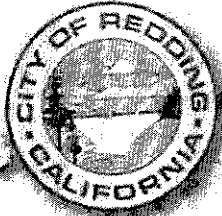
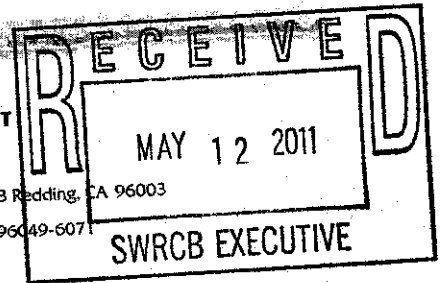


# CITY OF REDDING



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May 12, 2011  
W-010

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

Dear Ms. Townsend:

Subject: Comment Letter - SSS WDRs Review and Update

The City of Redding's Wastewater Utility (Utility) greatly appreciates the opportunity to provide these written comments on the State Water Resources Control Board's (Board's) proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). The City of Redding is a medium sized community in Northern California, and the Utility provides wastewater services to ratepayers throughout the Redding area. As with the City of Redding in general, this Utility understands the importance of sanitary sewer overflow (SSO) reduction, and is wholly committed to the protection of surface water resources within the context of its fiduciary obligations to ratepayers. Since the issuance of the initial SSO waste discharge requirements in 2006, the Utility has made significant effort to reduce the number and extent of SSOs, resulting in a trend toward reduced response time, spill volume, and impacts to surface waters and the storm drain system. The following comments are respectfully submitted with these goals in mind, in an effort to assure the continuation and betterment of California's environment while ensuring legitimate and efficient use of public funds.

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, the Utility 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 the sewer system management plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. As requirements become more complicated and convoluted, more agency staff time is directed toward preparing reports and reorganizing information and operating procedures, with less time actually spent managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system. The Utility also strongly opposes any kind of NPDES permitting approach, as the current regulatory structure has proven sufficient to provide reductions in the SSO number and volume, and NPDES permitting would impose additional unnecessary burdens and liability.

Moreover, the City of Redding has only been operating under the existing WDRs for only a short period of time. A two-year audit has not yet been required, and while it is clear that the occurrence and extent of SSOs have been falling, it is likely that the full benefit of the existing framework has not yet been realized. It seems illogical to proceed with a complete overhaul of a regulatory framework that has not been in place long enough to fully realize its potential impacts on SSO reduction.

Specific comments on the proposed SSS WDR are as follows:

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

The Utility strongly opposes the proposed two-tiered alternative, which would include both WDRs and National Pollutant Discharge Elimination System (NPDES) permits, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs prohibit SSOs to waters of the United States, there is no need for an NPDES permit. 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 noted by Board staff, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. Our office understands 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.

**2. The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is not justified and creates an inappropriate burden for public agency staff.**

The SSS WDR would require enrollees to report spills from privately owned laterals when they become aware of them; such reporting is currently voluntary. Adequate justification has not been provided regarding the need for this change, or have the staffing and financial resources necessary for public agencies to report PLSDs that are not affiliated with their collection system been thoroughly considered. The justification offered for this change is simply that the Board wants to "get a better picture of" the magnitude of PLSDs and better identify collection systems having "systemic issues" with PLSDs. This requirement would place a significant burden on the City of Redding to respond to, investigate, and report PLSDs, and in addition to the heavy financial burden this will cause there is the fact that the City of Redding's Municipal Code does not give Utility staff authority over private laterals or any mechanism for related enforcement. This would seriously constrain staff's ability to investigate PLSDs, resulting in widely varying quality of PLSD data reporting while promoting confrontational interactions with the citizens Utility staff are mandated to serve. This is an unproductive use of the staff time that should be spent maintaining the City of Redding's sanitary sewer collection system and reducing the number and extent of SSOs that the Utility has the ability to affect.

The Draft WDRs focus on private laterals raises several concerns. First, it appears to be directed toward shifting responsibility for privately owned sewer laterals to public agencies. For example, while the Draft WDR does acknowledge that maintenance and repair of private laterals may be the responsibility of the private owners, it would require public agencies to be responsible for mapping and documentation of all private lateral facilities, including the existence of back flow devices, clean outs, etc. The proposed revisions also appear to impose responsibility for lateral inspection and clean out programs. At worst, these programs create an additional and significant financial and liability burden on public agencies. At best, they create unnecessary confusion by giving the false impression that public agencies are in some fashion now responsible for the well being of privately owned and maintained sewer laterals.

The staff report for the Draft WDRs includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5 percent of the total volume from SSOs, almost all of which never pose a threat to waters. Requiring public agencies to provide detailed information regarding such a small percentage of overflow volumes from parts of the system over which they have no control is not appropriate and would divert limited staff resources from higher priority issues that actually protect waters.

As to the goal of generating better information regarding private lateral spills, we do not believe that the burden of requiring enrollees to report information or face being in noncompliance bears a reasonable relationship to the need for the information and the benefits to be obtained. Enrollees reporting spills may be liable to the property owner for errors in reporting, and property owners may claim they are entitled to compensation from the local agency for repair or replacement costs stemming from the reported spill. Under the current voluntary reporting scheme, the enrollee can weigh these factors in deciding whether to report private lateral spills or not.

Furthermore, if enrollees are required to report spills whether or not they occur within the enrollee's system, multiple entities (city, county, POTW, etc.) could all be required to report a single private lateral spill with potentially differing estimates of volume and other information. Rather than enhance the Board's knowledge base, this will actually lead to greater confusion and require additional resources to sort out and match up the multiple reports.

The Utility recommends that the 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 laterals on private property, and are, in most instances, the most appropriate agencies to respond to these events.

**3. It is essential that State and Regional Water Board staff consider the reasons for each SSO in any enforcement action.**

The existing SSS WDRs include language in Provision D.6 that provides 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 reads: "In assessing these factors, the State and/or Regional Water Boards will also consider whether..." (emphasis added)

In the proposed revisions to the SSS WDRs, this language has been changed to read: "In assessing these factors, the State and/or Regional Water Boards may also consider whether..." (emphasis added)

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 is retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

**4. 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.

**5. 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.

**6. The findings include incorrect statements about PLSDs.**

Finding 9 in the proposed revisions to the SSS WDRs includes the statement: "Major causes of SSOs and PLSDs include but are not limited to: grease blockages, root blockages, debris blockages, sewer line flood damage, manhole structure failures, pipe failures, vandalism, pump station mechanical failures, power outages, excessive storm or ground water inflow/infiltration, sanitary sewer age, construction and related material failures, lack of proper operation and maintenance, insufficient capacity, and contractor-caused damages. Many SSOs and PLSDs can be prevented by having adequate facilities, source control measures, and proper operation and maintenance of the sanitary sewer system." Including PLSDs in these descriptions is incorrect; many of the items on the first list are not causes of PLSDs, and many PLSDs cannot be prevented as described in the second sentence. References to PLSDs should be removed.

**7. 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 de-chlorination. Our office requests that this language be removed from the draft SSS WDRs.

**8. It is inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.**

We do not believe that meaningful statistics could be derived from data collected only for those PLSDs that an agency becomes aware of, and we do not support the idea that Water Board staff would decide that collection systems have "systemic issues" based on these incomplete data sets.

For this reason and the reasons detailed above, our office requests that the requirement for enrollees to respond to, investigate, and report PLSDs they become aware of should be removed from the draft SSS WDRs.

**9. Revisions to SSMP requirements are premature.**

The Utility is concerned that the proposed revisions to the SSS WDRs include significant changes to SSMP program requirements. Our office strongly urges that the existing SSMP requirements be preserved. As the Staff Report indicates, development and implementation of SSMPs by program enrollees have just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. Further, it is likely that dramatically changing SSMP requirements before full implementation will lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff.

**10. The four-year board re-certification requirement is excessive.**

The proposed revisions to the SSS WDRs would also require each agency to bring the SSMP before its governing board for re-certification at a minimum every four years. This frequency is excessive considering that infrastructure projects typically occur over a longer time frame; this could result in re-certification in the middle of a project, thereby reducing the effectiveness and comprehensiveness of the SSMP. Our office feels that a re-certification every 5-10 years is much more useful and reasonable.

**11. Notification requirements need to be clarified.**

The Utility supports the Staff Report's indication that only Cal EMA would need to be notified when spills to surface water of any volume occur, and appreciate the revised language requiring only Cal EMA notification. 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 be made to Cal EMA, and indicate that Cal EMA will notify other agencies.

**12. 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. For example, in 2010 SSOs resulting in less than 100 gallons spilled were 50 percent of the spills experienced by our system, but only represented 1 percent of the overall volume. This makes it clear that these SSOs are not a priority focus, do not provide significant information on reducing overall volume spilled, and that the staff time required to report these smaller spills are not

reasonable and would be better spent pursuing the causes and remedies of larger SSOs with spill volumes greater than 100 gallons.

**13. Section D, 12. (C) (v) Ban new connections.**

The requirement that an agency's authority include the ability to "ban new connections" raise concerns because it is uncertain and has the potential to be extremely controversial. For example, if the intent is to provide agencies with the authority to declare complete moratoriums on connections, that could be very problematic and unnecessarily create stress between public agencies and their constituents. Also, wastewater agencies have legal obligations to provide sewer service to their constituents, so a provision indicating that they have the ability to simply discontinue providing new service could be legally unenforceable. Our Utility recommends that this provision be eliminated, or at minimum, revised to clarify that the authority to ban new connections is limited to those circumstances in which such action is necessary to prevent a public nuisance or otherwise protect the public health and safety.

**14. Section D, 12. (D) (ii) O&M.**

The second paragraph of this section requires that the SSMP contain a list of contractors "conducting routine work" on the sewer system. The City of Redding has numerous capital projects underway and in the planning stages. Many of these projects are broken into phases, with various contractors mobilizing and demobilizing at each phase. For this reason, and because a list of contractors would constrain the required public bidding process, our office requests that the requirement to list contractors be removed. Alternately, language could be added clarifying that this requirement only applies to "routine work" and that routine work does not include the construction of new facilities and other infrastructure.

**Conclusion**

The Utility appreciates the Board's time and consideration on this important issue. The draft SSS WDRs as currently written would have far reaching and heavily impacting effects on dischargers throughout California, and our office respectfully requests that the revisions detailed above be taken into account. In general, it is our view that significant proposed revisions to the SSS WDRs are premature and overly burdensome. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under 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.

Please call me at 530-224-4122 or email me at [jkeener@ci.redding.ca.us](mailto:jkeener@ci.redding.ca.us) if you have any questions.

Sincerely,

  
Josh Keener  
Wastewater Compliance Coordinator

jk/ro

c: Jon McClain, Assistant Public Works Director  
Dennis McBride, Wastewater Utility Manager  
Josh Vandiver, Wastewater Utility Supervisor-Collections