



January 22, 2013

State Water Resources Control Board
Chair Hoppin and Board Members
1001 I Street, 15th Floor, P.O. Box 2231
Sacramento, CA 95812

VIA ELECTRONIC MAIL: rnorman@waterboards.ca.gov

Re: Comments on the Draft Amended Monitoring and Reporting program (MRP) for the SSS WDRs (Order#2006-0003-DWQ)

Dear Mr. Norman:

The California Coastkeeper Alliance (CCKA) represents 12 Waterkeeper groups spanning the coast from the Oregon border to San Diego. CCKA and its member Waterkeepers work daily to protect and enhance waterways throughout the state, and have commented extensively on this issue over the past six years; including the State Water Board March 22nd 2011 draft Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (SSS). California Waterkeepers have been actively involved in the attempt to curtail sanitary sewer overflows (SSOs) in their communities and identify beaches closed due to SSOs. On behalf of CCKA and Heal The Bay, we appreciate the opportunity to review and provide the following comments on the proposed Draft Amended Monitoring and Reporting program (MRP) for the SSS WDRs (Order 2006-0003-DWQ).

CCKA and Heal The Bay support the new MRP requirements, and thanks staff for addressing previous comments by environmental and fishing non-governmental organizations. We appreciate the changes made to the MRP that provide more robust monitoring and reporting requirements, while establishing clear and enforceable standards. For example, Attachment A, Section A: *Summary of MRP Requirements* provides enrollees and the public with a clear and organized table that clearly provides the requirements of the MRP. The MRP takes substantial steps forward in requiring Sewer System Management Plans to be made available to the public. We thank the State Water Board for developing an MRP that is clear, and provides the appropriate authorities and the public with SSO information.

Despite the improvements reflected in the revised MRP, we believe the State Water Board should make improvements to strengthen the notification, monitoring, reporting and enforcement provisions as provided below to: (1) provide the public with more timely and accessible notifications of SSOs, (2) improve enforcement mechanisms, and (3) provide detailed sampling protocols.

The MRP should more clearly delineate the categories of spills to ensure permittee implementation of appropriate monitoring and reporting protocols. The MRP contains little guidance to determine whether a spill is "fully captured and returned to the sewer system." In practice, the cracks and crevices in pipes make full capture nearly impossible. Moreover, a spill can never be "fully captured" if it occurs during a rain event; the SSO mixes with the constant flow of stormwater thus never being completely captured and contained. At a minimum, the MRP should provide additional guidance as to permittee determination of full capture, and note that it is impossible to completely capture and contain a spill that occurs during a rain event.

Those who recreate in surface waters impacted by a SSO have an increased risk of becoming sick. Thus, timely and effective public notification is a key element to any SSO program. The WDR requires the discharger to conduct "[a]dequate public notification to protect the public from exposure to the SSO."¹ However, the MRP only provides notification of an SSO on the California Emergency Management Agency's website, which is inadequate notification to the average recreationalist. The State Water Board needs to provide a more timely and informative tool to notify the public regarding an SSO. The State Water Board could ensure more immediate notification to recreational users via one of several web-based tools currently in use in California, including the California Water Quality Monitoring Council's *Safe to Swim* data portal and the Waterkeeper Alliance *Swim Guide* smartphone application.

Further, some of the existing reporting requirements in the MRP need additional improvements. First, Section C.6 of the MRP provides that permittees may *voluntarily* report sewage spills that are caused by blockages or other problems within a privately owned lateral line. Collection systems have the authority to inspect and are required to repair or replace defective laterals. The MRP should be amended to *require* permittees to track and report all information concerning private lateral spills that they become aware of.

Section D.4 of the MRP requires permittees to "assess the impacts of SSOs in which 50,000 gallons or greater may have been discharged, but not recovered, to waters of the state, within 48 hours of initial agency notification of such a possible SSO from a complainant, informant, or through self-discovery (whichever is earliest)." However, it will be difficult to accurately assess the impacts of an SSO when monitoring may not occur for up to two days, particularly during the rainy season. The MRP should be amended to require monitoring within 12-24 hours.

We are also concerned with the enforcement of the revised MRP. The MRP states that "[f]ailure to comply with this MRP may subject an enrollee to civil liabilities of up to \$5,000 a day per violation pursuant to Water Code section 13350 or may be referred to the Attorney General for civil action."² While this statement is true and we support its reference, we remain concerned that enforcement will not take place in practice. The State Board and Regional Boards should improve their SSO enforcement by: (a) giving the highest enforcement priority to bringing permittees into immediate compliance with the basic information reporting requirements of the WDR; (b) focusing as their next priority on issuing cease and desist orders ("CDOs") or Cleanup and Abatement Orders ("CAOs") to permittees with the most significant SSO

¹State Water Board, "Statewide Waste Discharge Requirements for Sanitary Sewer Systems" Order No. 2006-0003-DWQ, at pg. 9 (2006).

² State Water Board, Monitoring and Reporting Program: Attachment A.

problems; (c) in consultation with appropriate experts, setting a benchmark standard for annual SSO rates per 100 miles of sewer lines and annual volume of sewage spilled per 100 miles of sewer equal to well-performing systems, and targeting enforcement toward permittees not meeting these requirements; (d) issuing administrative civil liability orders (ACLs) in conjunction with CDOs or CAOs in appropriate cases, rather than issuing ACLs as the sole enforcement response; and (e) bringing judicial actions against recalcitrant violators.

Finally, the MRP should outline specific procedures for conducting monitoring that captures the size of the plume and any variability in the system. Specifically, the State Board should outline a detailed water quality monitoring protocol that includes parameters, such as frequency (i.e. daily or hourly sampling), number of sample points (i.e. 3 upstream and 3 downstream), time of collection (i.e. a set time after a spill has occurred), upstream and downstream distances of the spill (i.e. every 100 yards). Spill monitoring efforts should occur until such time as Fecal Indicator Bacteria densities are below water quality standards. Such a protocol is necessary to capture the variability in the type of spill and current environmental conditions such as tides, flows, time of day, and currents. Also, all spills that visibly reach receiving waters must be monitored immediately.

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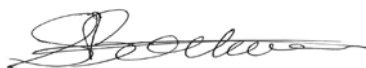
The high number and large volume of sewage spills into California's waterways, public streets, homes and businesses, and other places where the public may become sickened by contact with sewage make improvements to the MRP critical. We support the State Board's evaluation of the need to update and improve the MRP at this time, and we urge that our recommendations be adopted to stem the ongoing, serious problems associated with SSOs.

Thank you for consideration of our comments.

Sincerely,



Sara Aminzadeh
Executive Director



Sean Bothwell
Staff Attorney



Kirsten James
Water Quality Director