The City of Burlingame

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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 Burlingame 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 operates a sanitary sewer system that serves a population of approximately 28,000 in a 4.3 square mile service area. In addition, the City's sewer system accepts sewage from the Town of Hillsborough and a portion from Burlingame Hills in the unincorporated area of San Mateo County. Both the Town of Hillsborough and San Mateo County are responsible for its maintenance and capital improvements on their sewer systems. The sewer system consists of 100 miles of gravity sewers, 31 miles of lower laterals and seven lift stations.

The City's Operation and Maintenance activities consist of cleaning gravity sewer mains every 36 months and problem gravity sewers every 1, 3, 6, or 12 months based on the priority schedule. The City has a preventive maintenance program for its lower laterals that includes cleaning, inspection, and chemical root control. The City has a repair program for both mains and lower laterals. The City has instituted a program perform condition assessment using closed circuit television. This year the City has televised 45 miles of its gravity sewer.

The City of Burlingame strongly opposes the proposed revisions to the SSS WDRs and the NPDES permit approach to the regulations because of the following reasons:

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

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.

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. 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.

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 and difficult. Managing this program had become more time consuming having to make multiple redundant reports (Regional Board, CWIQS, Health Department, etc.).

Our staff time has more than doubled because of the reporting we are required to do now. We first have to notify the California Emergency Management Agency (CalEMA) followed by a 2 hour report to the Regional Board, the Health Department and Fish & Game. Revise and certify the report with the Regional Board within 24 hours and the state program the California Integrated Water Quality System (CIWQS). 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. **The basis for mandatory reporting of PLSDs is not justified and creates an excessive and inappropriate burden for public agency staff.**

   Water Board staff has not provided adequate justification to require public agencies to report PLSDs that are not affiliated with the collection system agency. State Water Board staff has simply not sufficiently thought through what this requirement means.

   Consider ... What if the collection system agency does not have all of the information for a PLSD, as requested on the reporting form? What if an agency finds out about two overflows at once and one is a PLSD and the other is from the public sewer and they only have resources to deal with one? What if an agency receives a telephone message about a PLSD and the information is incomplete? (Public resources should not be used to hunt it down.) Is there an expectation that if an overflow on private property is discovered by a public agency, that they assist with the cleanup? (Ratepayers should not pay for this.) If a homeowner observes their own sewage in their bathtub, because their lateral has a stoppage due to actions they caused (e.g. flushable wipes), and the toilet and sink have not overflowed onto the floor, is that a PLSD? How are we supposed to estimate volume spilled or recovered? (Often a

homeowner will be very guarded with information about what goes on inside the home.) What if a PLSD exists and someone thinks a public agency staff person knew about it and it wasn't reported? In any event, how will State Water Board staff enforce this provision? Most importantly of all, how will State Water Board staff use this information? How would city crews be allowed to work on private property since we do not have the right of entry and from liability stand point? There are many questions and very few answers or justifications addressed in the proposed revisions to the SSS WDRs.

In addition, it is unrealistic and inappropriate to expect local collection system agencies to solve (or even just report) all of the States' overflow problems, especially when they are insignificant in the realm of protecting water quality. It is difficult enough to manage the public system, the boundaries of which are likely to be well known. The State Water Board should only hold public agencies accountable and responsible for activities within their jurisdiction.

Moreover, the Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5% 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.

Also, although the Staff Report includes recognition that existing reporting requirements may have indirectly created disincentives for agencies to maintain ownership of private laterals, the proposed revisions create further confusion rather than resolving this issue. In order to solve the problem, we recommend that the California Integrated Water Quality System (CIWQS) database and SSO/mile/yr data reflect *only* mainline spills as a performance measure. These are the overflows that have the potential for water quality impact.

In addition, PLSDs typically only impact the property owner, as they are usually very small in volume and do not reach receiving waters. These types of events fall under the jurisdiction of local health officers. We recommend 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 laterals on private property, and are, in most instances, the most appropriate agencies to respond to these events.

For all of the reasons indicated above, we specifically request that reporting of PLSDs remain voluntary.

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 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...*" (emphasis added)

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...*" (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 be 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 several incorrect statements about PLSDs.**

Finding 7 in the proposed revisions to the SSS WDRs includes the statement: "SSOs and PLSDs may pollute surface or ground waters, threaten beneficial uses and public health, ..." We disagree that PLSDs are in the same category as SSOs from mainline sewers in terms of water quality impacts. These overflows are very small in volume individually, and overall. In the past three years of reporting lower laterals SSO's the median for the three years 2008, 2009 and 2010 was 5 gallons. There were no SSO's from laterals that reached the surface waters. The words "...and PLSDs..." should be removed.

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. **Required reporting of PLSDs by all agencies does not improve the predicament faced by agencies that own lower laterals.**

Requirements for reporting of SSOs are applicable to all "discharges resulting from a failure in the Enrollee's sanitary sewer system." (emphasis added) Requirements for reporting of PLSDs apply to all "discharges of wastewater resulting from a failure in a privately owned sewer lateral." (emphasis added) These requirements do not change the fact that SSOs from lower laterals are unfairly attributed only to those agencies that own them. In order to solve the problem, we recommend that the CIWQS database and SSO/mile/yr data reflect *only* mainline spills as a performance measure. Otherwise, comparisons of these data among agencies are incorrect.

In addition, the requirement for Enrollees to report PLSDs as they become aware of should be removed from Provision 4.

8. Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of these WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on several factors. These factors and data that we use for the condition assessment of our sewers are: structure, flow and cleaning. Sewers should not be replaced automatically when they reach a certain age, especially when they are in good condition and functioning as designed. This would not be a good use of limited public resources. For example, the useful life of certain types of high strength plastic pipe has yet to be determined.

9. Definitions related to private laterals are confusing and contradictory.

The following definitions are confusing and contradictory, as explained in the following paragraphs.

- *Lateral – Segment(s) of pipe that connect(s) a home, building, or satellite sewer system to a sewer main.*

  This definition of a lateral includes both upper and the lower laterals, regardless of whether or not the lower lateral is privately owned.

  Also, the definition of a lateral should not include any reference to satellite sewer systems, as the management and performance of each are very different. Satellite systems should have a separate and distinct definition.

- *Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement.* (emphasis added)

  This definition does not make reference to upper laterals and lower laterals and is therefore confusing. Also, it is misleading to state that sewer use agreements dictate lateral responsibility, as these agreements seldom exist for individual homeowners.

- *Private Lateral Sewage Discharge (PLSD) – Wastewater discharges caused by blockages or other problems within laterals are the responsibility of the private lateral owner and not the Enrollee. Discharges from sanitary sewer systems which are tributary to the Enrollee's sanitary sewer system but are not owned by the Enrollee and do not meet the applicability requirements for enrollment under the SSS WDRs are also considered PLSDs.* (emphasis added)

  This definition indicates that PLSDs include overflows from any portion of the lateral, regardless of whether or not the lower laterals are privately owned. The definition of a "private lateral sewage discharge" is inconsistent with that describing a "private lateral", as one includes publically-owned lower laterals while the other does not.

These definitions should be reworked for clarity and accuracy.

1. **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. 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.

2. **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." In addition, Paragraph (c) (vi) indicates that agencies must have legal authority to "limit the discharge of roots..." It is not clear if this phrase is intended to refer to limiting root intrusion (which would be covered by good standard specifications), or to limiting the illicit discharge of debris including cut roots (which is already included in paragraph (c) (i)). In any case, the word "roots" should be removed from this paragraph.

- *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 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.

3. The four-year board re-certification requirement is excessive.

The proposed revisions to the SSS WDRs would also require each agency to bring its 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 timeframe. We request a re-certification every 5-10 years.

4. Notification requirements need to be clarified.

We support the Staff Report's indication that only Cal EMA 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 Cal EMA, and indicate that Cal EMA will notify other agencies.

5. 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.

6. Providing whole SSMPs in an electronic form is not always practical.

Not every agency has their SSMP in one electronic document, and, in many cases, the SSMP makes reference to other documents which may only exist in hard copy form. These issues would make it difficult or impossible for some agencies to provide the whole SSMP in an electronic format.

7. 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 the best use of public resources for reporting this insignificant spill volume. Reporting of *de minimis* spill volumes from Enrollees' systems is 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.

Of the 28 SSO's (12 mains and 16 lower laterals SSO's) that the City of Burlingame reported in 2010, 25 of the SSO's were less than 100 gallons or 89% of the spills were less than 100 gallons. The average spill of the 25 SSO's was 17 gallons.

8. Certain Monitoring and Reporting Program requirements need to be clarified.

In addition to the request that mandatory PLSD reporting be removed from the proposed revisions to the SSS WDRs, several minor revisions should be made to clarify Monitoring and Reporting Program requirements:

- The second paragraph referring to other notification and reporting requirements is unnecessarily confusing and should be removed.
- Item 1.H under the description of mandatory information to be included in Category 2 SSO reports should be revised to read: "SSS failure point (main, lateral, etc.), if applicable."
- Item 3.I under the description of mandatory information to be included in Category 1 SSO reports should be revised to read: "Name of surface waters impacted (if applicable and if known)..."
- Item 1.D under the minimum records to be maintained by the Enrollee should be revised to read: "...and the complainant's name and telephone number, if known."

9. Revisions pertaining to Construction Trenches

The original SSO WDR included construction trenches in the definition of a sanitary sewer system. However, the proposed SSS WDR omits construction trenches from the definition of the sanitary sewer system. While it may seem like an insignificant change, this proposal will have serious consequences for all sewer systems in the state. This proposed definition, combined with the zero (0) tolerance spill volume will cause the City to have an SSO almost every time a sewer main or lateral was repaired or replaced.

Even if the City could always use plugs, bypass pumping, or restrict water use by homeowners or business (which are actions that are not feasible at many locations), there will still be small amounts of sewage entering into the construction trench – an event that the State Board has failed to show causes impacts to water quality. The proposed change to the definition of a sanitary sewer system would cause each of those instances to be an SSO and City would then be required to report and certify every time a drop of sewage entered a construction trench. The estimated impact to City is expected to be in the thousands of dollars annually. This estimate does not include any increased risk to citizen lawsuits for SSOs, which could increase our costs significantly.

The State Board should be encouraging enrollees to replace and repair their sewer system as needed but this proposed change would punish enrollees each time they maintained their system. We adamantly oppose the proposed change and request construction trenches to remain in the definition of a sanitary sewer system.

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.

The City of Burlingame hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,

Syed Murtuza, P.E.
Public Works Director

cc: Jim Nantell, City Manager
Rob Mallick, Public Works Superintendent
Art Morimoto Assistant Public Works Director
Vince Falzon, Assistant Superintendent – Streets and Sewer Division.