



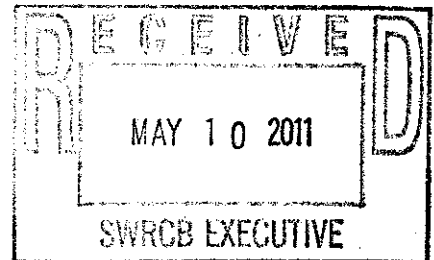
City of Clovis Public Utilities Department

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May 9, 2011

Via email: 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 Clovis appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). The City of Clovis, located in Fresno County, serves a population of less than 100,000 residents. The City has worked diligently over the past few years to reduce SSOs and due to the exemplary system of flood control basins throughout the community any SSOs do not reach surface waters but are contained within the system.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, our agency is very concerned about a number of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to sewer system management plan (SSMP) requirements that should not be mandated. As requirements become more complicated and confusing, more agency 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 sewer system overflows (SSOs) and properly maintain the collection system. Also, we strongly oppose any kind of NPDES permitting approach.

Specific comments on the proposed SSS WDR are as follows:

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

The public notice for the SSS WDR invites comments on whether the Board should consider substituting a two tiered "hybrid" system for regulating collection systems, in which some agencies are regulated via NPDES permit and others via WDR. We urge the Board not to move forward with this option, for policy, legal and practical reasons.

We strongly oppose 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 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

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

2. The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is not justified and creates an inappropriate burden for public agency staff.

The SSS WDR would require enrollees to report spills from privately owned laterals when they become aware of them. Such reporting is currently voluntary. Water Board staff has not provided adequate justification nor has it thoroughly considered the staffing and financial resources necessary to require public agencies to report PLSDs that are not affiliated with the collection system agency. The justification offered for this change is simply that the State Water Board wants to "get a better picture of" the magnitude of PSLDs and better identify collection systems with "systemic issues" with PSLDs.

The Draft WDR's focus on private laterals raises several concerns. First, it appears to be directed towards shifting responsibility for privately owned sewer laterals to public agencies. For example, while the Draft WDR does acknowledge that maintenance and repair of private laterals may be the responsibility of the private owners, it would require public agencies to be responsible for mapping and documentation of all private lateral facilities, including the existence of back flow devices, clean outs, etc. The proposed revisions also appear to impose responsibility for lateral inspection and clean out programs. At worst, these programs create an additional and significant financial and liability burden on public agencies. At best, they create unnecessary confusion by

giving the false impression that public agencies are in some fashion now responsible for the well being of privately owned and maintained sewer laterals.

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 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.

As to the goal of generating better information regarding PSL spills, we do not believe that the burden of requiring enrollees to report information or face being in noncompliance with the SSS WDRs bears a reasonable relationship to the need for the 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 repair or replacement costs 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.

Furthermore, if enrollees are required to report spills whether or not they occur within the enrollee's system, multiple entities (city, county, POTW, etc.) could all be required to report a single PSL spill with potentially differing estimates of volume and other information. Rather than enhance the Board's knowledge base, this will actually lead to greater confusion and require additional resources to sort out and match up the multiple reports.

We recommend 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. We believe that 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.

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 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.

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. Significant additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides guidance and funding.

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

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 otherwise well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the 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 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).

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.

5. 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.

6. The findings include several incorrect statements about 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, ..." We disagree 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.

7. Requiring de-chlorination of clean-up water is counter-productive.

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). Putting restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate either of the first two prohibitions is counter productive. The additional time to de-chlorinate would delay cleanup and is unnecessary due to the small amounts of chlorine getting used up in the demands of the wastewater and the travel time to a surface water.

8. It is inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.

We do not believe that meaningful statistics could be derived from data collected only for those PLSDs that an agency becomes aware of, and we do not support the idea that Water Board staff would decide that collection systems have "systemic issues" based on these incomplete data sets.

The requirement for Enrollees to report PLSDs they become aware of should be removed from Provision 4.

9. 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 and is very rare. Often sewers are lined rather than being replaced. Sewers should not be replaced automatically when they reach a certain age, especially when they are in good condition and functioning as designed. This would not be a good use of limited public resources. For example, the useful life of certain types of high strength plastic pipe has yet to be determined.

10. Revisions to SSMP requirements are premature.

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. We strongly urge that the existing SSMP requirements be preserved as in the existing SSS WDRs. As the Staff Report indicates, development and implementation of SSMPs by SSS WDRs enrollees has just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. Further, it is recognized that dramatically changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff.

11. 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 included. As written, the new requirement will require the SSMP to be revised every time a phone number or email address is changed.
- *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), 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 is irrelevant to a sewer system as they are installed on water services. This requirement should be removed.

Also, the last sentence of this section indicates that an updated map should be included in the SSMP. This will require two things; (1) the SSMP will have to be updated every time a new sewer line is drawn on the map and (2) many sewer mapping systems have hundreds of pages of sewer maps and including all of them in the SSMP will be burdensome if not impossible. The requirement should state that the SSMP should only include a reference to where sewer maps can be viewed.

- *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.

12. 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. What is the justification for governing board re-certification at a specified interval?

13. 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.

14. Providing whole SSMPs in an electronic form is not always practical.

Not every agency has their SSMP in one electronic document, and, in many cases, the SSMP makes reference to other documents which may only exist in hard copy form. These issues would make it difficult or impossible for some agencies to provide the whole SSMP in an electronic format.

15. Certain Monitoring and Reporting Program 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:

- 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."

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

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 our past experience with CIWQS, we are not confident that a batch uploading function will significantly save time. We request that overflows of less than 100 gallons need not be reported, a threshold previously established by the San Francisco Bay Regional Water Board.

17. The Proposed SSS WDR is Unreasonably Prescriptive With Regard to Local Program Implementation.

The dual purposes of the 2006 general order were to reduce sanitary sewer overflows and to ensure accurate and publicly accessible SSO reporting information. The prohibitions in the general order serve as the performance measure to which all enrollees are held. To facilitate compliance with these performance standards, enrollees are required to prepare and implement Sewer System Management Plans (SSMPs). The plans serve as a means to an end—better system performance—rather than an end in themselves. The 2006 general order specifies the elements that must be included in the SSMP, but recognizes the flexibility retained by local agencies to determine how best to comply with the prohibitions and reduce SSOs. The proposed order is increasingly becoming prescriptive in that it now dictates how sewer systems are to be operated. In essence, a sewer system can have no recorded overflows and still be in violation of the WDR because it is not operating its system as dictated by your Board.

18. Line by Line Comments on Individual Portions of the SSS WDR

Section D, 12. (b) (ii) Organization

Comment. Including board member information as part of the SSMP contacts is not needed and has the potential to create unnecessary confusion regarding operational responsibilities. Organization staff, not policymaking board members, are responsible for the SSMP implementation.

Section D, 12. (c) (iii) Legal Authority

Comment. The additional requirements regarding ensuring access are unnecessary and have the potential to create confusion. For example, the requirement to "ensure access" in easements and rights of way is unnecessary because, by definition, easements and rights of way include a right of access, even if access is not expressly addressed in the document. We recommend that the general requirement to ensure access included in the existing WDR be maintained.

Section D, 12. (c) (iv) Limit flows

Comment. The proposal to include authority to "limit flows . . . from connected sources" is not possible because there is no ability to limit flow from connected sources. Sewer connections are very rarely metered and there is no way to monitor or limit flows from customers.

Section D, 12. (c) (v) Ban new connections

Comment. The requirement that authority include the ability to "ban new connections" raises concerns because it is uncertain and has the potential to be very controversial. For example, if the intent is to provide agencies with the authority to declare complete moratoriums on connections, that could be very problematic and unnecessarily create stress between public agencies and their constituents. Also, wastewater agencies have legal obligations to provide sewer service to their constituents, so a provision indicating that they have the ability to simply discontinue providing new service could be legally unenforceable. We recommend that this provision be eliminated, or at minimum, revised to clarify that the authority to ban new connections is limited to those circumstances in which such action is necessary to prevent a public nuisance or otherwise protect the public health and safety.

Section D, 12 (d) (i) Map

Comment. We object to the mapping provisions which, when combined with the expanded definition of the sanitary sewer system, substantially expand the area of mapping required to include private laterals and related systems, such as, siphons,

backflow prevention devices, etc. Enrollees should not be held responsible for documenting and mapping privately owned and maintained facilities.

Section D, 12. (d) (ii) Contractors

Comment. This provision is unworkable because Enrollees need the flexibility to utilize and change the contractors on a regular basis without the need to update their SSMP. The decision regarding what contractor should be hired should be left to the discretion of Enrollees and not be subjected to a new regulatory program.

Sections D. 12. (d) (iv – vi) Training, planning and replacement

Comment. The provisions outlined above substantially intrude into the day-to-day operations of Enrollees and should be eliminated. For example, the Staff Assessment Program would dramatically increase the obligations of a member agency and, potentially, create a tension between an Enrollee's obligation to comply with its SSMP and the privacy and due process rights of employees. The proposed rule would require agencies to "identify any staff deficiencies, review the abilities of staff and identify needed changes." Compliance with these requirements would be time consuming and create a potential privacy violation for agencies when identifying staff related issues. The contingency planning and O&M and sewer system replacement funding sections also delve into the day-to-day operations of Enrollees. At best, they are duplicative of what is already done by Enrollees. At worst, they create additional, contradictory requirements that interfere with each individual's and Enrollee's ability to plan and run its operation in an efficient and appropriate manner.

Section D, 12. (f) (ii) Overflow Emergency Response Plan

Comment. The last sentence requiring contracts and agreements be included as part of the SSMP should be eliminated because it is unduly burdensome and is likely to create confusion regarding the requirements for an adequate SSMP. The need for third party contracts will necessarily vary between Enrollees, depending upon their available staff and the legal regulations that govern their contractual activities. Including a provision in the Draft WDR that requires contract documentation be attached to the SSMP infers that such a requirement is needed for an adequate plan. The Draft WDR should leave each Enrollee with the flexibility to determine what, if any, contracts and agreements are necessary to have an adequate response plan. Furthermore, attaching such contracts to the SSMP will require the SSMP to be updated every time such contracts are revised or changed.

Section D, 12. (f) (vi) Risk Analyses

Comment. The proposed risk analysis requirements would create a tremendous burden on each Enrollee to create a document that included all of the detailed information proposed. For example, requiring an analysis that includes "the expected consequences of each identified failure" would require engineering, geological,

topographical and flood plain information to model the potential direction and scope of various spills. The cost of such analysis would be significant, with the corresponding value that would be limited at best.

Section D, 12. (g) (v) Fog Control

Comment. The requirement to identify "required staffing levels" should be removed because it presumes a fixed staffing level for each Enrollee at all times. The necessary staffing levels will vary depending upon the size of an Enrollee system, frequency of problems and number of customers producing substantial amounts of FOG that enter into systems. Enrollees should be left with the flexibility to staff for FOG related services as needed, rather than have a fixed staffing level for something that may or may not be required.

Sections D, 12. (i) (i - vi) Monitoring and Measurement

Comment. The proposed changes represent a substantial expansion that presumes the need for a performance program that may not be required. For example, it requires that Enrollees identify performance targets to meet. This presumes that Enrollees are having significant SSO problems in the first instance. The additional detail required would create significant administrative burden with little or no evidence that would have a corresponding benefit. The new requirements would require that Enrollees "identify performance targets and illustrate SSO trends," modifications, and that they maintain a detailed log of any changes made, including identification of staff responsible for implementing each change, regardless of how significant or insignificant the change may be. We submit that the detailed reporting and accountability provisions in existence under the current WDR already effectively document the performance of Enrollees and steps that have been taken to correct problems that arise from time-to-time. The additional reporting, planning and documentation that would be required as part of the proposed performance targets and program modification provisions above would create an unnecessary additional layer of administrative work.

In general, it is our view that significant proposed revisions to the SSS WDRs are premature and overly burdensome. 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. We believe that it would be more productive for the 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.

The City of Clovis hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa Koehn".

Lisa Koehn
Assistant Public Utilities Director