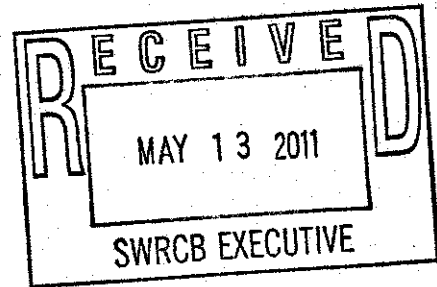




May 13, 2011

Via email: commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814



Subject: Comment Letter – SSS WDRs Review & Update

Dear Ms. Townsend:

The City of Palo Alto (City) appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). The City's sanitary sewer collection system consists of approximately 207 miles of pipe ranging from 4 inches to 72 inches in diameter, and one small lift station.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, our agency is very concerned about a number of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to sewer system management plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. Also, we strongly oppose any kind of NPDES permitting approach.

1. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit.

We strongly oppose the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit, and agree with several points included in the Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. The result of triggering an NPDES permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs. As you may know, several NGOs in the San Francisco Bay Region have already taken advantage of municipal government agencies, including the use of aggressive and shocking tactics, and pocketed precious funds that could have and should have been used for reducing SSOs. We do not believe this type of behavior is an appropriate way to spend public funds or staff resources.

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. We understand that these

staff resources are limited, and believe that they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

We would also like to reinforce concerns about confusion and wasted resources resulting from adopting an NPDES permit component now, that may need to be revised again if the United States Environmental Protection Agency (USEPA) implements an NPDES permit for satellite sanitary sewer systems later. As a collection system operating in the San Francisco Bay Region, we can speak to this issue with experience; the 2006 statewide requirements included in the existing SSS WDRs were different from our established regional program. In developing our SSMP, we had to sift through and identify strategies that addressed *both* sets of requirements. Changes to reporting requirements made everything more confusing. As requirements become more complicated and confusing, more agency staff time is directed towards preparing reports and re-organizing information and operating procedures, and less time is spent actually managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system.

2. State and Regional Water Board staff must consider the reasons for each SSO in any enforcement action.

The existing SSS WDRs included language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language read: "*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*"

In the proposed revisions to the SSS WDRs, this language was changed to read: "*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*"

The proposed revisions to the SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual regional boards are free to follow or ignore as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its system and these factors should definitely be considered in enforcement actions.

It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

3. Significant additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides guidance and funding.

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

The proposed Risk and Threat Analysis of all sanitary sewer assets would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise

well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the Water Board can demonstrate that those agencies complying with current requirements have been ineffective in reducing SSOs. This program should also only be required if and when adequate Water Board guidance has been developed and funding is provided.

Requiring development and implementation of the proposed Staff Assessment Program on an agency-by-agency basis is unrealistic. The expectations outlined in the proposed revisions to the SSS WDRs suggest that agency staff would be responsible for developing a program similar to the existing Technical Certification Program offered by the California Water Environment Association, which would require a substantial investment of resources to do redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities).

The Water Board should not implement these new requirements until detailed program guidance is provided. Also, Water Board staff has not demonstrated that the current training requirements are deficient.

4. SSMP sections (i) and (j) should be combined, because otherwise the requirements for routine review and revisions of the SSMP are redundant and contradictory.

SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis, while Section (j) specifies a minimum frequency of once every two years. We recommend that Water Board staff combine these two sections and clarify the requirements.

5. Requiring de-chlorination of clean-up water is counter-productive.

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill clean-up (in the event water used for clean-up is not fully recovered). Putting restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate either of the first two prohibitions simply adds further unnecessary challenges. In addition, the amount of potable water used, combined with the distance it would have to travel to reach a surface water (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in dechlorination.

6. Revisions to SSMP requirements are premature.

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. We strongly urge that the existing SSMP requirements be preserved as in the existing SSS WDRs and no changes are made to SSMP requirements. As the Staff Report indicates, development and implementation of SSMPs by SSS WDRs enrollees has just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. Further, it is recognized that dramatically changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff.

following as appropriate:... The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG.”

- *Performance Targets and Program Modifications* – Progress towards improving sewer system performance and reducing impacts of SSOs is already described in the SSMP and will be adequately characterized by a review of SSO trends. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success or failure. All references to performance targets should be removed from paragraphs (i) and (j).
- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained as is.

8. Notification requirements need to be clarified.

We support the Staff Report’s indication that only California Emergency Management Agency (CalEMA) would need to be notified when spills to surface water of any volume occur. However, Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the Monitoring and Reporting Program and the Staff Report. Please clarify that notification shall only to be made to CalEMA, and indicate that CalEMA will notify other agencies.

9. Enrollees should not be required to report SSOs if they are fully-recovered.

Fully-recovered SSOs cannot impact surface waters, and it is unlikely that they would impact public health. Therefore, they should not have to be reported to CIWQS. Not having to report these SSOs would provide an additional incentive to fully recover the overflow.

10. A *de minimis* spill volume for reporting should be allowed.

SSO reporting requirements do not apply to systems that do not meet the defined size threshold, recognizing that any spills from these systems would be insignificant, and therefore not worth reporting. Reporting of *de minimis* spill volumes from Enrollees’ systems is likely equally insignificant in their potential impacts to public health and the environment. The limited value of information regarding the physical condition and adequacy of collection system operation and maintenance obtained from reporting very small spill volumes does not warrant the staff resources required to make these reports. Given our past experience with CIWQS, we are not confident that a batch uploading function will significantly save time. We request that overflows of less than 100 gallons need not be reported, a threshold previously established by the San Francisco Bay Regional Water Board.

It is our view that significant proposed revisions to the SSS WDRs are premature and overly burdensome. Additional improvements are expected as capital improvements identified under the

7. Language describing SSMP requirements should be revised as follows (SSMP sections are listed in the order they appear in the proposed revisions to the SSS WDRs):

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* – Paragraph (c) (v) should be revised to read: “Ban new connections under certain conditions.”
- *Operations and Maintenance Program*
 - *Map* - Updating sewer system maps to identify and include all backflow prevention devices would be too onerous as they are not owned by the agency; this requirement should be removed.

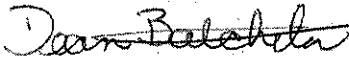
Also, the last section of paragraph (d) (i) should be revised to read: “A map illustrating the current extent of the sewer system shall be included in the SSMP or in a GIS.” Also, this requirement needs to be clarified. It is not clear if “the current extent of the sewer system” refers to a one page map of the service area, or the entire detailed map. The latter would be impractical to include in the SSMP.

- *Rehabilitation and Replacement* - The third sentence in paragraph (d) (iii) should be revised to read: “Rehabilitation and replacement shall focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects.” It is not correct to imply that age alone is problematic. We know that it does not, nor is it correct to imply ‘aging’ is the same as ‘deteriorating’.
- *O&M and Sewer System Replacement Funding* – The first sentence in section (d) (vi) should be revised to read “The SSMP shall include budgets for routine sewer system operation and maintenance and for the capital improvement plan including proposed replacement of sewer system assets over time as determined by careful evaluation of condition of the system.”
- *Design and Performance Provisions* – The addition of the phrase “all aspects of” in both paragraphs (i) and (ii) should be removed, requiring each agency to update their standards and specifications to cover every last possible minor detail of sanitary sewer system construction and inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary and is already implied.
- *FOG Control Program* – Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges may outweigh the benefits of *requiring* best management practices for residential FOG sources. We request that this existing language be preserved: “This plan shall include the

current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current permit rather than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs.

Thank you for the opportunity to comment on the draft WDRs. The City of Palo Alto hopes the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,



Dean Batchelor, Assistant Director
Utilities Operations
City of Palo Alto

CC: Javad Ghaffari

