



January 25, 2006

Via Electronic and U.S. Mail

Tam Doduc, Chair
And Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

c/o Selica Potter, Acting Clerk to the Board
commentletters@waterboards.ca.gov

SUBJECT: COMMENT LETTER – 1/19/06 PUBLIC HEARING FOR SSORP

Dear Chair Doduc and Members of the Board:

The Bay Area Clean Water Agencies, the California Association of Sanitation Agencies (CASA), the Central Valley Clean Water Association (CVCWA), the League of California Cities, the Southern California Alliance of POTWs (SCAP), and Tri-TAC appreciate the opportunity to provide comments regarding the proposed waste discharge requirements (WDRs) for sanitary sewer collection systems in California. Our associations represent public wastewater agencies providing sewer collection, treatment and water recycling services to millions of Californians.

The proposed WDRs represent the culmination of two years of significant effort on the part of your staff, regional boards, collection system owners and other stakeholders. The Sanitary Sewer Overflow Guidance Committee played a key role in identifying issues and providing input regarding the type of regulatory mechanism that should be employed to implement the SWRCB's SSO reduction initiative. The proposed WDRs reflect much of the Committee's work, and our associations are supportive of the goal of creating a consistent statewide approach for collection systems in California with regard to reporting and preparation of sewer system management plans. We also commend the SWRCB staff for their willingness to engage in a genuine dialogue as to the best approach to reducing SSOs.

We would like to be able to support the WDRs and assist the SWRCB in educating and training California's approximately 2,000 sewer collection systems with regard to implementation and compliance. However, we have several significant concerns that must

be addressed before we are able to endorse the adoption of the WDRs. Each of these issues is discussed below, and to the extent possible, the attached redline document provides recommended revisions to the draft WDRs to address the concerns.

The WDRs Require Local Agencies to Undertake an Extensive and Expensive New Program Without Providing Adequate Protection From Enforcement of Unavoidable SSOs.

As we have said from the outset, our associations share the goal of reducing SSOs and improving collection system management in California. We believe it is critical, however, for the Board to understand the scale and significance of the program mandated by the proposed WDRs. The proposed WDRs are unprecedented in their scope and requirements. For the first time, the SWRCB would require *all* publicly-owned collection systems, including those owned and operated by very small, rural communities, to comply with new reporting, operation, maintenance and capital requirements. The majority of these communities have never before been subject to wastewater permits issued by the SWRCB or regional boards. It is important that the Board understand what will be required of *all* publicly-owned collection systems, not just those who own and operate treatment facilities, under the WDRs as currently proposed.

We believe that long-term compliance with this program will cost California municipalities billions of dollars. The development of sewer system management plans (SSMPs) alone, which are required of all collection systems within the first few years of the program, are likely to cost more than \$10 million. There do not appear to be any significant new sources of state or federal funding available to help pay for these new mandates. The WDRs will require hundreds of already financially strapped local governments to undertake a broad new program, yet the proposed WDRs do not provide any defense against Clean Water Act citizen suits, which are increasing in number.

Earlier informal drafts of the WDRs provided a limited affirmative defense for rare and exceptional sanitary sewer overflows (SSOs) that are deemed unpreventable. This approach has been abandoned in favor of a provision recommending that regional boards exercise enforcement discretion under certain circumstances. The Draft Fact Sheet states that the enforcement discretion sections of the WDR are consistent with enforcement discretion provisions of the California Water Code, but many of the provisions of Section C.6 go far beyond the enforcement discretion provisions of the California Water Code in the scope of the requirements and are derived from federal NPDES regulations. (*See* Cal. Water Code § 13327, 40 CFR §122.41.) It is inappropriate to include in the WDRs language taken from federal regulations relating to conditions necessary to establish bypass and upset defenses for facilities regulated under NPDES permits, because an NPDES permit approach does not apply to many of California's collection systems, and, moreover, because meaningful legal protection from enforcement actions is not being provided even with full compliance with these conditions. An NPDES permittee that satisfies conditions necessary to demonstrate

bypass, including C.6.(iii), or that has an incident that meets the definition of an upset, including C.6.(iv), and that satisfies the conditions to demonstrate upset, including C.6.(ii), establishes an affirmative defense and thereby receives legal protection from government enforcement and third party suits.

Although the collection system community still believes that an affirmative defense is the better approach, and that such a defense is lawful, in the context of the proposed enforcement discretion approach, no such protection from enforcement actions has been incorporated into the WDRs. Therefore, we believe that these provisions are overly onerous, and do not provide commensurate protection from enforcement for permittees that are fully compliant with the terms of the draft WDRs yet experience unavoidable SSOs.

The WDRs Should Supersede Collection System Provisions in Existing WDRs and NPDES Permits in Order to Avoid Subjecting Agencies to Duplicative or Conflicting Requirements.

One of the primary drivers for adopting statewide general WDRs was a desire to bring consistency and fairness to the regulation of collection systems across the state. Our associations are concerned that the goal of a “level playing field” will not be accomplished by the proposed WDRs. The WDRs specify that Regional Boards may impose more stringent or more prescriptive requirements than those set forth in the WDRs. This provision subjects collection systems to a moving target and is directly contrary to the goal of a unified statewide program. We recognize that NPDES permits must include certain minimum requirements for collection systems. Other than those requirements, however, the WDRs should specify that once a collection system operator has been approved for coverage under the WDRs, the regional boards may not impose different or more stringent requirements except where legally required.

A similar problem is presented with regard to existing permits. The proposed WDRs state that the Order will *not* supersede a more specific or more stringent requirement contained in a WDR or NPDES permit issued by a regional board. How is a collection system operator to know which requirements to follow, and which set of requirements is “more stringent”? Some requirements in an existing permit may be considered “more stringent”—e.g. SSMP elements—while others, such as reporting requirements, may be arguably “less stringent.” Collection system operators cannot be in a position of piecemeal application of portions of permits according to their relative “stringency.” The determination of whether a collection system will be governed by the General WDRs or by an existing permit must be made by the SWRCB and Regional Board at the time of enrollment. Each collection system should be governed by a single permit.

Lastly, the Sewer System Management Plan Time Schedule should be tied to the date of approval of an application for coverage rather than the date of WDR adoption. If the Regional Water Boards have the authority to elect to impose more stringent requirements, as

currently set forth in the WDRs, the enrollee will not be in a position to know whether it is covered by the WDRs until that determination is made. Moreover, some entities whose collection systems are covered under existing permits should not be required to immediately enroll under the proposed WDRs.

Significant Details Regarding Implementation of the WDRs Must be Clarified Prior to Adoption.

While we appreciate the significant effort that has gone into preparation of the draft, several aspects of the proposed WDRs require revision and clarification prior to adoption.

- The proposed WDRs set forth a detailed schedule for completing individual elements of the SSMP. This approach does not provide sufficient flexibility for individual agencies to design and implement an SSMP appropriate to their particular circumstances. The entities subject to the WDRs will vary significantly with regard to such factors as topography, urbanization, budget, opportunities to partner with other systems, and so on. Rather than specify individual compliance dates for the SSMP interim milestones, the WDRs should simply specify the deadline for completion of an SSMP that includes all the required components. If the SWRCB believes that it is important to track development of SSMPs during the compliance period, the WDR could require the submittal or annual progress reports. We would also like to note that the amount of time provided for various size agencies is the MINIMUM amount that is acceptable. These schedules are very aggressive, and particularly where an entity has not previously prepared an SSMP (or an equivalent document) and/or where they will be contracting out for services, procuring equipment, obtaining authorization for additional personnel (and subsequently needing to fill new positions), and raising rates to pay for this new program, it is questionable whether some of these timelines can even be met. Therefore, we request that you seriously consider adding time to the compliance schedule and under no circumstances should you shorten the schedule.
- The SWRCB staff has made an attempt to estimate the costs of this program to local agencies. Unfortunately, the cost analysis is significantly flawed and underestimates the costs to small agencies, which we believe will be much higher than indicated, in many instances. In fact, the regression analysis provided does not provide a credible estimate of statewide costs for a number of reasons, and therefore must be revised prior to adoption of the WDR. This analysis is required as part of the Board's obligations under the California Environmental Quality Act (CEQA). We do not agree that the WDRs are exempt from CEQA. The State Board must perform an appropriate CEQA analysis. The proposed regulatory program will likely have environmental impacts in that sewer lines will be unearthed and replaced throughout the state, resulting in land and air impacts that must be considered. The State Board may not lawfully rely upon Water Code

section 13389 for an exemption from CEQA requirements, as this section applies only to NPDES permits. In addition, the claimed CEQA exemptions included in the proposed WDRs are inadequate. The exemption in 14 C.C.R. §15308 does not apply when construction activities are included. Since the SSMP program includes rehabilitation and replacement, both of which are construction activities, this exemption cannot apply. Similarly, since the existing sewer system facilities are anticipated to be repaired or replaced, it is questionable whether the existing facilities categorical exemption under 14 C.C.R. §15301 applies, particularly where the cumulative impacts of sewer repair and replacement both locally and statewide may have significant effects on the environment.

- Particularly for the capital cost component of the estimate, the analysis actually had essentially no explanatory value, and therefore extrapolation to a statewide estimate from the sample is invalid. Even for the Operation and Maintenance cost component, the number of EDUs had very little explanatory value. (Even when the analysis was redone and various statistical manipulations done, the number of EDUs still does not adequately predict the costs.) In fact, a host of other variables are likely to be important in determining costs for a community, such as population density and number of sewer miles, topography and number of pump stations, sewer diameter, investments in the collection system made previously. Another major flaw in the analysis is the omission of any costs that counties and special districts, who will also be expected to enroll in the permit, can be expected to incur. Additionally, there is no analysis or data to support either the supposition that the costs incurred by the cities in Orange County are similar to the costs that will be incurred to comply with the general WDRs, nor the representation that these entities are representative of local government entities throughout the state. Lastly, the inclusion of the costs of the Los Angeles County Sanitation Districts in the analysis may have skewed the analysis and is not discussed (its inclusion is odd, given that this entity is not covered by the Santa Ana general WDR, so the premise for inclusion in the sample is not met.). In conclusion, the State Board must revise this analysis so that a more realistic picture of the true costs of this sweeping new program can be disclosed and considered, prior to adoption of the WDRs.
- Effective implementation of this program by collection system agencies will require adequate training of agency staff. This training should cover all aspects of the requirements included in the general WDRs, particularly the online SSO reporting database. Providing consistent and quality training for an estimated 2,000 collection system agencies throughout the state is no small feat. Training materials must be developed, individuals must be trained to teach the information, and sufficient training sessions (both in number and geographic location) must be provided to ensure that all agencies have the opportunity to obtain training that is critical to their ability to comply with the requirements of the WDRs. The

schedule for compliance with the requirements identified in the proposed WDRs does not provide adequate time to effectively accomplish this necessary training.

- A related issue is the lack of a defined SWRCB/Regional Board Program to oversee implementation with the WDRs. The staff report does not provide information regarding the number of staff that will be required to review SSMPs, analyze reporting information, and enforce the WDRs. Hundreds of agencies will be developing SSMP elements according to the schedule set forth in the WDRs, yet it is unclear what process, if any, will be used to review and evaluate that information. Nor has the SWRCB disclosed its cost to implement this major new regulatory program and the fees that will be assessed enrollees to cover those costs. We are very concerned that collection agencies are being required to undertake a significant new mandate without understanding all of the cost implications.

In summary, we support the SWRCB's goal of reducing SSOs and bringing consistency to the regulation of collection systems. The proposed WDRs, however, are deficient in several important respects. We urge the SWRCB to direct staff to revise the WDRs to address the concerns identified in this letter and re-circulate a revised draft for additional comment prior to adoption by the Board. (Recommended language to effect this is provided in the attached redline of the proposed WDRs.)

Thank you for your consideration of our comments. We applaud the SWRCB for undertaking development of an SSO Reduction Program through an open stakeholder process and we are hopeful that our remaining issues can be satisfactorily addressed.

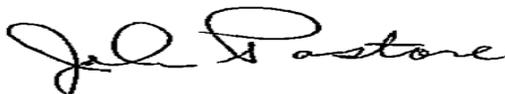
Sincerely,



Roberta Larson, Director, Legal and
Regulatory Affairs, CASA



Yvonne Hunter, Legislative Representative,
League of California Cities



John Pastore, Executive Director, SCAP



Charles V. Weir, Chair, Tri-TAC



Michele Pla, Executive Director, BACWA



Warren Tellefson, Executive Officer, CVCWA

Tam Doduc, Chair and Members
State Water Resources Control Board
January 25, 2006
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Attachments

cc: Bryan Brock, State Water Resources Control Board (*via electronic mail*)

Attachment

Municipal Association Recommended Revisions to

Draft

12/5/2005

STATE WATER RESOURCES CONTROL BOARD{PRIVATE }

ORDER NO. 2006-?

STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR WASTEWATER COLLECTION SYSTEM AGENCIES

(Additions are shown in Underlined Text; Deletions are Shown in Strike Through Text)

The State Water Resources Control Board, hereinafter referred to as "State Water Board", finds that:

1. All federal and state agencies, municipalities, counties, districts, and other public entities that own or operate sanitary sewer systems or any facilities that collect or convey untreated wastewater to a publicly-owned treatment facility in the State of California are required to comply with the terms of this Order, unless such facilities are subject to an NPDES permit. Such entities are hereinafter referred to as "Enrollees".
2. Sanitary sewer overflows (SSOs) are overflows from collection systems of domestic wastewater, as well as industrial and commercial wastewater, depending on the pattern of land uses in the wastewater collection system tributary area. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease and other pollutants. SSOs may cause a public nuisance, particularly when raw untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.
3. Wastewater collection systems experience periodic failures and are known to leak, resulting in discharges that may affect waters of the state. There are many factors (including factors related to geology, design, construction methods and materials, age of the system, population growth, and system operation and maintenance), which affect the likelihood of an SSO. A proactive approach that requires wastewater collection system owners and operators to ensure a system-

wide operation, maintenance, and management plan is in place will reduce the number and frequency of SSOs within the state. This will in turn decrease the risk to human health and environment caused by SSOs.

4. Major causes of SSOs include: grease blockages, root blockages, sewer line flood damage, manhole structure failures, vandalism, pump station mechanical failures, power outages, excessive storm or ground water inflow/infiltration, debris blockages, sanitary sewer system age and construction material failures, lack of proper operation and maintenance, insufficient capacity and contractor-caused damages. Many SSOs are preventable with adequate and appropriate source control measures and operation and maintenance of the sanitary sewer system.

SEWER SYSTEM MANAGEMENT PLANS

5. To facilitate proper funding and management of sanitary sewer systems, each sanitary sewer system owner or operator must develop and implement a system-specific Sewer System Management Plan (SSMP). To be effective, SSMPs must include provisions to provide proper and cost effective management, operation, and maintenance of sanitary sewer systems, while taking into consideration risk management and cost benefit analysis. Additionally, an SSMP must contain a spill response plan that establishes standard procedures for immediate response to an SSO in a manner designed to minimize water quality impacts and potential nuisance conditions.
6. Many local public agencies in California have already developed SSMPs and implemented measures to reduce SSOs. These entities can build upon their existing efforts to comply with these requirements. Others, however, still require technical assistance and, in some cases, funding to improve collection system operation and maintenance in order to reduce SSOs.
7. SSMP certification by technically qualified and experienced persons can provide a useful and cost-effective means for ensuring that SSMPs are developed and implemented appropriately.

Monitoring and Reporting

8. It is the State Water Board's desire to gather additional information on the causes and sources of SSOs to determine the full extent of SSOs and consequent public health and/or environmental impacts occurring in the State.
9. Both uniform SSO reporting and a centralized statewide electronic database are needed to collect information to allow the State and Regional Water Boards to effectively analyze the extent of SSOs statewide and their potential impacts on beneficial uses and public health. The monitoring and reporting program required by this Order and the attached Monitoring and Reporting Program No.???, are necessary to assure compliance with these WDRs.

10. Information regarding SSOs must be provided to Regional Water Boards and other regulatory agencies in a timely manner and be made available to the public in a complete, concise, and timely fashion.

Statewide Consistency

44. Several of the Regional Water Boards are engaged in initiatives to address SSOs. Some Regional Water Boards have issued Waste Discharge Requirements (WDRs) or National Pollution Discharge Elimination System (NPDES) permits to sanitary sewer system owners/operators within their jurisdictions. ~~This Order establishes minimum requirements to prevent SSOs. Although it~~ It is the Water Board's intent that this Order be the primary regulatory mechanism for sanitary sewer collection systems statewide. Thus, regional boards are encouraged to rescind existing individual and general WDRs upon adoption of this Order. While this Order does not supercede existing NPDES permits governing sanitary sewer collection systems, it is the Water Board's intent that, at the time of renewal, existing NPDES permits be revised to include in the NPDES permit only those requirements specified in 40 CFR 141 (a) through (e). Coverage for the sanitary sewer collection system will be provided under this Order. ~~, there will be some instances when Regional Water Boards will need to be more stringent or prescriptive than this Order provides. In those cases, this Order will not supersede a more specific or more stringent requirements contained in a WDR or NPDES permit issued by a Regional Water Board.~~

REGULATORY CONSIDERATIONS

12. California Water Code Section 13263 provides that the State Water Board may prescribe general WDRs for a category of discharges if the State Water Board finds or determines that:
 - The discharges are produced by the same or similar operations
 - The discharges involve the same or similar types of waste;
 - The discharges require the same or similar treatment standards; and
 - The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.
13. The issuance of a general WDR to the Enrollees will:
 - a) Reduce the administrative burden of issuing individual WDRs to each Enrollee;
 - b) Provide for a unified statewide approach for the reporting and database tracking of SSOs;
 - c) Establish consistent and uniform requirements for SSMP development and implementation;
 - d) Provide statewide consistency in reporting; and**
 - e) Facilitate consistent enforcement for violations.

14. The beneficial uses of surface waters that can be impaired by SSOs include, but are not limited to, aquatic life, drinking water supply, body contact and non-contact recreation, and aesthetics. The beneficial uses of ground water that can be impaired include, but are not limited to, drinking water and agricultural supply. Surface and ground waters throughout the state support these uses to varying degrees.
15. The implementation of requirements set forth in this Order will ensure the reasonable protection of past, present, and probable future beneficial uses of water and the prevention of nuisance. The requirements implement the water quality control plans (Basin Plans) for each region and take into account the environmental characteristics of hydrographic units within the state. Additionally, the State Water Board has considered water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area, costs associated with compliance with these requirements, the need for developing housing within California, and the need to develop and use recycled water.
16. The federal Clean Water Act prohibits any discharge of pollutants from a point source to surface waters except as authorized under an NPDES permit. In general, any point source discharge of sewage effluent to surface waters must comply with technology-based, secondary treatment standards, at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of raw untreated wastewater from a collection system to surface waters is illegal under the Clean Water Act. In addition, many Basin Plans adopted by the Regional Water Boards contain discharge prohibitions that apply to the discharge of raw untreated wastewater. Finally, the California Water Code generally prohibits the discharge of waste to land prior to the filing of any required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs.
17. This Order is consistent with State Water Board Resolution No. 68-16 (State of Policy with Respect to Maintaining High Quality of Waters in California) in that the Order imposes conditions to prevent impacts to water quality, does not allow the degradation of water quality, will not unreasonably affect beneficial uses of water, and will not result in water quality less than prescribed in State Water Board or Regional Water Board plans and policies.
18. The action to adopt this General Order is exempt from the California Environmental Quality Act (Public Resources Code §21000 et seq.) because it is an action taken by a regulatory agency to assure the protection of the environment and the regulatory process involves procedures for protection of the environment. (Cal. Code Regs., tit. 14, §15308). In addition, the action to adopt this Order is exempt from CEQA pursuant to Cal.Code Regs., title 14, §15301 to the extent that it applies to existing sanitary sewer collection systems that constitute "existing facilities" as that term is used in Section 15301.

19. The attached Information Sheet, which is incorporated by reference in the Order, contains supplemental information that was also considered in establishing these requirements.
20. The State Water Board has notified all affected public agencies and all known interested persons of the intent to prescribe general WDRs that require Enrollees to develop SSMPs and report all SSOs.
21. The State Water Board conducted a public hearing on ~~January 19~~February 8, 2006, to receive oral and written comments on the draft order. The State Water Board has considered all comments pertaining to the terms and condition of this Order.

IT IS HEREBY ORDERED, that pursuant to California Water Code section 13263, the Enrollees, their agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted hereunder, shall comply with the following:

A. DEFINITIONS

1. **Sanitary Sewer Overflow** - A sanitary sewer overflow (SSO) is any overflow, spill, release, discharge or diversion of untreated wastewater from a sanitary sewer system. SSOs include:
 - (i) Overflows or releases of untreated wastewater that reach surface waters;
 - (ii) Overflows or releases of untreated wastewater that do not reach surface waters; and
 - ~~(iii) Wastewater backups into buildings and on private property that are caused by blockages or flow conditions within the publicly owned portion of a sanitary sewer system.~~

Sanitary Sewer Backup: Wastewater backups into buildings and on private property that are caused by blockages or flow conditions within the publicly owned portion of a sanitary sewer system.

2. **Sanitary Sewer System** – Any system of pipes, pump stations, sewer lines, or other conveyances, upstream of the headworks used to collect and convey wastewater. Temporary storage and conveyance facilities (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, etc.) are considered to be part of the sanitary sewer system, and discharges into these temporary storage facilities is not considered an SSO.
3. **Enrollee** - Federal and state agencies, municipalities, counties, districts, and other public entities that own or operate sanitary sewer systems or any facilities that collect or convey untreated wastewater to a publicly-

owned treatment facility in the State of California and that have submitted a complete and approved application for coverage under - this Order.

4. **SSO Reporting System** – Online spill reporting system that is hosted, controlled, and maintained by the State Water Board. The web address for this site is: www.---.waterboards.ca.gov (*web address to be determined*). This online database is maintained on a secure site and is controlled by unique usernames and passwords.
5. **Untreated wastewater** – Any volume of untreated sewage, solids, or wastewater (from domestic, industrial, commercial or mixed sources) discharged upstream of a treatment facility.
6. **Satellite Collection System** – Any public agency that owns or operates a sanitary sewer system, which is tributary to a wastewater treatment facility owned or operated by a separate public agency.

B. APPLICATION REQUIREMENTS

1. *Deadlines for Application – All public agencies that currently own or operate sanitary sewer systems within the State of California must apply for coverage under this General Order within three (3) months of the date of adoption of this Order, unless the sanitary sewer system is covered by an NPDES permit or individual WDR. Additionally, public agencies that acquire or assume responsibility for operating sanitary sewer (collection) systems after the date of adoption of this Order must apply for coverage under this General Order at least three (3) months prior to operation of those facilities. A public agency that operates a sanitary sewer system covered by an NPDES permit may apply for coverage under this General Order concurrently with submittal of a report of waste discharge for permit renewal pursuant to Water Code sections 13260 and 13380.*
2. **General Permit Application** – In order to apply for permit coverage pursuant to this General Order, a legally authorized representative for each agency must submit a complete application package. Within thirty (30) days of this Order's adoption, State Water Board staff will send specific instructions on how to apply for coverage under this Order to all known public agencies operating sanitary sewer systems. Agencies that do not receive notice may obtain applications and instructions online on the Water Board's website.
3. **General Permit Coverage** – Permit coverage will be in effect and the Enrollee's obligation to comply with this Order will be

in effect upon the completion and approval of a complete application package.

C. PROVISIONS

1. The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order may constitutes a violation of the California Water Code and is grounds for enforcement action.
2. It is the intent of the State Water Board that public sanitary sewer systems be regulated in a manner consistent with this WDR. Nothing in this WDR shall be:
 - (i) Interpreted or applied in a manner inconsistent with the Federal Clean Water Act, any applicable Basin Plan prohibition or water quality standard, or the California Water Code.
 - (ii) Supersede any more specific or more stringent state or federal requirement in an existing NPDES permit, regulation, or administrative/judicial order or Consent Decree;
 - ~~(iii) Interpreted or applied to authorize an SSO that is illegal under either the Clean Water Act, an applicable Basin Plan prohibition or water quality standard, or the California Water Code;~~
 - (iv) Interpreted or applied to prohibit a Regional Water Board from issuing an individual NPDES permit or WDR for a sanitary sewer system as an alternative to approving the application package submitted pursuant to Application Requirement B.3 above. However, in no event shall a sanitary sewer collection system be subject to both an NPDES permit or individual WDR and this Order or applicable collection system requirements, authorized under the Clean Water Act; or
 - ~~(v) Interpreted or applied to supersede any more specific or more stringent requirement in WDRs or in an enforcement order issued by a Regional Water Board.~~
3. The Enrollee shall take all feasible steps to eliminate SSOs. In the event that an SSO does occur, the Enrollee shall take all feasible steps to contain and mitigate the impacts of an SSO.
4. The enrollee shall take all feasible steps to prevent untreated wastewater from discharging from storm drains into flood control channels or surface waters by blocking the storm drainage system and by removing the wastewater from the storm drains.
5. All SSOs must be reported in accordance with Section F of this WDR.
6. ~~In any enforcement action response to an SSO, the State and/or Regional Water Boards will consider the Enrollee's efforts to contain, control, and clean up SSOs from its collection system as part of their consideration of the~~ shall be considered in any enforcement decision under Chapter 5 or 5.5. of the California Water

~~Codesection 13327 or 13385 factors. In assessing these factors, the State and/or Regional Water Boards will also consider whether:~~

- (i) The Enrollee has complied with the requirements of this Order, including the schedule and requirements for reporting, and developing and implementing an SSMP;
- ~~(ii) The Enrollee can identify the cause or likely cause of the discharge event; There were no feasible alternatives to the discharge, such as temporary storage or retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, collecting and hauling of untreated wastewater to a treatment facility, or an increase in the capacity of the system as necessary to contain the design storm event identified in the SSMP. It is inappropriate to consider the lack of feasible alternatives, if the Enrollee does not implement a periodic or continuing process to identify and correct problems.~~
- ~~(iii) The discharge was exceptional, unintentional, temporary, and caused by factors beyond the reasonable control of the Enrollee;~~
- (iv) The discharge could not have been prevented by the exercise of reasonable control described in a certified SSMP for:
 - Proper management, operation and maintenance;
 - Adequate treatment facilities or sanitary sewer system facilities or components to the extent practicable (e.g., adequately enlarging treatment or collection facilities to accommodate growth, infiltration and inflow, etc...);
 - Preventive maintenance (including cleaning and fats, ~~o~~oils and grease (FOG) control);
 - Installation of adequate backup equipment; and
 - Adequate ~~i~~ inflow and infiltration prevention and control to the extent practicable.
- (v) The spill was caused by a wet weather event that exceeded the design capacity of the collection system as documented in the SSMP.
- (vi) The collection system design capacity is appropriate to reasonably prevent SSOs.
- (vii) The Enrollee took all reasonable steps to stop and mitigate the impact of the discharge SSO as soon as possible practicable.

Satisfaction of the above conditions, as applicable, should ordinarily lead to a decision not to take enforcement action or serve to mitigate the severity of an enforcement action otherwise contemplated.”

7. When an SSO ~~sanitary sewer overflow~~ occurs, the Enrollee shall take all feasible steps and necessary remedial actions to 1) control or limit the volume of untreated wastewater discharged, 2) terminate the untreated wastewater SSO,

and 3) recover as much of the ~~untreated~~-wastewater discharged as possible for proper disposal, including any wash down water.

The Enrollee shall implement all remedial actions to the extent they may be applicable to the discharge and consistent with an emergency response plan, including the following:

- (i) Interception and rerouting of untreated wastewater flows around the wastewater line failure;
 - (ii) Vacuum truck recovery of sanitary sewer overflows and wash down water;
 - (iii) Cleanup of debris at the overflow site;
 - (iv) System modifications to prevent another SSO at the same location;
 - (v) Adequate sampling to determine the nature and impact of the release; and
 - (vi) Adequate public notification to protect the public from exposure to the SSO.
8. The Enrollee shall properly, manage, operate, and maintain all parts of the sanitary sewer system owned and operated by the Enrollee, and shall ensure that the system operators are adequately trained and possess adequate knowledge, skills, and abilities.
 9. The Enrollee shall allocate adequate resources for the operation, maintenance, and repair of its sanitary sewer system, by establishing a proper rate structure, accounting mechanisms, and procedures to ensure an adequate and auditable measure of revenues and expenditures appropriate for the size of the community. These procedures must be in compliance with applicable existing laws and regulations and comply with generally acceptable accounting practices.
 10. The Enrollee shall provide adequate capacity to convey base flows and peak flows, including flows related to design storm wet weather events. Capacity shall meet or exceed the design criteria as defined in the Enrollee's System Evaluation and Capacity Assurance Plan for all parts of the sanitary sewer system owned or operated by the Enrollee.
 11. The Enrollee shall develop and implement a written Sewer System Management Plan (SSMP) and make it available to the State and/or Regional Water Board upon request. This SSMP must be adopted and approved by the elected board at a public meeting.
 12. In accordance with the California Business and Professions Code Sections 6735, 7835, and 7835.1, all engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields' pertinent to the required activities. The portions of the SSMP containing those evaluations and judgments ~~The SSMP~~ shall be prepared by or under the direction of appropriately qualified professionals, and shall bear the professional(s)' signature and stamp.

13. The ~~essential core~~ elements of the SSMP are specified below. If the Enrollee believes~~concludes~~ that any element of this section is not appropriate or applicable to the Enrollee's sanitary sewer system, the Enrollee does not have to address that element in its SSMP, ~~program does not need to address it, but~~ However, the SSMP must contain an explanation as to why that element is not applicable.

Sewer System Management Plan (SSMP)

- (i) **Goals:** The goal of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the wastewater collection system. This will help reduce and prevent SSOs, as well as mitigate any SSOs that do occur.
- (ii) **Organization:** The SSMP must identify:
 - (a) The responsible or authorized representative as detailed in Section H of this Order.
 - (b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP program. Include lines of authority as shown in an organization chart or similar document with a narrative explanation; and
 - (c) The chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to the State and Regional Water Board and other agencies if applicable (such as County Health Officer, County Environmental Health Agency, Regional Water Board, and/or State Office of Emergency Services (OES)).
- (iii) **Legal Authority:** Each Enrollee must demonstrate, through collection system use ordinances, service agreements, or other legally binding procedures, that it possesses the necessary legal authority to:
 - (a) Prevent illicit discharges into its wastewater collection system (examples may include infiltration and inflow (I/I), stormwater, chemical dumping, unauthorized debris and cut roots, etc...);
 - (b) Require that sewers and connections be properly designed and constructed;
 - (c) Ensure access for maintenance, inspection, or repairs for portions of the lateral owned or maintained by the Public Agency;

(d) Limit the discharge of fats, oils, and grease and other debris that may cause blockages, and

(e) Enforce any violation of its sewer ordinances.

(iv) **Operation and Maintenance Program.** The SSMP must include those elements listed below that are appropriate and applicable to the Enrollee's system:

(a) Maintain an up-to-date map of the sanitary sewer system, showing all gravity line segments and manholes, pumping facilities, pressure pipes and valves, and applicable stormwater conveyance facilities;

(b) Describe routine preventive operation and maintenance activities by staff and contractors; including a system for scheduling regular maintenance and cleaning of the sanitary sewer system with more frequent cleaning and maintenance targeted at known problem areas. The Preventative Maintenance (PM) program should have a system of tracking activities, such as work orders;

(c) Identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each deficiency. The program should include regular visual and TV inspections of manholes and sewer pipes, and a system for ranking the condition of sewer pipes and scheduling rehabilitation. Rehabilitation and replacement should focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects. Finally, the rehabilitation and replacement plan should include a capital improvement plan that addresses proper management and protection of the infrastructure assets;

(d) Provide training on a regular basis for staff in sanitary sewer system operations, maintenance, and require contractors to be appropriately trained; and

(e) Provide equipment and replacement part inventories, including identification of critical replacement parts.

(v) **Design and Performance Provisions:**

(a) Design and construction standards and specifications for the installation of new sewer systems, pump stations and other appurtenances; and for the rehabilitation and repair of existing sewer systems; and

- (b) Procedures and standards for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.
- (vi) **Overflow Emergency Response Plan** - Each enrollee shall develop and implement an overflow emergency response plan that identifies measures to protect public health and the environment. At a minimum, this plan should include the following:
- (a) Proper notification procedures so that the primary responders and regulatory agencies are informed of all SSOs in a timely manner;
 - (b) A program to ensure appropriate response to all overflows;
 - (c) Procedures to ensure prompt notification to appropriate regulatory agencies and other potentially affected entities (e.g. health agencies, regional water boards, water suppliers, etc...) of all SSOs that potentially affect public health or reach the waters of the State in accordance with the MRP. All SSOs shall be reported in accordance with this MRP, the California Water Code, State Law, and other applicable Regional Water Board WDR or NPDES permit requirements. The SSMP should identify the officials who will receive immediate notification;
 - (d) Procedures to ensure that appropriate staff and contractor personnel are aware of and follow the Emergency Response Plan and are appropriately trained;
 - (e) Procedures to address emergency operations, such as traffic and crowd control and other necessary response activities; and
 - (f) A program to ensure that all reasonable steps are taken to contain untreated wastewater and prevent discharge of untreated wastewater to surface waters and minimize or correct any adverse impact on the environment resulting from the SSOs, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the discharge.
- (vii) **Fats, Oils, and Grease (FOG) Control Program:** Each Enrollee shall evaluate its service area to determine whether a FOG control program is needed. If an Enrollee determines that a FOG program is not needed, the Enrollee must provide justification for why it is not needed. If FOG is found to be a problem, the Enrollee must prepare and implement a FOG source control program to reduce the amount of these substances discharged to the sanitary sewer system. This plan shall include the following as appropriate:

(a) An implementation plan and schedule for a public education outreach program that promotes proper disposal of FOG;

~~(b) Identification of authorized grease disposal locations and a list of licensed grease haulers. A plan and schedule for the disposal of FOG generated within the sanitary sewer system service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG generated within a sanitary sewer system service area;~~

(c) The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG;

(d) Requirements to install grease removal devices (such as traps or interceptors) design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;

(e) Authority to inspect grease producing facilities, enforcement authorities, and whether the Enrollee has sufficient staff to inspect and enforce the FOG ordinance;

(f) An identification of sewer system sections subject to FOG blockages and establish a cleaning maintenance schedule for each section; and

(g) Development and implementation of source control measures, for all sources of FOG discharged to the sewer system, for each section identified in (f) above.

(viii) **System Evaluation and Capacity Assurance Plan:** The Enrollee shall prepare and implement a capital improvement plan (CIP) that will provide hydraulic capacity of key sewer system elements for dry weather peak flow conditions, as well as the appropriate design storm or wet weather event. At a minimum, the plan must include:

(a) **Evaluation:** Steps to evaluate those portions of the sanitary sewer system, which are experiencing or contributing to an SSO discharge caused by hydraulic deficiency. The evaluation must provide estimates of peak flows (including flows from SSOs that escape from the system) associated with conditions similar to those causing overflow events, estimates of the capacity of key system components, hydraulic deficiencies (including components of the system with limiting capacity) and the major sources that contribute to the peak flows associated with overflow events;

- (b) **Design Criteria:** Where design criteria do not exist or are deficient, a program to assess the current capacity of the sanitary sewer system owned or operated by the Enrollee; and
 - (c) **Capacity Enhancement Measures:** Establish a short- and long-term CIP to address identified hydraulic deficiencies including prioritization, alternatives analysis, and schedules. The CIP may include increases in pipe size, I/I reduction programs, increases and redundancy in pumping capacity, and storage facilities. The CIP shall include an implementation schedule and shall identify sources of funding.
- (ix) **Monitoring, Measurement, and Program Modifications:** The Enrollee shall:
 - (a) Maintain relevant information that can be used to establish and prioritize appropriate SSMP activities;
 - (b) Monitor the implementation and, where appropriate, measure the effectiveness of each element of the SSMP;
 - (c) Assess the success of the preventative maintenance program;
 - (d) Update program elements, as appropriate, based on monitoring or performance evaluations; and
 - (e) Identify and illustrate SSO trends, including: frequency, location, and volume.
- (x) **SSMP Program Audits** - As part of the SSMP, the permittee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every two years and a report must be prepared and kept on file. This audit should focus on evaluating the effectiveness of the SSMP and Enrollee's compliance with this subsection, including identification of any deficiencies in the SSMP and steps to correct them.
- (xi) **Communication Program** – The Enrollee shall communicate on a regular basis with the public on the development, implementation, and performance of its SSMP. The communication system shall provide the public the opportunity to provide input to the Enrollee as the program is developed and implemented.

The Enrollee shall also create a plan of communication with systems that are tributary to the Enrollee's sanitary sewer collection system.

14. Both the SSMP and the Enrollee's program to implement the SSMP must be certified to be in compliance with the requirements set forth above by the appropriate governing board and must be presented to the board at a public meeting. The Enrollee shall certify that the SSMP, ~~and subparts thereof, are in~~ compliance with this WDR within the time frames identified in the time schedule provided in Finding number 15, below.

In order to complete this certification, the Enrollee's authorized representative must complete the certification portion in the Online SSO Database Questionnaire by checking the appropriate milestone box, printing and signing the automated form, and sending the form to:

Office of Statewide Initiatives
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

The SSMP must be updated every five (5) years, and must include any significant program changes. Re-certification by the governing Board of the permittee is required when significant updates to the SSMP are made. To complete the re-certification process, the Enrollee shall enter the data in the Online SSO Database and mail the form to the State Water Board, as described above.

15. The Enrollee shall comply with these requirements according to the following schedule. This time schedule does not supersede existing requirements or time schedules associated with other permits or regulatory requirements.

<u>T</u> <u>a</u> <u>s</u> <u>k</u> <u>a</u> <u>n</u> <u>d</u> <u>A</u> <u>s</u> <u>s</u> <u>o</u> <u>c</u> <u>i</u> <u>a</u> <u>t</u> <u>e</u> <u>d</u> <u>S</u> <u>e</u> <u>c</u> <u>t</u> <u>i</u> <u>o</u> <u>n</u>	Completion Date			
	Population > 100,000	Population between 100,000 and 10,000	Population between 10,000 and 2,500	Population < 2,500
Application for Permit Coverage Section B	3 months after WDR Adoption <u>application</u> <u>approval</u>	3 months after WDR Adoption <u>application</u> <u>approval</u>	3 months after WDR Adoption <u>application</u> <u>approval</u>	3 months after WDR Adoption <u>application</u> <u>approval</u>
Reporting Program Section F	4 months after WDR Adoption <u>application</u> <u>approval</u>	4 months after WDR Adoption, <u>application</u> <u>approval</u>	4 months after WDR Adoption <u>application</u> <u>approval</u>	4 months after WDR Adoption <u>application</u> <u>approval</u>
SSMP Development Plan and Schedule No specific Section	9 months after WDR Adoption <u>application</u> <u>approval</u>	12 months after WDR Adoption <u>application</u> <u>approval</u>	15 months after WDR Adoption <u>application</u> <u>approval</u>	18 months after WDR Adoption <u>application</u> <u>approval</u>

Sewer System Management Plan Time Schedule

Goals and Organization Structure Section C 13 (i) & (ii)	9 months after WDR Adoption	12 months after WDR Adoption	15 months after WDR Adoption	18 months after WDR Adoption
Overflow Emergency Response Program Section C 13 (vi)	9 months after WDR Adoption	12 months after WDR Adoption	15 months after WDR Adoption	18 months after WDR Adoption
Legal Authority Section C 13. (iii)	18 months after WDR Adoption	21 months after WDR Adoption	24 months after WDR Adoption	27 months after WDR Adoption
Operation and Maintenance Program Section C 13 (iv)	18 months after WDR Adoption	21 months after WDR Adoption	24 months after WDR Adoption	27 months after WDR Adoption
Grease Control Program Section C 13 (vii)	18 months after WDR Adoption	21 months after WDR Adoption	24 months after WDR Adoption	27 months after WDR Adoption
Design and Performance Section C 13 (v)	30 months after WDR Adoption	33 months after WDR Adoption	36 months after WDR Adoption	39 months after WDR Adoption
System Evaluation and Capacity Assurance Plan Section C 13 (viii)	30 months after WDR Adoption	33 months after WDR Adoption	36 months after WDR Adoption	39 months after WDR Adoption
Final SSMP, incorporating all of the <u>applicable</u> SSMP requirements	36 months after WDR Adoption <u>application approval</u>	39 months after WDR Adoption <u>application approval</u>	42 months after WDR Adoption <u>application approval</u>	45 months after WDR Adoption <u>application approval</u>

D. WDR AVAILABILITY

1. A copy of this WDR shall be maintained at appropriate locations and shall be available to sanitary sewer system operating and maintenance personnel at all times.

E. ENTRY AND INSPECTION

1. The Enrollee shall allow the Regional Board or its authorized representative, upon presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the Enrollee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the California Water Code, any substances or parameters at any location.

F. GENERAL MONITORING AND REPORTING REQUIREMENTS

1. The Enrollee shall furnish to the State or Regional Water Board, within a reasonable time, any information which the State or Regional Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Enrollee shall also furnish to the Executive Director of the State Water Board or Executive Officer of the applicable Regional Water Board, upon request, copies of records required to be kept by this Order.
2. The Enrollee shall comply with the attached Monitoring and Reporting Program No.??? and future revisions thereto, as specified by the Executive Director. Monitoring results shall be reported at the intervals specified in Monitoring and Reporting Program No.???. Unless superseded the Enrollee's sanitary sewer collection system is subject to by a specific enforcement Order at the time of application for a specific Enrollee, these reporting requirements are intended to replace other mandatory routine written reports associated with SSOs.
3. All enrollees must obtain SSO Database accounts and receive a "Username" and "Password" by registering through the California Integrated Water Quality System (CIWQS). These accounts will allow controlled and secure entry into the SSO Database. Additionally, within 30days of receiving an account and prior to

recording spills into the SSO Database, all enrollees must complete the "Collection System Questionnaire", which collects pertinent information regarding a Permittee's collection system. The "Collection System Questionnaire" must be updated at least every 12 months.

4. Pursuant to Health and Safety Code 5411.5, any person who, without regard to intent or negligence, causes or permits any untreated wastewater or other waste to be discharged in or on any waters of the State, or discharged in or deposited where it is, or probably will be, discharged in or on any surface waters of the State, as soon as that person has knowledge of the discharge, shall immediately notify the local health officer and the Regional Board of the discharge. Discharges of untreated wastewater to storm drains and drainage channels, whether man made or natural or concrete lined, shall be reported as required above.

All SSOs greater than 1,000 gallons discharged in or on any waters of the State, or discharged in or deposited where it is, or probably will be, discharged in or on any surface waters of the State shall also be reported to the Office of Emergency Services pursuant to California Water Code Section 13271.

G. CHANGE IN OWNERSHIP

1. This Order is not transferable to any person, except after notice to the Executive Director. The Enrollee shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new Enrollee containing a specific date for the transfer of this Order's responsibility and coverage between the existing Enrollee and the new Enrollee. This agreement shall include an acknowledgement that the existing Enrollee is liable for violations up to the transfer date and that the new Enrollee is liable from the transfer date on.

H. INCOMPLETE REPORTS

1. If an Enrollee becomes aware that it failed to submit any relevant facts in any report required under this Order, the Enrollee shall promptly submit such facts or information.

I. REPORT DECLARATION

1. All applications, reports, or information shall be signed and certified as follows:
 - (i) All reports required by this Order and other information required by the State or Regional Water Board shall be signed and certified by a person designated, for a municipality, state, federal or other public agency, by either a principal executive officer or ranking elected official, or by a duly authorized representative of that person, as described in paragraph (ii) of this provision.

- (ii) An individual is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described in paragraph (i) of this provision; and
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity.

J. CIVIL MONETARY REMEDIES FOR DISCHARGE VIOLATIONS

1. The California Water Code provides various enforcement options, including civil monetary remedies, for violations of this Order.
2. The California Water Code also provides that any person failing or refusing to furnish technical or monitoring program reports, as required under this Order, or falsifying any information provided in the technical or monitoring reports is subject to civil monetary penalties.

K. SEVERABILITY

1. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
2. This order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, nor protect the Enrollee from liability under federal, state or local laws, nor create a vested right for the Enrollee to continue the waste discharge.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on 2006.

Clerk to the Board

Ordered by: _____

Dated: