

Jeanine Townsend
State Water Resources Control Board
May 9th, 2011

an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. An NPDES permit would subject public agencies to additional and more egregious lawsuits and higher administrative penalties with no demonstration that this would improve water quality or further reduce SSOs.

As described in the Staff Report, this alternative would also require significant additional Regional and State Water Board staff resources to track and implement the different permit tiers. The District understands that these staff resources are limited, and believes that they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

The District would also like to reinforce concerns about confusion and wasted resources resulting from adopting an NPDES permit component now, that may need to be revised again if the United States Environmental Protection Agency implements an NPDES permit for satellite sanitary sewer systems later. As a collection system operating in the San Francisco Bay Region, the District speaks to this issue with experience. The existing SSS WDRs were very different from the established regional program. In developing our SSMP, staff had to sift through and identify strategies that addressed *both* sets of requirements. Changes to reporting requirements made everything more confusing. As requirements become more complicated and confusing, more staff time is directed towards preparing reports and re-organizing information and operating procedures, and less time is spent actually managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system.

2. The basis for mandatory reporting of PLSDs is not justified and creates an inappropriate burden for public agency staff.

State Water Board staff has not provided adequate justification to require public agencies to report PLSDs that are not affiliated with the collection system agency. The District does not believe that State Water Board staff has sufficiently thought through the practical aspects of implementing and enforcing such a requirement.

The District offers the following concerns ... Is there an expectation that if an overflow on private property is discovered by a public agency, that the public agency will assist with cleanup? (Ratepayers should not have to pay for spills caused by failures of equipment not operated or maintained by the District.) What if an agency is notified about two overflows at once and one is a PLSD and the other is from the public sewer and they only have resources to deal with one? What if the collection system agency does not have all of the information for a PLSD, as requested on the reporting form? What if an agency receives a telephone message about a PLSD and the information is incomplete? (It is not appropriate to use public resources to hunt down this information.) How would PLSD volume spilled or recovered be estimated? (It may be difficult to get this information. Often a homeowner is guarded when answering questions about what goes on inside their home.) Will a back-up inside a home (with no chance of affecting water quality of a surface water or storm channel) be considered an SSO? What if a PLSD occurs and someone thinks a public agency staff person already knows about it so it isn't reported? In any event, how will State Water Board staff

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enforce this provision? Most importantly of all, how will State Water Board staff use this information? There are many questions and very few answers or justifications addressed in the proposed revisions to the SSS WDRs.

In addition, it is unrealistic and inappropriate to expect public collection system agencies to solve (or even just report) all of the State's overflow problems, especially when they are insignificant in the realm of protecting water quality. It is difficult enough to manage the public system, the boundaries of which are likely to be well known. The State Water Board should only hold public agencies accountable and responsible for activities within their jurisdiction.

The District does not believe that meaningful statistics could be derived from data collected only for those PLSDs that an agency becomes aware of, and the District do not support the idea that State Water Board staff would decide that collection systems have "systemic issues" based on these incomplete data sets. It is simply inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.

Moreover, the Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5% of the total volume from SSOs, almost all of which never pose a threat to receiving waters. Requiring public agencies to provide detailed information regarding such a small percentage of overflow volumes from parts of the system over which they have no control is not appropriate and would divert limited staff resources from higher priority issues that actually protect waters. PLSDs typically only impact the property owner, as they are usually very small in volume and do not reach receiving waters. These types of events fall under the jurisdiction of local health officers. The District recommends that the State Water Board first work with the California Department of Public Health and local environmental health officers to determine if the desired information can be obtained through mutual agency cooperation. Public health agencies have the best knowledge of overflows from laterals on private property, and are, in most instances, the most appropriate agencies to respond to these events.

Please note that while the District does not own, operate, nor control private laterals, efforts are being made to reduce problems generally associated with laterals. To address inflow and infiltration (I&I) from private laterals, the District implemented a voluntary private lateral improvement grant program, to help property owners pay for needed repairs. The District also revised its Ordinance to require sewer lateral testing and release of a Certificate of Lateral Compliance for any one of the following actions: 1) real estate point of sale transactions, 2) District permitting process for plumbing upgrades that produce a major increase in wastewater flow, or 3) upon determination that upgrades are necessary for the protection of public health and safety. This program demonstrates the District's commitment to address I&I in the collection system from private laterals and the District's desire to work proactively with its customers. These management solutions proved beneficial to our program –the State Water Board should work with agencies and encourage them to develop solutions applicable to their programs. One-size-fits-all requirements, such as the proposed PLSD reporting requirements across the State, regardless of whether or not an agency owns the laterals, is not an effective management approach.

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For all of the reasons indicated above, the District specifically requests that reporting of PLSDs remain voluntary.

3. It is essential that State and Regional Water Board staff consider the reasons for each SSO in any enforcement action.

The existing SSS WDRs include language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language reads: "*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*" (emphasis added)

In the proposed revisions to the SSS WDRs, this language was changed to read: "*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*" (emphasis added)

The proposed revisions to the SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Water Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual regional boards are free to follow or ignore as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its system and these factors should definitely be considered in enforcement actions. It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

4. Revisions to Sewer System Management Plan (SSMP) requirements are premature and additional requirements should not be mandated until the State Water Board provides guidance and funding.

The proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. The District strongly urges that the existing SSMP requirements be preserved as in the existing SSS WDRs. The District, like many other agencies, has only recently developed its SSMP; this plan needs to be fully implemented so its effectiveness can be properly evaluated. Changing SSMP requirements before full implementation will result in an inappropriate expenditure of resources which again would be focused on planning and reporting rather than implementation.

That being said, the proposed new SSMP elements are unnecessary and overly prescriptive. In particular, the District urge the State Water Board not to implement the proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" until detailed guidance and appropriate funding are provided.

The proposed "Risk and Threat Analysis" of all sanitary sewer assets would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an

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otherwise well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the State Water Board can demonstrate that those agencies complying with current requirements have been ineffective in reducing SSOs. This program should also only be required if and when adequate State Water Board guidance has been developed and funding is provided.

Requiring development and implementation of the proposed "Staff Assessment Program" on an agency-by-agency basis is unrealistic. The expectations outlined in the proposed revisions to the 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 a substantial investment of resources to do redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities). Moreover, State Water Board staff has not demonstrated that the current training requirements are deficient and need improvement.

In addition, SSMP sections (i) and (j) should be combined, because otherwise the requirements for routine review and revisions of the SSMP are redundant and contradictory. SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis, while Section (j) specifies a minimum frequency of once every two years. The State Water Board staff should combine these two sections and clarify the requirements.

And lastly, the District believes the four-year board re-certification requirement is excessive. The proposed revisions to the SSS WDRs would require us to bring the SSMP before out Board of Directors at a minimum every four years. This frequency is excessive considering that infrastructure projects typically occur over a longer timeframe. The District requests a re-certification every 5-10 years.

5. Construction trenches should remain in the definition of a "sanitary sewer system."

The existing SSS WDRs include construction trenches in the definition of a sanitary sewer system. However, the proposed SSS WDR omits construction trenches from this definition (Definition A.11). While it may seem like an insignificant change, this proposal will have serious consequences for all sewer systems in the state. This proposed omission, combined with the lack of a *de minimis* spill volume, will cause agencies to have an SSO almost every time a sewer main was repaired or replaced.

Even if work crews could always use plugs, bypass pumping, or restrict water use by homeowners or business (which are actions that are not feasible at many locations), there will still be small amounts of sewage entering into the construction trench -- an event that the State Water Board has failed to show that it impacts water quality. The proposed change to the definition of a sanitary sewer system would cause each of those instances to be an SSO. The State Water Board should be encouraging enrollees to replace and repair their sewer system as needed but this proposed change

would punish enrollees each time they maintained their system. The District adamantly opposes the proposed change and request construction trenches to remain in the definition of a sanitary sewer system.

6. The findings include several incorrect statements and unclear definitions for PLSDs.

Finding 7 in the proposed revisions to the SSS WDRs includes the statement: "SSOs and PLSDs may pollute surface or ground waters, threaten beneficial uses and public health, ..." The District disagrees that PLSDs are in the same category as SSOs from mainline sewers in terms of water quality impacts. These overflows are very small in volume individually, and overall. The words "...and PLSDs..." should be removed.

Finding 9 in the proposed revisions to the SSS WDRs includes the statement: "Major causes of SSOs and PLSDs include but are not limited to: grease blockages, root blockages, debris blockages, sewer line flood damage, manhole structure failures, pipe failures, vandalism, pump station mechanical failures, power outages, excessive storm or ground water inflow/infiltration, sanitary sewer age, construction and related material failures, lack of proper operation and maintenance, insufficient capacity, and contractor-caused damages. Many SSOs and PLSDs can be prevented by having adequate facilities, source control measures, and proper operation and maintenance of the sanitary sewer system." Including PLSDs in these descriptions is incorrect: many of the items on the first list are not causes of PLSDs, and many PLSDs cannot be prevented as described in the second sentence. References to PLSDs should be removed.

The following definitions are confusing and contradictory, as explained in the following paragraphs. These definitions should be reworked for clarity and accuracy.

- *Lateral – Segment(s) of pipe that connect(s) a home, building, or satellite sewer system to a sewer main.*

This definition of a lateral includes both upper and the lower laterals, regardless of whether or not the lower lateral is privately owned.

Also, the definition of a lateral should not include any reference to satellite sewer systems, as the management and performance of each are very different. Satellite systems should have a separate and distinct definition.

- *Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement. (emphasis added)*

This definition does not make reference to upper laterals and lower laterals and is therefore confusing. Also, it is misleading to state that sewer use agreements dictate lateral responsibility, as these agreements seldom exist for individual homeowners.

- *Private Lateral Sewage Discharge (PLSD) – Wastewater discharges caused by blockages or other problems within laterals are the responsibility of the private lateral owner and not the Enrollee. Discharges from sanitary sewer systems which are tributary to the Enrollee's sanitary sewer system but are not owned by the Enrollee and do not meet the applicability requirements for enrollment under the SSS WDRs are also considered PLSDs. (emphasis added)*

This definition indicates that PLSDs include overflows from any portion of the lateral, regardless of whether or not the lower laterals are privately owned. The definition of a "private lateral sewage discharge" is inconsistent with that describing a "private lateral", as one includes publically-owned lower laterals while the other does not.

7. A *de minimis* spill volume for reporting should be allowed.

The District commends the State Water Board for proposing to modify the applicability of WDRs only to those systems greater than one mile in contiguous length *and* which collect more than 25,000 gallons of wastewater per day. SSO reporting requirements do not apply to systems that do not meet the defined size threshold, recognizing that any spills from these systems would be insignificant, and therefore not worth reporting. Reporting of *de minimis* spill volumes from Enrollees' systems is likely equally insignificant in their potential impacts to public health and the environment. The limited value of information regarding the physical condition and adequacy of collection system operation and maintenance obtained from reporting very small spill volumes does not warrant the staff resources required to make these reports. Given the District's past experience with CIWQS, a batch uploading function will significantly save time. The District requests that overflows of less than 100 gallons need not be reported, a threshold previously established by the San Francisco Bay Regional Water Board.

8. Language describing SSMP requirements should be revised.

In addition to the SSMP comments previously mentioned under heading 4, the District suggests that language describing SSMP requirements be revised as follows (SSMP sections are listed in the order they appear in the proposed revisions to the SSS WDRs):

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* - Paragraph (c) (v) should be revised to read: "Ban new connections under certain conditions." In addition, 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* - The last section of paragraph (d) (i) should be revised to read: "A map illustrating the current extent of the sewer system shall be included in the SSMP or in a GIS." Also, this requirement needs to be clarified. It is not clear if "the current extent of the sewer system" refers to a one page map of the service area, or the entire detailed map. The latter would be impractical to include in the SSMP.
 - *Rehabilitation and Replacement* - The third sentence in paragraph (d) (iii) should 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." It is not correct to imply that age alone is problematic; 'aging' is not the same as 'deteriorating'.
 - *O&M and Sewer System Replacement Funding* - The first sentence in section (d) (vi) should 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 as determined by careful evaluation of condition of the system."
- *Design and Performance Provisions* - The addition of the phrase "all aspects of" in both paragraphs (i) and (ii) should be removed; requiring each agency to update their standards and specifications to cover every last possible minor detail of sanitary sewer system construction and inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary and is already implied.
- *FOG Control Program* - Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges may outweigh the benefits of *requiring* best management practices for residential FOG sources. The District requests that this existing language be preserved: "This plan shall include the following as appropriate: ... The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG."
- *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. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success

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or failure. All references to performance targets should be removed from paragraphs (i) and (j).

- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained as is.

9. Certain Monitoring and Reporting Program (MRP) requirements need to be clarified.

In addition to the request that mandatory PLSD reporting be removed from the proposed revisions to the SSS WDRs, several minor revisions should be made to clarify Monitoring and Reporting Program requirements:


- Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the MRP and the recommendations in the Staff Report. Please clarify Provision G.4 to correspond with the MRP requirement that notification shall only to be made to Cal EMA, and indicate that Cal EMA will notify other agencies.
- The second paragraph referring to other notification and reporting requirements is unnecessarily confusing and should be removed.
- Item 1.H under the description of mandatory information to be included in Category 2 SSO reports should be revised to read: “SSS failure point (main, lateral, etc.), if applicable.”
- Item 3.I under the description of mandatory information to be included in Category 1 SSO reports should be revised to read: “Name of surface waters impacted (if applicable and if known)...”
- Item 1.D under the minimum records to be maintained by the Enrollee should be revised to read: “...and the complainant’s name and telephone number, if known.”

In general, the District believes that significant revisions to the SSS WDRs are premature and overly burdensome. Compliance with the revised SSS WDRs would require greater staff and resources on our behalf at a time when public agency budgets are shrinking. Furthermore, it is unclear how the revised permit would produce corresponding environmental or public health benefit. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. The District believes that it would be more productive for the State 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.

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The District appreciates the opportunity to comment on the proposed SSS WDRs and hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,



E.J. Shalaby
General Manager

cc: WCWD Board of Directors