WATER RECLAMATION
SOLID WASTE MANAGEMENT

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

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JAMES F. STAHL
Chief Engineer and General Manager

January 25, 2006

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BOARD
EXECUTIVE OFFICE

Via Electronic & U.S. Mail

Ms. Tam Doduc, Chair & Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attn: Selica Potter, Acting Clerk to the Board

Dear Chair Doduc and Members:

COMMENT LETTER – 1/19/06 PUBLIC HEARING FOR SSORP

On behalf of the Sanitation Districts of Los Angeles County (Districts), I am pleased to provide you with our comments regarding the proposed waste discharge requirements (WDR) for sanitary sewer collection systems. We strongly support the goal of reducing sanitary sewer overflows (SSOs) to the extent practicable, and we believe that creating a consistent statewide approach to collection system management and regulation will assist in reaching that goal. By way of background, the Districts serve over 5 million people in 78 cities and unincorporated areas of Los Angeles County. The Districts' sewerage system consists of 11 wastewater treatment plants, approximately 1,300 miles of sewer, and 54 pump stations. Additionally, there are nearly 10,000 miles of local city sewers that are tributary to our regional collection and treatment system.

The efforts of State Board staff are to be commended in developing this WDR, and we also greatly appreciated the stakeholder-based process that occurred over the past two years through the SSO Guidance Committee, though we were disappointed that some stakeholders in the non-governmental organization community chose not to participate in the process as of mid-2005.

We would like to be able to support adoption of the WDR; however, there are several remaining concerns that must be addressed before we are able to do so. A separate letter discussing the issues and proposing specific changes to the WDR is being submitted today to the State Water Resources Control Board (State Board) by Tri-TAC, the California Association of Sanitation Agencies, and several other local government associations. We fully support the comments contained in that letter, and incorporate it herein by reference. Our major comments are outlined below.

Need for Public Agency Protection From Enforcement of Unavoidable SSOs

The proposed WDR is unprecedented in its scope and requirements, and must be recognized for what it is: a major new regulatory program applicable to public agencies throughout California that will cost billions of dollars to implement. There do not appear to be any significant new sources of state or federal funding available to help pay for these new mandates. Most importantly, these additional costs

should not be further increased by fines or third party litigation due to SSOs that occur even after full Sewer System Management Plan (SSMP) implementation and full compliance with the requirements of the proposed WDRs. The WDR must strongly differentiate between preventable and unavoidable SSOs, and must provide protection against the cost impact of fines and lawsuits based on SSOs that occur even after a collection system is managed, operated and maintained according to the standards and requirements established by this new regulatory program.

Under Clean Water Act authority, citizen plaintiffs are currently able to file suit and obtain settlements for SSO's that are literally impossible to prevent through application of best available and best conventional technologies. This was not the intent of the citizen suit provision of the Clean Water Act. However, it appears that many groups that file citizen suits are not satisfied with their authorities under current law and are seeking to create a new class of unlawful SSO's (e.g., those spills not reaching waters of the U.S.) and an expanded set of causes of action for citizen enforcement through incorporation of SSMP and MRP requirements into an NPDES permit. The Sanitation Districts believe that those arguing this position are improperly trying to increase the scope of applicability of the Clean Water Act citizen suit provision by articulating an extreme and legally questionable position, which would result in an unwarranted and unrivaled expansion in citizen suit authority. The manner in which the current citizen suit authority codified in the Clean Water Act is being exercised today by some plaintiffs is already problematic from the perspective of the Districts and the regulated community in general. Thus, instead of adding to their ability to file citizen suits, the State Board should instead add to protections available to well managed and operated utilities by including a limited affirmative defense provision in the WDR (such as that included in a May 2005 draft WDR prepared by staff).

Support for State-only WDR rather than NPDES Permit

We understand that some parties are arguing that an NPDES permit is required and should replace the proposed WDR. Based on the explanation in the Fact Sheet, we agree with staff's determination that a statewide general WDR is the best approach, rather than an NPDES permit. One compelling reason is the 2005 2nd Circuit Court of Appeals decision regarding permitting of confined animal feeding facilities (CAFOs), which held that U.S. EPA could not require all CAFOs to apply for permits, only those with documented actual discharges to surface waters. (*Waterkeeper Alliance v. EPA,* 399 F.3d 486 (2nd Cir. 2005).) The court also held that U.S. EPA could not even place the burden on the CAFOs to demonstrate that they did not have discharges. We believe that this logic would also apply if the State Board were to issue this permit as an NPDES permit rather than a WDR. Another important reason to move forward with the WDR rather than with an NPDES permit is because numerous POTWs -- and presumably the satellite systems tributary to those POTWs -- are not subject to NPDES permits because they do not discharge to waters of the U.S. Thus, if the State Board were to proceed with an NPDES permit instead of the WDR, there would be major gaps in coverage and the State's goal of a consistent statewide program of SSMP implementation and spill reporting would not be achieved. In fact, it is not clear what gains would be achieved, other than providing more causes of action for citizen suits, as noted above.

WDR Should Supercede Collection System Provisions in Existing Permits

A major area that must be clarified prior to adoption of the WDR is the relationship of the proposed WDR to both existing permits (whether they be NPDES or WDR) and to potential future requirements that may be issued by Regional Boards. We are troubled by the language in Finding 11 and Provision 2, which basically appears to allow Regional Boards to issue permits in addition to or instead of the proposed WDR. Not only does this approach undermine the goal of a statewide consistent program, but we believe that it also potentially subjects permittees to duplicative or even conflicting requirements. Simply put, this approach is unacceptable and, under this program, it must be clear that each collection system will be governed by a single permit.

The Electronic Reporting System Must Be Fully Operational and Adequate Time Should Be Allowed For Training of Enrollees Before Formal Reporting Is Required

Before the WDR becomes effective and the new reporting requirements take effect, the State Board must assure that the electronic reporting system is working correctly and reliably and that there are adequate security measures in place to protect the information. This database will be used for compliance determination, as well as to track trends, and it is essential that the system be operational before the WDR takes effect. Furthermore, it is only fair that sufficient time and training be provided to the hundreds of new permittees to ensure that they fully understand what is being required of them. This alone is likely to take far more than the 4 months currently provided in the proposed WDR. We recommend that the State Board allow enough time to truly have the system operational before this requirement takes effect.

Need for Public Education

We encourage the State Board to educate not only the various collection system agencies regarding the new requirements, but also the public. One particular area that should be addressed relates to the number of SSOs that will be reported via the statewide SSO reporting system. Because the permit puts in place uniform standards for reporting virtually all spills and makes this information readily available to the public, over the first few years there may be a perception that the number of SSOs occurring has increased. In reality, however, this may be due to the change in reporting requirements and creation of a statewide tracking mechanism that didn't previously exist, rather than because of a real increase in the number of SSOs. The data generated through the reporting system must be carefully reviewed and interpreted, since, even though the implementation of the WDR is generally expected to decrease the number and severity of spills over time, there will be year-to-year variability in this outcome, and particularly in years with extreme wet weather events, more spills can be expected to occur despite the best efforts of collection system owners and operators.

We appreciate the opportunity to comment on the proposed WDR and strongly urge the State Board to make the changes described herein, as well as those described in the letter submitted by Tri-TAC, CASA and other associations, prior to adoption by the Board. If you have any questions about our comments, please contact me at (562) 699-7411, ext. 1701.

Very truly yours,

James F. Stahl

Philip L. Friess

Philip L. Friess
Departmental Engineer
Sewerage Department

PF:SNG:drs

cc: Bryan Brock, Office of Statewide Initiatives