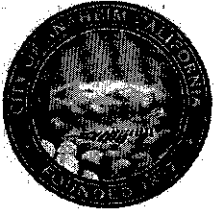
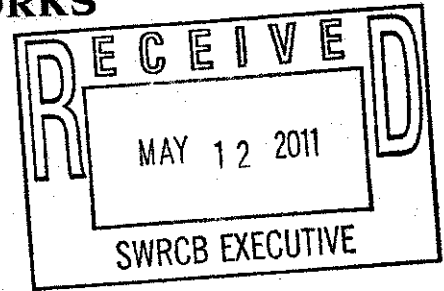


City of Anaheim  
**DEPARTMENT OF PUBLIC WORKS**  
Operations Division



May 12, 2011

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, Sacramento, CA 95814

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

Dear Ms. Townsend:

The City of Anaheim appreciates the opportunity to comment on the draft March 22, 2011 Waste Discharge Requirement for Sanitary Sewer Systems Permit (SSS WDRs). Upon reading the proposed SSS WDRs, the City was surprised to see many unanticipated changes in the regulations. Based on discussion with other enrollees and local WDR groups involved with State staff, it was anticipated that the changes in the document would be minimal, apart from including private system enrollment. However, the draft SSS WDRs proposes many significant changes that would place additional unnecessary burdens on the enrollees.

The purpose of the current SSO WDR is to reduce SSOs and their impacts to public health and the environment over time. We believe that the current program is working, based on our own experience and discussions with other enrollees and the local Health Care Agency. Under the current SSO WDR, the City has implemented an SSMP coupled with an aggressive preventative maintenance program that has resulted in a marked reduction in SSOs from the public system. While we appreciate the State's efforts to address certain issues with the current regulations, we ask that the State consider allowing the current SSO WDRs to remain in place until the end of the permitting cycle before implementing significant changes.

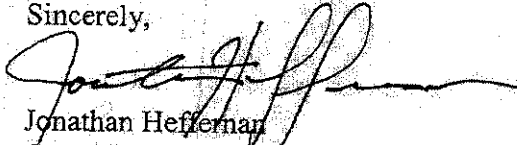
We encourage the State Board to postpone making changes until the current SSO WDRs has had time to be fully implemented by more agencies and the impacts can be fully measured. At this point in time, the City believes that many of the proposed changes are premature and not fully justified. While we share the State's goals of reducing SSOs, most of the proposed changes will likely have little measurable effect on SSO reduction and will add significant new costs at a time of economic stress for many enrollees.

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We appreciate the opportunity to comment on the proposed changes, and hope that the State will consider our comments. If there are any questions about the attached comments, please feel free to contact me at (714) 765-6903.

Sincerely,



Jonathan Heffernan  
Operations Supervisor

Attachments: Attachment A: Comments on the Proposed SSS WDRs

## **Attachment A: Comments on the Proposed SSS WDRs**

- 1. The parties, both public and private, that will be subject to the proposed SSS WDRs may not be aware of the new regulations or the ability to comment of these regulations.**

The third finding on the first page of the proposed SSS WDRs (General Permit) states that "all publicly and privately owned entities" meeting the proposed applicability criteria are required to apply with the terms of the General Permit. This means that a substantially larger number of agencies and private parties will become covered under this permit. While the City of Anaheim appreciates the State's effort to better address sewer overflows that may be caused by public and private entities not currently covered by the SSO WDRs, we are concerned that the majority of these parties are unaware of the forthcoming requirements and will not have the opportunity to comment. The City recommends that State Water Board prolong the comment period and increase public outreach to ensure that all parties subject to these regulations have an opportunity to review and comment prior to adoption.

- 2. Including private entities in the SSS WDRs is somewhat redundant.**

Presently, a private sewer spill is a violation of local NPDES regulations (MS4 permits), it is likely a violation of Local Sewer WDR Program Regulations and is also subject to Regional Board and even Health Care Agency Enforcement. Each of these agencies alone or in combination have the authority and ability to force a violator (private entity responsible for a sewer spill) to remediate a spill and implement steps to prevent future spills. While the intent of getting ahead of these situations seems prudent and well meaning, there will likely be hundreds, if not thousands, of private entities who will never cause a sewer spill but would be subject to these burdensome and expensive regulations, effectively to no positive result. Simply put, the same goal can be achieved by enforcing against the few violators under the existing regulatory regime(s) rather than regulating all entities - many of which pose little to no threat of causing SSOs.

- 3. Current enrollees should not be required to identify or oversee the potential new enrollees within their service area.**

Considering the large number of potential new enrollees subject to the SSS WDRs and State / Regional Water Boards' limited staff and resources, there is concern that enrollees currently covered by the SSO WDRs will be called upon to help identify and / or oversee these new enrollees within their jurisdiction. Although the proposed SSS WDRs does not state this specifically, there is the potential for this to occur in the near future as the State / Regional Boards recognize the substantial volume of new enrollees and the burdens associated with this new workload.

While the City appreciates and supports the goal of the SSS WDR, current enrollees should be assured that they will not be required to identify or oversee potential new enrollees that may exist within their service areas. Placing this additional (potential) burden on current enrollees may impair their ability to comply with the regulations while at the same time placing on them an impossible task, further diluting the program as a whole.

- 4. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit.**

The City agrees with the recommendation in the Staff Report and strongly opposes the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit, and agree with several points included in the Staff Report also opposing 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. The result of triggering an NPDES permit would subject local public agencies to the potential for additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs.

**5. The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is may be redundant and creates additional burden for enrollees.**

The SSS WDR would require enrollees to report spills from privately owned laterals when they become aware of them. Such reporting is currently voluntary and, as mentioned above in comment 2, may be currently required by an existing NPDES MS4 permit. Requiring the reporting of PLSDs would create a redundant reporting requirement for many agencies that have sanitary sewers and storm drains under their jurisdictions.

The justification for requiring the reporting of PLSDs is to generate better information regarding these types of spills. We do not believe that the burden of requiring enrollees to report information or face being in noncompliance with the SSS WDR bears a reasonable relationship to the need for that information and the benefits to be obtained. Enrollees reporting spills may be liable to the property owner for errors in reporting, and property owners may claim they are entitled to compensation from the local agency for non-governmental organization (NGO) lawsuits or administrative penalties stemming from the reported spill. Under the current voluntary reporting scheme, the enrollee can weigh these factors in deciding whether to report PSL spills or not.

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

The existing SSS WDRs included 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 read: "*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 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.

**7. Additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides clarification and guidance.**

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague and overly prescriptive.

The proposed Risk and Threat Analysis, while it may be useful for planning for SSOs, would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise well-operated and managed system. It also highlights the concern that if an enrollee has a failure at a particular point in their system (i.e. pump station) that was not identified as a risk or threat, that enrollee may be considered in violation of this portion of the SSS WDRs. It is likely that each enrollee has assets that they would not consider high risk, however, due to circumstances beyond their control (earthquake, vandalism) may fail and cause an SSO. The State should remove the requirement for the risk and threat analysis as part of the SSMP.

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).

The Water Board should not implement these new requirements until detailed program guidance is provided. Also, Water Board staff has not demonstrated that the current training requirements are deficient.

**8. 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. We recommend that Water Board staff combine these two sections and clarify the requirements.

**9. The prohibition on discharges of potable water is overly burdensome and may conflict with existing De Minimus Discharge Permits for Potable Water**

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill clean-up (in the event water used for clean-up is not fully recovered). Many agencies subject to the WDR also operate under De Minimus Permits issued by their respective Regional Boards that allow for the legal discharge of potable water that does not contain contaminants. The prohibition on discharges of potable water in any quantity is not only overly burdensome but may also conflict with these existing permits. The City recommends modifying this language to state

that chlorinated potable water used for wash down and clean-up should be collected to the maximum extent practicable (MEP).

**10. A SSO not fully captured is not an automatic discharge to waters of the State.**

Paragraph B.1.C of the MRP states that SSOs not fully captured from storm drains are considered discharges to waters of the State. The City disagrees with this assumption. In Anaheim, many storm drain systems must travel considerable distances before connecting to surface water. It is unreasonable to assume that a discharge of 10 gallons that must travel one mile in the storm drain before entering the nearest surface water can be considered a discharge to waters of the state. Such small volumes would likely pond and evaporate in the pipe rather than traverse the entire distance to the nearest surface water.

Whether a discharge to surface waters occurred should be determined by assessment in the field, based on the location of the spill site, the volume, and the location of the nearest surface water, among other factors. We recommend that the language in B.1.C be revised so that a discharge not captured is not categorically a discharge to waters of the state.

**11. Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.**

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of these WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on several factors. Sewers should not be replaced automatically when they reach a certain age, especially when they are in good condition and functioning as designed.

**12. Language describing SSMP requirements should 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 required.
- *Legal Authority* - Paragraph (c) (v) should be revised to read: "Restrict, condition or prohibit 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 and maintenance practices), 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* - Updating sewer system maps to identify and include all backflow prevention devices would be too onerous as they are not owned by the agency.

Also, 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.

Additionally, some agencies are concerned with making maps / GIS easily accessible to the public due to security reasons. The language should be modified to make including a map(s) in the SSMP (a public document) optional.

- *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. We know that it does not, nor is it correct to imply 'aging' is 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. We request 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 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.

**13. The four-year board re-certification requirement is excessive.**

The proposed revisions to the SSS WDRs would also require each agency to bring its SSMP before its governing board for re-certification at a minimum every four years. This frequency is excessive considering that infrastructure projects typically occur over a longer timeframe. We request a re-certification every 5-10 years.

**15. Notification requirements need to be clarified.**

We support the Staff Report's indication that only Cal EMA would need to be notified when spills to surface water of any volume occur. However, 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 Monitoring and Reporting Program and the Staff Report. Please clarify that notification shall only to be made to Cal EMA, and indicate that Cal EMA will notify other agencies.