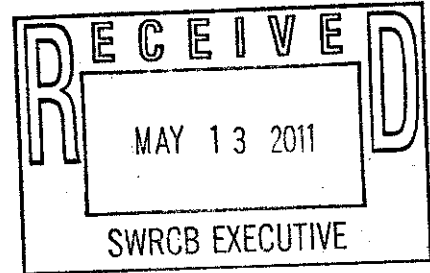


CITY OF  
**VENTURA**



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, Sacramento, CA 95814

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

Dear Ms. Townsend:

The City of San Buenaventura (City) appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). The City provides sewer service to a population over 109,000 as well as wastewater collection for McGrath State Beach Park and the North Coast Communities (Ventura County Service Area 29). In total, these residences generate approximately 9 million gallons of wastewater per day, which is conveyed to the Ventura Water Reclamation Facility. The Ventura Water Reclamation Facility is a tertiary treatment plant, located in the Ventura Harbor area near the mouth of the Santa Clara River. Pursuant to the 2006 statewide SSO WDR (Order No. 2006-0003-DWQ), the City developed and implemented a comprehensive Sewer System Management Plan (SSMP), aimed at the reduction of Sanitary Sewer Overflows (SSOs). While many of the SSMP programs implemented are in their infancy, the City is already experiencing key beneficial results. Improvements to sewer system preventative maintenance and condition assessment programs, as well as enhancements to the Fats, Oils and Grease (FOG) control program, have contributed to a 29% reductions in public SSOs (from 2009 to 2010) and enhancements to SSO response procedures have resulted in a greater than 90% reduction in the volume of SSOs lost to surface waters (from 2009 to 2010). It is the City's expectation that as key SSMP programs continue to mature, the City will experience continued SSO reductions.

The City appreciates the State Water Board's efforts to address certain issues associated with the existing WDRs including:

- Revisions to streamline spill notification points of contact so that only the California Emergency Management Agency would need to be notified when certain spills occur (though provisions throughout the SSS WDRs must be edited to consistently reflect this streamlined reporting obligation),
- Modifying WDR enrollment criteria to include a flow threshold (>25K gallons on any single day) and a pipe mileage threshold (>1 mile),

- Expanding coverage of the SSO WDRs to operators of private collection systems meeting the pipe mileage and proposed flow threshold (though provisions that create liability for public agencies in connection with monitoring for and reporting private collections system spills should be eliminated), and
- Clarifying that SSOs to land are not the focus of the SSO WDR.

However, our agency is very concerned about a number of proposed revisions that represent a major departure from the program that has been successfully implemented under the existing SSO WDRs, especially those proposed revisions related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to sewer system management plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. As requirements become more complicated and confusing, more agency 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.

The City of San Buenaventura offers the following specific comments on key elements of the proposed SSS WDR:

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

We strongly oppose 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 agree with several points included in the March 22, 2011 Staff Report for Order No. 2011-XXXX-DWQ *Statewide WDRs For Sanitary Sewer Systems* (Staff Report) also opposing an NPDES permit. Since the existing SSO WDRs and the proposed SSS WDRs do not authorize discharge of sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. Instead, the SSS WDRs expressly prohibit all discharges of waste from the collection system to surface water of the state, which encompass waters of the United States, regardless of quality. The result of triggering an NPDES permit would serve to subject local public agencies with limited fiscal resources to additional and more egregious and more expensive permitting application, reporting and implementation requirements, as well as non-governmental organization (NGO) lawsuits and higher administrative penalties, with absolutely no demonstration that a discharge to waters of the U.S. will occur, or that requiring the NPDES permit would improve water quality or further reduce SSOs

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. We understand that all public resources are limited, and believe that they should instead be used to further improve SSO reduction efforts under the existing SSO WDRs.

**2. The SSS WDR should not require public agencies to report Private Lateral Sewage Discharges (PLSDS).**

The SSS WDR would require enrollees to report spills from privately owned laterals when they become aware of them. Such reporting is currently voluntary. Water Board staff has not provided adequate justification nor has it thoroughly considered the staffing and financial resources necessary to require public agencies to report PLSDs that are not affiliated with the collection system agency. The justification offered for this change is simply that the State Water Board wants to "get a better picture of" the magnitude of PLSDs and better identify collection systems with "systemic issues" with PSLs.

The Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5% of the total volume from SSOs, almost all of which never pose 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.

As to the goal of generating better information regarding PSL spills, we do not believe that the burden of requiring enrollees to report information or face being in noncompliance with the SSS WDR bears a reasonable relationship (as required by Water Code § 13267) to the need for the information and the benefits to be obtained. Enrollees reporting spills may be liable to the property owner for errors in reporting, and property owners may claim they are entitled to compensation from the local agency for repair or replacement costs stemming from the reported spill. Under the current voluntary reporting scheme, the enrollee can weigh these factors in deciding whether to report PSL spills or not.

Furthermore, if enrollees are required to report spills whether or not they occur within the enrollee's system, multiple entities (city, county, POTW, etc.) could all be required to report a single PSL spill with potentially differing estimates of volume and other information. Rather than enhance the Board's knowledge base, this will actually lead to greater confusion and require additional resources to sort out and match up the multiple reports.

We recommend that 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. We believe 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.

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

The existing SSO WDRs included language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have 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 SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual regional 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.

In addition to making considering of these factors mandatory, Section D.6 of the SSS WDRs should also be revised to make it clear that consideration of the volume of spill, and consideration of the degree to which a spill is fully captured or instead is actually discharged to surface waters of the State and surface waters of the United States must be considered in any enforcement action.<sup>1</sup> To the extent that spills are fully captured and do not escape curb, gutter, catch basins, retention/detention basins, swales, non-drainage channel storm drains etc. to reach surface waters of the State or United States, the spills do not constitute discharges of waste or pollutants constituting a basis for assessment of penalties under Porter-Cologne (California Water Code §§ 13260; 13376), or the federal Clean Water Act (33 U.S.C. § 1311(a),(e); 33 U.S.C. § 1342(a)(1),(b).) These suggested revisions should be complemented by revisions to SSO Category designations as discussed below.

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<sup>1</sup> The City supports comments submitted by CASA and the League Of Cities that the prohibition on discharge need not be expanded to prohibit all discharges to waters of the State, and this comment should not be interpreted as support for expansion of the prohibition, which will only serve to increase the City's exposure to liability for potential violations of the SSS WRD, but will not serve to improve water quality.

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

Certain elements of the proposed "Risk and Threat Analysis" component of the Overflow Emergency Response Plan (SSS WDRs § D.12(f)(vi), the "Staff Performance Assessment Program" (SSS WDRs § D.12(d)(iv), and the "SSMP Program Audits" requirements (SSS WDRs § D.12(j)) are not statistically supported, unnecessarily complicated, and overly prescriptive and burdensome, contrary to Cal. Water Code § 1360(a) which recognizes that dischargers should be given substantial discretion in determining how to comply with WDRs.

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 that includes more conventional means of identifying and responding to risks of SSOs. It is not appropriate to require every agency to implement this requirement unless the Water Board can demonstrate that those agencies complying with current requirements, and implementation of currently robust condition assessment, rehabilitation and replacement, and preventive operation and maintenance programs have been ineffective in reducing SSOs. This program should also only be required if and when adequate Water Board guidance for implementing such an analysis has been developed, benefits of implementation are determined, and state funding for implementation is provided.

The requirements for the Staff Assessment Program in the proposed revisions to the SSS WDRs are unnecessarily burdensome, require updated assessments within short time frames (every 12 months) that are cost inefficient in light of changes in agency staff and operations that are realistically expected, and suggest that agency staff would be responsible for developing a training program for staff and contractors 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 responsible for attaining and maintaining their own certifications).

The proposed requirements for SSMP Program Audits require a comprehensive audit of the SSMP Program at least once every 2 years, regardless of the robust nature of the SSMP, diligence in its implementation, and/or success of an SSMP in meeting adopted SSO performance standards. For SSMP programs that are performing well and meeting performance standards, a requirement to expend significant resources to conduct a system-wide SSMP audit every two years is draconian, and unnecessary to assure proper operation of the system. So long as SSO performance standards are being met by an agency, the agency should not have an obligation to conduct audits so frequently, but instead should conduct them as needed to assure continued success in meeting performance standards.

The Water Board should not implement these new requirements until the Water Board staff has demonstrated that: such frequent Staff assessments are realistic and appropriate in light of typical changes in agency staffing and operations; the current training requirements are deficient; and that such frequent SSMP Program Audits are necessary to assure operation of an SSMP that is compliant with the applicable SSS WDRs and is implemented with relative diligence to achieve appropriate performance standards.

**5. 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 and expensive challenges to preventing spills from reaching surface waters. In addition, the amount of potable water used, combined with the distance it would have to travel to reach surface water (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in dechlorination.

**6. Revisions to SSMP requirements are premature.**

We are concerned that the very prescriptive SSMP program requirements set forth in the proposed SSS WDRs are unnecessary to improve water quality in light of water quality strides being made under the existing SSMP requirements in the current SSO WDRs. As the Staff Report indicates, development and implementation of SSMPs by SSO WDRs enrollees has just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. Many wastewater agencies, like the City's, are achieving improvements in spill rates and water quality under the current requirements, so new and expensive to implement prescriptive requirements are premature, and may prove to be unnecessary. Further, dramatically changing SSMP requirements before full implementation of the existing requirements will likely lead to confusion regarding the SSMP requirements among Enrollees, the public, and Water Board staff.

**7. Language describing SSMP requirements should be revised as follows (SSMP sections are listed in the order they appear in the proposed 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: "Restrict, condition or prohibit 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* - Updating sewer system maps to identify and include all backflow prevention devices would be too onerous as they are not owned by the agency; this requirement should be removed.
  - *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. We know that age does not cause spills, nor is it 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 their standards and specifications to cover every last possible minor detail of sanitary sewer system construction and inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary and is already implied.
- *FOG Control Program* - Proposed revisions to (g) (iii) 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. We request that this existing 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."

The revisions to the SSMP requirements discussed in items 4-7 of this letter are critical to preventing the situation where Enrollees succeed in investing in, managing and operating their systems in a manner that reduces SSOs and eliminates violations of discharge prohibitions, yet

the Enrollees can still be found to be in violation of the SSS WDRs for failure to comply with each and every prescriptive SSMP program requirement set forth in the WDRs.

**8. The language of the following sections of the proposed SSS WDRs should be revised.**

- **Private Lateral.** The proposed SSS WDR includes a definition of private lateral. The definition is confusing, in that it goes beyond defining the lateral to discussing alternatives for maintenance. Moreover, "sewer use agreements" are not the only means by which lateral responsibility may be established. For example, lateral responsibility can be established by, among other things, general ownership obligations, easement agreements or ordinances. We recommend the following change to the definition:

Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system.

- **Drainage Channel.** The definition of Drainage Channel set forth in SSS WDRs is inappropriately and impermissibly broad. Although it is unnecessary for purposes of preventing SSO discharges to expand the discharge prohibition to waters of the State (and doing so will only create more fodder for enforcement and litigation over low priority spills) if the prohibition is expanded to waters of the State, it should not be even further expanded to broadly defined "drainage channels," that could be comprised of storm drain improvements and facilities that are not surface waters of any kind. Therefore, we recommend the following change to the definition:

Drainage channel—For the purposes of the SSS WDRs, a drainage channel is defined as a man-made or natural surface channel that conveys runoff as part of a separate storm water collection system. Drainage channel does not include curbs, gutters, catch basins, swales, retention or detention basins or pipes that discharge to such facilities.

- **Sanitary Sewer System.** The definition of Sanitary Sewer System set forth in the SSS WDRs should be revised to clarify that it only applies to facilities owned by an individual Enrollee. The current reference to publicly or privately owned pipes, etc. arguably includes privately owned laterals and other facilities that are not the Enrollee's property or responsibility. We recommend the following revisions:

Sanitary sewer system— Any system of pipes, pump stations, sewer lines, or other conveyances, upstream of a wastewater treatment plant headworks owned by a single public or private Enrollee and used to collect and convey wastewater to a treatment facility or another downstream sanitary sewer system. Temporary storage and conveyance facilities attached to the sanitary sewer system (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, etc.) are considered part



of the sanitary sewer system and discharges into these temporary storage facilities are not considered SSOs. The term "collection system" shall have the same definition as a sanitary sewer system for the purposes of the SSS WDR.

**9. Monitoring and Reporting Requirements: The SSO Category designations need to be refined.**

Currently, Category 1 SSOs are defined as spills of *any* volume to surface water or a drainage channel, a discharge of any volume to a storm drain that is not fully captured, and spills 1,000 gallons or more regardless of spill destination. Category 2 SSOs are defined as all other SSOs.

In practice, several spills have been defined as Category 1 when there was no chance that the spill reaches waters of the state or of the United States. An example of this would be a spill that enters a storm drain pipe that flows to a maintained retention basin built in uplands with no outlets or that discharges to land. These types of spills should not be classified as Category 1 spills.

Because of the problems experienced when working with the current definitions, the categories should be refined as follows:

**Category 1** – Any volume spill that is not fully contained/recovered and reaches a water of the state or drainage channel (noting the definition for that term suggested in comment 8 above), or a water of the United States.

**Category 2** – Spills of 1000 gallons or more that were fully contained and recovered (e.g., discharged to land or fully captured in a street, curb, gutter, catch basin, retention or detention basin, storm drain pipe, swale or similar facility) and did not reach waters state or drainage channel, or water of the United States.

**Category 3** – Spills of less than 1000 gallons that were fully contained and recovered (e.g., discharged to land or fully captured in a street, curb, gutter, catch basin, retention or detention basin, storm drain pipe, swale or similar facility) and did not reach waters state or drainage channel, or a water of the United States.

The changes to Category 1 remove the 1,000 gallon distinction, which is unnecessary for this definition. The new Category 2 and 3 are divided at a 1,000 gallon threshold to differentiate which spills need to be reported to Cal EMA and will give the State Water Board separate, more easily trackable information on the de minimis spills of less than 1,000 gallons that do not implicate waters of the state or the United States.

**10. The four-year board re-certification requirement is excessive.**

The proposed revisions to the SSS WDRs would also 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. We request a re-certification every 5-10 years.

#### **11. Notification requirements need to be clarified.**

We support the Staff Report's indication that only Cal EMA would need to be notified when spills to surface water of any volume occur. However, 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 Monitoring and Reporting Program and the Staff Report. Please clarify that notification shall only to be made to Cal EMA, and indicate that Cal EMA will notify other agencies.

#### **12. Legal Authority.**

The additional requirements regarding ensuring access for operation and maintenance of the sanitary sewer system are unnecessary and have the potential to create confusion. For example, the requirement to "ensure access" in easements and rights of way is unnecessary because, by definition, easements and rights of way include a right of access, even if access is not expressly addressed in the document. The general requirement to ensure access included in the existing SSO WDR should be maintained.

The proposal that SSMPs must include authority to "limit flows . . . from connected sources" is problematic because it is uncertain what ability any Enrollee has to limit flow from connected sources, including potentially facilities owned by others. For example, would an Enrollee be required to insert a device into an existing system to limit the amount of flow from a connected source? Where would flow prohibited from entering the sanitary sewer system go? Such requirements would be unusual and problematic to implement.

The requirement that authority include the ability to "ban new connections" raises concerns because the degree to which sanitation agencies have such authority is uncertain and has the potential to be very controversial. Wastewater agencies have legal obligations to provide sewer service to their constituents, so a provision indicating that they have the ability to simply discontinue providing new service could be legally unenforceable and subject to legal challenge. This provision should be eliminated, or at minimum, revised to clarify that the authority to ban new connections is limited to those circumstances in which such action is necessary to prevent a public nuisance or otherwise protect public health and safety and is based on the direction of the Regional Water Board or Public Health Department.

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In general, it is our view that significant proposed revisions to the SSO WDRs are premature and overly burdensome. Implementation of the existing SSO WDRs has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current WDRs rather than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs.

The City supports continued implementation of reasonable WDRs that allow sanitation agencies to retain discretion in determining the methods, tools and programs that will be used to build upon the considerable water quality progress being made under the current SSO WDR and City SSMP. The City of San Buenaventura appreciates the State Water Resources Control Board's serious consideration of these comments.

Sincerely,



Dan Pfeifer  
Wastewater Utility Manger  
Environmental & Water Resources  
City of Buenaventura  
Public Works Department

