

SACRAMENTO AREA SEWER DISTRICT

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October 2, 2012

Mr. Russell Norman
State Water Resources Control Board
Division of Water Quality
1011 I Street, 15th Floor
Sacramento, CA 95814

Submitted via email: rnorman@waterboards.ca.gov

Subject: Comments on the Proposed Changes for Sanitary Sewer Systems Waste Discharge Requirements Monitoring and Reporting Program

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Dear Mr. Norman:

The Sacramento Area Sewer District (SASD) appreciates the opportunity to comment on the proposed changes to the Sanitary Sewer Systems Waste Discharge Requirements (SSS WDR) Monitoring and Reporting Program (MRP).

SASD has been involved in the SSS WDR regulatory processes since 2005, and we recently participated in the Data Review Committee (DRC) for the SSS WDR program. The DRC process resulted in positive recommendations for the SSS WDR program that we believe would improve the program for enrollees, regulators, and the public. Many of the recommendations from the DRC process were incorporated into the California Integrated Water Quality System (CIWQS). However, some of the DRC recommendations require changes to the MRP. Consistent with the DRC recommendations, we support the proposed MRP changes shown below:

- Creating three categories of SSOs,
- Clarifying an event-based approach to reporting SSOs, and
- Attempting to simplify notification requirements.

In addition to the items above, the DRC agreed that reporting requirements for small SSOs (now Category 3) should be streamlined, and reporting requirements for enrollees should be simplified. Simplifying the reporting requirements was intended to reduce confusion among enrollees and improve data quality so that the State Water Board Resources Control Board (State Water Board) could better analyze SSOs throughout the state.

We were surprised to find that the DRC's recommendations for the MRP were largely disregarded. The proposed MRP, which we thought was going to be streamlined based on DRC recommendations, has grown from six to 30 pages and includes very prescriptive requirements that are contrary to the SSS WDR and other State Water Board initiatives. Many of the MRP changes weren't

vetted by stakeholders because they were proposed after the DRC stopped regular meetings. Many of the changes in the proposed MRP are overly burdensome and will significantly increase compliance costs for enrollees without meaningful environmental benefit.

The increase in compliance cost is in conflict with other State Water Board initiatives. On October 18, 2011, the State Water Board adopted Resolution No. 2011-0052 which directed State Water Board staff to begin working on the Resource Realignment workplan. The goal of the workplan is to identify “opportunities for reducing the costs of compliance for discharges subject to Water Board oversight...” The workplan also identified the desire to “maximize the utility/benefit arising from discharger compliance actions, including benefits to the regulated community and to the environment at large.”

We believe that the proposed MRP is overly burdensome, much too prescriptive, and ignores the ongoing efforts of the resource realignment workplan. SASD estimates that it will cost approximately \$1.3 million more per year to implement the proposed MRP. We also estimate a one-time cost of approximately \$170,000 to train staff, purchase equipment, and update documents based on the proposed MRP. The cumulative cost to enrollees statewide will be much higher.

Based on our estimated costs for compliance, we don’t believe that the burden to the enrollees is warranted. Finding 13 of the proposed MRP states that “the State Water Board has determined that the burden to the enrollees to comply with this Order, including any costs, bears a reasonable relationship to the need for the information to protect beneficial uses and reduce SSOs.” We have not seen a cost-benefit analysis confirming this finding. We are concerned that the new MRP will not have a corresponding environmental benefit, and in fact, may divert resources from actually maintaining and rehabilitating sewer systems.

Examples of Changes and Associated Costs

Below are a few examples of the proposed MRP changes and the associated cost for SASD to comply.

Notification Requirements, section C:

The existing MRP requires enrollees to notify the State Office of Emergency Services (CalEMA) pursuant to California Water Code section 13271. The proposed MRP adds a two hour reporting window for notification, further defines what “become aware of” means, and adds to the amount of information required for reporting to CalEMA. These new provisions to the CalEMA notification requirement will significantly increase costs to enrollees. Additionally, CalEMA will most likely be flooded with erroneous SSO notifications. For SASD, we estimate that this section will increase our costs by approximately \$950,000 per year and have an associated one-time cost of \$50,000 per year for training, program changes, etc.

In the event of an SSO that reaches, or will reach, Waters of the State, California Water Code section 13271 requires an SSS WDR enrollee to notify CalEMA as soon as the enrollee:

- A) Has knowledge of the discharge,
- B) Notification is possible, and
- C) Notification can be provided without substantially impeding cleanup or other emergency measures.

If the proposed MRP is approved, SASD will only have two hours from the time that the SSO notification (ex., complaint, phone call, informant, or self-discovery) was received to the time that they contact CalEMA and provide the required information under section C.2 of the proposed MRP.

To comply with this new notification provision, SASD would need to add more staff to the spill standby and spill response groups. These new staff members wouldn't be added to improve SSO cleanup or response time—they would only be added to comply with the new notification requirements of the proposed MRP. While one spill response crew is fixing and cleaning the spill, the second crew would be collecting the data necessary to notify CalEMA within the two hour time frame.

We request that the notification requirements of the existing MRP remain the same. The notification requirements proposed in the new MRP would divert critical resources from our budget without reducing the frequency and volume of SSOs.

Increased Reporting Requirements for Category 3 Spills, Appendix 1, Section F:

This section significantly increases the information required for reporting Category 3 SSOs that generally have minimal impact due to low volume. We estimate that the new reporting requirements for Category 3 SSOs will cost SASD approximately \$180,000 per year.

As stated earlier, this significant increase in reporting requirements for category 3 SSOs is contrary to what the DRC proposed. Instead of streamlining the reporting requirements, they have been expanded, creating more opportunity for confusion among data submitters.

Photographic Evidence, section F.2.a.i:

The new photographic evidence requirement section of the MRP is an example of the prescriptive nature of the changes. Currently, enrollees can choose to (and many do) take pictures of the SSOs that they believe warrant photographic documentation. The proposed MRP will now require photographic evidence of *all* SSOs, including those that do not pose health risks to people or the environment.

For SASD, a sewer agency that owns hundreds of thousands of lower service laterals (small sewer line to the household) this new requirement is projected to cost \$100,000 annually with an associated one-time cost of \$50,000 to purchase equipment, modify response manuals, and train staff.

Not only would our staff have to take the pictures, but the photographs would have to be logged, entered into a database, and stored for five years. This estimate doesn't include the potential costs that could arise from a Notice of Violation (NOV) if staff couldn't take a picture of a spill due to dead batteries, camera failure, memory card problems, etc.

Impact assessment, section E.3, 5, and 6:

This section requires an impact assessment for spills over 50,000 gallons to Waters of the State. The impact assessment is required to include short-term and long-term impacts to beneficial uses, including public health, animal communities, plant communities, and appropriate ecosystems.

We don't know why the State Water Board chose 50,000 gallons as the volume that triggers an impact assessment, and we aren't aware of a study that shows what size SSO is likely to have long-term impacts to beneficial uses.

We are unsure why the State Water Board wants to make an impact assessment mandatory and automatic when the Water Boards already have the authority to require one as needed. Instead of the MRP making an impact assessment automatic and mandatory, it would be a better use of resources if the Water Boards reviewed the facts of the SSO before requesting a beneficial use impact assessment.

Completing the beneficial use impact analysis will likely require a specialized ecologist, trained in aquatic ecology. SASD and most other sewer agencies do not have the staff to complete this work and would have to hire a consultant to do the assessment. Each assessment would be unique, so it is difficult to estimate our staff and consultant costs. However, we would expect the costs per SSO to be between \$20,000 and \$100,000, depending on the nature of the spill, the location, and the time required to adequately assess impacts.

Enforcement Focus

It seems that many of the proposed changes in the MRP are driven by the recent audits of a small number of enrollees that were not responding to SSOs properly. There are existing mechanisms in place to deal with violations of the SSS WDR. Instead of utilizing those mechanisms, the State Water Board is proposing sweeping changes that will affect all enrollees regardless of their performance history.

By modifying the MRP based on a few bad examples, the State Water Board will require enrollees to collectively spend millions of dollars to collect and store data that, for the most part, will never be seen by the Office of Enforcement. Not only will enrollees be collecting data that may never be seen, but the new requirements of the MRP will create new opportunities for reporting-driven NOV's and third party lawsuits for enrollees that are otherwise working efficiently to decrease their SSOs.

We recognize the difficulty of completing audits for such a diverse set of enrollees throughout the state, and we are willing to work with State Water Board staff to make the audit process more efficient for all. For example, the DRC was aware that the Office of Enforcement needed help targeting its audits. With that in mind, the DRC tried to tailor the data in CIWQS to be the first resource used in determining which enrollees could be audited. Once that potential audit list is generated, State Water Board staff could contact those enrollees to request a pre-audit meeting that would give the enrollees the opportunity to correct, or explain the CIWQS issues that triggered the potential audit. If the enrollee's response doesn't satisfy the State Water Board, then a full audit could proceed.

Nature of the MRP Changes

The MRP has been modified before, but not to the extent that is being proposed now. While it is true that the Executive Director for the State Water Board has the authority to modify the MRP, we are concerned that the proposed MRP changes are indirectly modifying the SSS WDR.

For example, Section D.13 of the SSS WDR outlines the requirements of the SSMP audit and it gives enrollees the authority to create an audit that is appropriate to the agencies' size and number of SSOs. This will be changed by Appendix 3 of the proposed MRP.

Appendix 3 of the proposed MRP dictates the requirements of the SSMP audit and it removes the enrollees audit discretion that was outlined in the SSS WDR. If the proposed MRP is approved, all enrollees, regardless of size and number of SSOs, will have to complete the audit that is prescribed in Appendix 3. This proposed approach to SSMP audits is in conflict with the audit provisions of the SSS WDR.

Another example of the MRP indirectly modifying the SSS WDR can be found throughout the proposed MRP. The SSS WDR currently prohibits discharges to water of the United States, but the proposed MRP uses waters of the State when it defines the different types of SSOs and the associated reporting requirements. This proposed change will be very confusing to enrollees and it is inconsistent with the existing SSS WDR.

Another example of the MRP indirectly modifying the SSS WDR can be found in section F.3.b.iii of the proposed MRP. This section will require enrollees to conduct training on an *annual* basis. This differs from the SSS WDR because the SSS WDR requires *regular* training, and it gives authority to the enrollee to determine what frequency is appropriate for its employees.

Not only will the proposed MRP change technical details of the MRP, it also will change the agreed upon tone of the SSS WDR. In 2005, there was a robust stakeholder process that yielded a WDR that gave enrollees authority over their collection systems and allowed them to implement the WDR on a scale that fit their system. The proposed MRP is moving away from the tone set in the stakeholder process that created the SSS WDR, and as a result, the SSS WDR will become much more prescriptive.

As you are aware, in January 2012, the State Water Board had a hearing to discuss possible changes to the SSS WDR. Ultimately, the State Water Board decided not to update the SSS WDR. Many of the concerns that were raised during that hearing are the same that are now being expressed by enrollees regarding the proposed MRP changes.

Supported Changes

As stated previously, SASD participated in the DRC stakeholder process. Many of the recommendations from the process were already incorporated in the California Integrated Water Quality System database. However, some of DRC recommendations necessitated changes to the MRP. The changes below were approved by the DRC and they are reflected in the proposed MRP:

- Creating three categories of SSOs,
- Clarifying an event-based approach to reporting SSOs, and
- Attempting to simplify the notification requirements.

We still support the DRC's recommendation to streamline reporting requirements for category 3 SSOs, and we request that the proposed MRP reflect that recommendation.

Conclusion

We are concerned with the new approach that the State Water Board seems to be taking with the SSS WDR program. This new approach will require enrollees millions of dollars to complete paperwork that will not lead to a decrease in the number and volume of SSOs. We estimate that the proposed MRP will increase our annual compliance cost by approximately \$1.3 million.

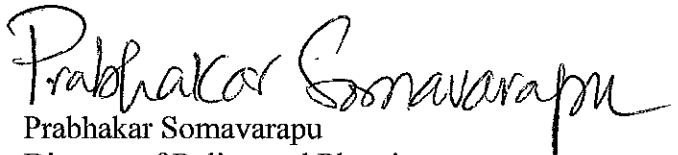
We believe that the stakeholder work in the DRC resulted in positive recommendations for the MRP, and we request that the recommendations of the DRC be incorporated into the MRP.

We are also willing to meet with State Water Board staff to discuss ideas that could improve the audit process for all stakeholders.

We have reviewed and support the comment letters submitted by the Central Valley Clean Water Association and California Association of Sanitation Agencies/Tri-TAC/Bay Area Clean Water Agencies.

If you have any questions, please contact Jason Lofton at loftonj@sacsewer.com, or (916) 876-6008.

Sincerely,



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