses, and the environment is the public policy of the state, while providing for uniform enforcement from regional board to regional board; thus, meeting the intent of the WDRs.

Although the Bureau supports the inclusion of affirmative defense language in lieu of enforcement discretion language, the Bureau recognizes the difficulties associated with this issue. If the SWRCB maintains the current enforcement discretion language of the proposed WDRs, the enforcement discretion language as proposed should be very explicit and clear. The SWRCB should add language stating that even the most well run collection systems have unavoidable sewage spills.

Furthermore, the enforcement discretion language should clearly state that formal enforcement action is only warranted if the Permittee has a history of chronic SSOs that have not been addressed through corrective actions; the Permittee is not operating its system per the adopted SSMP; and the Permittee did not respond in a timely manner, where practical, to contain and mitigate SSOs.

The enforcement discretion language should clearly state that formal enforcement action would not be normally warranted for the following:

- Spills that are fully contained and collected that don't reach a water of the state.
- Exceptional spills caused by severe natural actions, rains that are at or exceed the Permittee's sewer design storm, or other factors beyond the reasonable control of the Permittee.
- When the collection system is being properly managed, operated, and maintained in accordance with the SSMP, its NPDES permit, or any requirements under court order or agreement.
- Under condition during a State declared or federally declared natural disasters or emergencies.
- If a Permittee managing their collection system has continuously operated under good faith while excising reasonable due care in the management of the collection system.

**The Bureau requests inclusion of affirmative defense language for SSOs contained and collected before reaching a body of water; if this is not possible the Bureau requests that the enforcement discretion language provide greater protection for permittees fully compliant with the terms of the WDRs, yet still experience unavoidable, exceptional, unintentional, and temporary SSOs.**

### **Consistent Implementation and Enforcement**

The Bureau is concerned that the SWRCB's intent of making the WDRs the primary regulatory mechanism for regulating SSO collection systems statewide will not be accomplished by the proposed WDRs. By allowing RWQCBs the ability to impose more stringent or more prescriptive requirements than found in the WDRs, the WDR will not meet its intended purpose of facilitating a statewide approach of consistent enforcement for SSOs.

In instances where RWQCB's believe they need to impose more stringent or more prescriptive requirements than those found in the proposed WDRs, the RWQCB should have to obtain SWRCB approval and amend their respective basin plan prior to any more stringent or prescriptive requirements becoming effective.

The Statewide General WDRs are supposed to reduce administrative burdens, provide for unified consistency and a statewide approach for reporting and tracking SSOs, and facilitate consistent enforcement for violations. The Bureau is concerned that consistent, predictable, and fair implementation and enforcement will not take place from region to region due interpretation differences among the various regional boards throughout the state.

**The Bureau requests that RWQCBs be required to follow the formal administrative procedures to amend their basin plan for imposing more stringent or more prescriptive requirements than found in the proposed WDRs/MRP.**

### **SSMP Time Schedule**

The draft WDRs set forth specific due dates for various sections of the SSMP depending on the population of the collection system service area. The Bureau supports different completion dates for different size collection systems and the three-month implementation period to apply for permit coverage. However, the WDRs should focus on crucial elements and implementation of an effective SSMP rather than on dates for individual tasks that make up the SSMP.

Overflow emergency response plans are essential to protect public health and the environment. Reporting of SSOs and an effective emergency response plan are crucial for the prevention of SSOs and should be put in place as soon as possible. But only the reporting of SSOs and completion of an emergency response plan require an early-

expedited completion date, not the other elements of the SSMP. If the SWRCB believes that it is important to track the development of SSMPs, the City suggests that the WDR require annual updates regarding the completion of the SSMP while allowing POTWs the flexibility to implement specific elements of the SSMP appropriate to their particular circumstances.

In addition, the proposed WDRs should address the implementation schedule for the SSMP as it relates to the enforcement discretion since the enforcement discretion is clearly tied to compliance with the SSMP. The Bureau is concerned as to the effectiveness of the enforcement discretion between now and the date when the SSMP will be in place.

**The Bureau requests that the WDRs set a schedule for the reporting of SSOs, completion of an overflow emergency response plan, and completion of the SSMP, but remove all the other intermediate schedules, milestones, and interim deliverables.**

#### **Definition of Major and Minor Spills**

The definition of Major Spills is too broad. It should be consistent with other definitions and requirements in other existing NPDES permits and orders. Major spills should apply to all SSOs of 1,000 gallons or more or 500 gallons or more if it flowed to receiving waters or has public exposure. Under the definition as written, a 1-gallon spill to the curb or stormdrain could be considered a Major spill even if completely contained and collected.

Furthermore, the definition of a Major spill should not include nuisance or spills that threaten to create a condition of nuisance. As written, any spill could be considered a Major spill. For example, if a 5 gallon spill occurs but is contained and collected, it could still be considered a nuisance if it creates odors in the neighborhood. By labeling spills that create a nuisance as Major spills, the SWRCB is essentially declaring that all spills are major which will defeat the purpose of the WDRs.

The intent of distinguishing some spills as major spills is to ensure quick response and notification for those spills that could impact public health, safety and the environment. As such, defining whether a spill is major shouldn't be subjective and should be very explicit based on volume of spill.

**The Bureau requests that Major spills be defined as all SSOs of 1,000 gallons or all SSOs greater than 500 gallons that flow to receiving waters or have public exposure.**

#### **Notification and Reporting and the SSO Database**

The current definitions for notification and reporting and in the SSO Database are what are currently used to immediately notify the health departments, the regional boards and Office of Emergency Services (OES). Special consideration should be given to the impact of the

additional calls made to these agencies based on the definition of major spills as proposed in the WDRs.

Although the goal of electronic reporting in the proposed WDRs was to help streamline the reporting process, the proposed WDRs require the Permittee to make individual calls to health departments, regional boards, and OES. Since the majority of spills within the City are less than 500 gallons and do not reach waters of the state, it would be overly burdensome to require multiple phone calls to multiple agencies if these spills are ultimately defined as major based on the current definition in the proposed WDR. The goal of immediate reporting is to protect the public from potential health threats associated with sewage spills; thus, the City requests that individual calls be required only for spills greater than 1000 gallons and for all spills greater than 500 gallons in which any portion reaches a water of the state or has public exposure.

The WDRs should specify that reporting a spill electronically within 24 hours of knowledge of a spill satisfy all notification requirements of the WDRs because of the automatic emails that are generated and sent to the RWQCB, DHS, and OES. As a backup in case the computer system is down or not operating properly, a backup phone number can be provided to ensure the proper parties are notified. After this initial timely electronic notification, the burden should shift to the SWRCB to ensure that appropriate agencies are timely notified. Furthermore, the SWRCB should coordinate with other RWQCBs and the U.S. EPA before finalizing the WDRs to avoid duplication of notification, reporting, and enforcement activities.

The WDRs need to emphasize that reporting spills caused by circumstances on private property and not caused by the Permittee's collection system are not the liability of the Permittee. Furthermore, there should be a separate section regarding the SSO electronic database that records spills caused by circumstances on private property. The separate screen should not be associated with the Permittee and its performance measures and should not be included in the total count of spills for that respective collection system.

**The Bureau requests that reporting electronically within 24 hours of the spill satisfy all notification and reporting requirements to avoid duplication of notification, reporting, and enforcement activities.**

### **WDR Fees**

The Bureau currently pays over \$300,000 a year in fees and surcharges for its NPDES permits. Agencies currently paying permit fees under the NPDES programs should receive some credit towards the WDR fees for collection systems since the NPDES permit fees already include both treatment compliance and collection system components.

**The Bureau requests a credit be applied toward the WDR fee since the NPDES permit fees already cover collection system components.**