



California Regional Water Quality Control Board

Central Coast Region



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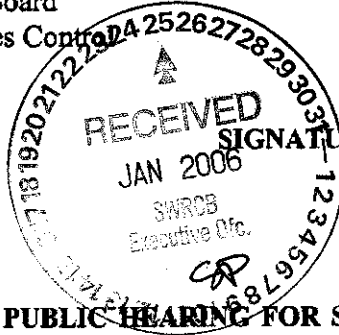
Arnold Schwarzenegger

SSO Hearing: 2/8/06

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

FROM: Roger Briggs
Executive Officer

DATE: 25 January 2006



SIGNATURE: *[Handwritten Signature]*

COMMENT LETTER – 2/8/2006 PUBLIC HEARING FOR SANITARY SEWER OVERFLOW REDUCTION PROGRAM (SSORP)

Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff has reviewed the proposed Statewide General Waste Discharge Requirements (WDRs) for Wastewater Collection System Agencies (General Permit). We appreciate the opportunity to provide our comments.

General Comments:

1. Privately owned treatment works (as opposed to private laterals) should not be exempt. The General Permit should provide a minimum design capacity that is subject to WDRs and state that the schedule starts for private plants upon notification, rather than upon adoption.
2. The argument regarding basin plan consistency is not compelling. It is unlikely any basin plans would have language allowing sanitary sewer overflows (SSO). Furthermore, there are only nine basin plans so State Board staff could simply read them. The Clean Water Act (CWA) prohibits spills to surface waters. Even if there are not specific Water Quality Objectives (WQO) in all Basin Plans that are violated by other spills, spills can be prohibited under nuisance authority.
3. The fact sheet should not be incorporated into the WDRs.
4. The WDRs should provide regulation of private laterals. The WDRs could regulate some laterals serving developments of a certain size or category (e.g., mobile home parks). The WDRs should require the collection system operators to ensure that private laterals, especially those with known problems, do not have overflows. (Some of this may be addressed through Municipal Separate Storm Sewer Systems' Storm Water Management Plans.)
5. Provision C.2.iii. should explicitly allow for WDRs that are more stringent than the statewide WDRs, not just National Pollutant Discharge Elimination System (NPDES) permits. As currently written, Provision C.2.iv. appears to apply only to WDRs issued before the statewide WDRs.
6. Provision C.13.ii. references Section H (Incomplete Reports). This section needs to be changed to support Section C.13 in developing the SSMP organization.
7. Provision C.13.iv. should include the development of a mechanism to address spills from private laterals (i.e., response activities, containment, jurisdictional area, potential cleanup, and

California Environmental Protection Agency



regulatory mechanisms for violations). This section could benefit by adding in fiscal resource and staffing descriptions.

8. Provision C.13.vi. (Overflow Emergency Response Plan), should also require the agency to describe timely response protocol, access to emergency spill equipment, and any alarms associated with the collection system.

Enforceability Comments:

1. It does not appear necessary to "write in" the Regional Water Boards' discretion to consider feasibility. The contradiction between that language and the CWA prohibition and/or applicable basin plan provisions will likely complicate our enforcement response.
2. The WDRs clearly do not authorize prohibited discharges under CWA; however, the Regional Water Boards have to consider factors that would make enforcement more difficult. The end result is the same as weakening the prohibition, assuming there is no compliance without the possibility of enforcement.
3. Administrative Civil Liability (ACL) considerations in paragraph 6 should be taken out, especially for 13385 ACLs. Mandating these considerations in all cases is contrary to statute, and the Regional Water Boards can clearly consider these factors at their discretion. Also, if the WDRs do not contain discharge prohibitions, most enforcement will likely be based on violation of the CWA prohibition on unpermitted discharges or violation of a Basin Plan prohibition. Since these are outside of the WDRs (i.e., the violation being enforced would not be a violation of the WDRs, but violation of a prohibition), it is inappropriate for the WDRs to weaken the enforcement tools. If the WDRs, including paragraph 6, are not intended to apply to such cases, they should be revised to make that clear. The WDRs' requirements to take reasonable and feasible measures already build in the paragraph 6 factors, so paragraph 6 is redundant when enforcing the WDRs. If paragraph 6 is not stricken, then we suggest including the following: (i) change "will consider" to "may consider," and (ii) require the Enrollee to report information regarding all factors in paragraph 6 in the spill report, and (iii) state that the discharger has the burden of proving these factors should lower the amount in a given case.
4. Provision H.1 should specify that Provision H.1 does not preclude enforcement for late or deficient reports.
5. The suggestion that a basin plan WQO makes any spill "illegal" is misleading. Regional Water Boards can take enforcement for a prohibition violation, but unless there is a permit or WDRs incorporating WQOs into effluent or receiving water limits, WQOs alone do not provide a basis for enforcement or make a spill "illegal." The fact sheet discussion and WDRs language on this point require more clarity.

Program Reporting Comments:

1. Provision F.2 (General Monitoring and Reporting Requirements (MRP)) should say it does not supercede any MRP of a Regional Water Board (not just MRPs pursuant to enforcement Orders). If a Regional Water Board rescinds existing SSO requirements, the associated MRP will also be rescinded so there would be no conflict. The current language could cause confusion if other types of MRPs have been issued.

2. Sanitary Sewer Management Plan (SSMPs) should be submitted to the Regional Water Board (not just made available) and the WDRs should state that the Regional Water Board's failure to comment on the SSMP shall not be deemed as approval of the SSMP.
3. The requirement for "updating SSMP every 5 years" should include "or when necessary due to significant program changes." The current language suggests an Enrollee can make significant program changes, but not put them into the SSMP until the five-year review. The MRP should also provide for more frequent updates as directed by the Regional Water Board or if there are significant or numerous violations.
4. Reporting three days after the Enrollee is "made aware of" the spill suggests the Enrollee is not required to assure that it has prompt knowledge of spills. The agencies should be required to have an adequate proactive program that facilitates early reporting of spills. In addition, waiting three days to advise the Regional Water Board could impede our enforcement and inspection efforts.
5. The WDRs should have reporting requirement for all known private lateral spills. This should not be voluntary. Additionally, there should be a requirement setting up a reporting program for spills from laterals, such as a municipal ordinance that requires private lateral owners to notify the collection system operator.
6. Telephone reporting requirements to call the Regional Water Board should be made explicit.
7. The compliance schedule should say that it does not supercede existing compliance schedules (or implementation timeframes for SSMPs already developed) by any Regional Water Board.

We appreciate your consideration of our comments. If you have questions, please call **David LaCaro at 805 549-3892.**

cc: Bryan Brock, Senior Engineer