SSD — STEGE SANITARY DISTRICT

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Via email: 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**
Stege Sanitary District

Dear Ms. Townsend:

Stege Sanitary District (Stege), 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). Stege represents a population of approximately 40,000 with 13,000 lateral connections and serves the eastern San Francisco Bay Area communities of El Cerrito, Kensington, and part of Richmond Annex. We are responsible for 148 miles of collection system main lines, 2 pumping stations, and about 4300 manholes in our service area. We have taken significant efforts for about twenty years to reduce the number of SSOs in our system and are pleased to report we have reduced them from 11 per month to 1 per month during that twenty year period. We began implementation of a private sewer lateral inspection program upon the sale of homes in 2005 and since then over 25% of the laterals have been replaced or demonstrated compliance with our standards. We are in the process of working with the state and EPA in the initiation of a program which will require the implementation a broad spectrum of improvements and management processes in order to comply with a Federal order. Many of these changes are in keeping with the past requirements of the original WDR. The new proposed WDR will impose additional staff and financial burdens on our agency at a time when we are trying to implement court-mandated requirements that are hugely expensive and will require our customers and property owners to bear the burden of the private expenses to replace many, if not most, of the sewer laterals in the service area. Our efforts before and since the adoption of the 2006 WDR have resulted in reductions in the number and volume of SSOs and we expect this trend to continue without the new onerous provisions included in the draft SSS WDR.

The proposed revisions to the SSS WDRs represent a major departure from the program that is still being implemented under the existing WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, Stege is very concerned

about a number of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and the onerous additions to the Sewer System Management Plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding are first 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 our collection system. Finally, we strongly oppose any kind of NPDES permitting as it might relate to collection system operations and maintenance. We will specifically address this issue later in this letter.

The following are our specific comments regarding the proposed draft revisions to the SSS WDR circulated by the Water Board staff on March 24, 2011.

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

We are strongly opposed 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 agree with several points included in the Staff Report also opposing this concept. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize SSOs to waters of the United States, there is no need for an NPDES permit. The result of triggering an NPDES permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs. In addition, the time necessary to apply for and receive a new NPDES permit will leave our collection system in regulatory limbo while that permit is being negotiated.

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

2. **The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is not justified and creates an inappropriate burden for public agency staff.**

The proposed revision to the SSS WDRs requires 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 PSLDs and better identify collection systems with "systemic issues" with PSLDs. The Staff Report includes a reference to a

study that indicated that the total volume of SSOs from private laterals is about 5% of the total volume of SSOs, almost all of which never pose a threat to waters of the State. 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. In many cases it is very difficult to determine the owner of the private lateral sewage discharge and therefore staff resources may need to spend time attempting to identify the local owner or to actually determine what property is involved in the overflow as many of these occurrences do not evidence themselves in the public right of way.

As to the goal of generating better information regarding PSLDs, 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 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 PSLDs.

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 PLSD spill with potentially differing estimates of volume and other basic information. Rather than enhance the Board's knowledge base, this will actually lead to greater confusion and require additional resources to sort out the multiple PLSD 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 private property laterals, 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 SSS 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 read: "*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 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.

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

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

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 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 Water Board guidance has been developed and funding 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. Additionally, most all of this information is available and in agency budgets that are publically approved by the local elected officials. Finally, it is not appropriate to require public agencies to train contractors (which are separate, private entities). In addition there is no mechanism readily available throughout a project to determine when and how additional training is required when the contractors' staffing changes as much as daily or weekly.

The Water Board should not implement these new requirements until detailed program guidance is provided and the reality of how contractors prosecute their work is understood by the Water Board.

5. **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. We recommend that Water Board staff combine these two sections and clarify the requirements.

6. Revisions to SSMP requirements are premature.

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. We strongly urge that the existing SSMP requirements be preserved as in the existing SSS WDRs. As the Staff Report indicates, development and implementation of SSMPs by SSS WDRs enrollees has just been completed and these plans need to have time to be fully implemented so their effectiveness can be properly assessed. Further, it is recognized that dramatically changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff.

7. The findings include several incorrect statements about PLSDs (Findings 7 & 9).

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 ..." We disagree 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.

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. References to PLSDs should be removed.

8. **Mandatory Operator Certification**

If a change in the Staff position is considered by the Water Board in favor of mandatory certification, we recommend that this be phased in over four or five years allowing time for agencies to conduct necessary bargaining processes before the mandatory certification becomes required. An alternative to this might be a requirement that agencies state in their collection system classification descriptions that certification is "highly desirable" which then allows and agency to use this as a hiring criteria when making a final selection of a new or promoted employee.

9. It is inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management (Provision 4).

We do not believe that meaningful statistics can be derived from data collected only for those PLSDs that an agency becomes aware of, and we do not support the idea that Water Board staff would decide that collection systems have "systemic issues" based on these incomplete data sets.

The requirement for Enrollees to report PLSDs they become aware of should be removed from Provision 4.

10. 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 these WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on several factors. These factors could include some or all of the following; pipe condition, location, risk of failure, consequences of failure, future capital work in the area, and pipes with extraordinarily high maintenance costs. 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 good public policy or a wise use of limited public resources. For example, the useful life of certain types of high strength plastic pipe has yet to be determined.

11. Definitions related to private laterals are confusing and contradictory.

The following definitions are confusing and contradictory, as explained in the following paragraphs.

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

   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.

2. *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 with property owners.

3. *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.

12. Language describing SSMP requirements should be revised as follows (SSMP sections are listed in the order they appear in the proposed revisions to the SSS WDRs):

1. *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 required.

2. *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.

3. *Operations and Maintenance Program*
   Map - Updating sewer system maps to identify and include all backflow prevention devices (back water valves) would be too onerous as they are not owned by the agency; this requirement should be removed.

   Also, 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 because it isn't, and it is incorrect to imply 'aging' is the same as 'deteriorating'.

i. *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."

4. *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.

5. *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. 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."

6. *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).

7. *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 would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained without change.

13. 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.

14. Providing whole SSMPs in an electronic form is not always practical.

Not every agency has their SSMP in one electronic document, and, in many cases, the SSMP makes reference to other documents which may only exist in hard copy form. These issues would make it difficult or impossible for some agencies to provide the whole SSMP in an electronic format. In addition most agencies currently make these documents available on their websites so just
identifying the website address seems completely adequate for availability to the public and/or the regulatory community.

15. Certain Monitoring and Reporting Program requirements need to be clarified.

We believe several minor revisions should be made to clarify Monitoring and Reporting Program requirements:

- 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."

16. **Enrollee Coverage Reenrollment (Application Requirement 1)**

The draft SSS WDR requires all current enrollees to reenroll under this new SSS WDR within six (6) months of adoption. This requirement is a waste of staff resources and does not provide the Water Board with any new information that is not already detailed in the enrollees' collection system information currently with the State. We do not understand the need for this requirement nor the added information that is expected by reenrolling. This will be a waste of both local and State staff time, will lead to confusion when and if an agency does not reenroll due to now being excluded from the requirements and will be a significant irritation to 1100 agencies throughout the State. We suggest that the Water Board consider only requiring agencies that no longer will be covered by this regulation to be required to submit a form or letter stating that they are no longer covered and will no longer by complying with the requirements. We understand that this will only affect approximately 80 agencies throughout the state and is in their best interest to respond and remove their agencies from the regulations. Why must the other 1000 agencies be required to again state their enrollment - can't the State recognize those that just continue their

compliance with the revised regulations. In addition, all of the information that will be required at the time of reenrollment is the same information that will be required in the new Collection System Questionnaire that the agencies must complete annually. We recommend that this requirement be deleted except for those agencies requesting removal from the program.

Conclusions

It is our view that the significant proposed revisions to the SSS WDRs are premature and overly burdensome. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current WDR are completed in the future. It is frustrating to invest significant resources in meeting the current requirements only to have them change before our current efforts to comply have been completed. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current permit conditions rather than initiating sweeping revisions that regardless of the compliance history or the effectiveness of the current program have not had adequate time to show improved performance and compliance.

Stege hopes that the State Water Board will take these comments under serious consideration. We look forward to positive responses to our comments from the Water Board staff and are hopeful that the promised workshops on this topic will reflect many of the suggestions contained herein resulting in a new SSS WDR that is far less prescriptive and resource intensive than the current draft. Thank you again for the opportunity to comment on this important regulation and please be assured of our continued efforts to fully comply with the current and any future regulations at the end of this process.

Sincerely,

Douglas Humphrey

Douglas C. Humphrey
District Manager
Stege Sanitary District

cc: