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October 19, 2009

Via Electronic and U.S. Mail

Darren Polhemus
Deputy Director, Division of Water Quality
State Water Resources Control Board
P.O. Box 100
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Subject: Sanitary Sewer Overflow (SSO) Reduction Program Review and Update

Dear Mr. Polhemus:

The above-listed clean water associations and others that represent public agency interests (Associations) thank you for soliciting our comments with regard to possible revisions to the Waste Discharge Requirements (WDR) Order 2006-003 related to Sanitary Sewer Overflows (SSOs). The Associations have carefully considered the questions that your staff proposed in advance of the two discussion meetings held in September. In addition, many of our members participated in the thorough task force efforts to help State Water Board staff create the SSO WDR. The task force process drew on the lessons learned from regional programs initiated in prior years and allowed stakeholders to reach agreements on many of the key issues. A great deal of technical work was involved, as well as considerations of public policy and funding, and a determination of what was achievable. Our members work with the requirements of the SSO WDR on a daily basis and are responding to your questions with that experience in mind.

In our view, implementation of the SSO WDR should be allowed to reach completion of its initial stated goals for enrollment and reporting by all public agencies before major changes are made. The full SSO WDR program has been in effect for all agencies for only two years, and the requirement for some agencies to complete their Sewer System Management Plans (SSMPs)

does not occur until the summer of 2010. Many enrollees are still in the initial stages of the implementation period for this SSO WDR. General WDRs typically remain in effect for an extended period much greater than a couple of years, in recognition of the time required to implement programs and conduct studies and evaluate the data collected. Moreover, results from efforts to improve collection system performance, particularly where capital improvements are necessary, will occur over a number of years, and should not be expected to occur on the same timeframe as implementation of the spill reporting system.

The results of the first two full years of WDR implementation are impressive. The State Water Board and collection system agencies deserve to take pride in these accomplishments. As was shown at the WDR program review meetings held in September, all but one office in one region showed a reduction in SSOs. At the hearings of September 29, 2009, Ken Greenberg of EPA Region 9 staff commented that “. . . the WDR is to be applauded. No State has [a program] as good.”

The Associations believe that the program is at a point where the State Water Board could most positively focus its resources on achieving compliance with the existing program, which has not yet been completely implemented. The slide show presented by State Water Board staff at the September workshops indicated that nearly forty percent of agencies are not reporting on a regular basis. Fifteen percent of agencies have not even completed the CIWQS questionnaire. Only half of the agencies have certified completion of their SSMPs. The lack of reporting by the non-compliant agencies is unfair to the agencies that *are* reporting, and the map of spills shown on the Water Board's website is misleading to any viewer of the website because of the agencies that are not yet included in the program or are not reporting appropriately.

It is also noteworthy that only four percent of SSOs are greater than 1,000 gallons in volume, which is the reporting threshold contained in Title 23 regulations for the purposes of reporting unauthorized discharges under California Water Code section 13271. (23 C.C.R. § 2250.) These data are readily available for all reporting entities and should be used to inform the enforcement program. Most small SSOs are very unlikely to cause a public health or water quality impact and, therefore, should be given much lower priority. Rephrased, the category of small spills represents more than ninety-five percent of the reported spills. The State Water Board is about to consider adoption of a revised Water Quality Enforcement Policy that confirms that the state's limited enforcement resources should be focused on violations that pose an immediate and substantial threat to water quality, as well as on those entities that avoid water quality regulation. We concur with these priorities.

During the last two to three years, collection system agencies have been developing their SSMPs, increasing funding by their public rate-payers for their collection system activities in a process that usually takes a year or more, and participating in training in order to make improvements in their operational capabilities and reach compliance with the WDR.

We suggest the WDR be left unchanged for the present. Making major changes in the requirements of the WDR now will result in confusion and new challenges for collection system agencies, the State Water Board, and Regional Water Boards. Many of the smaller agencies and some of the larger ones are just becoming accustomed to the reporting challenges and are beginning to feel comfortable with their compliance requirements.

The CIWQS reporting system is only now reaching a level of maturity such that it is not a software challenge for agencies to enroll, complete the questionnaire, and report. State Water Board staff have worked hard to resolve the initial enrollment, questionnaire, and reporting problems in the system. That process is not yet complete, but progress continues to be made and no *new* reporting software issues have been listed in the past few months. This is good news and yet another reason to allow the system additional time to function without substantive revisions, with the exception of remaining reporting and other issues, as identified by the CIWQS SSO Users Group, which should be resolved administratively.

At this point, we believe that additional efforts by the State Water Board to analyze program data would be useful and appropriate. This effort should seek to ensure the accuracy of reported information, completeness of information, and to identify if there are performance concerns that need to be strategically addressed either as a whole or by individual permittees. This type of review could also ensure that future attention is focused on the most important issues when considering protection of public health. This focus is critical to permittees as it will help to concentrate their efforts on the highest priority issues during this time of limited resources. We applaud the concept of a data review workgroup including stakeholders, so that trends may be noted and addressed.

Perhaps part of the solution for the non-compliance issues of poor reporting or non-reporting is providing more education and outreach. The apparatus is in place to conduct classes in reporting and in constructing an SSMP. The Memorandum of Agreement between the State Water Board and the California Water Environment Association has served the needs of this initiative well and is in the process of being renewed. For example, the need for more standardized volume estimation techniques was raised. Such techniques exist, are reliable, and at least three complementary methods have been heavily used in the industry. Agencies that may not yet be aware of such tools or are not seasoned in their use could be assisted. These types of refinements can be administratively included in the existing program.

In addition to focusing on non-compliance with reporting requirements, there are a number of improvements to the reporting system that can, and should, be made administratively without revisions to the WDR. Issues raised during testimony include requested changes in the spill database and mapping features. The functionality of these electronic tools can be augmented without the need to reopen the SSO WDR.

Concern about reporting private lateral spills was raised at the September meetings. We believe it is unlikely that they lead to significant environmental harm or customarily to public health issues, though clearly they can be a personal property issue. At the present time, such reporting is voluntary for agencies that have no authority over these private lines and typically have no knowledge of the occurrences of such spills. Including these lines in the required reporting would provide less accurate and less consistent data to the state's database, thereby diluting its dependability and usefulness.

Furthermore, these types of events that impact private property owners (which are usually very small in volume and do not reach receiving waters) fall under the jurisdiction of local health officers. It is recommended that the State Water Board first work with the California Department of Public Health and local environmental health officers to determine if the desired information can be obtained through mutual agency cooperation. We believe that public health agencies have the best knowledge of overflows from lateral spills, and are, in most instances, the most appropriate agencies to respond to private lateral spill issues.

However, on the issue related to public laterals, there are changes that need to be made to the CIWQS reporting system. Current SSO reporting combines all SSOs, whether they originate from a sewer mainline or a public lateral sewer line, which does not provide an accurate comparison among collection system agencies. Many agencies may not own lateral lines from a private property boundary to the mainline of the collection system. However, those agencies that do own this type of lateral will show a higher number of overall spills if there is not a separate category for reporting these "public lateral" SSOs. Unfortunately, in the CIWQS reporting system sewer laterals are included in the performance measure of number of spills per 100 miles of pipe. As a result, when SSOs for miles of lateral lines and mainlines are combined, it unfairly characterizes an agency's performance. We recommend the CIWQS database and SSO/mile data should reflect only mainline spills as a performance measure. This will give a solid baseline and consistency to the data that is needed to properly evaluate if the SSO WDR is working.

In summary, the Associations believe that reopening the SSO WDR at this time would be premature and we believe it would not be in the public interest to spend resources making changes at this early stage of the program.

We look forward to continuing to work with you to make this program increasingly efficient and effective.

Sincerely,

A handwritten signature in black ink, appearing to read "David Tucker", written in a cursive style.

David Tucker, BACWA



Roberta Larson, CASA



Karen Keene, CSAC



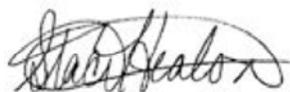
Darren Greenwood, CWEA



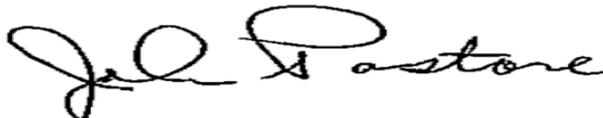
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