



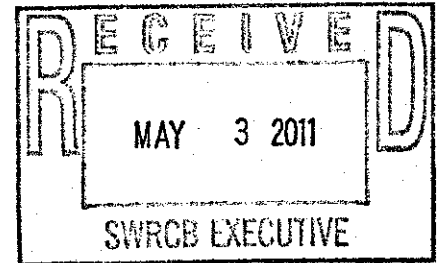
CITY OF MANTECA

PUBLIC WORKS DEPARTMENT

May 3, 2011

Via email: commentletters@waterboards.ca.gov

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: **Comment Letter – SSS WDRs Review & Update**

Dear Ms. Townsend:

The City of Manteca (City) would like to thank the State Water Resources Control Board (SWRCB) and its staff for encouraging comments to the proposed Sanitary Sewer Systems Waste Discharge Requirements (SSS WDRs) which would replace the existing statewide Sanitary Sewer Overflow (SSO) WDR (Order WQ 2006-003). At this time the City concurs with the findings of the various organizations that acted in a collaborative role developing the current SSO WDR and join them in opposition to the proposed SSS WDR.

BACKGROUND

The City was incorporated in 1918 and has grown to its current size of approximately 70,000 residents. The City has over 250 miles of gravity sanitary sewers and 8 miles of force mains. The City was one of the early participants in the SSO Reduction Program and developed and adopted the required Sewer System Management Plan (SSMP) in May of 2006 which is the centerpiece of the current SSO WDR. Developing this extensive document came at a cost of \$88,000 in 2006 dollars. Implementation of the elements of the Plan on an on-going basis has proven to be an even more expensive endeavor. The City currently provides the service of cleaning residential laterals from the home's cleanout to the City's main trunk line. This is a proactive step to prevent Private Lateral Sewer Discharges (PLSDs). The City is still providing this service even during the current fiscal crisis that the City is facing which so far has led to the elimination of several positions in Public Works (as well as the City as a whole).

The City has reviewed all the comment letters that were solicited in October of 2009, the public hearing comments in September of 2009, and the recent CVCWA suggested template which the City supports. Many of the issues presented in the comments of 2009 on the SSO Reduction Program remain relevant for this discussion of comments and concerns. The City of Manteca presents the following concerns regarding the proposed SSS WDR which would replace the current Order.

I. Procedural – The Abandonment of the Collaborative Approach

The current SSO WDR was drafted in a partnership manner where knowledgeable stakeholders participated in every aspect of the process. The California Water Environment Association (CWEA) even provided the training on the new regulations and use of the CIWQS database while local agencies provided the facilities for this training. This resulted in a product that Ken Greenberg of EPA Region 9 staff commented that “. . . the WDR is to be applauded. No State has [a program] as good.” This statement was made in September of 2009, less than two years ago.

The current approach to the new regulations ignores the past success of the collaborative process which has proved so successful. The existing adversarial methodology is now resulting in the very same associations that helped produce the current WDR to opposing the majority of changes proposed in the “updated” WDR and encouraging affected public agencies to do the same.

II. Lack of Enforcement on Recalcitrant Public Agencies Not Complying with Current Order

The *WATER QUALITY ENFORCEMENT POLICY – State Water Resources Control Board: May 20, 2010 p. 2* states: “It is the policy of the State Water Board that the Water Boards shall strive to be fair, firm, and consistent in taking enforcement actions throughout the State, while recognizing the unique facts of each case.” In addition the Policy asserts: “the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any “economic benefit or savings” violators gained through their violations. (Wat. Code, § 13385, subd. (e).) p. 9.” Lastly, the Policy mandates “The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation.” p. 20. The Policy goes into great detail on how to determine the economic benefit, the larger the agency the greater the economic saving for not complying. An economic benefit analysis based upon mileage of collection system serviced or owned by the noncompliant agency with a minimum calculated benefit based upon the cost of developing an SSMP with the mandatory elements would conform quite well to the requirements of the Policy.

The City of Manteca has been diligent in its efforts to comply with all provisions of the current SSO WDR. There still exist a significant number of agencies that are not enrollees that have not developed or implemented an SSMP, and have not performed the required monthly reporting. These agencies have been immune to public scrutiny, to possible fines for SSOs that may have occurred at their agency, and have benefited financially from ignoring these requirements. Until every agency is in compliance with these minimum requirements the addition of more requirements on agencies that perform their legal obligations is inconsistent with the stated Policy of the SWRCB.

The SWRCB has developed an enforcement plan for SSO reductions titled the “*Statewide Sanitary Sewer Overflow Reduction Program: Compliance and Enforcement Plan*” - State Water Resources Control Board: January 2010. In this SSO reduction plan, the State Board sets forth a phased approach to the various compliance issues confronting the State Board on SSO Reductions.

The Plan states: "Due to limited staff resources, a phased approach will be used in implementing the proposed enforcement tasks."

PHASE I

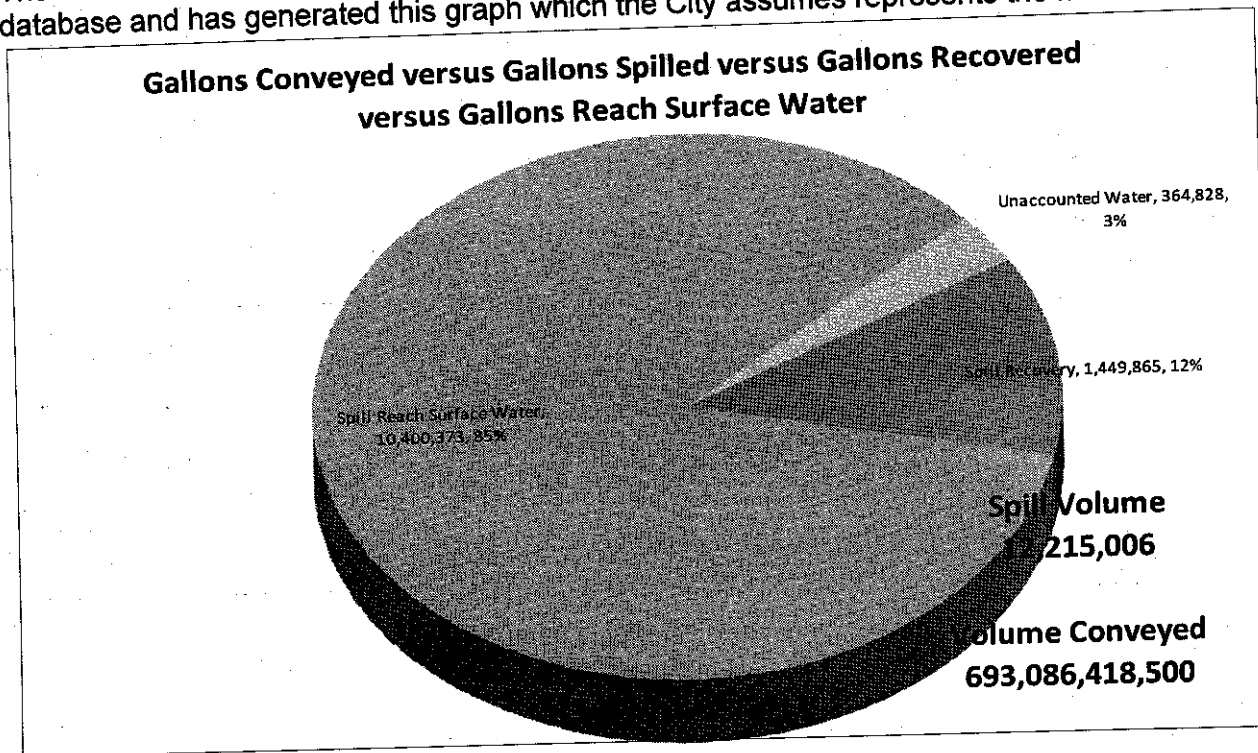
During this phase, enrollees not meeting the basic program participation requirements (e.g., enrollment, reporting, SSMP development) will be identified and enforcement actions will be conducted to bring them into compliance. Collection system agencies and enrollees not participating in the SSO Reduction Program at all will be addressed first."

The City of Manteca concurs with this approach. To add supplementary regulatory burdens on complying agencies would vitiate the stated goals of the SWRCB's formal policy of "fair, firm, and consistent in taking enforcement actions throughout the State"

III. "Lies, Damned Lies, and Statistics"¹ The Proposed WDR will be Based Upon Incomplete Data and False Conclusions

A. The Data Format Leads to Misleading Conclusions

The Data Review Committee has been meeting and correlating the spill data from the CIWQS database and has generated this graph which the City assumes represents the most recent data.



¹ Mark Twain "Chapters from My Autobiography", North American Review; 1906

At first blush, this graph generates a visceral “Oh My Gosh!” reaction, which would lead any reasonable person to conclude that the system has failed and drastic steps must be taken to resolve this problem. The graph shows that 85% of all spill volumes reach surface waters. There is a flaw in the system and that is how data is correlated and presented by the current data management system. The data is grouped together into only a few categories, in this case; Total Spill Volume, Total Amount of Spill Volume Recovered, and Total Spill Volume Reaching Surface Waters.

An evaluation of the data that went into generating this chart reveals a completely different picture. Choosing only spill events of extremely large volumes (100,000² gallons or more) accounted for close to 70% of the total volume that reached surface waters. There were only 24 such events. Counting only the 4 largest spills indicated that these 4 spill events were responsible for close to 40% of the total spill volume that reached surface waters (one (1) single event accounted for almost 20% of total spill volume to reach surface waters). This chart includes spill volumes as low as one (1) gallon.

SWRCB staff recognizes this distinction is its Enforcement Plan, however, it is clearly not widely known. Comments from NGOs in 2009 make this unambiguous. Here is a sampling from some of these NGO comment letters:

“There were only six enforcement actions (FY 2008-2009³) yet there were approximately 12,000 reported SSOs with nearly 28 million gallons reaching surface waters (this is a 0.05% enforcement rate). What deterrent will those enrolled under the WDRs have to correct their systems with practically no threat of enforcement?” and

“The State Board’s own recent SSO report indicates that 28 million gallons of sewage have been spilled to surface waters in over 1900 SSOs since the WDR has been in place.”

The clear fault in this reasoning is that it implies that all SSOs reach surface waters and pose a significant threat to the environment and to the health and safety of residents as a whole. The implication is every SSOs (per first quote) is approximately the same size and reaches surface waters. They attempt to paint a vision of geyser like spills coming out of manholes as a common occurrence which necessitates that the SWRCB take immediate and strong measures to rectify. This inferred argument is bolstered by the poor manner in which CIWQS presents the data.

B. The Data Demonstrates the Lack of Need for Additional Regulations

As noted above only a handful of spill events led to the majority of untreated or partially treated wastewater to the surface waters of the state. One glaring omission in the staff’s

² One data point was 97,785 gallons

³ Inserted for clarification

recommendations is the fact that there has been a decrease in SSO volume to the state's waters. In the fiscal year of 2008-2009 the volume of SSOs that reached state waters was approximately 28 million gallons. The most recent data indicated in the above mentioned chart reveals a volume of a little more than 10 millions gallons of SSOs reaching the surface waters of the state. This is almost a three (3) fold decrease in less than two (2) years under the current SSO WDR. Further, the decrease to 10 million gallons occurred in spite of the fact that more agencies during this time period were added to the CIWQS database and started reporting their SSO data. Finally, only one third ($\frac{1}{3}$) of all public agencies (reporting agencies) had an SSO that reached state waters. The other two thirds ($\frac{2}{3}$) of public agencies did not have a single SSO event that reached the waters of the state.

The current SSO WDR has been an unparalleled success. The City does not understand the basis for the need and apparent urgency for the State Board to add additional requirements on a tremendously successful SSO reduction program. The SWRCB's tentative schedule is to adopt these new requirements sometime during the summer of 2011. With a timeframe of submitting comments by Friday, May 13, 2011 then holding public workshops a short time after the written comment period and then to hold the adoption hearing a short time later, leaves little to no time for meaningful discussion. To make material changes to the current SSO WDR that has demonstrated incredible success despite the lack of full enrollment and reporting is of great concern to the City of Manteca. Without the inclusion of the public agencies that are ignoring this law, there is a lack of data to justify the adoption of more requirements for the law abiding public agencies. This in addition to the short time frame that the current SSO reduction program has been implemented coupled with the fact that the program to date has been extremely successful presents a powerful argument not to add new requirements. There appears to be no legitimate justification for additional regulatory burdens for a program that a close review of the data would sanction.

C. Further Misleading Data from the Way Private Lateral Sewage Discharges (PLSDs) are Reported and Correlated

The current Order WQ 2006-003 defines a Private Lateral Sewage Discharge (PLSD) as a "Sewage discharges that are caused by blockages or other problems within a privately owned lateral." As mentioned above, the City of Manteca provides a free service to its residents for cleaning and unblocking private laterals from a home owner's clean-out to the City's main trunk line. Since the vast majority of the City's property owners know about this free service, the City's collection system maintenance crews are typically called out when the private lateral discharge is starting to slow down, *not* when it has already been completely blocked and domestic waste is spilling into the street. When the collection system crews respond to these slow flow calls, the crews block the area around the clean-out prior to opening the clean-out because past experience has taught them that when they remove the clean-out cap, the private lateral is usually surcharged with domestic wastewater. The process of opening the clean-out cap causes the private lateral to "burp" with one to two gallons of wastewater. Per the State Board, this anticipated quick bubbling up of domestic wastewater is now considered a PLSD and gets counted in the City's overall number of SSOs, even though this minor amount of wastewater was produced in the prevention of an SSO and is completely captured, never leaves the private property and the area is sanitized in order that there would be no health risk to curious or playing children.

These preventative cleanings which are meant to be proactive and prevent real PLSDs are now being tallied as an actual PLSD where it adds to the number of SSOs the City has for the reporting year and adds to the number of SSOs per collection system mile, a measure that most if not all NGOs use as a basis for litigation. Here is the break down of all SSOs that Manteca reported in 2010:

Total 2010 City of Manteca Reported SSOs vs Trunk Line SSOs vs PLSDs

<i>Trunk Line SSOs</i>	7
<i>SSO Causes:</i>	
General Debris	6
Shale in Manhole	1
<i>Private Lateral Sewage Discharge</i>	45
<i>PLSD Causes:</i>	
General Debris	33
Debris Rags	7
Root Intrusion	3
Grease	1
Dirt from upper lateral	1
Total Number of SSOs Reported	52

The amount of SSOs reported on the CIWQS for the City of Manteca for 2010 was 52. If the City just reported the required amount of SSOs per the definition of SSO in the Order WQ 2006-003, the total SSO reportable amount would be 7. It is the City's understanding that the vast majority of agencies report in this manner. As an example, the City of Lodi which has a comparable population base and is about 30 miles north of Manteca reported only 6 SSOs last year. A NGO looking at the data could come to the conclusion that the City of Manteca had almost 10 times the amount of SSOs than a City that is similar in size. A Stockton newspaper titled the "Record" reported⁴ on September 23, 2008 that the City of Stockton was being sued by a NGO in federal court over "...claims that 1,530 sewer overflows over the past five years have endangered human health and the environment." The basis of this claim being " While 64 city wastewater treatment plants discharge into rivers and streams in the Central Valley, ...Stockton's number of spills per mile of pipe greatly exceeds the state average, and ultimately worsens water quality in the Delta." Stockton is a City approximately 20 miles north of Manteca and about 10 miles south of Lodi. Sadly, this relatively meaningless statistic of SSOs per mile of collection system is being considered as a performance measure even though the data demonstrates that a handful of SSO events resulted in practically all of the volume of untreated to partially treated wastewater reaching the surface waters of the state.

Ironically, due to the fact that the City of Manteca is diligent in reporting these non spills that come from taking preventative actions when the City responds to its residential calls for slow flows in their

⁴ Attachment 1

private laterals, this expensive service could result in the City being subject to litigation based upon the poor way data is currently being correlated. With the cost of performing this service coupled with the potential for litigation, the City, in these difficult economic times could be forced to discontinue this powerful preventative measure that stops PLSDs before they become real PLSDs. Requiring the City to report a controlled non spill from a preventative private lateral cleaning program that is designed to prevent PLSDs yet must count that effort as a PLSD is an anathema to common sense, punitive in nature, and a strong disincentive in continuing the program. Conversely, if the City did not perform this service it would have less PLSDs to report and the PLSDs that it would report would be actual PLSDs. The City intends to only report SSOs from publicly owned collection works in order that it's reported SSOs are more in line with the way the rest of the public agencies perform their reporting.

In the City of Manteca's situation in 2010 there were 52 reported SSOs, 7 were SSOs from City owned collection systems and the total volume that reached the surface waters of the state was zero gallons. Per the proposed performance measure (number of SSOs per mile of collection system) it would make it appear that the City of Manteca's "disproportionate" amount of SSOs per mile of collection system means that the City is not maintaining its collection system on par with other similar situated cities when the exact opposite is true. With Manteca performing cleaning of private laterals, the City is actually an agency that maintains its collection system to a higher degree than the great majority of public agencies. However, the statistics currently being used and the way they are compiled would leave a reasonable person to come to the opposite conclusion.

Proposed Mandatory PLSD Reporting

The proposed SSS WDR would make reporting PLSDs mandatory. The reasons stated being the leveling of the playing field for those agencies (like Manteca) that until recently reported PLSDs, PLSDs having a potential to impact the environment, and that reporting of PLSDs would provide information on the age and seriousness of certain communities private laterals.

Again, this appears to be reasonable, yet once more it does not hold up to close scrutiny. Out of the 24 SSOs that accounted for nearly 70% of the volume of spills reaching the surface waters of the state, none were PLSDs. Further, it would not level the playing field. Even if the City discontinued with the private lateral cleaning service, residents would still call in disproportionate amounts of PLSDs until the residents finally became aware that this service was no longer being provided.

The primary assumption on data gathering and the correctness of the data as well as the representativeness of the data is the belief that the data from reporting PLSDs would be proportionally consistent from all public agencies. This is pure speculation. It would for all practical purposes be impossible to verify if the reported call-ins for private lateral spills bear any resemblance to a consistent percentage of actual private lateral spills. The data gathered would be useless. It could not tell if one public agency has a more prevalent issue with PLSDs than any other agency. The data could vary by the percentage of home ownership vs. rental property, with rental property being reported to the landlord and not the City, and numerous other factors beyond the scope of this discussion. There exists no shortage of databases that contain detailed demographics on public agencies. The SWRCB would be better served to obtain the data that they presume they would

gather from the reporting of PLSDs, e.g. average age of residence, etc. from commercially available data resources which would be more reliable than the presumptions upon PLSD reporting is based.

Along with mandatory reporting of PLSDs, there are proposals that would require the TVing of private laterals. To allocate limited resources to inspecting private lines would mean most agencies would be forced to perform less inspecting of public lines. Public line inspection is far more important and relevant to the reduction of SSOs than private line inspection. The firm Environmental Engineering and Contracting (EEC) conducted extensive studies on the causes of SSOs and presented these findings at the CWEA P3S Conference of February 28 to March 2, 2011. The firm came to the conclusion that the best way to prevent SSOs by a considerable margin was the cleaning of public sanitary lines. Since defects in collection system lines are responsible for the majority of the SSOs, these sanitary lines should be cleaned on a more frequent schedule or repaired depending on the cost benefit analysis. The TVing of the collection system is an invaluable tool in determining collection system line defects and for assessing the effectiveness of the cleaning procedure. TVing of private laterals (non commercial) would be labor extensive and questionable as to the remedies available to the public agencies that find a line that is partially blocked but not overflowing. Is the public agency going to require flowing private laterals to be cleaned before it causes a PLSD? If the private landowner is in compliance with not having a PLSD and the public agency finds a partial blockage, does that mean that the residence with the partial blockage now goes on a watch list where the public agency has to inspect that line more frequently until it becomes an actual PLSD? It quickly becomes obvious on how inspecting thousands of private laterals would yield nothing useful and at an incredible cost.

IV. Should the SWRCB Have a Two-Tiered System for Regulating SSOs?

The SWRCB is considering regulating public agencies without a single SSO that reaches the state surface waters under a WDR while issuing a NPDES permit to those agencies that have experienced at least one SSO. If an agency that is regulated under a WDR and experiences at least one SSO it also would be captured under a NPDES permit.

The City of Manteca strongly opposes a two-tier system on the following grounds:

A. The Lack of Need for an Additional Regulatory Mechanism to Control SSOs

“In California, the governing state law, the Porter-Cologne Water Quality Control Act (Porter-Cologne), assigns the task of establishing water quality standards to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards, which together comprise the principal state agencies with primary responsibility for the coordination and control of water quality. (Water Code § 13001.)”⁵

The California Water Code derives its authority from Porter-Cologne.

⁵ CITY OF TRACY v. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
Case Number: 34-2009-80000392 p.4

“Under both state and federal law, a permit is required to discharge pollutants from point sources to surface waters. These permits are known under state law as Waste Discharge Requirements (WDRs) and under federal law as National Pollutant Discharge Elimination System (NPDES) permits. (33 U.S.C. § 1342; Water Code § 13374.) WDRs established by the state are the equivalent of NPDES permits required by federal law. (Water Code § 13374).”⁶

The reason that NPDES permits will only be considered for public agencies that had at least one SSO that reached the surface waters of the state is due to a recent decision by the United States Court of Appeals for the 2nd Circuit that has called into question the USEPA's ability to regulate discharges that are only “potential” under an NPDES permit, *Waterkeeper Alliance v. United States Environmental Protection Agency* (2005) 399 F.3d 486, 504-506.

The reasons asserted for implementing NPDES permits are stated in a staff report.

“Advantages of adopting the SSS WDRs as a two-tiered WDRs and NPDES permit include:

- This will simplify enforcement somewhat by allowing the State Water Board to cite Water Code section 13385 in enforcement actions, allowing a lower burden of proof for spill enforcement, and allowing for the imposition of higher monetary penalties.

- This change would allow for third-party (e.g., U.S. EPA, citizens, NGOs) lawsuits to not only address Clean Water Act violations for discharges to waters of the United States as is currently provided for but also for violations of the notification, reporting, and SSMP development provisions of the NPDES permit.”⁷

However, the current Water Quality Enforcement Policy states:

“The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.”⁸

Further, in the former WATER QUALITY ENFORCEMENT POLICY - State Water Resources Control Board; February 19, 2002 pp.21-23 there exists a table with all the California Water Code (CWC)

⁶ CITY OF TRACY v. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
Case Number: 34-2009-80000392 p.5

⁷ STAFF REPORT-STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 2011-XXXX-DWQ STATEWIDE GENERAL WASTE DISCHARGE
REQUIREMENTS FOR SANITARY SEWER SYSTEMS p.9

⁸ WATER QUALITY ENFORCEMENT POLICY - State Water Resources Control Board; May 20, 2010 p.9

provisions related to enforcement⁹ which remains up-to-date. It should be noted that the enforcement provisions referred to in this table pertain only to monetary enforcement authority and not to the plethora of administrative enforcement orders that can be issued in lieu of or concurrent with the monetary fines.

The SWRCB has more than sufficient authority to implement the requirements of Order WQ 2006-003, but apparently would like to have third party suits and the USEPA to assist them in enforcement activities "Due to limited staff resources..."¹⁰

Recommendation for the SWRCB – SSO Division

It appears that the SSO division of the SWRCB needs additional personnel to fulfill its mission to reduce SSOs. Taking a page from many pretreatment and other regulatory programs that have instituted administrative fines and cost recovery, the SWRCB should enact a provision in its SSO WDR that provides up to 100% of the funds acquired through their enforcement activities must be allocated to the implementation of the SSO program. If the SWRCB lacks the authority to make such a designation then have a member of the state assembly sponsor a limited provision for just the SSO program. Issuing needless NPDES permits adds little authority to supplement the CWC. As far as third party suits are concerned, NGOs are not without recourse under a WDR. Many NGOs state that they will be denied access to courts unless public agencies are issued a NPDES permits for SSOs; however, there are common law theories in which to base a cause of action. The only difference is under this state's system of jurisprudence each party would have to bear their own legal costs.

B. The State Should Allow the USEPA to Decide if the Need Exists to Issue a Federal NPDES Permit for All States in the Country

The USEPA is currently evaluating the need to issue NPDES permits for SSOs or regulating SSOs under an agency's POTW NPDES permit that has been already issued. The USEPA, as stated above, already acknowledges that California has the best program in effect to regulate and reduce SSOs in the entire country. Since the time that Mr. Ken Greenberg of EPA Region 9 staff commented that "... the WDR is to be applauded. No State has [a program] as good." the program has become even more successful. California should let the EPA decide whether a federal NPDES permit is warranted for all states and what would constitute such a permit. If California issues its own type of NPDES permit, it could be easily superseded by the EPA at a later date. This would cause unnecessary redundancy and a complete waste of resources to now conform to a new NPDES permit when the state is facing a budget crisis and already has the best SSO program in the country.

Based upon the holding in the *Waterkeeper Alliance* case, the issuance of an NPDES permit to any public agency that had at least one spill is problematic. The court's analysis in *Waterkeepers Alliance* pertaining to EPA's position that the Clean Water Act gives them the authority to regulate point sources from which pollutants "may be" discharged, the court responded:

⁹ Attachment 2

¹⁰ *Statewide Sanitary Sewer Overflow Reduction Program: Compliance and Enforcement Plan?* - State Water Resources Control Board; January 2010 p.21

"The EPA principally attempts to derive support for its "duty to apply" provision from the statutory definition of point source. EPA argues that point source is defined to mean not only "any discernible, confined and discrete conveyance" from which pollutants "are" discharged, but also "any discernible, confined and discrete conveyance" from which pollutants "may be" discharged. 33 U.S.C. § 1362(14). The EPA cannot, however, point to any provision of the statute that gives operational effect to the "may be" language in the manner in which the EPA seeks to do so here. The EPA points, for example, to 33 U.S.C. § 1311(e). Yet that section provides not that effluent limitations shall be applied to all point sources, end of story, but that effluent limitations shall be applied "to all point sources of discharge of pollutants in accordance with the provisions of this chapter." 33 U.S.C. § 1311(e) (emphasis added). Thus, while point sources are statutorily defined to include potential dischargers, effluent limitations can, pursuant to 33 U.S.C. § 1311(e), be applied only to "point sources of discharge of pollutants," i.e. those point sources that are *actually* discharging.²¹ *Id.*"

If the SWRCB decides to issue NPDES permits to agencies that had at least one SSO that reached the navigable waters of the United States, such a decision would be ripe for litigation. Assuming for arguments sake that an agency was issued a NPDES permit for a single SSO that reached the waters of the U.S. for a total volume of 50 gallons and one specific location was the sole source for any of the agency's SSOs to reach U.S. waters. The agency discovers that a defect in the collection system line is the source for the SSO and repairs the line so that over a period of two years the agency experiences no further SSOs that reach surface waters. Annual TVing of the line at the location of the SSO that reached surface waters shows the line to be in good repair and no build up of materials is being produced in the line. Would the SWRCB keep the agency under a NPDES permit for perpetuity? Per the above hypothetical the agency has just as much reasonable potential for a SSO to reach U.S waters as any other agency that has not experienced a SSO that reached surface waters. Since the "actual" source of the SSO discharge to surface waters has been eliminated wouldn't the SWRCB be permitting only a potential SSO discharge? These types of discussions are best left for the EPA to consider since the NPDES permit is a federal permit and the EPA was involved in the original litigation. Further, since California has the best SSO program in the country and sufficient authority to deal with SSOs, there lacks sufficient justification for the SWRCB to initiate the issuance of NPDES permits. Further, SWRCB staff made this recommendation regarding the two-tier approach with the following comments:

"Staff considers that the current SSS WDRs are functioning well as WDRs and that administering a two-tiered WDRs and NPDES permit would create administrative complexities because agencies would be subject to different orders depending upon their history of SSOs and, agencies would need to be transitioned from WDRs to an NPDES permit when the NPDES triggers occur. Staff considers that the time required to constantly maintain agencies

under the correct form of sanitary sewer systems permit would be better utilized in further improving the SSO reduction Program and conducting enforcement. There is also uncertainty in what U.S. EPA will propose as national NPDES sanitary sewer system requirements. Adopting an NPDES permit component at this time may result in the need to change the permit again if the U.S. EPA implements an NPDES permit for satellite sanitary sewer systems. This could result in more confusion among enrollees and Water Board staff and increased staff resources to change the permit again. Therefore, staff prefers to wait until after U.S. EPA develops regulations for sanitary sewer systems before changing the SSS WDRs to an NPDES permit or two-tiered WDRs and NPDES permit.”¹¹

The City of Manteca concurs with staff's recommendation.

CONCLUSION

The City has expended considerable resources and staff time to comply with the current SSO WDR. The concerns that the City presented above are not exhaustive but more illustrative on the current program's deficiencies and the modifications that would compound them. The City would be remiss to fail to mention some of the positive aspects of the proposed SSS WDR:

- Revisions to streamline spill notification points of contact
- Modifying applicability criteria to include a flow threshold (>25K gallons on any single day) and a pipe mileage threshold (>1 mile)
- Expanding coverage of the SSS WDRs to private collection systems meeting the pipe mileage and proposed flow thresholds
- Clarifying that SSOs to land are not the focus of the SSS WDR.

There is a saying in the regulatory community, "Bad facts make for bad law (or regulations)". As the discussions above demonstrate, the data being used to make these regulatory changes comes from an incomplete set of data (as a significant amount of agencies are not participating in the program), the length of time for evaluation of the SSO WDR dataset is insufficient to gather a meaningful trend, agencies that are participating are not all reporting uniformly (data from voluntary reporting is comingled with data from mandatory reporting), and that the reports that comes from the database sets leads to false conclusions. The way that the database generates reports is in dire need of updating. It takes Board staff a considerable amount of time to sort through the individual data points to recognize that only a small percentage of SSOs actually reach surface waters and of the small percentage that actually do reach surface waters a likewise small percentage of those events accounts for the vast majority of the volume of wastewater reaching surface waters. The reports

¹¹ STAFF REPORT-STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 2011-XXXX-DWQ STATEWIDE GENERAL WASTE DISCHARGE
REQUIREMENTS FOR SANITARY SEWER SYSTEMS pp.10-11

generated by CIWQS need to correctly identify the trivial problems from the serious problems in order for public agencies to most efficiently allocate their limited resources to produce the greatest impact in SSO reductions.

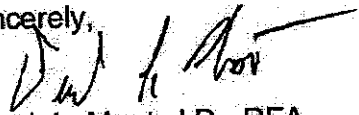
The two-tiered system is unnecessary due to the state's authority to enforce its WDRs. Having a system where an agency could be in a WDR category with the potential to be in a NPDES status would add little to the state's powers to enforce against SSOs and would cause more confusion and litigation than it could possibly warrant.

The City would like to reiterate the concern that until the SWRCB achieves at least a 95% compliance rate of having all required agencies in the current SSO reduction program and implementing the minimum elements thereof, adding additional regulatory burdens to complying agencies that have already demonstrated extraordinary success in SSO reductions would be contrary to good public policy. Further, adding these recalcitrant agencies to the list of fully participating agencies to the best program in the country would do more than any other single act by the SWRCB.

Finally, California has the best SSO reduction program in the nation. The SWRCB should modify the current program to make it more efficient and to correct the identified deficiencies. By adding additional regulatory burdens to participating agencies will do little to further protect people and the environment from SSOs. Preventative maintenance (line cleaning, line TVing, repairing line defects, etc.) as identified in each participating agency's SSMP is and will be the most effective manner to achieve a collection system that is well run and prevents all the SSOs that can reasonably be averted.

Once again, thank you for the opportunity to present the City's comments and the Board's time in reviewing them.

Sincerely,



Derek LaMont, J.D., REA
Permit Compliance Coordinator
City of Manteca

cc Mark Houghton, Director of Public Works
Phil Govea, Deputy Director of Public Works –Engineering

ATTACHMENT #1

News

ENVIRONMENTAL ORGANIZATION SUES STOCKTON OVER SEWAGE SPILLS (12:23 P.M.)

By *The Record*
September 23, 2008

STOCKTON - Environmentalist Bill Jennings made true on his promise to sue the city for sewage spills and violations of its wastewater discharge permit.

A lawsuit filed in federal court in Sacramento claims that 1,530 sewer overflows over the past five years have endangered human health and the environment. Jennings' organization, the California Sportfishing Protection Alliance, blames the city for failing to maintain the sewer system and for putting off repairs due to lack of funding.

City officials were not immediately available for comment this morning. City Attorney Ren Nosky in July said the city was not aware of any violations of its federal permit.

While 64 city wastewater treatment plants discharge into rivers and streams in the Central Valley, Jennings said Stockton's number of spills per mile of pipe greatly exceeds the state average, and ultimately worsens water quality in the Delta.

Read Wednesday's Record for more on this story by staff writer Alex Breitler.

ATTACHMENT #2

Table IV-1. Summary of Relevant California Water Code and Health and Safety Code Authority for Imposing Administrative Civil Liability Pursuant to this Policy.

STATUTE	COVERAGE
§ 13261 (California Water Code)	Up to \$1,000 per day for failure to furnish reports of waste discharge or failure to pay annual program fees. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a willful violation.)
§ 13265 (California Water Code)	Up to \$1,000 per day for discharging without a permit. (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and violation is due to negligence.)
§ 13268 (California Water Code)	Up to \$1,000 per day for failing or refusing to furnish technical or monitoring reports or falsifying information therein. (Up to \$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a knowing violation.)
§ 13271 (California Water Code)	Up to \$20,000 for failing to notify the Office of Emergency Services (OES) of a discharge of hazardous substances that exceeds the reportable quantity or more than 1000 gallons of sewage.
§ 13272 (California Water Code)(Limitation: Does not apply to spills of oil into marine waters as defined in Government Code §8670.3(f).)	Not less than \$500 and not more than \$5000 per day for each day of failure to notify OES of a discharge of any oil or product in or on the waters of the state.
§ 13308 (California Water Code)	Up to \$10,000 per day for violations of time schedules. Amount to be prescribed when time schedule is established.
§ 13350 (California Water Code)	<ul style="list-style-type: none"> • Up to \$10 per gallon of waste discharged, or • Up to \$5000 per day of violation. <p>The Regional Board is required to make a specific finding if it imposes civil liability in an amount less than \$100 per day of violation if there is no discharge, or less than \$500 per day of violation if there is a discharge and a CAO is issued.</p>
§ 13385 (a) (California Water Code)	For NPDES permit program violations or discharges to surface water: Up to \$10,000 per day of violation plus an additional liability of \$10 per gallon for each gallon over 1,000 gallons where there is a discharge that is not cleaned up. A "discharge" as used in this section is defined as any discharge from a point source to navigable waters of the United States, any introduction of pollutants into a POTW, or any use or disposal of sewage sludge.

ATTACHMENT #2

Table IV-1. Summary of Relevant California Water Code and Health and Safety Code Authority for Imposing Administrative Civil Liability Pursuant to this Policy.

<p>§ 13385 (h) and (i) (California Water Code)</p>	<ul style="list-style-type: none"> • 13385 (h) (1) ... Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for the first serious violation as defined by statute and each additional serious violation in any period of six consecutive months, except that the SWRCB or RWQCB may elect to require the discharger to spend an amount equal to the penalty for the first serious violation on a supplemental environmental project or to develop a pollution prevention plan. • 13385 (i) Mandatory minimum penalties of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations: <ol style="list-style-type: none"> (1) Exceeds a waste discharge requirement effluent limitation. (2) Fails to file a report pursuant to Section 13260. (3) Files an incomplete report pursuant to Section 13260. (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
<p>§ 13399.33 (California Water Code)</p>	<ul style="list-style-type: none"> • Not less than \$5,000 per year or fraction thereof for failure to submit required notice of intent for coverage under stormwater permit. • Not less than \$1,000 per year or fraction thereof for failure to submit notices on non-applicability, annual reports or construction certification as required by stormwater program.