

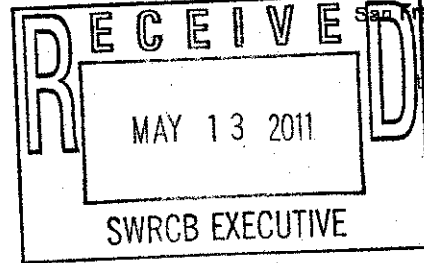


San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

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May 13, 2011

BY EMAIL, FAX, and U.S. MAIL

Chair Hoppin and Members of the Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814
commentletters@waterboards.ca.gov

Subject: Comment Letter – Statewide General Waste Discharge Requirements for Sanitary Sewer Systems Review & Update

Dear Chair Hoppin and Members of the Board:

The San Francisco Public Utilities Commission (San Francisco) 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). This is San Francisco's second set of comments on the proposed SSS WDRs. San Francisco submitted comments jointly with the City of Sacramento in a letter dated May 5, 2011 (requesting language changes to make it clear that the proposed SSS WDRs would apply only to sanitary sewer systems and not combined sewer systems). These comments focus on improving the SSS WDRs as they apply to San Francisco's Separate Sanitary Stormwater Sewer System.

While San Francisco is served primarily by a Combined Sewer System, a portion of the city is served by a Separate Sanitary Stormwater Sewer System. San Francisco is proud that it has never had a reportable Sanitary Sewer Overflow ("SSO") under SWRCB Order No. 2006-0003, Statewide General Waste Discharge Requirements for Sanitary Sewer System. We believe that we have such a strong record because of the variety of prescriptive and preventative programs San Francisco has instituted. Earlier this year, for instance, the San Francisco Board of Supervisors approved a FOG ("Fats, Oils, and Grease") Control Program to reduce the discharge of FOG to San Francisco's sewer systems. This program became effective April 2011.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented (and is still being implemented) under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address issues associated with the existing WDRs, San Francisco is concerned about the number of major changes, and about several particular provisions, including the new prohibition to surface waters of the state, reporting of private lateral sewage discharges, onerous and proposed additions to sewer system management plan, and the two-tiered WDRs NPDES permitting approach.

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1. Change in Prohibition from 'waters of the US' to 'surface waters of the state' requires clarification of "tributary"

The proposed WDR prohibitions state "Any SSO that results in a discharge of untreated or partially treated wastewater to surface water of the state is prohibited. This includes:

- (a) Discharges to storm drains that are not fully captured and returned to the sanitary sewer system or captured and otherwise appropriately disposed of if the storm drain is tributary to a surface water of the state, and
- (b) Discharges to drainage channels if the drainage channel is a surface water of the state or tributary to a surface water of the state." (emphasis added)

Use of the term "tributary" is vague and confusing, given the common use of the term in defining waters of the state and United States and applicability of beneficial uses. The recent case of NRDC v. County of Los Angeles, et.al. (decision issued March 10, 2011), arose in part because of confusion between stormwater system functions, flood control system functions, and the identification of the recognizable point source discharge that is vital to this state and federal regulatory scheme.

This case demonstrates the confusion the failure to clarify the terminology of "tributary" can cause. We therefore recommend that the definition and prohibition be changed by replacing "is tributary to" with "discharges to."

2. The PLSDs mandatory reporting requirement lacks liability protection, critical provisions, and needed guidance

The requirement for agencies to report private lateral sewer discharges (PLSDs) causes us significant concern. This particular avenue of obtaining information would require additional measures—beyond those currently provided in the proposed SSS WDRs—to avoid problematic consequences. For instance, agencies may be at risk for incurring liability if they report such information, and currently the proposed SSS WDRs do not address this. In addition, the requirement lacks the development of critical provisions and guidelines, such as the course of action when the agency may have incomplete or second-hand information or the boundaries of the PLSD definition (for instance does sewage in the homeowner's house constitute a PLSD?).

Until these important issues have been addressed and resolved, we request that reporting of PLSDs remain voluntary.

3. Proposed sweeping SSMP revisions have not been shown to be necessary; require changes to function appropriately

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements without a demonstration that the existing SSMP requirements are inadequate. Therefore, we strongly urge that the existing SSMP requirements remain in place. As the Staff Report indicates, development and implementation of SSMPs have just been completed and these plans need to be fully implemented so their effectiveness can be properly evaluated.

In the event that the State Water Board elects to proceed with changing the SSMP requirements, however, we believe some revisions would need to be made to the proposed language. We identify problematic provisions below, with suggested edits.

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- *Organization* – Inclusion of board member information as part of the SSMP contacts is unwarranted as organizational staff, not policy making board members, are responsible for the SSMP implementation.
- *Legal Authority* – The proposal to include authority to “limit flows . . . from connected sources” is problematic because it is uncertain what ability any Enrollee has to limit flow from connected sources. For example, would an Enrollee be required to insert a device into an existing system to limit the amount of flow, or are other actions required? Such requirements would be unusual and problematic to implement.

The requirement that legal authority include the ability to “ban new connections” raises concerns because it is uncertain and has the potential to be very 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 create tension 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. This provision should 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.

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 backflow prevention devices not owned by the agency would be quite onerous and difficult to accomplish as the information is not in the agency’s hands and is not readily available. These devices are part of the plumbing on private property and therefore not a part of San Francisco’s sewer collection system. We request that this requirement be removed.

We also request that the provision requiring a listing of the names of contractors be eliminated. San Francisco needs the flexibility to utilize and change contractors on a regular basis without the need to continually update our SSMP. We believe that the decision regarding which contractor should be hired should be left to the discretion of the Enrollees and not be subjected to regulatory oversight.

- *Rehabilitation and Replacement* – We recommend that the third sentence in paragraph (d) (iii) 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.” We believe this to be a better framing of the issue since age is not necessarily problematic. From our practical experience, ‘aging’ is the same as ‘deteriorating.’ The need to replace sewers is dependent on several factors which include age of pipe, soil type

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and condition, and material of pipe (i.e. concrete, brick, iron). Sewers do not need to be automatically replaced when they reach a certain age, especially when they are in good condition and functioning as designed; a well maintained brick sewer can have a lifespan of up to 140 years.

- *O&M and Sewer System Replacement Funding* – We request that the first sentence in section (d) (vi) 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 based on condition of the system.”
- *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. Therefore, the proposed revision adding performance targets is unwarranted and should not be included in the policy. We request that all references to performance targets be removed from paragraphs (i) and (j).

Should the State Water Board proceed on this front, the regulated community would need more specific guidance on how to develop these targets, as the requirement as proposed is vague and offers no validation test of success or failure.

- *Communication Program* – The proposed revisions to the SSS WDRs require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. We request that language be added allowing agencies to comply with this requirement through their websites, which makes information about the SSMP available to the public 24 hours a day.

4. We do not support a two-tiered WDRs and NPDES permit system

The State Water Board invited comment on the advisability of having a 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. In our view this would not be an appropriate structure, and agree with several points included in the Staff Report also opposing an NPDES permit. It is unclear what purpose requiring an NPDES permit would serve, since SSOs to the waters of the United States are not allowed (either under the existing or the proposed SSS WDRs). In addition, a single SSO is an unnecessarily strict trigger.

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. With limited staff resources, however, we believe it would be more effective for staff to focus on improving SSO reduction efforts rather than administering new NPDES permits.

We also understand that the United States Environmental Protection Agency (EPA) is considering implementation of a NPDES permit for satellite sanitary sewer systems. Until there is further clarification about the EPA's intentions, it could be poor timing to proceed forward with adopting a new California NPDES permit system for Enrollees who could also then be subject to the EPA's new system.

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5. The Risk and Threat Analysis should not be required for every agency, and needs additional guidance and funding to implement

The proposed Risk and Threat Analysis of all sanitary sewer assets requirement appears to be complex and resource-intensive, while not providing any obvious additional benefit beyond what a well-operated and managed system would deliver. Therefore, it is not appropriate to require every agency to implement this program. San Francisco, for instance, has not had any reportable SSO events. We therefore request that the Water Board require the proposed Risk and Threat Analysis only if an agency's past performance demonstrates that it has been ineffective in reducing SSOs. In addition, given the complexity of the analysis, we recommend that this program be required only after additional Water Board guidance has been developed and funding is provided.

6. The Staff Assessment Program should not be implemented

Based on our reading of the proposed Staff Assessment Program requirement, it appears that it would be quite extensive and difficult to implement. The expectations outlined in the proposed 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 substantial funding and program staff. Moreover, the work would be repeated at each agency, a redundancy which does not appear to be a good use of resources. We are also concerned about the propriety of San Francisco, as a public agency, undertaking the training of contractors which are separate, private entities; we believe that this would not be an appropriate way to spend public funds.

We therefore request that the proposed Staff Assessment Program be removed from the SSS WDRs.

7. The Sewer System Replacement Funding requirement to demonstrate funding "in perpetuity" is functionally unachievable

The Sewer System Replacement Funding Provision would require Enrollees to "demonstrate the agency's ability to properly fund the sewer system in perpetuity." As San Francisco understands this provision, it would require a demonstration of funding into eternity, a requirement which is functionally unachievable given how Boards of Supervisors and agency budget approval processes operate. We request that this unrealistic provision be eliminated.

8. The four-year board re-certification requirement should be lengthened to cycle appropriately with capital program timelines

The proposed revisions to the SSS WDRs would require each agency to bring its SSMP before its governing board for re-certification at a minimum every four years. This is too short a time period considering that infrastructure projects need to be funded, approved, constructed, and in full operation, which generally requires a longer timeframe than the proposed 4-year recertification. San Francisco, for instance, addresses sewer rehabilitation, replacement, and improvement projects on a 10-year programmatic timeline. A requirement for each agency to recertify their SSMP every four years would be out-of-step with the reality of capital funding and is not likely to yield comprehensive and objective analysis of the program. Therefore, San Francisco requests that the re-certification time frame of the SSMP be extended to every 5-10 years.

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CONCLUSION:

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 under the current system as capital improvements identified under the current permit are completed. 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 this opportunity to provide input and comments on the proposed SSS WDRs.

Sincerely,



Tommy T. Moala
Assistant General Manager
Wastewater Enterprise

LP/TTM/hc