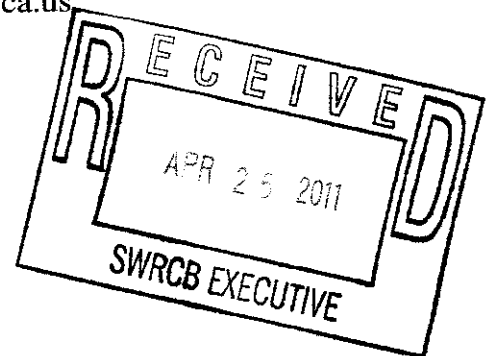




CITY OF COVINA

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April 19, 2011

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

SUBJECT: COMMENT LETTER: SSS WDRS REVIEW AND UPDATE

Dear Chairman Hoppin and Members of the Board:

On behalf of the City of Covina, thank you for the opportunity to provide our comments on the proposed revisions to the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (SSS WDR). Our agency has been diligently implementing the existing general order (Order 2006-003-DWQ) and has expended and is continuing to expend significant resources toward improving our system to reduce sanitary sewer overflows and ensure accurate reporting.

We understand that associations representing public collection system agencies are submitting detailed comments regarding the specific changes needed before the SSS WDR should be adopted, and we request that the Board give those comments careful consideration. The purpose of our letter is to urge the State Water Board to direct its staff to reconsider and substantially revise the proposed SSS WDR, for the reasons articulated below.

California is the only state in the nation with a comprehensive regulatory program governing sanitary sewer collection systems. United States EPA Region 9 has referred in public testimony to the State's program as the best in the country. It would be unfortunate if, rather than building on the program's successes through refining and improving the basic framework already in place, the Board were to abandon the course set five years ago through an extensive stakeholder effort in favor of fundamentally flawed and ill advised changes proposed in the draft SSS WDR.

Regulating Sewer Systems by NPDES Permit is Unnecessary and Inappropriate.

The public notice for the SSS WDR invites comments on whether the Board should consider substituting a two tiered "hybrid" system for regulating collection systems, in which some agencies are regulated via NPDES permit and others via WDR. We urge the Board not to move forward with this option, for policy, legal and practical reasons.

The proposed SSS WDR does not authorize any discharges to waters. To the contrary, the SSS WDR would expressly prohibit all discharges of wastewater from the collection system to surface waters, regardless of water quality. If a sanitary sewer system discharges without a permit, it is already liable for discharging without a permit and subject to severe civil and criminal penalties. NPDES permits are to be

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issued "for the discharge of any pollutant, or combination of pollutants" to waters. If a facility requests and obtains an NPDES permit, "it can discharge within certain parameters called effluent limitations." Thus, unless the proposed permit would authorize—or excuse through an affirmative defense—certain SSOs to waters, an NPDES permit is not appropriate.

We strongly disagree with the characterization in the staff report that an *advantage* of the NPDES permit would be to allow increased third party enforcement of the programmatic details of each system's operations and planning. Third party enforcement is already overly aggressive and consuming millions of dollars in public resources annually. Moreover, this view loses sight of the purpose of the SSS WDR, which is to reduce SSOs, not to second-guess every management and operation decision made by local government. As noted, SSOs to waters of the United States are already subject to citizen enforcement. Nor do we agree that higher monetary penalties are needed for administrative enforcement. The existing potential maximum monetary penalties are so high that the Board's own Water Quality Enforcement Policy establishes a *far lower* per gallon factor than the statutory maximum for calculating monetary liability for SSOs.

The WDR Should Not Require Public Agencies to Report Spills from Systems they Neither Own nor Operate.

The SSS WDR would require enrollees to report spills from privately owned sewer laterals (PSLs) when they become aware of them. Such reporting is currently voluntary. The justification offered for this change is that the State Water Board wants to "get a better picture of" the magnitude of PSL spills and better identify collection systems with "systemic issues" with PSLs. With regard to the latter point, the Board has ample information already available to it from the online database to determine whether PSL problems are a significant contributing factor to a particular system's SSO rates. As to the goal of generating better information regarding PSL spills, we do not believe this requirement is likely to yield very useful information. There may be various enrollees who respond to reports of spills before they know whether the spill is in their system or not. 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.

Additionally, 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.

The Proposed SSS WDR is Unreasonably Prescriptive With Regard to Local Program Implementation.

The dual purposes of the 2006 General Order were to reduce sanitary sewer overflows and to ensure accurate and publicly accessible SSO reporting information. The prohibitions in the General Order serve as the performance measure to which all enrollees are held. To facilitate compliance with these performance standards, enrollees are required to prepare and implement Sewer System Management Plans (SSMPs). The plans serve as a means to an end—better system performance—rather than an end in themselves. The 2006 General Order specifies the elements that must be included in the SSMP, but recognizes the flexibility retained by local agencies to determine how best to comply with the prohibitions and reduce SSOs.

The proposed SSS WDR does not remove the prohibitions. To the contrary, it expands the reach of those prohibitions to SSOs to additional surface waters and adds a new prohibition on chlorine

residual. The proposed performance standard would be more stringent than under the 2006 General Order. No SSOs to waters are authorized or excused. Yet the draft SSS WDR would go far beyond the 2006 General Order to require very specific and detailed steps of each enrollee in addition to the prohibitions. For example, the draft SSS WDR imposes burdensome new and/or expanded requirements, such as development of a Staff Assessment Program, requirements for contingency planning and natural disaster response planning, preparation of risk and threat analyses of each and every sanitary sewer system asset, and development and implementation of "performance targets" linked to each element of the SSMP and assessed annually. It is inappropriate to add all of these administrative burdens to a performance-based standard and to deprive local agencies of the opportunity to decide for themselves how to best allocate their scarce resources. The draft SSS WDR also goes far beyond what is reasonable in attempting to dictate that enrollees allocate a sufficient amount of resources for compliance with the SSS WDR, by mandating that SSMPs include budgets for operation and maintenance as well as capital improvements, and by requiring enrollees to "demonstrate the agency's ability to properly fund the sewer system in perpetuity." While it is desirable to be able to identify the resources that will be available for implementation of any program, obviously public agency budgets must be approved from year-to-year and neither the State Water Board nor any public agency that is enrolled in the SSS WDR can guarantee a specified level of funding beyond what has been approved by its legislative body, let alone "in perpetuity." These requirements are unreasonable and overly prescriptive, and should not be included in the revisions to the SSS WDR.

Thank you for your consideration of our comments. We look forward to working with the State Water Board to craft an SSS WDR that allows California to build on the successes of the existing program and continue our progress toward reducing SSOs and maintaining our critical local infrastructure.

Sincerely,



Steve A. Henley
Director of Public Works