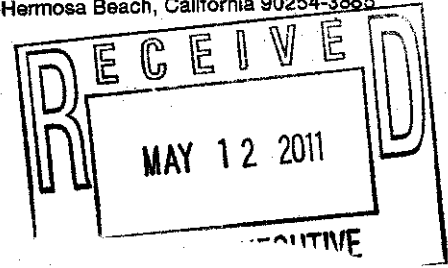


# City of Hermosa Beach



Civic Center, 1315 Valley Drive, Hermosa Beach, California 90254-3885



May 12, 2011

Jeanine Townsend, Clerk to the  
State Water Resources Control Board  
1001 "I" Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Subject: COMMENT LETTER – SSS WDRs REVIEW & UPDATE

Dear Chair Hoppin and Members of the Board:

The City of Hermosa Beach (City) is a small, historic beach town that fronts two miles of popular beaches and is home to approximately 18,000 residents. As a coastal city focused on surfing and other ocean-oriented activities as well as tourism, protecting recreational beach water quality is very important to the City of Hermosa Beach. The City's residents are strongly supportive of proactive environmental measures and actions to protect water quality and the environment.

The City of Hermosa Beach has numerous measures in place to prevent sanitary sewer overflows, many of which were in place well before adoption of the statewide Waste Discharge Requirements for Sanitary Sewer Systems (SSS WDRs). In 2005, one year before the adoption, the City Council of the City of Hermosa Beach unanimously approved Ordinance No. 05-1250 amending the plumbing code to require the *retrofitting* of grease removal systems for food service establishments (FSEs) and providing for annual inspection of the grease recovery systems. Thus the City by its own initiative had voluntarily with the express intent of reducing the incidence of SSOs caused by grease blockages, put in place a FOG control program well before adoption of the SSS WDRs. The public works department is also proactive in its inspection of new sewer construction and connections to the collection system to ensure the integrity and quality control of field installations. The department has also augmented its sewer program through the development of sewer connection standards and industry practices for private property development and renovations that involve connections to the City's sewer network. These are just a few examples of the many measures the City has taken to prevent SSOs. Since adoption of the SSS WDRs the City of Hermosa Beach has been diligently and proactively implementing the provisions of the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. Since reporting began under the SSS WDRs we have seen a steady decline in the frequency of SSOs and, more importantly, no SSOs within the City of Hermosa Beach have resulted in discharges to Waters of the State.

The City of Hermosa Beach is subject to Total Maximum Daily Loads for Bacteria in Santa Monica Bay consequently we are very concerned with prevention of sanitary sewer overflows and believe that prevention and effective response should be the primary objective and focus of the statewide SSS WDRs. Reporting is certainly a means of verifying that objective, but not an end in itself and we believe that overly burdensome reporting siphons City resources away from the essential focus of our work to prevent SSOs in the first place and to respond as promptly and effectively as possible when despite our best efforts they do occur.

Contrary to the stated intention in the State Board staff's report to allow the full implementation of the sanitary sewer system management plans that have just been completed statewide by SSS WDR enrollees, and to assess their effectiveness and shortcomings before undertaking dramatic changes to the SSMP requirements<sup>1</sup>, the proposed revisions represent a major departure from the program currently in place and come before most agencies have had the opportunity to audit the effectiveness of their programs in accordance with the schedule of the current SSS WDR. Compliance with the proposed revisions to the SSS WDR will require far greater staff and resources for permit enrollees at a time when public agency budgets are shrinking. It is unclear how the additional information and reporting that must be generated will be used by the Water Boards or that the efforts required will produce corresponding environmental benefits.

The proposed revisions to the SSS WDR move away from the approach developed by the Stakeholder SSO Guidance Committee in 2005-06 which focused on reporting of SSOs and reducing SSOs with the potential to affect water quality or public health to a very prescriptive and onerous order that seeks to dictate decisions regarding the way local sewer system programs are managed and implemented. The City disagrees with many of the changes being proposed by State Board staff. Our concerns include but are not limited to the following:

1. The City recommends striking the proposed requirement for reporting discharges from private laterals that do not reach the storm drain system or Waters of the State for the following reasons:
  - a. It is the City's policy and practice to respond promptly to all reports of spills whether from private laterals, the City, or Sanitation Districts system and to take immediate measures necessary to protect the storm drain system and the shoreline from the discharge. The proposed changes to the SSS WDRs will require reporting of spills from privately owned sewer laterals over which the City has no ownership or operational responsibility. This measure is not directed at assessment of the effectiveness of the City's sanitary sewer system management plan, but over private property. This proposed requirement may create a disincentive for private property owners to call for emergency assistance with an overflow from a private lateral if the owner

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<sup>1</sup> 3/22/2011 Staff Report for Order No. 2011-XXX-DWQ, Statewide WDRs for Sanitary Sewer Systems, page 11 last paragraph.

knows the municipality will be required to report to the State. Such disincentive to call for assistance could result in an increase rather than a decrease in the number of SSOs which result in discharge to the MS4 or Waters of the State.

- b. To mandate that Enrollees expend resources to investigate and report private lateral spills is an unfunded State mandate. There is no legal or regulatory basis for requiring the reporting of spills of wastewater from privately owned sewer laterals unless they are discharged to the municipal separate storm drain system or to Waters of the State. The City of Hermosa Beach already reports SSOs from private laterals that reach the storm drain system as part of the illicit discharge reporting under the municipal separate storm sewer system NPDES permit. No other such reporting of private lateral spills should be required.
  - c. The proposed requirement for reporting discharges from private laterals, including information on parcel ownership, strains the relationship between city and resident/property owner, especially if the spill has been properly addressed and does not reach Waters of the State. If all that is intended is for the State Board to obtain a better understanding of the frequency of SSOs from private laterals, there is no reason for reporting of the name of the property owner/responsible party.
2. Part D.12 d (iv) Staff Assessment Program of the proposed SSS WDR: It is unclear what is required under this section and it needs to be clarified or excluded in its entirety. Personnel records, especially an assessment of employee performance, are generally not public record and not available for public inspection (see Public Records Act, Brown Act, and case law). Courts have generally been protective of employee privacy. The Board has not demonstrated any public interest served by publishing assessments of city employees' performance or shown how that interest would outweigh the employees' right to privacy or to what purpose the information would be used.
  3. Part D.12 d (vi) O&M Sewer System Replacement Funding: The requirement to demonstrate an agency's ability to fund the sewer system in perpetuity is unrealistic and should be deleted. Public agencies' budgets must be approved year-to-year. Public funding is fluid and cannot be guaranteed. No public agency can guarantee a specified level of funding beyond what has been approved by its legislative body, let alone in perpetuity. Many factors affect the reliability and allocation of public funds, not only those specific to sewer system needs, but the entire range of public services provided by cities. Government budgets fluctuate on a yearly basis and can change dramatically as witnessed in recent years. It is unconscionable to mandate that agencies be accountable for a "guaranteed" level of funding.

Not with standing these concerns, the City *has* historically allocated dedicated sewer funds for the maintenance and repair of its collection system. The City's Annual Sewer Maintenance program has been in effect for seventeen years. The City budgets for annual cleaning and videoing of sewers as a preventative and proactive strategy to reduce the occurrence of blockages and overflows. The City's Public Works Department Capital Improvement Program includes an annual Sewer Repair Project which has been in effect since well before the adoption of the 2006 SSO WDR program. Projects are budgeted using funds restricted for use on sewer facilities. Repairs are prioritized based on need as identified in the City's Sewer Master Plan Report.

4. The proposed SSS WDR includes a new prohibition on the use of chlorine during spill cleanups. *"The discharge of chlorine, or any other toxic substance for disinfection and cleanup of wastewater spills to any surface water body is prohibited. This prohibition applies to the chlorine residual in the potable water used for wash down and clean-up of wastewater spills."*<sup>2</sup> This proposed prohibition will make it difficult to wash down and fully clean up and disinfect SSOs on roads, gutters and in catch basins and storm drains to protect public health as well as the recreational uses of receiving waters. Maintenance crews prefer the use of chlorine for its success and effectiveness in disinfecting affected surfaces. When used, chlorine is applied within the contained sewer spill area following the removal of spilled wastewater. The chlorine is allowed to evaporate thus precluding its migration beyond the confined areas.

California is the only state in the nation with a comprehensive regulatory program governing sanitary sewer collection systems. USEPA Region 9 has referred in public testimony to this SSS WDR program as the best in the country. The fundamental and ill-advised changes proposed in the draft SSS WDR represent a wholesale revision of the course set five years ago through an extensive stakeholder effort. The City of Hermosa Beach strongly urges the State Board to scale back these revisions to allow the existing program to be fully implemented and the effectiveness and shortcomings identified, as well as for USEPA to propose national NPDES sanitary sewer system requirements before embarking upon such fundamental changes to the SSS WDRs.

We do appreciate and support the State Board staff's recommendation to eliminate duplicative notification requirements thereby streamlining spill notification allowing City staff to better deploy and focus resources on prompt and effective spill response. Revisions to streamline spill notification points-of-contact would be a positive change to the current requirements.

The City of Hermosa Beach also agrees with the State Board staff's recommendation against a change in regulatory structure either to a two-tiered WDR/NPDES program or a strictly NPDES program. Changing regulatory structure will not demonstrably improve water quality but will create confusion amongst the regulated community, will create additional administrative burdens on both the regulated community and the Regional

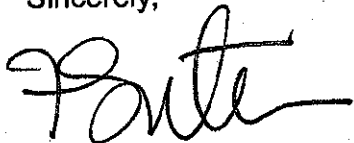
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<sup>2</sup> March 22, 2011, proposed State Water Resources Control Board Order No. 2011-XXX-DWQ, Part C. 3.

Board staffs, and will only serve to elevate legal costs borne by municipalities and their residents in defending against third party lawsuits.

In closing, the City of Hermosa Beach looks forward to working cooperatively with State and Regional Board to protect the waters of the State of California for the public benefit of the people of California and the residents of the City of Hermosa Beach.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Senteno".

Frank Senteno, P.E.  
Interim Director of Public Works

