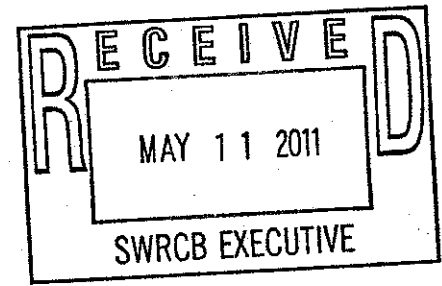




COUNTY SANITATION DISTRICT NO. 2-3
OF SANTA CLARA COUNTY
Office of the District Engineer and Manager
MARK THOMAS & COMPANY, INC.
20833 STEVENS CREEK BLVD., STE. 104 CUPERTINO, CA 95014
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May 11, 2011

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

Dear Ms. Townsend:

The County Sanitation District No. 2-3 of Santa Clara County (CSD2-3) 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).

District 2 was established in 1948 and District 3 was established in 1953, with the two merging as CSD2-3 in 1977. The District is responsible for sanitary sewer wastewater disposal in the unincorporated County areas in the east foothills of San Jose. The District serves approximately four thousand six hundred residential and commercial properties in an area encompassing roughly eight square miles.

Approximately fifty-nine (59) miles of sanitary sewer main lines and lateral sewers are maintained and overseen by Mark Thomas & Company, Inc., with the help of various subcontractors. The District's sewer lines convey approximately 1.05 million gallons (MGD) of wastewater per day through the City of San Jose sewer system, eventually ending up for treatment at the San Jose/Santa Clara Wastewater Treatment Plant in Alviso.

The District's ongoing Preventative Maintenance and Video Inspection Programs have been put in place to help reduce the number of mainline and lateral SSOs. The District also has a multi-year Capital Improvement Project program that focuses on repair, replacement and rehabilitation of the sewer system.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, our agency 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 sewer system management plan

(SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. Also, we strongly oppose any kind of NPDES permitting approach.

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 Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (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. As you may know, several NGOs in the San Francisco Bay Region have already taken advantage of municipal government agencies, including the use of aggressive and shocking tactics, and pocketed precious funds that could have and should have been used for reducing SSOs. We do not believe this type of behavior is an appropriate way to spend public funds or staff resources.

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 these staff resources are limited, and believe that they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

We would also like to reinforce concerns about confusion and wasted resources resulting from adopting an NPDES permit component now, that may need to be revised again if the United States Environmental Protection Agency (USEPA) implements an NPDES permit for satellite sanitary sewer systems later. As a collection system operating in the San Francisco Bay Region, we can speak to this issue with experience; the 2006 statewide requirements included in the existing SSS WDRs were different from our established regional program. In developing our SSMP, we had to sift through and identify strategies that addressed *both* sets of requirements. Changes to reporting requirements made everything more confusing. 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.

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

Water Board staff has not provided adequate justification to require public agencies to report PLSDs that are not affiliated with the collection system agency. State Water Board staff has simply not sufficiently thought through what this requirement means.

Consider ... 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 finds out 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 an agency receives a telephone message about a PLSD and the information is incomplete?

(Public resources should not be used to hunt it down.) Is there an expectation that if an overflow on private property is discovered by a public agency, that they assist with the cleanup? (Ratepayers should not pay for this.) If a homeowner observes their own sewage in their bathtub, because their lateral has a stoppage due to actions they caused (e.g. flushable wipes), and the toilet and sink have not overflowed onto the floor, is that a PLSD? How are we supposed to estimate volume spilled or recovered? (Often a homeowner will be very guarded with information about what goes on inside the home.) What if a PLSD exists and someone thinks a public agency staff person knew about it and it wasn'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 States' overflow problems, especially when they are insignificant in the realm of protecting water quality. It is difficult enough to manage the public system, the boundaries of which are likely to be well known. The State Water Board should only hold public agencies accountable and responsible for activities within their jurisdiction.

Moreover, 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.

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. In order to solve the problem, we recommend that the California Integrated Water Quality System (CIWQS) database and SSO/mile/yr data reflect *only* mainline spills as a performance measure. These are the overflows that have the potential for water quality impact.

In addition, 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. 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.

For all of the reasons indicated above, we specifically request that reporting of PLSDs remain 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 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.

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 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.

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.

The findings include several incorrect statements about 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, ..." 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.

Required reporting of PLSDs by all agencies does not improve the predicament faced by agencies that own lower laterals.

Requirements for reporting of SSOs are applicable to all "discharges resulting from a failure in the Enrollee's sanitary sewer system." (emphasis added). Requirements for reporting of PLSDs apply to all "discharges of wastewater resulting from a failure in a privately owned sewer lateral." (emphasis added). These requirements do not change the fact that SSOs from lower laterals are unfairly attributed only to those agencies that own them. In order to solve the problem, we recommend that the CIWQS database and SSO/mile/yr data reflect *only* mainline spills as a performance measure. Otherwise, comparisons of these data among agencies are incorrect.

In addition, the requirement for Enrollees to report PLSDs as they become aware of should be removed from Provision 4.

It is inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.

We do not believe that meaningful statistics could 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.

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. CSD2-3 utilizes video inspection of sewers to assess the condition in evaluating needed repairs or replacement. 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. For example, the useful life of certain types of high strength plastic pipe has yet to be determined.

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.

Enrollees should not be required to report SSOs if they are fully-recovered.

Fully-recovered SSOs cannot impact surface waters, and it is unlikely that they would impact public health. Therefore, they should not have to be reported to CIWQS. Not having to report these SSOs would provide an additional incentive to fully recover the overflow.

The County Sanitation District No. 2-3 of Santa Clara County hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,



Richard K. Tanaka
District Manager-Engineer