

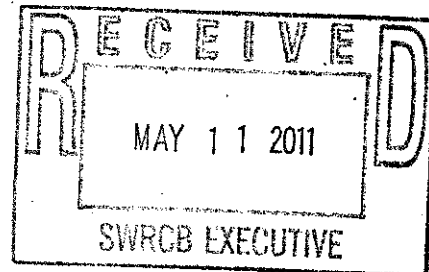


Las Virgenes – Triunfo Joint Powers Authority
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818.251.2100



May 5, 2011

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



SUBJECT: Comment Letter – SSS-WDRs Review and Update

Dear Ms. Townsend:

Las Virgenes MWD and Triunfo Sanitation District, a Joint Powers Authority (Authority), appreciates the opportunity to provide comments on the proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS-WDR). For background, the Authority provides wastewater treatment, bio-solids treatment and recycled water in the northwestern portion of Los Angeles County and the southeastern portion of Ventura County. The service area generally consists of the Malibu Creek Watershed and small portions of the Los Angeles River Watershed. The Authority owns and operates the Tapia Water Reclamation Facility and 60 miles of trunk sewer lines. There are several hundreds of miles of satellite collection systems owned and operated by the cities and counties over which the Authority has no legal authority.

Since the adoption in May 2006 of the SSS-WDR, the Authority has made a significant investment in staff time and other resources to develop the various plans and submittals required by the WDR. For example, a substantial investment was made to GPS map the trunk sewer system so that it could be included in a comprehensive GIS program. As the Staff Report indicates, development and implementation of SSMPs by SSS-WDRs enrollees has just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. 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, the Regional Boards and Water Board staff. It was only a little over a year and half ago that those final required submittals were provided to the SWRCB. Based on that short amount of time, the Authority believes it is premature to make significant changes to the adopted WDR.

We appreciate this opportunity to present the following comments on the proposed changes to the draft waste discharge requirements for sanitary sewers:

- The proposed SSS WDR moves away from the approach developed by the Stakeholder SSO Guidance Committee in 2005-2006, which focused on reporting of SSOs and reducing SSOs with the potential to affect water quality or public health, to a very prescriptive and onerous order that seeks to dictate decisions regarding the way local sewer system programs are managed, funded and implemented. Compliance with the revised SSS WDR will require far greater staff and other resources, at a time when public agency budgets are shrinking. Furthermore, it is unclear how the additional information that must be generated

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will be used by the Water Boards or that the efforts required under the revised permit will produce corresponding environmental or public health benefits.

- 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. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

- 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 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). The Water Board should not

implement these new requirements until detailed program guidance is provided. Also, Water Board staff has not demonstrated that the current training requirements are deficient.

- 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.
- The SSS WDR will expand liability for SSOs by including all spills to surface water as prohibited SSOs subject to enforcement, instead of only those reaching a "water of the United States." This change does not provide added protection of water quality or public health. Rather, it just places additional unnecessary and costly regulatory requirements on public agencies.
- The proposed SSS WDR will transform the existing enforcement discretionary 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. This has the potential to create confusion and conflicting regulations.
- The SSS WDR is overly focused on private sewer laterals (PSL), requiring reporting of PSL spills by enrollees who have no authority over the privately owned laterals and requiring detailed information regarding local lateral programs.

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.

In the Authority's case, we are two levels removed from PSL because the local collection systems are owned and operated by the local cities and Los Angeles County. Most residential laterals are owned by the private homeowner; it would not be reasonable, under any circumstance, to assume the Authority would have knowledge of a PSL spill resulting from a blockage or pipe failure. 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.

- The SSS WDR will include a new prohibition on the use of chlorine during spill cleanups, including any potential chlorine residual in potable water, thus making it very difficult to wash down and fully clean up and disinfect SSOs on roads and gutters, and in storm drains or ditches. 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. This prohibition could be detrimental to public health and safety, rather than protective of those key elements.
- 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; the life expectancies of these systems vary from area to area and may have service lives exceeding 50 plus years. 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. Condition assessment which determines the remaining capacity, strength and condition of the system should be used to develop a comprehensive replacement/rehabilitation plan not an arbitrary regulatory requirement.

The Authority does appreciate the proposed revisions that would make the SSS WDR a clearer regulation such as:

- Revisions that streamline spill notification points of contact. 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 be made to Cal EMA, and indicate that Cal EMA will notify other agencies.
- Modifying the applicability criteria to include a flow threshold (>25K gallons on any single day) and a pipe mileage threshold (>1 mile).
- Expanding the coverage of the SSS WDRs to private collection systems meeting the pipe mileage and proposed flow thresholds, and

- Clarifying that SSOs to land is not the focus of the SSS WDR.

The Authority strongly opposes any two-tiered WDR. Under the two-tiered WDRs, and NPDES permit: (1) enrollees who have had at least one SSO that has reached waters of the United States would be required to seek coverage under the NPDES permit; (2) enrollees who have never had any SSO that has reached waters of the United States would be required to seek coverage only under the WDRs; and (3) when an enrollee covered under the WDRs reports a SSO that has reached waters of the United States, the enrollee would be required to switch coverage from the WDRs to the NPDES permit. The NPDES permit (as does the SSO WDR) includes a prohibition against all SSOs to waters of the United States.

Since the SSS WDR does not authorize any SSOs to waters of the United States, there is no need for an NPDES permit, as there are no permitted discharges! The result of such a change would be to subject local public agencies to additional citizen group lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or reduce SSOs. This alternative would also require additional Water Board staff resources to track and implement the different permit tiers.

If you have any questions, please contact David Lippman, P.E., Director of Facilities and Operations, at 818-251-2221 or dlippman@lvmwd.com.

Thank you for the opportunity to comment on these proposed revisions.

Sincerely,



John R. Mundy,
Administering Agent/General Manager

JM:acg