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October 19, 2009

Waste Discharge Requirements Unit  
State Water Resources Control Board  
1001 I Street, 15<sup>th</sup> Floor  
Sacramento, CA 95814

**Re: SSO Reduction Program Review and Update**

To Whom It May Concern:

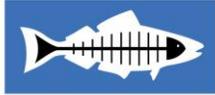
On behalf of Heal the Bay, we submit the following comments on the Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report (“Report”) and SSO Reduction Program General Water Quality Order No. 2006-0003\_DWQ (“WDRs”). We appreciate the opportunity to provide these comments.

**I. Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report**

**The State and Regional Board must Prioritize Enforcement Actions**

The enforcement record presented in the Report is dismal: “[d]uring fiscal year 2008-2009, CIWQS data shows a total of six formal enforcement actions have been taken by Regional Water Boards, resulting in more than \$2 million in assessed liabilities for SSOs throughout the state.” Report at 10. There were only six enforcement actions, yet there were approximately 12,000 reported SSOs with nearly 28 million gallons reaching surface waters (this is a 0.05% enforcement rate). What deterrent will those enrolled under the WDRs have to correct their systems with practically no threat of enforcement? Also aren’t certain SSOs subject to Mandatory Minimum Penalties (SB 709, Migden, 2000)? Further, the enforcement section of the Report does not discuss important questions such as what type of enforcement actions were taken, who was enforced upon, what were the criteria used to determine who to enforce upon (i.e. largest spill, biggest public health threat)? These questions should be answered in the assessment.

In addition to enforcing in response to the SSOs themselves, it is crucial that the State and Regional Boards address other non-compliance issues. For instance the Report states that “[t]he average monthly reporting compliance rate of 61% is less than the target level of 100%. The reporting rate also dropped off in January 2009 to 58%. Earlier in the year, staff sent out emails to enrollees reminding them that they must report spills or submit no-spill certifications. This was effective in increasing compliance, but the effect appears to have been temporary. Staff is developing a more comprehensive strategy for dealing with this noncompliance.” Report at 12. What was the reason for this low reporting compliance rate? With 59% or more of the dischargers not reporting to the State Board, it is possible that additional spills are occurring and



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the appropriate agencies and the public are not being informed of spills. Also, did the reports that were submitted provide the critical information required in the WDRs such as monitoring that was performed and the public and agency notification actions taken? These are critical elements in the reports that need to be verified and discussed in the program assessment. The Report claims that staff was to develop a SSO Compliance and Enforcement Plan by June 2009. Report at 10. Was this drafted? Is it available for public comment?

### **The Report Lacks Key Pieces of Information**

#### Public Notification

SSOs are a huge threat to public health. Those who recreate in surface waters impacted by a SSO have an increased risk of becoming sick. Thus, timely and effective public notification is a key element to any SSO program. In fact, it is arguably the most important part of the program. The WDRs require the discharger to conduct “[a]dequate public notification to protect the public from exposure to the SSO.” Further the WDRs require that “[i]nformation regarding SSOs must be provided to Regional Water Boards and other regulatory agencies in a timely manner and be made available to the public in a complete, concise, and timely fashion.” However, this critical element of the SSO program is not even discussed in the Report. What actions were taken to inform the public of spills? What was the timeframe for such actions? How many of the reported spills that made it to surface waters resulted in a public notification/closure action? Under AB411 beaches must be closed in the event of a significant sewage spill reaching bathing waters. Failure to close the beach is yet another violation category that was not included in this assessment. These are critical questions that should be included in a SSO program assessment.

#### Monitoring

In addition, the WDRs require “[a]dequate sampling to determine the nature and impact of the release.” What sampling efforts were conducted by those dischargers reporting SSOs? Were all receiving waters sampled at an appropriate frequency to determine the extent of impacts and when the waters were again meeting water quality standards? This is another critical piece of information missing in the Report.

#### Spatial Analysis of Spills

It is difficult to discern the severity of a spill from the Report. For instance, a spill that is less than 1,000 gallons might have been directly into a “Rec-1” receiving water and could therefore be much more problematic than a much larger spill into a grassy field miles away from any storm drain or receiving water. The Report should include a spatial analysis of the spills and an analysis of proximity to Rec-1 receiving waters. The State and Regional Boards should not rely on volume amount to determine the severity of a spill.



## **Miscellaneous**

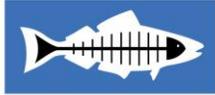
- The numbers in your data analysis of SSO and PLSD spill volumes do not add up. For example in Table 3, the “total volume” is given as 35,769,735 gallons, yet 12,459,502 gallons were reported as recovered and 27,383,974 gallons reached surface water. Please clarify why the gallons recovered and reached surface waters does not equal the total spill gallons.
- As stated in the Report, “[t]he State Water Board has released a new interactive geographic information system (GIS) Web based display of sewer spill information to the public in May 2009 that depict SSO and PLSD incidents (sanitary sewer systems only, not from wastewater treatment plants) that have been reported to CIWQS by enrollees.” Report at 9. Why should the public have to go to different maps to find SSOs and wastewater spills? It would be most useful if all spill information was located in one central location. Also, it would be very useful if there was a special notation on the map of those dischargers that are not in compliance (i.e. non-filers or non-reporters). This can serve as a tool to “shame” dischargers into compliance.

## **II. General Water Quality Order No. 2006-0003\_DWQ**

Heal the Bay has significant concerns that the WDRs (General Water Quality Order No. 2006-0003\_DWQ) do not adequately fill the role of the “primary regulatory mechanism for sanitary sewer systems,” as intended by the State Board (WDRs at 2). For instance, the WDRs do not include *specific* requirements for areas vital to maintaining water quality and ensuring public health such as monitoring SSO impacts and promptly notifying the public of spill events. Further, there is no guarantee that the discharger-developed-and-approved Sewer System Management Plans (SSMPs) will provide these necessary details. Our comments are discussed in more detail below.

### **The Monitoring Requirements should be Enhanced to Adequately Characterize SSO Impacts.**

The WDRs call for “adequate sampling to determine the nature and impact of the release.” (WDRs at 9). How does the State Board define “adequate sampling,” as there is no sampling protocol included in the WDRs? The Monitoring and Reporting Program of the WDRs should *require* extensive sampling for any spill reaching a receiving water, as this is an unregulated discharge to a surface water. The WDRs should outline specific procedures for conducting



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monitoring that captures the size of the plume and any variability in the system. Specifically, the State Board should outline a detailed water quality monitoring protocol that includes parameters, such as frequency (i.e. daily or hourly sampling), number of sample points (i.e. 3 upstream and 3 downstream), time of collection (i.e. a set time after a spill has occurred), upstream and downstream distances of the spill (i.e. every 100 yards). Spill monitoring efforts should occur until such time as Fecal Indicator Bacteria densities are below water quality standards. Then, and only then, should a beach be reopened. Such a protocol is necessary to capture the variability in the type of spill and current environmental conditions such as tides, flows, time of day, and currents. Also, all spills that visibly reach receiving waters must be monitored immediately. It should take no more than two hours after the spill is known to reach receiving waters to initiate receiving water sampling after a spill.

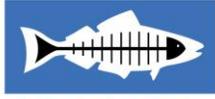
In addition, the WDRs should require that the discharger secure an additional, unbiased party to collect samples concurrently with its own sampling. In other words, the agency responsible for the pollution should not be the only party monitoring all aspects of a possible catastrophic event. This critical weakness was highlighted during the major Manhattan Beach spill several years ago. In that case, ideally, the independent party should have been the Los Angeles County Department of Health Services, however, the health department failed to fulfill that role. Many parties and the public have questioned how the Manhattan Beach sewage spill was handled in terms of volume estimates and sampling protocol, both of which were conducted solely by the Los Angeles County Sanitation Districts. Independent involvement in such an effort helps to ameliorate, if not eliminate, perceived or actual bias in the reporting process. Given the breakdowns that occurred during recent events, we urge the State Board to revise the WDRs to require third party participation.

### **SSO Online Reporting Should Include a Description of Receiving Water Impacts**

The WDRs require reporting of “[w]hether or not the SSO entered a drainage channel and/or surface water” and “[b]eaches impacted (if applicable).” In addition, there should be a requirement to specify any Rec-1 receiving waters that were impacted. Any waters that have an existing or potential beneficial use for contact water recreation must be included in the reporting.

### **Public Notification Should Take Place as soon as possible but Not Later Than Two Hours After Knowledge of an Incident, and Notification Procedures Should be Independent of Spill Volume.**

The WDRs call for “adequate public notification to protect the public from exposure to the SSO.” (WDRs at 9). Again, what does the State Board find to be “adequate?” The WDRs outline SSO Reporting timeframes but do not include notification specifics. After a spill to receiving waters of any size is identified by a responsible party, notification should take place *immediately*, so that water quality and public health are not compromised due to a reporting



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time-lag and appropriate protective measures are implemented in a timely fashion. A two-hour maximum after the spill is known to reach receiving waters for completing public notification is more appropriate as public notification will become a priority for the discharger in the event of a spill and not just an after-thought. Notification cannot consist of leaving a message on an answering machine. Notification must be directly to a Regional Board staff member. In addition, the State Board should include local media as part of the public notification protocol for spills to beaches and spills deemed a threat to public health. The public is blatantly absent from the Overflow Emergency Response Plan in the WDRs. The WDRs state that “[p]rocedures to ensure prompt notification to appropriate regulatory agencies and other potentially affected entities (e.g. health agencies, regional water boards, water suppliers, etc...) of all SSOs that potentially affect public health ...” (WDRs at 12). Clearly, the public is a “potentially affected entity” and should be promptly notified of a SSO via the media or other means.

Simply stated, much of the language in the WDRs is weak and nonspecific. The vagueness of the permit language can be interpreted in many ways, which will translate into inconsistent applications in the development of SSMPs Statewide. Moreover, relying on discharger-approved SSMPs to provide the details is not an appropriate form of regulation. Given recent events, along with these weaknesses in the WDRs, the State Board should re-examine this language at this time and include a more detailed protocol for appropriate spill response measures.

If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500. Thank you for your consideration of these comments.

Sincerely,

Water Quality Director