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Waste Discharge Requirements Unit  
State Water Resources Control Board  
1001 I Street, 15th Floor  
Sacramento, CA 95814

Subject: **SSO Reduction Program Review and Update - Comments**

Dear Water Board staff:

Thank you for the opportunity to comment on the existing SSO WDR Order No. WQ-2006-0003. Our engineering firm is commenting on behalf of several sanitation agencies in Marin County and other areas of the Bay Area, and believes the SSO WDR and CIWQS systems would benefit from fine-tuning, in order to function more effectively and more fairly.

As you have heard from Bay Area Clean Water Agencies (BACWA) and other organizations, the sanitation agencies generally prefer to not re-open the Order, and encourage the state's pursuit of agencies that have not lawfully filed to comply. If the Order is re-issued, we believe there are minor aspects of the Order that could be adjusted at this time to make the system work more effectively, which is the goal of these comments.

We commend the State Water Board for its initial regulatory effort, which was wisely based on the collaborative program initiated in the San Francisco Bay Region, and we and our clients share the Board's goals to minimize sanitary sewer overflows and minimize exposure to the public and the environment. We believe that the SSO WDR has had positive outcomes of raising agency and citizen awareness, increasing preventive and responsive capabilities, and elevating the importance and the profile of wastewater infrastructure renewal.

Our comments on the SSO Reduction Program Review and Update are numbered and titled below:

1. Multiple and Rapid Reporting Requirements. There are several problems with the current reporting requirements of three phone reports within 2 hours for all spills that may be over 1,000 gallons, reached a storm drain, or surface waters. We believe the two-hour triplicate reporting requirements and 24-hour written confirmation should be dropped and replaced with a same day reporting requirement, except for major spills where exposure to the public is clearly evident and limited emergency response resources

can be targeted effectively. The state should pursue a one-stop phone call as a goal of the program and not heretofore leave it to the sanitation agencies to make three or four phone calls when they need to concentrate on spill containment.

The approach to SSO reporting grew out of major wet weather treatment plant overflow events of January 2008 that had significant public notification shortcomings.

Unfortunately, the State Board Executive Order No. WQ 2008-0002-EXEC of February 20, 2008, less than one month after the Bay Area's SSOs, was hastily assembled using these worst-case spill scenarios as a template for public notification of all SSOs. This was a one-size-fits-all solution that has caused a great deal of wasted effort in the intervening months.

a. Major Spills – Multiple, Immediate Reporting Makes Sense. Experience has shown that most of the overall volume of SSOs is from a small number of major spills, usually associated with treatment plant capacity, force main breaks, or pump station malfunctions. These are the instances where the reporting to Cal EMA, Public Health agencies and the Water Boards should be compulsory. The aggressive 2-hour reporting requirement is appropriate when areas affected by the spill are places where the public can readily come into contact with the water. The Southern Marin spills embody this example, and the rapid, multiple reporting makes sense for these uncommon, major events.

b. Most Spills – Multiple, Immediate Reporting Unnecessary and Distracting. The logistics of spill response are wholly dependent on the available crew. Depending on the timing of the spill, the responding crew members may not be the senior members with as much experience estimating spill size, let alone mobilizing and deploying immediate spill containment techniques. The key point is that the 2-hour reporting requirement is one more task piled on to many other complex tasks that can overwhelm the capacity of a responding crew. Because of the liability associated with the strict reporting requirements of the executive order, managers may direct staff to prioritize the phone reporting over the spill containment, and this is an unintended consequence that compels re-thinking of the reporting requirements.

If this requirement were changed to same-day, then the flow estimates will be more reliable, and we believe that the actual spill responses will be more effective when the crew can concentrate on the emergency work on which they need to concentrate. At the very least, they should only be making one notification phone call, not three. The state could do its share to enhance its ability to get the word out to public health agencies (where warranted) from its emergency response central location.

2. A de minimis level needs to be set. We suggest 100 gallons unless there is a discharge to surface waters. Since the majority of the currently reportable spills are less than 50 gallons, the reporting and data management burden of CIWQS SSO database is skewed sharply to managing the sheer number of minor spills that pose little or no health or water quality threat. Note that sanitation agencies do not mind keeping track of these minor events and reporting them on an annual basis for all the tracking benefits they provide.



3. A de minimis level should be set for phone reporting SSOs to not overburden the emergency management system. Experience has shown that emergency management agencies and public health agencies treat sanitation agency staff with some contempt for reporting minor SSOs, certainly those under 100 gallons. We encourage State Water Board to work closely with their partner health management agencies to co-evaluate the current notification approach, and possibly prioritize the reporting to match the processing capacity of these agencies and not burden them with non-emergency information.

4. Discharges to storm drains that are fully contained should not be in the same Category 1 as discharges to surface waters. Discharges to storm drains that are able to be fully captured, cleaned and returned to sanitary sewer systems should not be reportable except for the 30 day, quarterly or annual reports. Such effective quick-thinking should be rewarded by less reporting burden, not more.

5. Reporting on private laterals should not be required. These areas are on private property and the sanitary districts have no control over them. The public health threat from them is limited to the resident and the plumber that assists them, and sanitation agencies have limited legal authority. They rarely if ever reach surface water, the real SSO issue. A faulty sewer lateral does not signify an I/I threat – the I/I implication is dependent on location in the watershed and the water table elevation. Many of these incidents are from citizens dumping potato peels, baby wipes and eggshells down the drain – there is only so much education a sanitation agency can provide to change such behavior. The data management for these everyday occurrences would overwhelm the system and dilute the importance of the larger and chronic SSOs.

6. Third Party Lawsuits - CIWQS really needs to have a category of “damage by others.” Otherwise, the available categories make sanitation agencies solely responsible for many incidents that they can not avoid regardless of training, preventive maintenance, sewer rate increases, lateral improvement programs, pollution prevention programs, contractor outreach, and the overall capital improvement program.

We have many examples of SSOs that have been caused by others, whether it be a plumber that loosens a rootwad in a private lateral that floats downstream and causes a blockage in the sewer main, or a contractor excavating for other utility installation rupturing a gravity sewer or force main. While Water Boards may have discretion in pursuing enforcement action on these incidents of no culpability, in practice the third-party plaintiffs lump these reported spills in with all the rest of the spills when they pursue legal action against sanitation agencies. In these third party lawsuits the spills over which sanitation agencies have no control end up carrying equal weight. Similarly, when the performance metrics for agencies are calculated in SSO spills or gallons per pipe-mile, the incidents caused by others get lumped in and artificially lower the agency’s perceived performance. Sanitation agencies should not be held liable for these common incidents over which they have no control, and the public database should

be structured to reflect this reality-on-the-ground. Otherwise, the Water Boards are hanging sanitation agencies, their clean water partners, out to dry.

7. Data Management and Reporting Resources. We encourage the development and maintenance of a Data Review Committee including representative stakeholders, because it would be useful to review the resources it takes to enter the data, and what data are missing that assist in determining appropriate enforcement response (see No. 6 above). We encourage the stakeholder process you have already initiated before the administrative draft Order, and hope it will continue and that the administrative draft will reflect input received.

8. Fines and Supplemental Environmental Projects (SEP). The recently adopted statewide SEP policy should be revisited, removing the 50% limit for supplemental environmental projects. We do not believe it is appropriate for at least half the money from fines from sanitation agencies, which are public agencies, to leave the regions where they are collected and go into the statewide Cleanup and Abatement Account. These fines that come from sewer ratepayers should go back to the agency where the problem occurred so that the money can be targeted to abate the problems that caused the SSOs, with Water Board approval. Taking money from the agencies only makes meeting the challenge of reducing SSOs more difficult.

### Conclusion

Thank you for considering these comments as the SSO WDR is under consideration for updating. These comments constitute lessons learned based on three years of experience complying with the current statewide order. The Order has accomplished the positive outcomes stated above, but has created a new avenue of legal exposure to sanitation agencies that result in third-party lawsuits with no attendant improved water quality. And the reporting requirements of the hastily assembled Executive Order No. 2008-0002-EXEC have resulted in unintended consequences of overwhelming the emergency reporting system and creating confusion and delay at the scenes of spills. We hope to see a commitment at the state level to facilitate emergency communications where warranted.

If you have any questions, do not hesitate to contact me at (415) 453-4480.

Very Truly Yours,

NUTE ENGINEERING

By



W. Edward Nute



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