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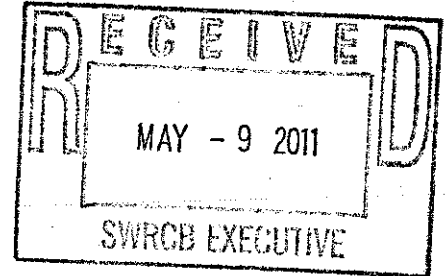
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May 5, 2011

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street 24th Floor
Sacramento, CA 95814



Subject: Draft Waste Discharge Requirements for Sanitary Sewer Systems

Dear Ms. Townsend:

The City of Orange appreciates the opportunity to comment on the draft March 22, 2011 Waste Discharge Requirements for Sanitary Sewer Systems Permit (WDR). Our initial impression after reading the WDR staff report and information gathered from informal group discussions with state board staff and various committees was that there would be minimal changes to the existing WDR. We were informed that the WDR would be revised to include private system enrollees and clarify certain existing requirements.

However, after reading the WDR and redlined version, we were surprised to see the number of changes proposed that were not discussed in the accompanying staff report. Our review of the WDR has identified a number of very prescriptive requirements and significant changes that are of concern such as the revision of the enforcement language regarding what may be considered in possible enforcement actions; the dictation of specific actions that go beyond the requirements of Porter Cologne; the addition of new administrative burdens that will result in additional compliance costs and other compliance issues. These are more fully discussed in the enclosed attachment.

Orange completed development of its sewer system management plan (SSMP) in May 2009 as required by Order 2006-0003 and has been implementing it for the past two years. Some of the smaller agencies serving populations less than 100,000 have recently completed their SSMPs and have just begun implementing them. We do not believe this short implementation period is sufficient time to assess whether program modifications are needed.

The purpose of WDR program is to reduce SSOs over time and we believe the current program is working. In Orange, we have placed additional emphasis on sewer maintenance and hot spots and have seen the number of public spills reduced from 16 in 2006 to 9 in 2010 (a 44% reduction). When vandalism, which is out of our control, is factored in the number is reduced to 6. We believe this and other programs required by



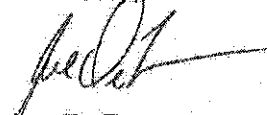
Comment Letter March 22, 2011 Draft WDR
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our SSMP and the WDR is proof that the current program is working and should be allowed to continue for at least another permitting cycle before significant changes are proposed.

We urge the State Board to scale back the number of proposed changes until such a time when the program has had more time to develop and changes can be justified. As proposed, most changes are not justified and will simply add significant new costs and staff to an already expensive program during a time of shrinking City budgets and adverse economic conditions.

We hope you will reconsider the proposed changes. Questions regarding these comments may be directed to Gene Estrada at 714-744-5547.

Sincerely,



Joe DeFrancesco
Director Public Works

cc. John Sibley, City Manager

Attachments: Attachment A

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The following are the City of Orange's comments on the proposed draft WDR.

Compliance Beyond Porter Cologne

Porter Cologne Section 13360 (a) prohibits WDR permits from specifying how compliance is to be achieved with permit requirements yet the draft WDR contains many new provisions that specify specific requirements to achieve compliance with the WDR.

1. Of Particular concern is the specificity relating to the funding of the sewer system operation and maintenance program. Paragraphs D.6.(e) and D.7 include the words "proper funding" and paragraph D.8 goes so far as to require the development of a rate structure to fund the eventual replacement of the entire sewer system. In the context specified in D.8, it can be interpreted to mean that a public agency must develop a cost recovery plan to be imposed on rate payers or a cost recovery plan to be voted upon by rate payers. The requirement to eventually replace the entire sewer system is unnecessary since history has shown that clay pipe, used predominately by most agencies, has a life of hundreds to thousands of years and requiring to fund the eventual replacement of the pipe is imposing an unnecessary burden. A more reasonable requirement is to ensure a plan exists to carry out the maintenance requirements of the system as required by provisions 12.(d).iii, 12.(d).vi. and 12.(h).

Recommendation – (1) delete the D.(8) requirement to create a rate structure and delete the requirement to fund eventual replacement of the entire sewer system. (2) define proper funding as used in D.6.(e) and D.7 to mean development of a funding mechanism to carry out the requirements of an agency's SSMP.

2. Paragraph D.12.(f).vi requires development of a risk and threat analysis to identify the most problematic areas that may create future overflows. While we agree such an analysis may be useful in the planning of future overflows, there may be many other considerations that need to be included in planning for future overflow conditions and such planning should be left to an individual agency.

Recommendation –delete D.12.(f) requirement for a risk and threat analysis.

3. Provision D.10 requires a governing board to approve the SSMP Development Plan and Schedule. This requirement exceeds the requirements in Porter Cologne by dictating how a plan is to be developed. The only WDR requirement should be that agencies develop an SSMP development plan and schedule, which can be done without governing board approval.

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Recommendation – delete D.10 requirement to have governing board approve SSMP Development Plan and Schedule.

4. Paragraph D.12.(g)(v) requires the FOG program to specify staffing levels. The FOG program needs to contain the elements identified in D.12(g) however, how the program is carried out should be left to individual agencies. Requiring staffing levels goes beyond the requirements of Porter Cologne.

Recommendation – delete D.12.(g).(v) "staffing level" requirement with "staff to carry out program."

Expanded Administrative Burden

The draft WDR contains many provisions that increase the administrative burden and are unnecessary.

5. Paragraph D.13. requires recertification of the SSMP every 4 years. This requirement, while it may appear beneficial, creates an unnecessary burden of time and expenses on agencies. There is no clear justification for this requirement. A more reasonable requirement would be to recertify the SSMP when there are major changes as required in the existing WDR.

Recommendation – require SSMP recertification only when there are major changes to the existing SSMP.

6. Paragraph 12.(f) requires adoption of an SSO emergency response plan. The term "adoption" has a number of meanings and interpretations and it is not clear what is meant in the draft WDR. It could be interpreted to mean adoption or approval by the governing board or simply adoption by a department or division. The precise meaning is unclear but we believe an SSO emergency response plan can be carried out by an agency without the formal adoption by a governing board as is done for many programs in the City. As mentioned above in reference to Porter Cologne, the requirement should be to develop a plan but not require approval by a governing board.

This comment is also applicable in other section of the WDR where the term adoption is used.

Recommendation – (1) revise "adopt" to "develop a plan" in paragraph 12.(f).(2) review WDR to ensure that "adoption" is clear in its meaning.

7. In the Monitoring and Reporting program, Paragraph C- Record Keeping requires keeping copies of the SSO draft report, keeping names of field crews responding to a spill and other information such as steps to prevent future recurrence and

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methods of determining spill volumes and recovery. Keeping copies of the draft SSO report seems of little value and would only be duplicative of the information contained in the final report. The final SSO report in the state SMARTS system also contains information related to spill volumes and recovery. Keeping copies of the final SSO report is reasonable and all other information noted above would be contained in this report. The names of the field crew responding to an overflow incident seems of little value and should not be a WDR requirement. The important information is how a spill response is carried out and mitigated; this is information provided in the final SSO report.

Recommendation – delete reporting requirements to identify field crew names and other information contained in the final SSO report in the SMARTS system.

Private Sewer Overflows

The draft WDR expands coverage to individual private owners of sewer systems that are greater than one mile in length and collect over 25,000 gallons per day of wastewater. In carrying out this new WDR provision, clarification is required in certain sections relating to new enrollees and the reporting of SSOs.

8. In the draft WDR there is no provision regarding how existing Enrollees will be notified when a private Enrollee is responsible for their private system and the public agency does not need to report SSOs for the private system.

Recommendation – include a provision that the State or private Enrollee will notify an existing Enrollee of existence of an individual WDR permit within the Enrollees jurisdiction who will now be responsible for reporting their system's SSOs.

9. Within the Monitoring and Reporting section provision 3 of Section B - SSO Reporting requires clarification that reporting of PLSDs is required by the Enrollee only if the SSO is not from a Private Enrollee.

Recommendation – add clarification to reporting of private SSOs that if a Private Enrollee is responsible for the system, the Private Enrollee is responsible for reporting any SSOs and notifying the appropriate agencies.

10. In Monitoring and Reporting under Mandatory Information to be Included in SSO Online Reporting – the information in paragraph (2) Private Lateral Sewage is to be made by the Enrollee with jurisdiction in the area only if there is no Private Enrollee.

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Recommendation – add clarification that reporting of private SSOs is by the Enrollee with jurisdiction in the area only if there is no Private Enrollee responsible for the private system.

SSOs Not Fully Captured

Paragraph B.1.C of the Monitoring and Reporting program states that SSOs not fully captured in storm drains and returned to the sanitary system are considered discharges to waters of the state.

11. We strongly disagree with this premise. It has been the City's experience that SSOs that travel significant distances to reach existing channels or other water bodies do not always reach these water bodies. Determining if SSOs reach a water body or not depends on a number of factors such as volume, distance to water bodies and other structural elements within the storm drain system such as siphons. To categorically state that unrecovered wastewater in storm drains is a discharge to waters of the state is premature and incorrect.

As an example: a discharge of 5 gallons that travels one mile or more will probably not end in a discharge to a water body but will be trapped or will evaporate over time in the storm drain. However, the same volume of discharge that has to travel only 100 feet will most likely reach a water body.

Whether or not a discharge reaches a water body can be verified by visual inspection for odor and wastewater at the storm drain's outlet point into the water body. We believe this is the reasonable standard to determine whether a discharge to a water body has occurred and not simply that an SSO was not completely recovered.

Recommendation – revise Paragraph B.1.C of the Monitoring and Reporting program to indicate that a discharge to waters of the state has occurred only when there is visual evidence of a discharge.

Prohibitions on SSO discharges

12. Prohibition C.1.(a) prohibits a wastewater discharge to storm drains if the wastewater is not fully captured and incorrectly assumes a discharge to waters of the state as noted above. This prohibition if not revised could place an agency in noncompliance if all of the wastewater is not recovered from the storm drain. This could result in enforcement actions without proof that a discharge to waters of the state has occurred. This is a very serious violation that should be revised to ensure noncompliance occurs only when there is real evidence that an agency has violated a part of the WDR.

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Recommendation – see comment number 11 above on partial capture of wastewater from storm drains.

Enforcement Considerations

13. Paragraph D.6 contains what appears to be a relatively minor change in language in reference to what the State or Regional Boards will consider in follow-up enforcement actions. The existing WDR states "In assessing these factors, the State and/or Regional Water Boards will also consider whether"; the draft WDR states "In assessing these factors, the State and/or Regional Water Boards may also consider whether" followed by a number of factors to be considered in enforcement actions. The change from "will" to "may" is significant in that the listed factors do not necessarily need to be considered in follow-up enforcement actions. The factors to be considered during enforcement actions were the subject of extensive discussions in the adoption of the existing WDR and language has now been changed arbitrarily without cause and discussion.

Recommendation – revert to previous approved language in D.6

Performance Targets

14. Section 12.D.i has created a new section to be incorporated into an agency's SSMP. While there is value in monitoring to assess program development and implementation, the goal of the WDR and SSMP is to reduce SSOs over time. The inherent assumption in this section is that employing performance targets will result in reduced SSO and program improvement. This may or may not be true depending on the number of SSOs and an agency's program. Showing improvement in SSOs and meeting specified targets may be difficult if the SSO number is low and program is already efficient. More value can be obtained by ensuring implementation of the SSMP and modifying programs as necessary.

Recommendation – revise Section 12.D as follows:

- (i) Identify SSO trends;
- (ii) Collect and maintain appropriate records and information to identify SSO causes and preventive measures;
- (iv) Monitor the effectiveness and success of each SSMP element;
- (v) Update SSMP elements, as appropriate; and
- (vi) Maintain an SSMP Change Log that includes a list of all modifications and changes made to the SSMP including date and identification of staff responsible for implementing each change.

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Clarifications

15. Paragraph B.2 requires separate permits for each system of sewer lines over one mile that collects over 25,000 gallons of wastewater per day. It appears that this provision applies only to sanitary districts that have sewer lines managed under different operating districts and not agencies that have multiple lines over one mile and collect 25,000 gallons or more as is the case for many agencies operating in Orange County. Requiring each line that is over one mile to obtain a WDR permit would place an unnecessary and significant administrative burden on agencies that connect to existing sanitation district trunk lines and would be a extremely difficult to administer. We do not believe this is the intent of this provision and suggest that this requirement be clarified to address agencies with multiple sewer lines that connect to another agency's trunk lines.

Recommendation – clearly state that only a single WDR permit is required for agencies with multiple sewer lines that connect to larger trunk lines owned by another agency.

16. Paragraph D.13 requiring an SSMP Development Plan and Schedule seems to apply to new enrollees only and should be clarified. Agencies or Enrollees that already have a certified SSMP do not need to comply with this requirement.

Recommendation – clarify that only new Enrollees need an SSMP Development Plan and Schedule. It is recommended that the WDR include appropriate sections that apply only to new Enrollees and section that includes all of the requirements for existing Enrollees.

17. Section A of the Monitoring and Reporting program requires a 2 hour time frame to notify Cal EMA of spills that discharge to a storm drain or channel. This time frame has been revised in Section B - SSO Reporting Timeframes to "as soon as" to be consistent with Porter Cologne.

Recommendation – revise the 2-hour notification time frame in Section A to be consistent with Section B and Porter Cologne.

TWO Tiered WDR and NPDES Permit

The City supports continued use of the collection system permit as a WDR permit instead of an NPDES permit. We agree with state board staff recommendations that the current program is working well and do not see any justification to create confusion by adopting a tiered WDR and NPDES permit. The exiting WDR allows for enforcement by state and regional board staff and citizens can call the state or regional boards if they believe an Enrollee is out of compliance. For these and other reasons previously discussed during the adoption of the existing WDR, the state should not move towards

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the more complex form of an NPDES permit simply because there is one SSO that reaches waters of the United States. This is illogical and would greatly increase the number of NPDES permits issued statewide that would become an administrative nightmare for the State that would likely result in delaying issuance of permits, which could number in the hundreds to thousands of permits.

