



Tri-TAC
Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

Via Electronic and U.S. Mail

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September 2, 2005

Bryan Brock
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SUBJECT: Comments On August 1st Draft Statewide Waste Discharge Requirements For Sewer Collection System

Dear Mr. Brock:

On behalf of the California Association of Sanitation Agencies (CASA) and Tri-TAC, we appreciate the opportunity to provide you with our preliminary comments on the August 1, 2005 draft Statewide WDR for collection systems. As you know, many of our members have been active participants in the SSO Guidance Committee and have had the opportunity to discuss with you many of our most significant concerns regarding the draft WDR. We greatly appreciate the time and effort that you personally have devoted to preparing the WDR, and your openness to input from the regulated community as well as other stakeholders.

In light of this, we regret that our organizations are unable to support adoption of the WDR as currently drafted. In particular, there are several key issues essential to our acceptance of this significant new regulatory program that must be addressed.

The WDR Must Include a Limited Affirmative Defense.

We understand that the affirmative defense contained in the earlier draft WDR was deleted from the August 1st draft due to vehement opposition from the NGO community, and the view expressed by U.S. EPA and your own legal counsel that a defense would “undermine the purposes of the Clean Water Act.” We strongly disagree. As we pointed out in our June 17, 2005 letter to the State Water Resources Control Board, the inclusion of limited affirmative defense language is both lawful and essential to implementation of the SSO reduction program. The publicly owned collection system community has consistently

maintained that the State's new comprehensive regulatory program should provide affirmative defense protection against enforcement for rare and exceptional sanitary sewer overflows (SSOs) that are clearly beyond the reasonable control of the collection system owner who has fully implemented a certified SSMP. We have never, however, advocated blanket absolution from liability for the majority of SSOs that occur, nor have we sought to undermine the Clean Water Act's citizen suit authority.

During the August 22, 2005 SSO Guidance Committee meeting, staff from U.S. EPA Region 9 and from several regional boards indicated that they would not oppose a narrow affirmative defense, provided it was included in a WDR (versus an NPDES permit), and provided that NPDES permits include the three specific provisions required by the Clean Water Act – Duty to Report, Proper Operations and Maintenance and Duty to mitigate violations. We strongly urge you to reconsider and to include affirmative defense language in the WDR.

Confusion Persists With Regard Coverage Under the WDR and its Relationship to NPDES Permits.

Though the discussion at the August 22, 2005 SSO Guidance Committee was helpful in clarifying the relationship between the WDR and existing and future NPDES permits, we believe additional clarity is still required in the form of revisions to the WDR, along with discussion in the Fact Sheet or in guidance to the regional boards. Specifically, the Fact Sheet should indicate that it is the SWRCB's intent that collection systems be regulated consistently in accordance with the WDR. As NPDES permits come up for renewal, language will be included to meet the minimum requirements of the Clean Water Act: Duty to Report, Proper Operations and Maintenance and Duty to mitigate violations. SSMP and reporting requirements will be established via the WDR. To the extent that existing NPDES permits include detailed collection system provisions, these should be replaced with the minimum federal requirements.

The WDR is Overly Restrictive with Regard to Interim Compliance Dates.

The draft WDR sets forth specific due dates for various elements of the SSMP. This approach unnecessarily restricts an agency's flexibility to sequence tasks in a manner that is most appropriate for its particular circumstances. The WDR should instead focus on the date that the SSMP must be adopted and implemented rather than on dates for individual tasks that make up the SSMP.

The Definition of an SSO and the Associated Monitoring and Reporting Requirements Are Extremely Broad.

Tri-TAC and CASA support statewide consistency in reporting SSOs. However, we believe an appropriate reporting threshold should be established based on risk to public health and the environment. We believe the two-tier reporting system reflected in the draft

WDR is on the right track. However, we strongly believe that a 100 gallon reporting threshold should be established for reporting Category II SSOs. In addition, we believe specific provisions must be provided in the definition of an SSO, as well as in the MRP, that exclude controlled releases from maintenance activities that are fully contained, recovered, and do not pose a public health or water quality impact.

SSOs Should be Defined in the MRP Such that Category 1 SSOs are enforceable while Category 2 SSOs are not.

Throughout the WDR development process, State Water Board and other regulatory staff have asserted that it is important that all spills be reported because those that do not affect water quality provide important information regarding the effectiveness of an agency's maintenance program. We agree that spills indicate different things and believe it is important that the WDR clearly reflect the intent of the data reporting. To that end, only Category I spills, which reach waters of the State and which have the potential to harm public health and/or the environment, should be subject to enforcement action. Category II spills only reflect on the operation and maintenance of the collection system, and should not represent a violation of the permit. The WDR or fact sheet should clearly specify that this information is being required for the purpose of evaluating collection system operations, not because of health or environmental problems. Further, the WDR should be clear that spills that are completely contained and recovered, regardless of magnitude, are not Category I spills. Spills that do not persist in the environment represent no different threat to human health or the environment than sewage contained in pipes.

Thank you for your consideration of our comments. We have all worked very hard to craft a WDR that will reduce SSOs in a manner that is cost effective, fair and implementable. The proposed changes outlined here are essential to our ability to accept the WDR, and we urge you to revise the WDR accordingly before releasing it for formal public review. As always, we are happy to meet with you to discuss our recommendations.

Sincerely,



Roberta L. Larson
Director, Legal & Regulatory Affairs
CASA



Charles V. Weir
Chair
Tri-TAC

RLL/CVW/jlp