

ENGINEERING SERVICES DEPARTMENT

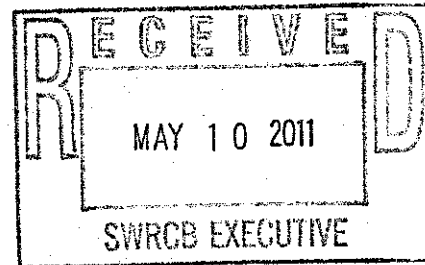
City of **Richmond**



May 10, 2011

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – SSS WDRs Review & Update**

Dear Ms. Townsend:

The City of Richmond (City) appreciates the opportunity to comment on the State Water Resources Control Board's (State Water Board) proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (proposed SSS WDRs). The City serves about 52,000 people, approximately half of the population living within the City's boundaries. Many of the residents living in northern Richmond are served by the West County Wastewater District; while many of those in the southern section are served by Stege Sanitation District. The City's collection system has approximately 185 miles of sanitary gravity and pressure sewer pipes with appurtenant manholes and 13 lift stations. The City has been diligently maintaining and reporting on its sewer system-related activities per requirements specified in the current general collection system permit, Order No. 2006-0003 (existing SSS WDRs). The City is implementing its Sewer System Management Plan (SSMP).

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented since 2006. While the State Water Board's efforts to address certain issues associated with the existing SSS WDRs are appreciated, the City is very concerned about a number of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to SSMP requirements that should not be mandated unless State Water Board guidance and funding is made available. Also, the City strongly opposes any kind of permitting mechanism that uses the National Pollutant Discharge Elimination System (NPDES) approach.

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

The City is in opposition to the two-tiered WDRs and NPDES permit alternative, whereby an SSO

occurring previously or in the future would trigger the requirement to apply for an NPDES permit, and agrees with several points included in the State Water Board Staff Report that also indicate opposition to an NPDES permit. Since the existing SSS WDRs and the proposed revisions do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. An NPDES permit would subject public agencies to additional and more egregious lawsuits and higher administrative penalties with no demonstration that this would improve water quality or further reduce Sanitary Sewer Overflows (SSOs).

As described in the Staff Report, this alternative would require significant additional Regional and State Water Board staff resources to track and implement the different permit tiers. The City understands these staff resources are limited, and believes they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

The City also feels that adopting an NPDES permit component now will create confusion and wasted resources since it may need to be revised again if the United States Environmental Protection Agency implements an NPDES permit for satellite sanitary sewer systems later. As a collection system operating in the San Francisco Bay Region, the City speaks to this issue with experience. The existing SSS WDRs were very different from the established regional program. In developing the SSMP, City staff had to sift through and identify strategies that addressed *both* sets of requirements. Changes to reporting requirements also resulted in confusion. As requirements become more complicated and confusing, more staff time is directed towards preparing reports and re-organizing information and operating procedures, and less time is spent actually managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system.

**2. The basis for mandatory reporting of PLSDs is not justified and creates an inappropriate burden for public agency staff.**

State Water Board staff has not provided adequate justification to require public agencies to report PLSDs that are not affiliated with their own collection system. The City is concerned that State Water Board staff has not sufficiently thought through the practical aspects of implementing and enforcing such a requirement.

The City offers the following concerns ... Is there an expectation that if an overflow on private property is discovered by a public agency, that the public agency will assist with cleanup? (Ratepayers should not have to pay for spills caused by failures of equipment not operated or maintained by the City.) What if an agency is notified about two overflows at once and one is a PLSD and the other is from the public sewer and they only have resources to deal with one? What if the collection system agency does not have all of the information for a PLSD, as requested on the reporting form? What if an agency receives a telephone message about a PLSD and the information is incomplete? (It is not appropriate to use public resources to hunt down this information.) How would PLSD volume spilled or recovered be estimated? (It may be difficult to get this information. Often a homeowner is guarded when answering questions about what goes on inside their home.) Will a back-up inside a home (with no chance of affecting water quality of a surface water or storm channel) be considered an SSO? What if a PLSD occurs and someone thinks a public agency staff person already knows about it so it isn't reported? In any event, how will State Water Board staff enforce this provision? Most importantly of all, how will State Water Board staff use this

information? There are many questions and very few answers or justifications addressed in the proposed revisions to the SSS WDRs.

In addition, it is unrealistic and inappropriate to expect public collection system agencies to solve (or even just report) all of the State's SSOs, especially when they may be insignificant in the realm of protecting water quality. It is difficult enough to manage the City's system, the boundaries of which are well known. The State Water Board should only hold public agencies accountable and responsible for activities within their particular jurisdiction. Also, although the Staff Report includes recognition that existing reporting requirements may have indirectly created disincentives for agencies to maintain ownership of private laterals, the proposed revisions create further confusion rather than resolving this issue.

The City does not believe that meaningful statistics can be derived from data collected only for those PLSDs that an agency becomes aware of, and does not support the idea that State Water Board staff can decide that collection systems have "systemic issues" based on these incomplete data sets. It is simply inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.

Moreover, the Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is only about 5% of the total volume from SSOs, almost all of which never poses a threat to waters. Requiring public agencies to provide detailed information regarding such a small percentage of overflow volumes from parts of the system over which they have no control is not appropriate and would divert limited staff resources from higher priority issues that actually protect waters. PLSDs typically only impact the property owner, as they are usually very small in volume and do not reach receiving waters. These types of events fall under the jurisdiction of local health officers. The City recommends the State Water Board first work with the California Department of Public Health and local environmental health officers to determine if the desired information can be obtained through mutual agency cooperation. The City believes that public health agencies have the best knowledge of overflows from laterals on private property, and are, in most instances, the most appropriate agencies to respond to these events.

Please note that while the City does not own, operate, nor control private laterals, efforts are still being made to reduce problems generally associated with laterals. To address inflow and infiltration (I&I) from private laterals, the City implemented a voluntary private lateral improvement grant program, to help property owners pay for needed repairs. The City also revised its Municipal Code to require testing for a Certificate of Lateral Compliance for any one of the following actions: 1) real estate point of sale transactions, 2) city permitting process for plumbing upgrades of two or more fixtures through Building Regulations and Engineering encroachment issues, or 3) evidence of leakage or sewage ex-filtration from the private lateral. The ordinance also helps resolve disputes between property owners when sewage from leaking laterals migrates onto other properties. This program demonstrates the City's commitment to address I&I in the collection system from private laterals and the City's desire to work proactively with its residents. These management solutions are proving beneficial – and the City encourages the State Water Board to include these actions as options that may prove useful to other programs. The City does not believe that one-size-fits-all requirements, such as the proposed PLSD reporting requirements across the State regardless of whether or not an agency owns the laterals, is an effective management approach.

For all of the reasons indicated above, the City specifically requests that reporting of PLSDs remains voluntary.

**3. It is essential that State and Regional Water Board staff consider the reasons for each SSO in any enforcement action.**

The existing SSS WDRs include language (Provision D.6) that provides some reassurance, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language reads: "*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*" (emphasis added)

In the proposed revisions to the SSS WDRs, this language was changed to read: "*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*" (emphasis added)

The proposed revisions to the SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Water Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual Regional Water Boards are free to follow or ignore as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its system and these factors should definitely be considered in enforcement actions. It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

**4. Revisions to Sewer System Management Plan (SSMP) requirements are premature and additional requirements should not be mandated until the State Water Board provides guidance and funding.**

The City is concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. The City strongly suggests that SSMP requirements be preserved as in the existing SSS WDRs. The City, like many other agencies, has only recently developed its SSMP. The City believes this plan needs to be fully implemented so its effectiveness can be properly evaluated. Changing SSMP requirements before full implementation will result in an inappropriate expenditure of resources which again would be focused on planning and reporting rather than implementation.

That being said, the proposed SSMP elements are unnecessary and overly prescriptive. In particular, the City urges the State Water Board to not implement the proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" until detailed guidance and appropriate funding are provided.

The proposed "Risk and Threat Analysis" of all sanitary sewer assets would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the State Water Board can demonstrate that those agencies complying with current requirements have been ineffective in reducing SSOs. This program should

also only be required if and when adequate State Water Board guidance has been developed and funding is provided.

Requiring development and implementation of the proposed "Staff Assessment Program" on an agency-by-agency basis is unrealistic. The expectations outlined in the proposed revisions to the SSS WDRs suggest that agency staff would be responsible for developing a program similar to the existing Technical Certification Program offered by the California Water Environment Association, which would require a substantial investment of resources to do redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities). Moreover, State Water Board staff has not demonstrated that the current training requirements are deficient and need improvement.

In addition, SSMP sections (i) and (j) should be combined, because otherwise the requirements for routine review and revisions of the SSMP are redundant and contradictory. SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis, while Section (j) specifies a minimum frequency of once every two years. The City recommends the State Water Board staff combine these two sections and clarify the requirements.

Lastly, the City believes the four-year board re-certification requirement is excessive. The proposed revisions to the SSS WDRs would require each agency to bring its SSMP before its governing board for re-certification at a minimum every four years. This frequency is excessive considering that infrastructure projects typically occur over a longer timeframe. The City requests a re-certification every 5-10 years.

#### **5. Construction trenches should remain in the definition of a "sanitary sewer system."**

The existing SSS WDRs include construction trenches in the definition of a sanitary sewer system. However, the proposed SSS WDR omits construction trenches from this definition (Definition A.11). While it may seem like an insignificant change, this proposal will have serious consequences for all sewer systems in the state. This proposed omission, combined with the lack of a *de minimis* spill volume, may result in agencies having to report SSOs almost every time a sewer main was repaired or replaced.

Even if work crews use plugs, bypass pumping, or restrict water use by homeowners or business during every construction project (which are actions that are not feasible at many locations), there will still be small amounts of sewage entering the construction trench – an event for which the State Water Board has failed to demonstrate impacts to water quality. The State Water Board should be encouraging enrollees to replace and repair their sewer system as needed, but this proposed change would punish enrollees each time they maintained their system. The City adamantly opposes the proposed change and request construction trenches remain in the definition of a sanitary sewer system.

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

The City commends the State Water Board for proposing to modify the applicability of WDRs to those systems greater than one mile in contiguous length *and* which collect more than 25,000

gallons of wastewater per day. SSO reporting requirements would not apply to systems that do not meet the defined size threshold, recognizing that any spills from these systems would be insignificant, and therefore not worth reporting. Reporting of *de minimis* spill volumes from Enrollees' systems is likely equally insignificant in their potential impacts to public health and the environment. The limited value of information regarding the physical condition and adequacy of collection system operation and maintenance obtained from reporting very small spill volumes does not warrant the staff resources required to make these reports. Given the City's past experience with CIWQS, it does not appear that a batch uploading function will save significant time. The City requests that overflows of less than 100 gallons not be reported, a threshold previously established by the San Francisco Bay Regional Water Board.

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

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill clean-up (in the event water used for clean-up is not fully recovered). Putting restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate either of the first two prohibitions simply adds further unnecessary challenges. In addition, the amount of potable water used, combined with the distance it would have to travel to reach surface waters (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in dechlorination.

**8. The findings include several incorrect statements and unclear definitions for PLSDs.**

Finding 7 in the proposed revisions to the SSS WDRs includes the statement: "SSOs and PLSDs may pollute surface or ground waters, threaten beneficial uses and public health, ..." The City disagrees that PLSDs are in the same category as SSOs from mainline sewers, in terms of water quality impacts. These overflows are very small in volume, individually and overall. The words "...and PLSDs..." should be removed from the revised finding.

Finding 9 in the proposed revisions to the SSS WDRs includes the statement: "Major causes of SSOs and PLSDs include but are not limited to: grease blockages, root blockages, debris blockages, sewer line flood damage, manhole structure failures, pipe failures, vandalism, pump station mechanical failures, power outages, excessive storm or ground water inflow/infiltration, sanitary sewer age, construction and related material failures, lack of proper operation and maintenance, insufficient capacity, and contractor-caused damages. Many SSOs and PLSDs can be prevented by having adequate facilities, source control measures, and proper operation and maintenance of the sanitary sewer system." Including PLSDs in these descriptions is incorrect: many of the items on the first list are not causes of PLSDs, and many PLSDs cannot be prevented as described in the second sentence. The City requests that references to PLSDs in Finding 9 be removed.

The following definitions are confusing and contradictory, as explained in the following paragraphs. These definitions should be reworked for clarity and accuracy.

- *Lateral – Segment(s) of pipe that connect(s) a home, building, or satellite sewer system to a sewer main.*

This definition of a lateral includes both upper and the lower laterals, regardless of whether or not the lower lateral is privately owned.

Also, the definition of a lateral should not include any reference to satellite sewer systems, as the management and performance of each are very different. Satellite systems should have a separate and distinct definition.

- *Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement. (emphasis added)*

This definition does not make reference to upper laterals and lower laterals and is therefore confusing. Also, it is misleading to state that sewer use agreements dictate lateral responsibility, as these agreements seldom exist for individual homeowners.

- *Private Lateral Sewage Discharge (PLSD) – Wastewater discharges caused by blockages or other problems within laterals are the responsibility of the private lateral owner and not the Enrollee. Discharges from sanitary sewer systems which are tributary to the Enrollee's sanitary sewer system but are not owned by the Enrollee and do not meet the applicability requirements for enrollment under the SSS WDRs are also considered PLSDs. (emphasis added)*

This definition indicates that PLSDs include overflows from any portion of the lateral, regardless of whether or not the lower laterals are privately owned. The definition of a "private lateral sewage discharge" is inconsistent with that describing a "private lateral", as one includes publically-owned lower laterals while the other does not.

#### **9. Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.**

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of the proposed WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on several factors. The City's existing Capital Improvements Program ("CIP"), as well as the CIP set forth in our 2008 System Evaluation and Capacity Assurance Plan (SECAP), addresses those sewer pipes most in need of replacement due to age, size, hydraulic capacity in the system, and frequency of SSOs. Approximately twenty-five (25) million dollars (1999 Bonds) have been expended by the City over the past decade to repair, rehabilitate, and replace collection system infrastructure, including pump stations. This demonstrates the City's high level of commitment to reducing capacity issues and SSOs within the collection system. Sewers should not be replaced automatically when they reach a certain age, especially when they are in good condition and functioning as designed. This would not be a good use of limited public resources.

## 10. Language describing SSMP requirements should be revised.

In addition to the more general SSMP comments previously mentioned under heading 4, the City requests that language describing SSMP requirements be revised as follows (SSMP sections are listed in the order they appear in the proposed revisions to the SSS WDRs):

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* – Paragraph (c) (v) should be revised to read: “Ban new connections under certain conditions.” In addition, Paragraph (c) (vi) indicates that agencies must have legal authority to “limit the discharge of roots...” It is not clear if this phrase is intended to refer to limiting root intrusion (which would be covered by good standard specifications), or to limiting the illicit discharge of debris including cut roots (which is already included in paragraph (c) (i)). In any case, the word “roots” should be removed from this paragraph.
- *Operations and Maintenance Program*
  - Map* - The last section of paragraph (d) (i) should be revised to read: “A map illustrating the current extent of the sewer system shall be included in the SSMP or in a GIS.” Also, this requirement needs to be clarified. It is not clear if “the current extent of the sewer system” refers to a one page map of the service area, or the entire detailed map. The latter would be impractical to include in the SSMP.
  - *Rehabilitation and Replacement* - The third sentence in paragraph (d) (iii) should be revised to read: “Rehabilitation and replacement shall focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects.” It is not correct to imply that age alone is problematic. It is not correct to imply ‘aging’ is the same as ‘deteriorating’.
  - *O&M and Sewer System Replacement Funding* – The first sentence in section (d) (vi) should be revised to read “The SSMP shall include budgets for routine sewer system operation and maintenance and for the capital improvement plan including proposed replacement of sewer system assets over time as determined by careful evaluation of condition of the system.”
- *Design and Performance Provisions* – The addition of the phrase “all aspects of” in both paragraphs (i) and (ii) should be removed. Requiring each agency to update its standards and specifications to cover every last possible minor detail of sewer system construction and inspections would create an unwarranted burden on staff.
- *FOG Control Program* – Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges



may outweigh the benefits of *requiring* best management practices for residential FOG sources. The City requests the existing SSS WDR language be preserved: "This plan shall include the following as appropriate:...The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG."

- *Performance Targets and Program Modifications* – Progress towards improving sewer system performance and reducing impacts of SSOs is already described in the SSMP and will be adequately characterized by a review of SSO trends. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success or failure. All references to performance targets should be removed from paragraphs (i) and (j).
- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency is required to send a notice at a certain time each year. It does not acknowledge an exception for agencies that communicate information to the public primarily via their websites. Online information is made available 24 hours a day and should be sufficient for notification purposes. Language in the existing SSS WDRs should be retained..

#### 11. Certain Monitoring and Reporting Program (MRP) requirements need to be clarified.

In addition to the request that mandatory PLSD reporting be removed from the proposed revisions to the SSS WDRs, several minor revisions should be made to clarify Monitoring and Reporting Program requirements:

- Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the MRP and the recommendations in the Staff Report. Please clarify in Provision G.4 (as-needed to correspond with the MRP requirement) that notification shall only to be made to Cal EMA and that Cal EMA will notify other agencies.
- The second paragraph referring to other notification and reporting requirements is unnecessarily confusing and should be removed.
- Item 1.H under the description of mandatory information to be included in Category 2 SSO reports should be revised to read: "SSS failure point (main, lateral, etc.), if applicable."
- Item 3.I under the description of mandatory information to be included in Category 1 SSO reports should be revised to read: "Name of surface waters impacted (if applicable and if known)..."
- Item 1.D under the minimum records to be maintained by the Enrollee should be revised to read: "...and the complainant's name and telephone number, if known."

In general, the City feels that significant revisions to the SSS WDRs are premature and overly burdensome. Compliance with the revised SSS WDRs would require greater staff and resources at a time when public agency budgets are shrinking. Furthermore, it is unclear how the revised permit would produce corresponding environmental or public health benefit. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water quality. Additional improvements are expected as capital improvements are completed as specified

under the existing SSS WDRs. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before current efforts have come to fruition. The City believes it would be more productive for the State Water Board to focus on bringing all agencies into compliance with the existing SSS WDRs rather than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs.

The City appreciates the opportunity to comment on the proposed SSS WDRs and hopes the State Water Board will take these comments under serious consideration.

Sincerely,

A handwritten signature in cursive script that reads "Chad Davisson".

Chad Davisson  
Wastewater/Stormwater Division Manager