

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION

SUPPLEMENTAL SHEET FOR SPECIAL MEETING OF NOVEMBER 19, 2004

Prepared on November 10, 2004

ITEM: 5

SUBJECT: Issuance of Waste Discharge Requirements for Wastewater Collection Agencies Tributary to the Goleta Sanitary District Wastewater Treatment Facility, Santa Barbara County – Order No. R3-2004-0130

SUMMARY

Two sets of written comments letters regarding draft Waste Discharge Requirements (WDR) Order No. R3-2004-0130 were received. A comment letter from Hatch and Parent, general counsel to the Goleta West Sanitary District (GWSD) was received on November 4, 2004 (Attachment No. 1). A comment letter from Santa Barbara ChannelKeeper (Attachment No. 2) was received on November 8, 2004. Detailed responses to those comments are contained below. With the recommended changes contained in the Staff Report and this Supplemental Sheet, staff recommends adoption of Order No. R3-2004-0130.

system requirements for the Permittees and upholds State water quality standards.”

The authority to prohibit discharges of waste is cited in Finding No. 17 of the proposed Order: “**Authority to Prohibit Discharge** - California Water Code Section 13243 provides that a Regional Board, in a basin plan or waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. The requirements specified in this Order are consistent with both the Basin Plan and Water Code Section 13243.”

COMMENTS AND RESPONSES

Comments from Goleta West Sanitary District (GWSD), letter dated November 4, 2004:

In addition, Water Code Section 13263, listed on page 4 of the proposed Order under “It is Hereby Ordered...” also specifies the Regional Board authority to issue these Waste Discharge Requirements.

**GWSD General Comment No. 1:** GWSD formally objects to the issuance of the Draft Order. GWSD is unable to discern the legal basis upon which the Regional Board purports to regulate activities of a sanitation collection system that does not in fact engage in the discharge of waste.

**Recommended change** – None

**Staff Response:** Page 2 of the Staff Report contains a detailed discussion for the need and rationale for the issuance of the proposed Order No. R3-2004-0130. Finding No. 2 of the Order already notes the regulation of the system is pre-existing, and also refers to the State’s authority in the last sentence, “This Order sets specific wastewater collection

**GWSD General Comment No. 2:** GWSD suggests the Draft Order constitutes a “project” within the meaning of the California Environmental Quality Act, and finds no evidence of compliance with CEQA in the Draft Order or Staff Report.

**Staff Response:** Pursuant to CEQA Guidelines, Section 15301, the proposed WDRs are exempt from CEQA because these WDRs are for existing facilities (existing wastewater collection system). GWSD’s collection system was previously regulated

through the NPDES permit to Goleta Sanitary District. CEQA compliance is described below in Finding No. 18, page 3 of the proposed Order:

“These waste discharge requirements apply to existing wastewater collection systems and are exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.) in accordance with Section 15301, Article 19, Chapter 3, Division 6, Title 14 of the California Code of Regulations. In addition, this Order is a prohibition of discharge, and as such, is exempt from the provisions of the California Environmental Quality Act, in accordance with Title 14, California Code of Regulations, Chapter 3, Section 15308.”

**Recommended change** – None

**GWSD General Comment No. 3:** GWSD believes the Draft Order will impose significant new planning, monitoring and reporting responsibilities on GWSD. GWSD believes a “one system at a time” method of creating a new program is not authorized by the statutes governing the Regional Board’s operations, particularly since those statutes require that the economic impact of new programs be considered.

**Staff Response:** Although CWC Section 13263(i) gives the Regional Board discretion to issue general orders to similar facilities, nothing requires the Regional Board to exercise its discretion to issue general rather than individual WDRs. Any requirement to consider economic impacts is the same, whether WDRs are issued as general or individual WDRs. Porter-Cologne sets forth a general policy that the Regional Board must achieve the highest water quality that is reasonable considering, among other things, economic impacts. (CWC §13000.) The Regional Board must also consider economic impacts when establishing water quality objectives. (CWC §13241.) The tributary system WDRs do not establish water quality objectives; they ensure compliance with existing objectives in order to protect

beneficial uses. The Regional Board is not required to consider the factors listed in Section 13241 when it adopts WDRs. (See, e.g., State Board Order No. WQ 2001-0016 (Petition of Napa Sanitation District et al.), pp. 23-24.) Moreover, since the prior NPDES permit required GWSD West to prevent overflows, the issuance of these Waste Discharge Requirements should not result in significant increased costs.

**Recommended change** – None

**GWSD Specific Comment No. 1:** WDRs, page 4, #21, GWSD is unaware of a public hearing on October 22, 2004 and, to its knowledge, received no notice of such hearing

**Staff Response:** This is a typo, referring to the October 22, 2004 Regional Board meeting in Santa Barbara. The correct date for a public hearing on this item is November 18, 2004.

**Recommended change** – Change the dated contained in Finding No. 21 to **November 18, 2004.**

**GWSD Specific Comment No. 2:** WDRs, page 7, #14, a directive that facilities be accessible during the wet weather season might require that easements by which the District obtains access to collection system manholes be paved. This would be expensive and may have significant adverse environmental impacts, particularly as some GWSD collection lines are located in riparian corridors and other environmentally sensitive areas.

**Staff Response:** Standard Provisions and Reporting Requirements E.14. does not require GWSD access to facilities be obtained by paving. The requirement states “Facilities shall be accessible during the wet weather season.” The method and manner of how the access is obtained is left up to GWSD. As part of its standard operating procedures, GWSD should already have access, or be securing access agreements for all collection system manholes.

**Recommended change** – None

**GWSD Specific Comment No. 3:** WDRs, page 8, #22 - GWSD's service area includes portions of the City of Goleta and some incorporated areas within Santa Barbara County. The "planning and building departments" of the City and the County have no authority over GWSD's operations and thus have no role to play in GWSD's planning for capacity improvements. Therefore, it is inappropriate to require that GWSD secure the participation of these other public agencies before submitting a capacity improvement plan.

**Staff Response:** The requirement is specifically limited to "all planning and building departments having jurisdiction in the area served by the waste collection system." If the City of Goleta and the County have no authority or jurisdiction in capacity improvements, than no involvement by such parties is necessary to meet this requirement. However, to the degree the City of Goleta and the County of Santa Barbara have permit authority over improvements or expansion to GWSD's collection system, does necessitate participation and cooperation from GWSD with such agencies. Not securing that participation and/or cooperation prior to submitting the capacity improvement plan likely ensures that difficulties will arise later during the permitting process.

**Recommended change** – Change language on page 8, E.22, last paragraph of the proposed Order to: "In addition, the required technical report shall be prepared with public participation to the extent possible and in consultation with entities or departments having jurisdiction in the area served by the waste collection system, but which GWSD has no legal control".

**GWSD Specific Comment No. 4:** M&R Program, page 1, #A, GWSD does not have GPS coordinates for "receiving waters"

**Staff Response:** If a GPS device is not available, the GWSD should include as a minimum the nearest street address for the

location of the spill, and the nearest street address for any affected receiving water (if the spill reaches a receiving water).

**Recommended Change:** Add **and/or** to the requirement for use of GPS device and reporting GPS coordinates.

**GWSD Specific Comment No. 5:** M&R Program, page 3, #C: GWSD already submits an annual pretreatment report to the Goleta Sanitary District. This report should satisfy this requirement.

**Staff Response:** Staff agrees. However the requirement to ensure the report is submitted by the due date is the responsibility of GWSD, not the Goleta Sanitary District.

**Recommended change** – None

**GWSD Specific Comment No. 6:** M&R Program Attachment 1, page 1, #IIIA: GWSD receives wastewater collected by the Embarcadero Municipal Improvement District (EMID), although the EMID service area is not located within the GWSD boundaries. Is EMID considered to be a "satellite system" for purposes of this paragraph?

**Staff Response:** Yes

**Recommended change** – None

**GWSD Specific Comment No. 7:** M&R Program Attachment 1, page 2, #IIIF: How can GWSD determine whether one of its contractors are "appropriately trained?"

**Staff Response:** Proper collection system management requires properly trained personnel. We suggest you contact other entities with large collection system (Goleta Sanitary District, or the City of Santa Barbara, for example) and request their list of training requirements and courses they require their staff attend.

**Recommended change** – None

**GWSD Specific Comment No. 8:** M&R Program Attachment 1, page 2, #III, I: GWSD does not regulate activities on private property.

**Staff Response:** Staff acknowledges that GWSD does not regulate activities on private property.

Finding No. 11 of the proposed Order factually states that overflows can occur from both publicly and privately owned systems. It does not assign responsibility of privately owned systems to the GWSD. The proposed Order does not indicate that the GWSD owns or maintains private sewer laterals. Any person who discharges sewage is responsible and liable for that spill. If the GWSD does not own the system from which a spill occurs, it is not liable.

We acknowledge a special district does not have the same cleanup obligations as a city that also owns the right of way and has the stormwater permit. The Collection System Management Plan GWSD submits under these WDRs may state that they have no legal authority over the rights of way, and its response plan for spills might consist of referring the discharger (homeowner) to the appropriate response authorities.

**Recommended changes - None**

**Comments from Santa Barbara ChannelKeeper, letter dated November 5, 2004**

**SB ChannelKeeper Comment No. 1:** The WDR should be issued as an NPDES permit. As part of this comment, ChannelKeeper submitted background information: a) an EPA letter to RWQCB's EO dated December 14, 2001, b) the NPDES permit for the City of Oakland, and c) Notice of Intent to File Suit Under the Clean Water Act dated November 4, 2004.

**Staff Response:** Thank you for providing background information about other NPDES permits. The Central Valley Regional Board also issued an NPDES permit to the City of Folsom collection system in March 2002. Staff is currently reviewing both permits.

Even assuming the Board has authority to issue these requirements as NPDES permits, staff is not aware of any requirement to do so and believes that this is within the Regional Board's discretion. As you know, the Board requested at the October 22, 2004 meeting that staff investigate whether tributary system requirements can be issued as NPDES permits. Staff will provide a report to the Board at the February 2005 meeting. At that time, if legal counsel advises the Board that NPDES permits are an option, the Board may direct staff to prepare NPDES permits to replace the existing tributary system WDRs, may elect to leave the WDRs in place, or may decide to wait until the State Board develops statewide general requirements before deciding whether to revise existing WDRs.

The commenter also stated, "It appears to ChannelKeeper that the only motivation for not issuing the WDR as an NPDES permit is an attempt to insulate the satellite facilities from U.S. EPA and citizen enforcement of the WDR under the CWA's enforcement provisions..." [Please see the attached letter for the complete comment.]

The proposed Order prohibits sewage discharges from the collection system other than to the treatment facility (see Prohibition A.1). This prohibition encompasses the discharge of sewage to waters of the State, and to navigable waters of the U.S. The entities listed as permittees under these WDRs do not propose to discharge waste to state or federal waters.

Regional Board staff's motivation/reasons for recommending issuance of satellite collection system WDRs are detailed on page two of the staff report. None of those reasons include an attempt to insulate the facilities from U.S. EPA or citizen suits. To the contrary, separate WDRs for collection systems provide a more definitive and rigorous enforcement mechanism and are intended to prevent discharges that could violate the Clean Water Act. In addition, Board staff understand that non-NPDES WDRs do not insulate a

discharger discharging from a point source to waters of the U.S. without an NPDES permit from citizen suits.

**Recommended change** – None

**Santa Barbara ChannelKeeper Comment No. 2**

WDRs, Implementation Requirement D.3: As worded, this provision impermissibly authorizes the discharge of pollutants. Channelkeeper agrees that it generally would be inappropriate for the Regional Board to take enforcement actions in the circumstances described (though we have some concerns that the term “widespread flooding” is an ill-defined event), but applicable law prohibits the Regional Board from authorizing the discharge of pollutants in such circumstances. The Regional Board should amend this provision to model the EPA’s bypass regulation set forth at 40 C.F.R. section 122.41(m). This D.3 should thus provide that overflows that reach state waters or waters of the United States are always prohibited, and the Regional Board may take enforcement action against a permittee for any overflows unless the two circumstances described in D.3 are met and the permittee provides notice within twenty-four hours (or similarly short reporting deadline) that it has had an overflow meeting the requirements of D.2. The Regional Board should further define “widespread flooding” to be large-scale regional flooding generated by a storm event exceeding the applicable design storm for the satellite system in issue.

**Staff Response:** Implementation Requirement D.3 refers to Prohibition A.1, which prohibits all discharges from the collection system other than to the treatment facility. The conditional aspect of this requirement applies to the consideration of violations, and does not authorize waste discharges. If the conditions described are not met, and the discharge constitutes a violation, then by definition the Regional Board may take enforcement action.

The Regional Board may take enforcement action for any discharge that results from natural conditions. In cases where the discharger demonstrates that the natural

conditions were severe, and that those conditions could not have been reasonably anticipated, the Regional Board will exercise discretion in determining the appropriate enforcement response. Requirement D.3 asserts that communities have limited protection from enforcement in very rare circumstances.

**Recommended change** – None

**ATTACHMENTS**

1. Goleta West Sanitary District letter (via general counsel Hatch and Parent), dated November 4, 2004
2. Channelkeeper letter, dated November 8, 2004

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