



October 19, 2009

VIA EMAIL AND U.S. MAIL

Waste Discharge Requirements Unit
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, California 95814

Re: Comment Letter - SSO Program Review and Update; Review and Update of the Sanitary Sewer Overflow Reduction Program including its General Waste Discharge Requirements for Sanitary Sewer Systems (SSO General Order), Order No. 2006-0003-DWQ

Dear Waste Discharge Requirements Unit:

This letter is submitted to the State Water Resources Control Board (State Board), Waste Discharge Unit, on behalf of various municipal and public agencies that our firm represents in Los Angeles and San Bernardino County and which are subject to the requirements of the Sanitary Sewer Overflow Reduction Program (Program) including its General Waste Discharge Requirements for Sanitary Sewer Systems (Order), Order No. 2006-0003-DWQ. As Public Agencies that are subject to the Order, the following are our concluding comments at the close of the Public Meetings held to obtain comments to the Order. Charles Abbott Associates, Inc. (CAA) staff attended and participated in the September 15, 2009 Public Meeting held in Orange County. In communication with our clients and other Public Agency staff, we submit the following comments for the State Board's consideration and adoption. We look forward to working with the State Board and its staff in developing well considered and reasonable regulations, however, it must be acknowledged that implementation efforts of the Order are still in early stages of the Program.

Introduction

The Order was adopted by the State Board on May 2, 2006. The Order was enacted to, "...provide for a consistent state-wide approach in reducing sanitary sewer overflows." The

regulations define a sanitary sewer overflow (SSO) as, "...an overflow from a sanitary sewer system of domestic wastewater, as well as industrial and commercial wastewater." The Order required each Public Agency that owned or operated one mile or more of a sanitary sewer collection system to develop a Sewer System Management Plan (SSMP). The SSMP was to address and detail how each affected Public Agency planned to comply with the Order. As part of the Order, the State Board also created a systematic and statewide reporting system. This reporting system required each Public Agency to submit monthly reports indicating whether a SSO occurred in their jurisdictional area.

Comments to the Proposed Order Modification

As a representative of Public Agencies that have worked diligently to develop and implement the Program as found in the Order, we submit the following comments for the State Board's consideration.

Programmatic Changes

Implementation of the Order should be given additional time before major program modifications are made. The full Order and related program(s) have only been in existence for two (2) years and some agencies are not required to have their Sewer System Management Plans (SSMPs) completed until August 2010. We believe that any reopening and change to the Order is premature.

During the last two (2) to three (3) years, the majority of Public Agencies have been developing their SSMPs, increasing budgets for their collection system activities (a process that usually takes a year or more), and training staff in order to comply with the Program and Order. The State Board, its Regional Board's, and the Public Agencies are still at the beginning of the implementation period for this new Program. We therefore request that the State Board simply needs to allow more time for the Public Agencies to develop and

implement their SSMPs as planned. It would be inappropriate for the State Board to undertake changes in the Order and requirements of the Order at this time. It will create confusion within the regulated, political and regulatory communities and make it even more challenging for the Public Agencies to effect changes.

Increase in SSOs Is Not Reflective of Improvement(s)

One of the potential reasons used to modify the Order was that the total number of SSOs reported to the online electronic database (a.k.a., CIWQS) had increased. We believe that this increase of SSOs is due to the consolidation and uniformity in reporting, which was not previously available. We believe, as with other affected Public Agencies, that the State Board and its staff should not adjudge the increases until the data can provide some overall trend analysis. We also believe that once the affected Public Agencies implement the full requirements of the Order, the State Board will then be better situated to more adequately determine those agencies that are in need of additional assistance, those meeting the goals and objectives of the Order, and those where enforcement may be appropriate. As a consultant to the effected Public Agencies, it is simply too early to determine these program issues.

Increase Enrollment & Participation

We believe that the State Board, instead of reopening and modifying the Order, should instead seek out and require those entities that have not enrolled to implement the Order requirements. It seems that requiring full participation across the board should be a higher priority than reopening regulations that have yet reached maturity.

Help Not Hinder

Some Non-Governmental Organizations (NGOs) have indicated their desire for greater enforcement against for reported SSOs by public agencies that have enrolled and that have

submitted the requisite data and information. We disagree that this is the best approach. For Public Agencies that have experienced SSOs, but that are enrolled and undertaking all necessary and required actions, the State Board should attempt to further *assist* and *enhance* their programs. Penalties, as always, should remain the last resort for those Public Agencies that have or continue to ignore the required regulations. Education and technical assistance, particularly for participating and smaller agencies, are the most important issues at this stage to achieve the overall goals and objectives of the program.

Private Lateral Responsibilities

We understand that both NGOs and the U.S. Environmental Protection Agency (U.S. EPA) have requested that the State Board make the Public Agencies responsible for private laterals - the portion of the sewer system that connects a home or building to the publicly owned sewer system. As you are aware, most local agencies do not own or have legal responsibility over these private properties. We strongly disagree with this position and believe that State and Federal laws cannot be subrogated so simply. Entry by any governmental official onto private land and property, without emergency, is constitutionally prohibited without warrant and court order. Should the NGOs and U.S. EPA pursue this option, they should be required to provide a detailed legal analysis, with their agency's certification, that such action is: 1) warranted; 2) in accordance with both State and Federal laws and constitutions; and 3) necessary to achieve the goals of the Order.

III. Conclusions & Recommendations

In conclusion, we recommended that the State Board give the Order additional time before undertaking major changes and or modifications because the full Order and its related programs have only been in existence for two years. Some agencies have not yet been required to have their SSMPs completed. We believe that any reopening and change to the Order at this time is now premature. We recommend that the State Board continue with its existing Program and

focus on improving the current Program requirements until fully implemented and can be examined in total.

We look forward to working with the State Board, NGOs, and other Public Agencies in creating a workable and viable system of regulation. If we can answer any question or address any concern, please feel free to contact me at your convenience.

Yours truly,

Charles Abbott Associates, Inc.

Kevin Powers
Environmental Compliance Manager

KP:kjp

cc: City of Hidden Hills, California
City of Bell, California
City of Palos Verdes Estates, California
City of Norwalk, California
City of Hawaiian Gardens, California
Kimberly Colbert, Director, Environmental Services Division, CAA