



PO Box 3156, Fremont, CA 94539
(510) 770 9764 www.cacoastkeeper.org

Humboldt
Baykeeper

May 13, 2011

Inland Empire
Waterkeeper

Charlie Hoppin, Chair and Board Members
California State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
c/o Jeanine Townsend, Clerk to the Board
VIA electronic mail: commentletters@waterboards.ca.gov

Klamath
Riverkeeper

Monterey
Coastkeeper

Orange County
Coastkeeper

Re: Comment Letter - SSS WDRs Review & Update

Russian
Riverkeeper

Dear Chair Hoppin and Members of the Board:

San Diego
Coastkeeper

On behalf of the California Coastkeeper Alliance, which represents 12 Waterkeeper organizations spanning the coast from the Oregon border to San Diego, we welcome the opportunity to submit these comments with regard to the State Board's draft revised Statewide General Waste Discharge Requirements for Sanitary Sewer Systems ("the Revised WDR") which would update the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ) ("the 2006 WDR"). We have commented extensively on this issue over the past six years (*see, e.g.*, October 19, 2009 and September 14, 2010 letters attached). In addition, California's Waterkeepers have been actively involved in the attempt to curtail sanitary sewer overflows ("SSOs") in their communities and identifying beaches closed due to SSOs.

San Francisco
Baykeeper

The 2006 WDR was an important step toward addressing the serious environmental problem of frequent raw sewage spills from sewage collection systems statewide. However, the 2006 WDR has been of only limited effectiveness. To better address the significant, continuing problems posed by sewage spills, the prompt issuance of a revised SSO permit reflecting the improvements we have repeatedly urged (many of which are reiterated herein) is critically needed.

San Luis Obispo
Coastkeeper

Santa Barbara
Channelkeeper

Santa Monica
Baykeeper

Ventura
Coastkeeper

We note with appreciation that the State Board staff in the Revised WDR has adopted in whole or in part several of the suggested revisions to the SSO WDR recommended in our prior comment letters, and has resisted weakening some aspects of the 2006 WDR as inappropriately urged by sewage dischargers. Along these lines, we urge the State Board to adopt staff's recommendations with respect to the following important provisions of the Revised WDR:

- (1) mandatory reporting of private lateral sewage discharges (PLSDs);
- (2) retention of the obligation to report all SSOs (*i.e.*, rejection of a *de minimus* exception to the SSO reporting obligation);

- (3) requiring private collection systems to be covered;
- (4) revising the SSO prohibition to prohibit SSOs to “surface waters of the state,” rather than just to waters of the United States; and
- (5) adding to or clarifying the mandatory elements of Sewer System Management Plans (SSMPs), and improving SSO reporting and SSO response and contingency planning.

We note with concern, however, that the State Board staff in the Revised WDR and accompanying Staff Report has rejected several of our important comments concerning the terms of a reissued SSO WDR, and for certain provisions is recommending approaches that would perpetuate the 2006 WDR’s failures to curb SSOs. We urge the State Board to reject such staff recommendations and adopt more protective approaches as follows:

- (1) the State Board should reject staff’s recommendation that the Revised WDR be issued only as a Porter-Cologne Act WDR and not also as a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit;
- (2) the State Board should reject staff’s recommendation that the WDR’s prohibition provision should be limited to those SSOs that reach surface waters and that it should not include a prohibition on all SSOs; and
- (3) the State Board should reject staff’s recommendation not to regulate treatment plant bypasses.

Finally, the State Board should build upon and make more explicit the staff recommendation for requiring adherence to SSO performance goals.

In considering how to frame the Revised WDR, the State Board should keep in mind that SSOs continue at an alarmingly high rate and continue annually to spill millions of gallons of raw sewage into California’s waterways, public streets, homes and businesses, and other places where the public may become sickened by contact with sewage pollutants. Effective enforcement to curb this problem remains an unattained goal, hampered in part by flaws in the 2006 WDR. These points are discussed in more detail below.

I. *SSOs Continue to Cause Serious Environmental and Public Health Harm.*

The State Board’s own most recent assessment of SSOs since reporting requirements became effective in January 2007 indicates that over 55 million gallons of sewage have been spilled in over 15,700 SSOs since the WDR has been in place.¹ Of this, **only 25% of all spilled sewage (both spills to surface water and “nuisance” spills) was recovered. Fully 82% of the**

¹ SWRCB, “Statewide Sanitary Sewer Overflow Reduction Program: Annual Compliance Update,” p. 12 (May 2010), available at: http://www.waterboards.ca.gov/board_info/minutes/2010/may/051810_edreport.pdf, Appendix 1 (“2010 SSO Update”). Private lateral spills add another 2,244 events totaling almost 1.6 million gallons spilled. *Id.* See also attached maps as illustrations of the scope and magnitude of spills since reporting began.

total volume of sewage spilled in SSOs reached surface water.² In other words, *the vast majority of the volume of sewage spilled in SSOs makes it to surface waters, and most sewage spilled is never recovered.*

Despite the fact that 78% of SSOs are caused by “common and manageable causes” such as “root intrusion, grease deposition, [and] debris,”³ Regional Board inspection and enforcement effort against violators has either been completely absent or grossly inadequate to curtail SSOs. The Water Board’s most recent Annual Enforcement Report states that of 1,069 facilities regulated under the SSO WDR, **an average of zero percent statewide were inspected in 2009.**⁴ Despite dozens of spills over 10,000 gallons in the reporting year, and many more over the Office of Emergency Services (now Cal EMA) reporting threshold of 1,000 gallons,⁵ the 109 enforcement actions in 2009 included only one cease and desist order and five administrative civil liability orders.⁶

Further, even well over four years after WDR adoption, “[c]ompliance rate information on collection systems is not reliable.”⁷ Limited available compliance data for SSMP element certification demonstrates that compliance is at “approximately 60%,”⁸ leaving the reliability of fully 40% of the state’s collection systems in question. Finally, data on the percent of WDR enrollees monthly reporting their SSO or No Spill certifications peaked at 80% but has since *declined*,⁹ belying the “new regulatory system” justification for heightened regulatory action.

As noted in our appended letter dated October 2009, SSOs have real impacts. Among other things, they have repeatedly caused closures of state waters heavily used for water contact recreation such as swimming, surfing, wading, kayaking, diving and other sports. For example, Heal the Bay revealed 364 days of beach closures in Los Angeles, Orange and San Diego Counties from April 2008 to April 2009 from 95 separate SSOs (*see* statistics at www.healthebay.org/brcv2/). They also create numerous ecological impacts.¹⁰

Examples of local impacts of sanitary sewer overflows abound. For instance, Santa Barbara Channelkeeper reports that since 2006 there have been at least 171 reported spills from the City of Santa Barbara’s sewage collection system. At least 57 SSOs have been illegally discharged into creeks or the city’s storm drain system since November 2008. Channelkeeper notes that these spills directly resulted in at least two beach closures lasting for a total of 8 days, one at East Beach near Sycamore Creek from January 23-25, 2008, and one at Arroyo Burro

² *Id.* The 82% figure was calculated by simply dividing the 45,381,460 gallons of SSO-released sewage reaching surface waters by the total (55,340,238 gallons) sewage spilled; this figure is also reflected in the Staff Report.

³ *Id.*, pp. 15-16.

⁴ SWRCB, “2009 Annual Enforcement Report,” Table 30, p. 48 (undated but presented to the SWRCB at their Sept. 7, 2010 Board Meeting) (“2009 Enforcement Report”), available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/annl_rpt2009.pdf.

⁵ *See* SSO Incident Map at http://www.waterboards.ca.gov/water_issues/programs/ss0/sso_map/sso_pub.shtml.

⁶ 2009 Enforcement Report, Table 40, p. 55.

⁷ *Id.*, p. 77.

⁸ *Id.*, p. 100.

⁹ *Id.*

¹⁰ *See, e.g.*, Dr. Michael McGowan, “Ecological Impacts of Sanitary Sewer Overflows,” (April 19, 2011), available at: <http://www.cacoastkeeper.org/document/ecological-impacts-of-sanitary-sewer-overflows.pdf>.

Beach from December 7-11, 2009. All of Santa Barbara's beaches have warnings posted for excessive bacteria on a frequent basis. In the last five years, a total of 208 health advisories have been posted for the city's beaches (Leadbetter Beach, East Beach and Arroyo Burro Beach). While beach advisories can be caused by a number of problems, sewage spills and leaky sewer pipes are one likely culprit. In fact, recent studies analyzing potential sources of high bacteria in Santa Barbara's storm drains found significant inputs of human fecal waste into some drains that lead to the ocean. The studies suggest that damaged sewer pipes may be discharging contaminated water into the surrounding soil, which could then seep in through cracks in storm drain pipes.

As another example, San Diego Coastkeeper has compiled information on Navy SSOs from Camp Pendleton over the last several years. Details of SSOs reaching waters of the U.S. and other SSOs are attached. Finally, San Diego Coastkeeper has also provided a photo (attached) of a recent, 1.2 million gallon sewage spill in Santee that flowed into the San Diego River and 20 miles out to Ocean Beach, which the San Diego County Department of Environmental Health was forced to close until tests showed it was safe.

Given the lack of enforcement of the SSO WDR, declining rates of compliance, high volume of sewage spilled reaching surface water (82% of the volume spilled), continued beach closures due to SSOs, and continued spilling of sewage onto the state's streets and into its waters from SSOs (spill maps attached), further regulatory action is needed to protect the public from this ongoing health and environmental threat.

II. *The Revised WDR Should Be Issued As Both a Porter-Cologne Act WDR and a Clean Water Act NPDES Permit.*

The most serious shortcoming of the 2006 WDR was that it was not also issued as an NPDES Permit under the federal CWA. The issuance of a WDR that is not also an NPDES permit renders the WDR's requirements unenforceable by the U.S. Environmental Protection Agency ("U.S. EPA") and citizens via the CWA's citizen suit provision. Staff inappropriately is recommending that the State Board continue this error and issue the Revised WDR as a Porter-Cologne Act WDR only, rather than as a joint Porter-Cologne WDR/Clean Water Act NPDES permit.

This approach is contrary to the State Board's duties as a state agency approved by the U.S. EPA to administer an NPDES program under the Clean Water Act. EPA regulations require that California's NPDES program regulate point source discharges to waters of the United States via NPDES permits as mandated by the CWA as a condition of retaining EPA approval. *See* 40 C.F.R. § 123.1(c), ("The Administrator will approve State programs which conform to the applicable requirements of this part.") § 123.1(g)(1) ("the state program must prohibit all point source discharges of pollutants... except as authorized by permit in effect under the State Program or under section 402 of CWA"); § 123.25 (all state programs must have requirements for NPDES permitting that track EPA NPDES permitting regulations).

CWA section 301(a) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of an NPDES permit. 33 U.S.C.

§1311(a). The CWA further defines the discharge of a pollutant as the discharge from a point source to any waters of the United States. The CWA and EPA regulations broadly define the terms point source and waters of the United States.¹¹ Whenever a sewage system operator spills raw sewage from sewer lines, manholes, pump stations or other sewage infrastructure into a waterway such as the ocean and other tidal waters, lake, river, tributary to such waters, or wetland adjacent to such waters, it has discharged pollution from a point source into a water United States within the meaning of the CWA. *See* 33 U.S.C. § 1362(14).

40 C.F.R. section 122.21(a) provides that "Any person who discharges pollutants ... and does not have an effective permit . . . must submit a complete application" for an NPDES permit.¹² Under this U.S. EPA CWA regulation, all POTWs have a mandatory duty to apply for and obtain an NPDES permit regulating the discharge of pollutants to waters of the United States, including but not limited to SSOs from their collection systems.

To meet the obligations imposed by these provisions of the CWA and EPA regulations, the State Board must provide a process for all sewage collection system operators that discharge raw sewage to waters of United States to apply for and obtain NPDES permits regulating such raw sewage discharges. Contrary to the assertions in the Findings, the Clean Water Act is the "primary regulatory mechanism" for discharges to waters of the United States and should be addressed.

Staff point out court decisions such as *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 504-06 (2nd Cir. 2005) have held that U.S. EPA and the states cannot require NPDES permit coverage for facilities that have the potential to discharge pollutants to waters United States but have not actually done so. These decisions cannot justify declining to require NPDES permit coverage for California's sewage collection and treatment system operators.

First, staff fails to acknowledge the fact that U.S. EPA regulations mandate that sewage systems subject to Clean Water Act requirements be properly operated and maintained. 40 C.F.R. § 122.41(e) ("The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit"). Nearly all California's sewage collection and treatment systems either directly or indirectly discharge treated sewage to waters of United States pursuant to NPDES permit authorization for such discharges. Even satellite systems, *i.e.*, those that only collect sewage and then route that sewage to a separately owned and operated regional treatment system, are nearly always discharging pollutants to waters of United States, albeit indirectly through another entity's outfall. Case law well establishes that entities that discharge pollutants to waters United States via an outfall owned by a third party are still properly subject to NPDES regulation as point source dischargers. *See., e.g., Dague v. Burlington*, 935 F.2d 1343, 1355 (2d Cir. 1991) (discharging pollutants to

¹¹ A "point source" is "any discernible, confined and discrete conveyance [such as a pipe, ditch, channel, or conduit], from which pollutants are or may be discharged." CWA § 502(14), 33 U.S.C. § 1362(14). Waters of the United States include the Pacific Ocean, all tidal water bodies; lakes, rivers, streams, and wetlands that flow to the ocean or are used in interstate commerce, any tributaries to those waters, or wetlands adjacent to such waters." *See* 33 C.F.R. § 328(a); 40 C.F.R. § 230.3(s).

¹² Except in a few narrow specific circumstances not applicable here.

navigable water via culvert owned by third party violated the CWA), rev'd on other grounds, 505 U.S. 557 (1992); *Friends of Sakonnet v. Dutra*, 738 F. Supp. 623, 629 (D.R.I. 1990) (violation of CWA to discharge raw sewage into river via pipe owned by third-party). The fact that nearly all California's sewage collection and treatment systems are directly or indirectly discharging sewage to waters United States distinguishes such systems from the concentrated animal feeding operations at issue in the *Waterkeeper Alliance* case, which were not discharging pollutants to waters of United States, but merely had the potential to do so. Given that all or nearly all California sewage collection and treatment systems are point source dischargers subject to NPDES regulation, it would be appropriate to include in their NPDES permits conditions which require proper operation and maintenance of their entire sewage waste management systems—including conveyance of all collected sewage for proper treatment and discharge via a permitted outfall in compliance with effluent limitations set in accord with secondary treatment requirements and applicable water quality standards. *See* 40 C.F.R. § 122.41(e).

Second, it is entirely proper under any interpretation of the *Waterkeeper Alliance* line of authority to require NPDES permit authorization for any POTW that *has actually had* an SSO that has reached waters of the United States. The State Board now has several years of SSO reporting from over 1,000 sewage system authorities. As the Staff Report expressly acknowledges, the State Board's California Integrated Water Quality System ("CIWQS") database indicates that many of the state's sewage collection systems have reported SSOs reaching surface waters.¹³ And as the Staff Report again expressly acknowledges, the overwhelming majority of the volume of sewage spilled by the state's sewage collection systems reaches surface waters (82% of the total volume of wastewater spilled reported in CIWQS), the vast majority of which is unrecovered.

While some sewage collection systems have not reported surface water spills to CIWQS (a number of these no doubt due to failure to accurately report— as discussed below, the State Board's 2009 Enforcement Report documents widespread problems with accurate SSO reporting), this does not justify declining to issue the WDR as an NPDES permit. As the Staff Report discusses, a simple solution is for the State Board to make the WDR both a Porter-Cologne Act permit *and* an NPDES permit, with the NPDES permit authorization extending only to the subset of sewage collection system authorities that self-identify themselves as having discharged pollutants to waters of the United States. The State Board could specify a two-tier approach to the requirement to submit Notices of Intent (NOIs) to be covered by the WDR. First, the State Board could require POTWs that either discharge treated effluent to waters of the United States, and/or that have ever had SSOs that have reached waters of the United States, to identify these facts in their NOI, together with a request for NPDES permit coverage. Second, the State Board could require that POTWs that do not discharge their treated effluent to waters of the United States and have never had an SSO that has reached waters of the United States to identify these facts in their NOI, together with a request that they not be given NPDES permit coverage.

The State Board staff's three reasons for rejecting this simple two-tier approach fails to stand up on examination. One, staff contends that a two-tiered WDRs and NPDES permit system would be more complex and require more staff resources to implement— leaving staff with

¹³ *See*: http://www.swrcb.ca.gov/water_issues/programs/ciwqs/publicreports.shtml.

insufficient resources to administer other important aspects of the SSO program. Staff erroneously contends that additional staff resources would be required to ensure each collection system is properly enrolled under the correct permit type (i.e., WDRs or NPDES) and to make findings in specific cases that discharges to waters of the United States actually occurred. This ignores that the NOI process would be self-implemented by the dischargers; no permitting staff time will be required in passively receiving dischargers' NOIs. Granted, staff time could be taken up by follow-up enforcement cases that targeted dischargers who have had SSOs to waters of the United States but failed to submit an NOI requesting NPDES permit coverage. But it is a red herring to contend that this will necessarily overly tax staff resources. Regional Board and State Board staff enjoy prosecutorial discretion and thus need not take on enforcement actions that they lack adequate resources to pursue. To the extent that resource constraints are an issue, Regional Board and State Board staff can limit enforcement actions to those sewer system operators that have failed to submit NOIs for NPDES coverage that would (or should) be enforcement targets anyway— because, for example, they had failed to register for CIWQS at all or to curb demonstrated SSO problems.

Furthermore, staff's contention ignores what should be an overriding consideration--that issuing the SSO WDR as an NPDES permit will make the WDR enforceable by U.S. EPA and citizen groups – vastly augmenting the enforcement resources available to address WDR violations. Indeed, the CWA's legislative history emphasizes that Congress provided for citizen suit enforcement *expressly because* it anticipated that administrative agencies might lack the resources to bring all the enforcement actions that should be brought. *Proffitt v. Municipal Auth. of the Borough of Morrisville*, 716 F. Supp. 837, 844 (E.D. Pa. 1989) (“Congress’ clear intention [in enacting the CWA’s citizen suit provisions was] that citizen plaintiffs are not to be treated as ‘nuisances or troublemakers’ but rather as ‘welcomed participants in the vindication of environmental interests.’” (quoting *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2d Cir. 1976)). Thus, on balance, the State Board and Regional Board will effectively have *more* resources rather than less to advance and enforce the SSO program if the State Board issues the Revised WDR as a two-tier, joint WDR/NPDES permit.

Two, staff contends that the fact that U.S. EPA is contemplating new national SSO regulations warrants declining to issue a California statewide SSO NPDES permit until EPA acts. Staff argues that allowing the U.S. EPA to develop the NPDES program for collection systems first and then adapting to the federal program will result in less confusion and potential backtracking compared to the state forging NPDES policy in this area and having to adapt later to national requirements that may differ from adopted state requirements. By this logic, the State Board would never have issued the 2006 WDR or done anything else to adopt permit requirements concerning SSOs. The fact of the matter is that the same State Board program, administered by the same State Board personnel, is now and will continue in the future to be in place if and when EPA adopts national SSO regulations. If there truly is irreconcilable inconsistency between EPA's new SSO regulations and the State Board's Revised WDR, the State Board will not be able to avoid, as staff puts it, “backtracking” and “having to adapt later to national requirements that may differ from state requirements” simply because the Revised WDR is not an NPDES permit. The State Board will obviously not implement two separate SSO programs for collection systems that spill sewage to waters of the United States--one under the

WDR and a separate one to meet federal requirements. The State Board would have to “backtrack” and “adapt” its program to be consistent with the new federal mandates all the same.

Moreover, staff’s concern about “backtracking” is surely overblown. Staff ignore that EPA’s CWA regulations clearly specify that State programs may be more stringent than minimum federal requirements. 40 C.F.R. §123.1(i). So there will only be a need for the State Board to “backtrack” and “adapt” to the extent that the state program is not as stringent as new federal requirements. But again, if this is the case, the State will not be able to avoid “adapting” simply because it issued the Revised WDR as a WDR-only. Again, California will have to conform its program to minimum federal requirements as an NPDES authorized state. Finally, State Board staff ignore that the chance of prompt EPA enactment of new federal SSO regulations is undoubtedly very low. After years of effort, EPA proposed new federal SSO regulations in 2000, but 11 years later, EPA has still not promulgated any such regulations. Given this track record of inaction, it is simply unreasonable for the State Board to defer action on SSO regulation because it anticipates imminent change from EPA.

Three, State Board staff speciously contend that issuing the Revised WDR as an NPDES would be environmentally disadvantageous because an NPDES permit would prohibit spills to waters of the United States whereas the draft SSS WDRs would prohibit spills to surface waters of the state, and the latter is a broader prohibition covering a wider range of water bodies in the state. To begin, as discussed below, the CWA grants EPA and the State Board the authority to prohibit *all* SSOs, and both EPA and several Regional Boards have exercised this authority to issue NPDES permits that in fact do prohibit *all* SSOs. If the State Board were to properly follow this precedent, there would be no distinction between SSOs prohibited by an NPDES permit and those prohibited by a Porter-Cologne Act WDR. Furthermore, even if the State Board were to adopt different prohibitions depending on whether a permittee is a WDR-only permittee versus an NPDES permittee, the simple solution to the dilemma posed by staff is to require *all* sanitary sewer systems to have Porter-Cologne Act coverage and be subject, for purposes of state law, to the broad prohibition on spilling sewage to surface waters of the state. A subset of sanitary sewer systems would then face an additional federal law requirement not to spill sewage to waters the United States.

III. *The Revised WDR Should Include an Expanded SSO Prohibition.*

The 2006 WDR only prohibited SSOs that reach waters of the United States and SSOs that cause public nuisance. State Board SSO WDR, Prohibitions ¶ C. As we pointed out in our prior comment letters, this unduly narrow prohibition undermined effective enforcement and allowed a significant part of the SSO problem to remain unaddressed.

We commend State Board staff for proposing to partially rectify this problem by expanding the Prohibition provision to prohibit SSOs to “surface waters of the state.”¹⁴ Staff defines “surface waters of the state” as any surface water body, including saline waters, within the boundaries of the state. This is a significant improvement which we urge the State Board to adopt. As we pointed out in prior comment letters, the lack of clear definition in current case law

¹⁴ We also support the addition of storm drains tributary to waters of the state in the definition of SSO at para. 10(a) of the Revised Order.

of the term “waters of the United States” creates considerable potential ambiguity as to which SSOs the Prohibition clause actually prohibited.¹⁵ By contrast, the term “surface waters of the state” is broad and relatively unambiguous, and thus enforcing this Prohibition will be significantly easier. Additionally, expanding the prohibition provision to protect all surface waters of the state is required by California Water Code § 13263, which effectively requires the state board of regional boards to protect the beneficial uses of all waters of the State. The Revised WDR must be consistent with existing statutory requirements.

Staff’s approach to the Prohibition provision, however, falls significantly short of the full reform needed. Staff has proposed that SSOs that contaminate groundwater will be expressly outside of the Prohibition. This is an odd proposal contradictory of environmental protection: how can the State Board conceivably take the position that raw sewage spills that contaminate the state’s groundwater resources should not be prohibited? The State Board cannot find that sewage spills do not risk harm to groundwater resources. Indeed, State Board staff’s draft findings accompanying the Revised WDR expressly note that “SSOs and PLSDs may pollute surface *or ground waters*, threaten beneficial uses and public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. Finding No. 7 (emphasis added). The California Water Code clearly provides the State Board with both the authority and the mandate to protect groundwater¹⁶ and the State Board must implement this mandate by protecting groundwater against sewage spills.

State Board staff has further recommended that the State Board reject our prior suggestions that the Prohibition be expanded to further expressly prohibit all SSOs. The State Board should reject this recommendation and amend the Revised WDR to expressly prohibit all SSOs. Staff’s recommendation would leave many SSOs outside of the Prohibition, ignores past permitting precedent, and is contrary to the California Water Code’s dictates to regulate all waste discharges and nuisances associated with such discharges. California Water § 13263.

The Staff Report observes that 87% of the number of reported SSOs did not reach surface waters (as opposed to the total volume of SSOs, *almost all* of which represents raw sewage reaching surface waters). However, as noted below, auditing would suggest that this figure reflects significant underreporting of spills to waters. Full enforcement under the 2006 WDR against spills reported as “not reaching surface waters” is effectively impossible; ferreting out which SSOs reported as not reaching surface waters did in fact reach surface waters (usually well after the fact) is impracticable in most enforcement actions.

¹⁵ The U.S. Supreme Court’s recent fractured decision in *Rapanos v. United States*, 547 U.S. 715 (2006) leaves highly uncertain in some cases as to what is a water of the United States. Justice Kennedy’s concurring opinion provided the fifth justice needed for a majority in *Rapanos*. With respect to wetlands, Justice Kennedy opined that only wetlands with a “significant nexus” to a navigable-in-fact water body constitute waters of the United States. As the case dealt only with wetlands, whether Justice Kennedy’s test extends to other surface waters, such as streams, arroyos, and artificial channels is not clear. Moreover, Justice Kennedy’s test itself is highly ambiguous and subject to varying interpretation.

¹⁶ See, e.g., California Water Code § 13260 (required a person discharging waste, including discharge of any waste to waters of the state, to file a report of waste discharge to the appropriate regional Board); Water Code § 13050(e) (defining waters of the state to include groundwater).

With respect to the issue of underreporting SSOs to waters, that the Prohibition only applies to SSOs that reach waters or cause a public nuisance gives permittees obvious incentive to slant their reporting as indicating that SSOs did not reach waters, particularly given that as a WDR, the Prohibition is enforceable only by understaffed Regional Water Boards. The State Board's 2009 Enforcement Report corroborates that underreporting of SSOs is a significant problem:

Recent audits revealed that some dischargers are violating the Sanitary Sewer Order and are underestimating the volume of sewage spilled and/or failing to report SSOs. Further, there are numerous sanitary sewer collection systems in the State that have not yet enrolled for coverage under the Sanitary Sewer Order.¹⁷

Failure to amend the Revised WDR to prohibit all SSOs will continue to give dischargers the incentive to underreport SSOs to waters. The language in Section C.1.(a) of the Revised WDR adds to this problem by failing to define "fully captured," leaving another likely reporting loophole.

Staff further expands under-reporting and under-enforcement by relying on an unduly narrow definition of "nuisance." While the definition of "nuisance" in the Revised WDR does include the entire definition from the Water Code, the 2010 SSO Update (page 12) admits that in practice, staff has read the definition only as follows: "to be considered a nuisance an SSO would have to affect an entire community or neighborhood." This reading illegally limits application of the statutory definition of "nuisance," which also includes impacts on "any considerable number of persons." An appropriately full reading of "nuisance" would encompass far more spills than those that affect "entire communities." Once again, such ongoing problems could be readily addressed with a clear ban on *all* SSOs, which would prevent the current guesswork involved in reporting and enforcement.

Staff's approach further represents significant backsliding on the approach taken by at least some Regional Boards and U.S. EPA, which have issued multiple NPDES permits that broadly prohibit all SSOs.¹⁸ Indeed, two premier Regional Board SSO enforcement actions

¹⁷ 2009 Enforcement Report, p. 100.

¹⁸ An example is NPDES Permit No. CA010991 issued by the Los Angeles Regional Board to the City of Los Angeles' Hyperion wastewater treatment plant and appurtenant collection system. Regional Board Order No. 94-021 ("the Hyperion Permit"). Condition IV.2 of the Hyperion Permit provides "Any discharge of wastes at any point other than specifically described in this order and permit is prohibited, and constitutes a violation thereof." The Hyperion NPDES permit describes the discharge of treated sewage from the ocean outfall downstream of the Hyperion treatment plant. Standard Provision B.7. further provides that "[a]ny "overflow" or "bypass" of facilities, including the "waste" collection system, is prohibited. . . ." The Hyperion Permit further defines an "overflow" to mean "the intentional or unintentional diversion of flow from the collection and transport systems, including pumping facilities." Hyperion Permit Standard Provision A.31. Together, these provisions made it clear that *all* SSOs from the Hyperion system are prohibited. Additionally, Regional Board 2's existing NPDES permits to several East Bay sewage facilities provide contain the following SSO prohibition that is broader than the WDR's prohibition: "The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited." City of Oakland, Sanitary Sewer Collection System, NPDES Permit No. CA0038512, Order No. R2-2004-0012, § A. Prohibitions, ¶ 1; City of Albany, Sanitary Sewer Collection System, NPDES Permit No. CA0038471, Order No. R2-2004-0009, § A. Prohibitions, ¶ 1; City of Alameda,

against the City of Los Angeles and City of San Diego relied on such permit conditions to bring successful enforcement and secure extensive SSO remedial measures. *United States and People of the State of California, ex rel. California Regional Water Quality Control Board, Los Angeles Region v. City of Los Angeles*, Civ. No. 01-191-RSWL (C.D. Cal.) (Consent decree entered Oct. 29, 2004); *United States and People of the State of California, ex rel. California Regional Water Quality Control Board, San Diego Region v. City of San Diego*, Civ. No. 03-1349K POR (S.D. Cal.) (Consent decree entered October 12, 2007). It is creating an unduly complicated and inconsistent regulatory regime for some individual NPDES permits and WDRs issued by some Regional Boards to include prohibitions on all sewage spills while the State Board's SSO WDR omits a similar prohibition. It is further inequitable and inimical to environmental protection to impose such restrictions on some POTWs while exempting others that lack such specific individual permits. This is contrary to the stated purpose of the WDR which is, as it should be, to promote consistent statewide SSO regulation that leads to the protection of beneficial uses and the prevention of nuisance.

The State Board has authority for a broad SSO prohibition. The permittees' sewage collection systems all constitute Publicly Owned Treatment Works ("POTW") as that term is defined by the CWA and accompanying U.S. EPA regulations. CWA § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. § 403.3. Specifically, a POTW includes all sewers, pipes and other conveyances that convey wastewater to a POTW's WWTP. U.S. EPA regulations require that POTWs subject to CWA regulation be properly operated and maintained. 40 C.F.R. § 122.41(e). As sewage collection systems are part of the system/appurtenances used to collect and treat sewage to meet CWA requirements, and as proper operation and maintenance of such systems would preclude SSOs, NPDES permits must prohibit SSOs. Furthermore, SSOs that do not directly reach waters, but overflow into public streets and other public places and *back up* into people's homes and businesses, *necessarily* are nuisances that pose public health threats, which the State Board properly must regulate and seek to curtail.

To protect the public health and welfare from the grave health risks and frequent potential property damage caused by SSOs to public streets, parks, residences and businesses, the WDR must be amended to include a blanket prohibition on all SSOs. The State Board may not condone the spilling of raw sewage into people's homes, places of business, public streets, and other areas accessible to the public.

Sanitary Sewer Collection System, NPDES Permit No. CA0038474, Order No. R2-2004-0008, § A. Prohibitions, ¶ 1; City of Berkeley, Sanitary Sewer Collection System, NPDES Permit No. CA0038466, Order No. R2-2004-0010, § A. Prohibitions, ¶ 1; City of Emeryville, Sanitary Sewer Collection System, NPDES Permit No. CA0038792, Order No. R2-2004-0011, § A. Prohibitions, ¶ 1; City of Piedmont, Sanitary Sewer Collection System, NPDES Permit No. CA0038504, Order No. R2-2004-0013, § A. Prohibitions, ¶ 1; Stege Sanitary District, NPDES Permit No. CA0038482, Order No. R2-2004-0014, § A. Prohibitions, ¶ 1.

Another example is the EPA-issued NPDES Permit (NPDES Permit No. HI0020877) to the City and County of Honolulu for the Honouliuli WWTP and related collection system. The Honouliuli NPDES permit contains express provisions prohibiting all unauthorized overflows of sewage, regardless of whether the spills reach waters of the United States. See Honouliuli Permit, Standard Provisions and Reporting Requirements ¶¶ B.7, C.2, and C.4.

IV. *The Revised WDR Should Mandate Development of and Adherence to SSO Performance Targets.*

State Board staff has proposed adding a provision to the Revised WDR requiring dischargers to develop SSO performance targets. We support this important improvement, but advocate that the State Board improve it still further. As drafted by staff, the provision could be read as mandating that dischargers develop SSO reduction goals for the maximum number of SSOs they should have and maximum volume of sewage spilled in a year. The provision, however, is ambiguous and should be amended to more explicitly establish this requirement. Many federal court consent decrees in citizen suit SSO cases have been requiring adherence to SSO reduction goals. In our experience, SSO reduction performance has been greatly facilitated by establishing objective minimum standards that sewer systems should be held to. We suggest that the Revised WDR require sewer system operators to consider the average spill performance of the state's best-performing systems and the spill reduction they can obtain by implementing state-of-the-art spill reduction measures, and then set their reduction goals to appropriately reflect this analysis.

V. *The Revised WDR Should Include Environmentally Protective SSMP Requirements.*

We commend State Board staff for several improvements to the 2006 WDR's Sewer System Management Plan ("SSMP") related provisions. At the outset, we commend State Board staff for adding an express mandate that "[t]he SSMP and all its components shall be considered living documents that need to be amended as conditions change in the service area or in system operations, management, or funding." As all who are knowledgeable in the field are aware, an asset management approach by which sewer system operators continually strive to adaptively manage their systems for improved performance is needed to reduce SSOs to the minimum.

We also welcome the move toward encouraging sewer system operators to post their SSMPs online. However, the language in the Revised WDR remains unclear as to Water Board intent. To ensure full disclosure to the public, SSMPs *must* all be made readily available online, *both* on CIWQS as well as on the regulated entity's own website. This is essential to ensure that agency staff and concerned members of the public can readily review the SSMPs and compare them against each other. Accordingly, we urge the Board to amend the WDR to mandate clearly that all sewer system operators must post their SSMPs to their own websites if they already have such websites, and that all sewer system operators must further post their SSMPs to CIWQS. The State Board should then follow up and ensure that SSMPs are collected and posted to a publicly available link on CIWQS. This will allow the State Board, the Regional Board, U.S. EPA, other sewer system operators, and members of the interested public to have ready access to and opportunity to review SSMPs, in order to find examples of good SSMPs and to identify when operators have failed to adopt sufficient SSMPs.

Further, in our 2009 comment letter to the State Board, we recommended that the WDR's requirements concerning SSMP elements be amended to add certain requirements. We appreciate that State Board staff has responded with at least some additional provisions that correspond in some fashion to many of our recommendations for improved SSMP elements. We urge the State Board to at least adopt staff's improvements and in some cases to go beyond them.

A. *Private Lateral Program Requirement.* State Board staff has not adopted our comment in our 2009 letter that SSMPs should include a private lateral sewer line inspection and replacement program. Staff has, however, added a requirement that SSMPs include “a description of any private sewer lateral inspection and replacement programs implemented within the sewer system service area.” We support this modest improvement as far as it goes; it at least provides some acknowledgment that sanitary sewer system operators should at least consider adopting private lateral programs.

However, we continue to urge the State Board to adopt a more comprehensive and explicit requirement for sanitary sewer system operators to adopt private lateral sewer programs. Private laterals remain a largely unaddressed, major source of SSO problems. Defective private laterals frequently serve as a source of infiltration and inflow loading that overwhelms collection systems and leads to huge volume wet weather sewer overflows. Private laterals are also a source of sewer line root intrusion and debris loading that can lead to sewer line blockages and overflows. Thus, the State Board should amend the Revised WDR to mandate that SSMPs must include a program for inspecting and securing the replacement of defective private laterals, unless an enrollee provides a written, supported explanation why defective private laterals are not a problem in their system.

B. *Contingency Planning:* We urge the State Board to adopt staff’s proposal to add a broad requirement that SSMPs include provisions for Contingency Planning that identifies the most critical collection system assets and operating procedures, including components posing the highest risks and threats for an SSO—and that Contingency Planning shall include a list of the most critical replacement part inventories that should be maintained by sewer system operators.

C. *Management of Satellite Systems:* In our 2009 comment letter, we recommended that SSMPs should require development by satellite sewer collection systems, and the main systems to which they discharge, of joint plans for managing peak wet weather flows. State Board staff has partially responded to the suggestion by mandating that SSMPs demonstrate that dischargers have the authority to “limit flows to the sanitary sewer system from connected sources including service laterals and satellite collection systems,” and further mandating that they must communicate at least annually with any satellite systems concerning SSMP implementation. We support this addition as far as it goes, but we continue to advocate that the State Board mandate more explicit joint planning between satellite systems and the systems to which they discharge for managing peak wet weather flows. We note that for many sewer systems, such as those in the East Bay area of the San Francisco Bay region, this is critically needed to avoid wet weather overflows.

D. *CIP Planning for Replacing Infrastructure at the End of Its Useful Life:* In our 2009 comment letter, we recommended that SSMPs require inclusion in capital improvement plans (“CIPs”) of analysis of the expected useful life of system assets and a schedule for replacing assets before the end of their expected useful life. The State Board staff has apparently responded to this suggestion with a mandate that dischargers perform a risk and threat analysis that identifies highest risks and threats of sewer system failures. Such an analysis would implicitly include an analysis of the remaining useful life of critical sewer system components.

We recommend that the State Board amend this provision to make clearer that this is an explicit requirement.

E. *Quality Assurance for Routine Preventive Operation and Maintenance Activities:* Reducing SSOs requires effective routine preventive operation and maintenance activities including regular sewer line cleaning. The Revised WDR appropriately continues to require that SSMPs provide for systematic preventive operation and maintenance activities such as sewer line cleaning and a system to document scheduled and conducted activities. Recent experience has shown that the quality of sewer line cleaning can vary tremendously depending on field crew training and oversight and that the quality of sewer line cleaning is a key variable in determining SSO rates for collection system operators. To ensure effective sewer line cleaning, it is important that collection system operators perform quality assurance/quality control evaluations of sewer line and provide feedback and training to sewer line cleaning crews whenever shortcomings of sewer line cleaning is uncovered by such evaluations. The State Board should revise the WDR to mandate quality assurance/quality control evaluation of sewer line cleaning.

F. *System design and performance standards:* We urge the State Board to approve staff's addition of clarifying language to the Revised WDR stating that dischargers must adopt and implement sewer design and construction inspection, and testing standards and specifications, for all aspects of their sewage collection systems.

G. *Financial Planning:* We urge the State Board to approve staff's newly added language in the Revised WDR specifying that SSMPs include financial planning that compares the annual budget needed to implement the SSMP versus the resources available to the permittee, and that ensures that adequate financial resources are available to fund the SSMPs.

VI. *The Revised WDR Should Be Amended to Address Sewage Plant Bypasses.*

Overlooking a serious environmental problem, the 2006 WDR failed to regulate and restrict "bypass" discharges of sewage from treatment plant outfalls; *i.e.*, the discharge of sewage that has not been subjected to full secondary treatment. Staff has once again overlooked this problem and is not proposing to address bypasses in the Revised WDR. We urge the State Board to amend the Revised WDR to regulate bypasses. Bypasses annually result in the discharge of millions of gallons of inadequately treated sewage to sensitive waterways. Furthermore, such bypasses stem from the same infiltration and inflow problems that lead to wet weather SSOs from collection systems. They thus can only be reduced via similar infiltration and inflow control measures, such as the comprehensive rehabilitation of sewer mains and effective private lateral programs, that are needed to reduce wet weather SSOs. Accordingly, there is no sound policy reason that bypasses should not be subjected to the same regulatory responses as SSOs.

In addition, bypasses should be included in the CIWQS database so the State Board, the Regional Boards, the U.S. EPA, local environmental health officers, and interested members of the public can remain informed about the number, volume and location of bypasses. The wet weather capacity planning mandated to be included in SSMPs should focus also on eliminating bypasses, not just wet weather SSOs.

VII. *The State Board Should Adopt Staff's Environmentally Protective Recommendations Concerning Regulation of Private Collection Systems, Reporting of PLSDs, Reporting of All SSOs, and SSO Response Requirements.*

We urge the State Board to follow staff's recommendations for adopting the following important improvements in the Revised WDR:

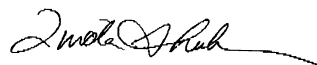
- (1) mandatory reporting of private lateral sewage discharges (PLSDs);
- (2) retention of the obligation to report all SSOs (rejection of a *de minimus* exception to the SSO reporting obligation);
- (3) requiring private collection systems to be covered under the WDR;
- (4) improved SSO reporting requirements (such as clearly identifying which water bodies sewage spills have reached, and which beaches have been adversely affected by sewage spills); and
- (5) improved SSO contingency planning and response measures (such as taking into account the risk and potential consequence of natural disasters in planning spill response measures).

For all of the above improvements, we agree with the reasoning expressed in the staff report as to why these improvements are needed and appropriate.

* * *

Again, we commend the State Board for evaluating the need to update and improve the SSO WDR at this time, and we urge that our recommendations be adopted to stem the ongoing, serious problems associated with sanitary sewer system overflows. Thank you for consideration of our comments.

Best regards,



Linda Sheehan
California Coastkeeper Alliance
P.O. Box 3156
Fremont, CA 94539
lsheehan@cacoastkeeper.org
510-770-9764



Christopher Sproul
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
csproul@enviroadvocates.com
(415) 533-3376

cc: Alexis Strauss, U.S. EPA Region IX
Ken Greenberg, U.S. EPA Region IX

Attachments

ATTACHMENT A:

MAPS DEPICTING SSOs OVER 100 GALLONS, 10,000 GALLONS AND 100,000 GALLONS, FROM 1/1/07-3/30/11 (SOURCE: SWRCB, SEWAGE SPILL INCIDENT MAPS,

http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml)

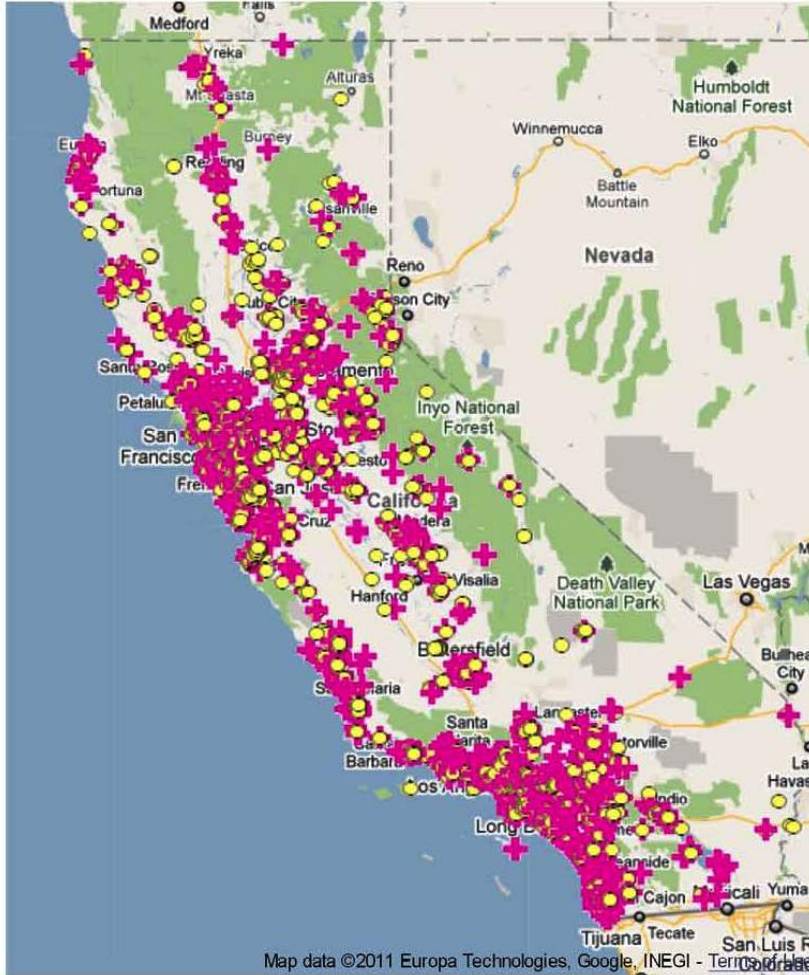
**SANITARY SEWER OVERFLOWS: 01/01/2007
- 03/30/2011**

Spill type: **+** Category 1 ●

Category 2

Click on a map icon for incident information.

Note: Map does not include spills from sewage treatment plants.



- Show all incidents
- Show only incidents with GPS coordinates

Filter by volume (gallons)
100 - 1,000,000+ gal.

Minimum:

Maximum:

Filter by date:
01/01/2007 - 03/30/2011

Start:

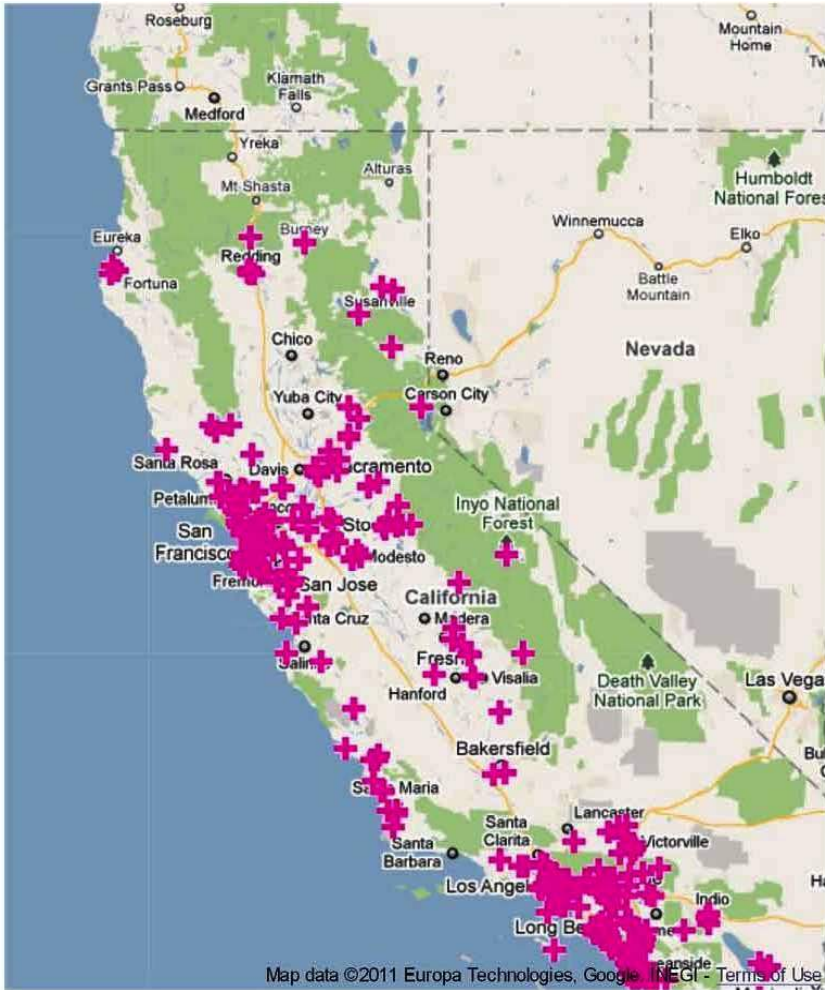
End:

SANITARY SEWER OVERFLOWS: 01/01/2007 - 03/30/2011

Spill type: **+** Category 1 ●
Category 2

Click on a map icon for incident information.

Note: Map does not include spills from sewage treatment plants.



- Show all incidents
- Show only incidents with GPS coordinates

Filter by volume (gallons):
 10,000 - 1,000,000+ gal.

Minimum:

Maximum:



Filter by date:
 01/01/2007 - 03/30/2011

Start:

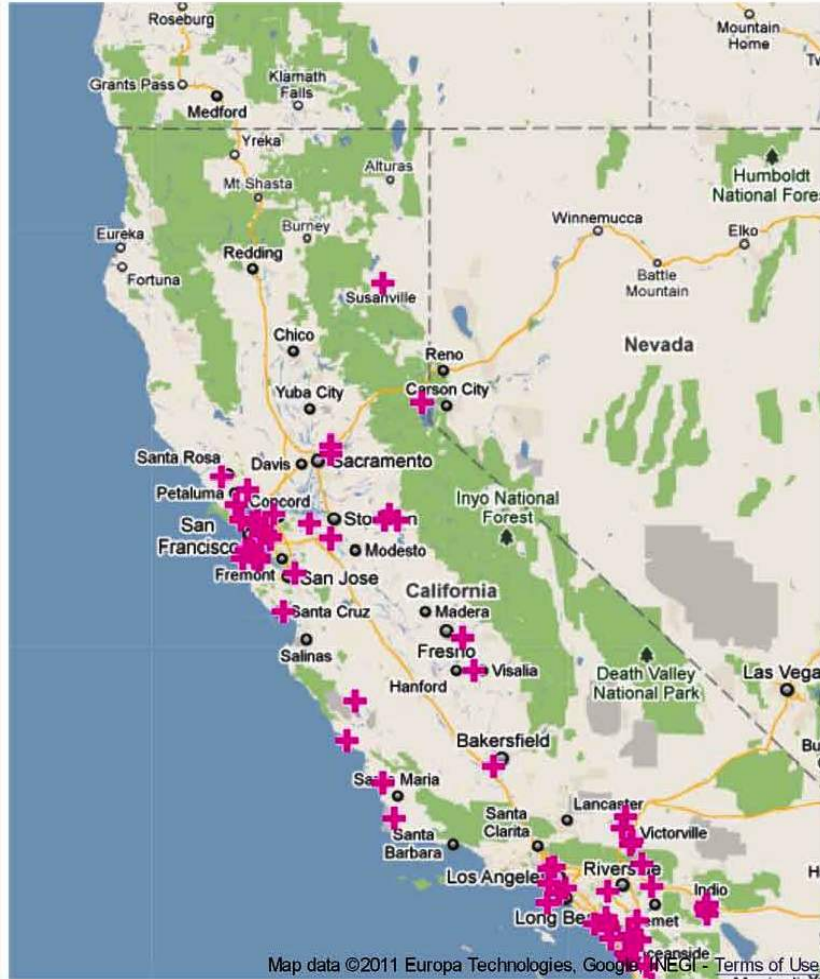
End:

SANITARY SEWER OVERFLOWS: 01/01/2007 - 03/30/2011

Spill type: + [Category 1](#) ●
[Category 2](#)

Click on a map icon for incident information.

Note: Map does not include spills from sewage treatment plants.



- Show all incidents
- Show only incidents with GPS coordinates

Filter by volume (gallons): 100,000 - 1,000,000+ gal.

Minimum:

Maximum:

Filter by date: 01/01/2007 - 03/30/2011

Start:

End:

ATTACHMENT B:**Navy SSOs at Camp Pendleton (data compiled by San Diego Coastkeeper) – SSOs Reaching U.S. Waters**

Overall Viola- tion Number	SSO Reaching Surface Water Violation Number	Violation Date	Spill Volume (gal)	Volume Reaching U.S. Waters (gal)	Reported Spill Cause	I.D. Number
1	A-1	November 15, 2006	250,000	250,000	Illicit connection of newly refurbished office restrooms to a storm drain pipe instead of to the sanitary sewer collection system	648687
2	A-2	January 24, 2007	500	500	root intrusion	646309
3	A-3	February 7, 2007	88,000	68,000	Manhole cover deteriorated. Cover fell into manhole and rocks and debris fell into manhole and blocked pipe	646873
4	A-4	August 26, 2007	80	25	Pump station failure when station lost power during lightning storm	656404
5	A-5	October 5, 2007	3,000	400	construction/ maintenance crew error	704800
6	A-6	October 21, 2007	7,500	6,300	root intrusion	706610
7	A-7	November 28, 2007	3,000	30	Pipe structural problem/failure	708546
8	A-8	November 30, 2007	500	500	rainfall exceeded design	708570

Overall Violation Number	SSO Reaching Surface Water Violation Number	Violation Date	Spill Volume (gal)	Volume Reaching U.S. Waters (gal)	Reported Spill Cause	I.D. Number
9	A-9	January 9, 2008	30,240	25,240	pipe failure following erosion from rains	711132
10	A-10	January 13, 2008	2,500	100	vandalism	711327
11	A-11	January 16, 2008	1,500	200	Pipe structural problem/failure	711443
12	A-12	January 23, 2008	200	150	grease deposition	711719
13	A-13	May 7, 2008	337	237	root intrusion	717111
14	A-14	July 14, 2008	169	169	flow exceeded capacity	722762
15	A-15	September 6, 2008	120	20	grease deposition	726015
16	A-16	October 31, 2008	400	250	grease deposition	728784
17	A-17	March 23, 2009	47,915	42,415	pump station failure	735464
18	A-18	July 8, 2009	20	20	collapsed pipe blocked gravity main	741905
19	A-19	January 17, 2010	3,000	3,000	grease deposition	748482
20	A-20	January 22, 2010	3,000	3,000	maintenance crew error	748733
21	A-21	February 22, 2010	7,500	7,500	debris	749812
22	A-22	October 5, 2010	25	25	pump station failure	757422
23	A-23	December 21,	4000	4,000	rainfall exceeded design	760231

Overall Violation Number	SSO Reaching Surface Water Violation Number	Violation Date	Spill Volume (gal)	Volume Reaching U.S. Waters (gal)	Reported Spill Cause	I.D. Number
		2010				
24	A-24	December 22, 2010	12,000	12,000	rainfall exceeded design	760240
25	A-25	December 30, 2010	250	250	pipe failure following erosion from rains	760290
26	A-26	January 27, 2011	200	50	debris	762328
TOTAL				424,381		

ATTACHMENT C:**Navy SSOs at Camp Pendleton (data compiled by San Diego Coastkeeper) – Other SSOs**

Overall Violation Number	Additional SSO Violation Number	Date of Violation	Spill Volume (gallons)	Reported Spill Cause	ID Number
27	B-1	January 25, 2007	250	root intrusion	646310
28	B-2	February 20, 2007	2,000	pump station failure	647264
29	B-3	February 21, 2007	10	obstruction of toilet paper and body wipes	647245
30	B-4	March 9, 2007	100	Contractor error	647853
31	B-5	March 29, 2007	75	operator error	648704
32	B-6	April 6, 2007	293	Root intrusion	649215
33	B-7	April 10, 2007	70,000	Pump #2 faulted and tripped the main MCC breaker.	649299
34	B-8	April 16, 2007	600	Force main was connected to a sewage line that was still connected to the old headworks, which overflowed when the force main was placed in service.	649629
35	B-9	May 1, 2007	30	Blockage in the main sewer line	650084
36	B-10	May 1, 2007	200	Cracked cap of a 1" PVC.	650882
37	B-11	June 5, 2007	500	debris blockage	651599
38	B-12	July 9, 2007	50	unknown	654037

Overall Violation Number	Additional SSO Violation Number	Date of Violation	Spill Volume (gallons)	Reported Spill Cause	ID Number
39	B-13	July 17, 2007	200	A flapper valve installed in the manhole failed to open and caused a back up	654413
40	B-14	September 2, 2007	5	Power failure to pump station	657220
41	B-15	October 12, 2007	20	root intrusion	705778
42	B-16	October 17, 2007	15	debris	705789
43	B-17	November 13, 2007	600	pipe structural problem/failure	707900
44	B-18	December 13, 2007	15	pipe structural problem/failure	709533
45	B-19	January 15, 2008	200	pump station failure	711440
46	B-20	January 16, 2008	15	root intrusion	711441
47	B-21	January 17, 2008	8,288	debris	712173
48	B-22	February 21, 2008	100	root intrusion	714113
49	B-23	April 3, 2008	35	debris	715782
50	B-24	April 16, 2008	120	root intrusion and debris	716262
51	B-25	April 17, 2008	4	debris	716435
52	B-26	April 29, 2008	15	maintenance contractor error	717025
53	B-27	June 25, 2008	25	pipe structural problem/failure	720721
54	B-28	July 30, 2008	30	root intrusion	724004
55	B-29	August 21, 2008	400	debris	725115
56	B-30	September 10, 2008	300	root intrusion	726016

Overall Violation Number	Additional SSO Violation Number	Date of Violation	Spill Volume (gallons)	Reported Spill Cause	ID Number
57	B-31	September 22, 2008	150	pipe structural problem/failure	727314
58	B-32	October 21, 2008	20	pipe structural problem/failure	728680
59	B-33	October 24, 2008	300	A heavy equipment vehicle error	728564
60	B-34	October 30, 2008	150	debris	729441
61	B-35	December 10, 2008	100	maintenance contractor error	730524
62	B-36	January 27, 2009	9,736	maintenance crew error	732902
63	B-37	March 30, 2009	500	Pressure gauge became disconnected from a discharge line	735842
64	B-38	March 31, 2009	1,716	debris	736849
65	B-39	April 1, 2009	1	pipe structural problem/failure	735867
66	B-40	May 11, 2009	200	debris--rags	737915
67	B-41	June 6, 2009	25	debris	739820
68	B-42	July 24, 2009	200	resident flushed faulty toilet during maintenance event	742213
69	B-43	September 22, 2009	200	maintenance crew error	745532
70	B-44	October 1, 2009	5	maintenance contractor error	745533
71	B-45	October 9, 2009	40	maintenance contractor error	746365
72	B-46	October 29, 2009	200	root intrusion	746428
73	B-47	November 5, 2009	25	debris	747656
74	B-48	November 30, 3009	3	operator error	747658

Overall Violation Number	Additional SSO Violation Number	Date of Violation	Spill Volume (gallons)	Reported Spill Cause	ID Number
75	B-49	December 11, 2009	2	debris	748377
76	B-50	December 29, 2009	2	debris	751335
77	B-51	January 12, 2010	500	grease deposition	748379
78	B-52	March 15, 2010	100	root intrusion	751188
79	B-53	March 15, 2010	15	construction crew error	751193
80	B-54	March 16, 2010	20	pipe structural problem/failure	751197
81	B-55	March 22, 2010	125	O ring on bypass pipe failed	751198
82	B-56	May 25, 2010	1,000	maintenance contractor error	752790
83	B-57	June 2, 2010	200	grease deposition	753067
84	B-58	June 30, 2010	8,800	maintenance contractor error	754380
85	B-59	July 7, 2010	5	maintenance crew error	754701
86	B-60	July 23, 2010	5,350	maintenance contractor error	755486
87	B-61	July 26, 2010	50	pipe structural problem/failure	755486
88	B-62	July 29, 2010	1,528	maintenance contractor error	755626
89	B-63	August 15, 2010	20	debris--rags	756016
90	B-64	August 18, 2010	400	operator error	756285
91	B-65	August 31, 2010	10	debris	75678
92	B-66	September 18, 2010	150	pipe structural problem/failure	757058
93	B-67	September 28, 2010	12,000	maintenance contractor error	757299
94	B-68	October 7, 2010	50	debris	757812
95	B-69	October 19, 2010	100	lift station pumps stopped working after power outage	758152

Overall Violation Number	Additional SSO Violation Number	Date of Violation	Spill Volume (gallons)	Reported Spill Cause	ID Number
96	B-70	November 3, 2010	40	debris	758356
97	B-71	November 8, 2010	50	debris	758425
98	B-72	November 17, 2010	50	debris	759095
99	B-73	January 6, 2011	500	debris	761179
100	B-74	February 2, 2011	1,000	Heavy equipment vehicle error	762782
TOTAL			130,133		

**ATTACHMENT D: SSO Closes Ocean Beach, San Diego, December 2010
(News image captured by San Diego Coastkeeper)**



ATTACHMENT E:

Letter from California Coastkeeper Alliance and Heal the Bay to SWRCB, "Review and Update of the General Waste Discharge Requirements for Sanitary Sewer Systems" (Sept. 14, 2010)

Letter from California Coastkeeper Alliance to Waste Discharge Requirements Unit, SWRCB, "SSO Reduction Program Review and Update" (Oct. 19, 2009)



September 14, 2010

Charles Hoppin, Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
c/o Jeanine Townsend, Clerk to the Board

VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov

Re: 9/21/2010 Board Meeting: Item #9, Review and Update of the General Waste Discharge Requirements for Sanitary Sewer Systems

Dear Chair Hoppin and Board Members:

On behalf of the California Coastkeeper Alliance, which represents 12 Waterkeeper organizations spanning the coast from the Oregon border to San Diego, and Heal the Bay, we welcome the opportunity to submit these comments with regard to the above-described Informational Item on sanitary sewer overflows (SSOs). We have commented extensively on this issue over the past five years; in addition, California's Waterkeepers have been actively involved in the attempt to curtail SSOs in their communities, and Heal the Bay has led the state in reporting of beaches closed due to SSOs. In light of the latest information on SSOs, we reiterate our earlier comments (*see* October 19, 2009 letter attached) and make the following findings and recommendations with regard to the issues raised in the Item #9 Staff Report:

- SSOs continue, continue to reach surface water, and continue to cause problems in the face of relatively little enforcement effort;
- A two-tier NDPES/WDR permit needs to be issued to reflect ongoing discharges to surface water, and must include a straight prohibition on SSO discharges;
- Mandatory reporting should be required for all private laterals;
- Staff should explicitly explain what is meant by "streamlining" reporting for Category 2 SSOs, as proposed in the notice linked above; and
- Private collection systems need to be regulated.

These issues are discussed briefly below. Given that the WDR was adopted over four years ago, we look forward to further discussion and swift action to update and strengthen the permitting system and bring an end to the ongoing spilling of sewage into California's waterways and streets.

SSOs continue, continue to reach surface water, and continue to cause problems in the face of relatively little enforcement effort.

The State Board's own most recent assessment of SSOs since reporting requirements became effective in January 2007 indicates that over 55 million gallons of sewage have been spilled in over 15,700 SSOs since the WDR has been in place.¹ Of this, **only 25% of spilled sewage was recovered**, and **82% of the volume of sewage spilled in SSOs reached surface water.**² In other words, the vast majority of the volume of sewage spilled in SSOs makes it to surface waters, and the majority of that (75% on average) is never recovered. As noted in our appended letter dated October 2009, SSOs have real impacts. Among other things, they have repeatedly caused closures of state waters heavily used for water contact recreation such as swimming, surfing, wading, kayaking, diving and other sports. For example, Heal the Bay revealed 364 days of beach closures in Los Angeles, Orange and San Diego Counties from April 2008 to April 2009 from 95 separate SSOs.³

Despite the fact that 78% of SSOs are caused by "common and manageable causes" such as "root intrusion, grease deposition, [and] debris,"⁴ Regional Board inspection and enforcement effort against these violators has either been completely absent or grossly inadequate to curtail SSOs. The Water Board's most recent Annual Enforcement Report states that of 1,069 facilities regulated under the SSO WDR, **an average of zero percent statewide were inspected in 2009.**⁵ Despite dozens of spills over 10,000 gallons in 2009, and many more over the Office of Emergency Services (now Cal EMA) reporting threshold of 1,000 gallons,⁶ the 109 enforcement actions in 2009 included only one cease and desist order and five administrative civil liability orders.⁷ No cleanup and abatement orders were issued despite staff assessment that only 25% of spill volumes on average are recovered.

Further, even well over four years after WDR adoption, "[c]ompliance rate information on collection systems is not reliable."⁸ Limited available compliance data for SSMP element certification demonstrates that compliance is at "approximately 60%,"⁹ leaving the reliability of fully 40% of the state's collection systems in question. Finally, data on the percent of WDR enrollees monthly reporting their SSO or No Spill certifications peaked at 80% but has since

¹ SWRCB, "Statewide Sanitary Sewer Overflow Reduction Program: Annual Compliance Update," p. 12 (May 2010), available at: http://www.waterboards.ca.gov/board_info/minutes/2010/may/051810_edreport.pdf, Appendix 1 ("2010 SSO Update"). Private lateral spills add another 2,244 events totaling almost 1.6 million gallons spilled. *Id.* See also attached maps as illustrations of the scope and magnitude of spills since reporting began.

² *Id.* The 82% figure was calculated by simply dividing the 45,381,460 gallons of SSO-released sewage reaching surface waters by the total (55,340,238 gallons) sewage spilled; this figure is also reflected in the Staff Report.

³ See <http://www.healthebay.org/brcv2/>.

⁴ 2010 SSO Update, pp. 15-16.

⁵ SWRCB, "2009 Annual Enforcement Report," Table 30, p. 48 (undated but presented to the SWRCB at their Sept. 7, 2010 Board Meeting) ("2009 Enforcement Report"), available at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/annl_rpt2009.pdf.

⁶ See SSO Incident Map at http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml.

⁷ 2009 Enforcement Report, Table 40, p. 55.

⁸ *Id.*, p. 77.

⁹ *Id.*, p. 100.

*declined,*¹⁰ belying the “new regulatory system” justification for heightened regulatory action (see below).

Given the lack of enforcement of the SSO WDR, declining rates of compliance, high volume of sewage spilled reaching surface water (82% of the volume spilled), and continued spilling of sewage onto the state’s streets and into its waters from SSOs, further regulatory action is needed to protect the public from this ongoing health and environmental threat.

A joint NPDES/WDR needs to be issued to reflect ongoing discharges to surface water, and must include a straight prohibition on SSO discharges.

As we have discussed in detail in numerous comment letters on the draft and final SSO WDR (including the attached letter dated October 2009), the federal Clean Water Act *requires* that the SSO WDR be styled at a minimum as a two-tiered WDR/NPDES permit, given that many millions of gallons of SSO-released sewage regularly reach surface waters each year. In brief, CWA section 301(a) provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharger is in compliance with the terms of an NPDES permit. The sewer lines, manholes, and pump stations from which SSOs originate are all point sources within the meaning of the CWA.¹¹ Accordingly, any POTWs, including “satellite collection systems” that route sanitary sewage to regional treatment facilities, are all “persons” within the meaning of the CWA. By ignoring their CWA responsibility, the SWRCB is doing a disservice not only to the people of California and the waters of the state, but it is also doing a disservice to POTWs by exposing them to added CWA liability for failure to meet the duty to apply and obtain NPDES permit authorization imposed by 40 C.F.R. § 122.21(a).

As noted in the Staff Report, key advantages of adopting an NPDES/WDR hybrid permit include simplifying and enhancing enforcement. This is particularly important given the almost complete lack of enforcement to date and resulting drop in monthly reporting, as described above. In addition, the just-released 2009 Enforcement Report states that:

Recent audits revealed that some dischargers are violating the Sanitary Sewer Order and are underestimating the volume of sewage spilled and/or failing to report SSOs. Further, there are numerous sanitary sewer collection systems in the State that have not yet enrolled for coverage under the Sanitary Sewer Order.¹²

Under an NPDES permit, failure to comply with mandatory reporting requirements would be enforceable under the Clean Water Act (clearly needed given the above information and drop-off in reporting). Also enforceable under the CWA would be failure to comply with required sewage spill prevention efforts. Enforcement of these essential program elements currently is severely and unnecessarily hobbled by the existing, WDR-only regulatory process.

The “issues” raised in the Staff Report with adopting the permit under the Clean Water Act do not apply to the recommended NPDES/WDR hybrid. First, the assertion that “not all

¹⁰ *Id.*

¹¹ See 33 U.S.C. § 1362(14).

¹² 2009 Enforcement Report, p. 100.

SSOs result in a discharge to surface water” can be addressed by facilities that have never so discharged self-selecting to be regulated under the WDR, leaving the opportunity for facilities that do release sewage to surface waters to select the appropriate NPDES permit. This is an option that the Water Board is well familiar with in other contexts,¹³ again as described at length in our past comment letters.

Second, given that the Water Board has now almost three full years of SSO reporting to review, it is simply untenable to assert the “potential” argument for the many facilities that we *know* are discharging sewage to surface water, with the majority of such spills never recovered. The NPDES permit option allows those facilities discharging tens of thousands to millions of gallons of sewage into surface waters to select that appropriate regulatory option, which will help ensure that *all* of the provisions of the permit are fully enforced. And third, the assertion that satellite systems “have not typically been regulated” and that the four-year old program is still in an “early stage” both fail as defenses to mandatory application of the Clean Water Act. Indeed, by these arguments, *no* dischargers would have been regulated, since all at some point were newly brought under the Act.

Finally, not only should the WDR be adopted as a two-tier NPDES/WDR permit, the prohibition against SSOs in that permit should be expanded significantly. Currently the SSO WDR prohibition provision reads as follows:

PROHIBITIONS

1. Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
2. Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.

As discussed at length in our past comment letters, including the attached October 2009 letter, the prohibition provision should be expanded to expressly prohibit *all* SSOs to *waters of the State*, including groundwater and including all SSOs from sewage collection systems. The limitation to “nuisance” spills that do not reach waters of the United States prevents appropriate action to ensure full compliance with operations and maintenance practices that would prevent further spills, including spills to waters of the U.S. This expansion of the SSO prohibition would not be inconsistent with adoption of the permit as a two-tier NPDES/WDR permit, as violations of the prohibition of discharges to waters of the U.S. could be enforced under the Clean Water Act, and violations of other releases could be addressed under Porter-Cologne.

¹³ The Water Board has many years of extensive experience with implementation of such a hybrid permit. *See, e.g.*, Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (General Permit)/Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (1997), available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmnt.pdf.

Mandatory reporting should be required for all private laterals

We agree with the Staff Report that the WDR has “created disincentives for enrollees to report PLSDs” (private lateral sewage discharges) by making such reporting optional. We accordingly agree with the Staff Report that reporting of PLSDs should be mandatory in order to better assess spills, level the playing field and identify key problem areas.

Staff should explicitly explain what is meant by “streamlining” reporting for Category 2 SSOs

We agree with the Staff Report that *all* spills are relevant because they indicate failures in proper system functioning and “provide valuable information regarding the physical condition and adequacy of collection system operation and maintenance.” Given this reasoning, staff’s recommendation that reporting requirements for Category 2 SSOs be “streamlined” must be better explained and justified. While reporting requirements should be clear, data needed to assess system functioning and adequacy cannot be eliminated merely for the sake of “streamlining.” We look forward to further information on this recommendation that indicates how changes in reporting will still provide the information needed for proper oversight.

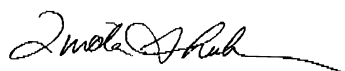
Private collection systems need to be regulated

We agree with the Staff Report that private collection systems should be regulated. This is needed to provide equity, level the playing field, ensure adequate facility maintenance, and most importantly to prevent further sewage from being spilled from these facilities.

* * *

Thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to contact us.

Sincerely,



Linda Sheehan, Executive Director
California Coastkeeper Alliance
510-770-9764
lsheehan@cacoastkeeper.org



Mark Gold, President
Heal the Bay
310-451-1500
mgold@healthebay.org

Attachments:

- Map of Sanitary Sewer Overflows over 100,000 Gallons since January 2007 (source: http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml)
- Map of Sanitary Sewer Overflows over 1,000,000 Gallons since January 2007 (source: http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml)
- Comment Letter from CCKA to SWRCB Waste Discharge Requirements Unit, “SSO Reduction Program Review and Update” (Oct. 19, 2009)

State Water Resources Control Board Sanitary Sewer Overflow (SSO) Incident Map

http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml

Sanitary Sewer Overflows over 100,000 Gallons 1/1/07-6/9/10

Sanitary Sewer Overflow (SSO) Incident Map

Background Map

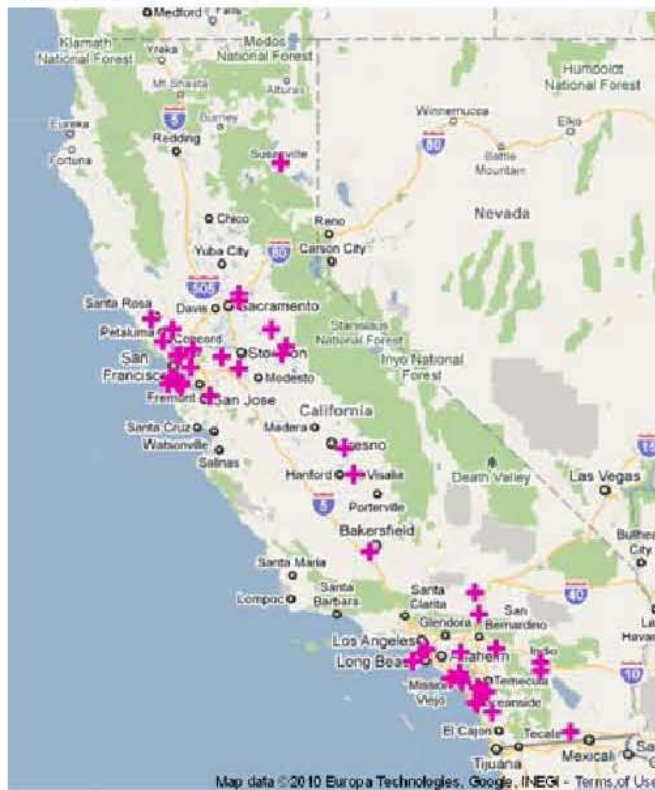
**SANITARY SEWER OVERFLOWS: 01/01/2007
- 09/13/2010**

Spill type: + [Category 1](#) ●

[Category 2](#)

Click on a map icon for incident information.

Note: Map does not include spills from sewage treatment plants.



- Show all incidents
- Show only incidents with GPS coordinates

Filter by volume (gallons):
100,000 - 1,000,000+ gal.

Minimum:

Maximum:

Filter by date:
01/01/2007 - 09/13/2010

Start:

End:

Filter by Agency:
(All)

State Water Resources Control Board Sanitary Sewer Overflow (SSO) Incident Map

http://www.waterboards.ca.gov/water_issues/programs/sso/sso_map/sso_pub.shtml

Sanitary Sewer Overflows over 1,000,000 Gallons 1/1/07-6/9/10

Sanitary Sewer Overflow (SSO) Incident Map

Background Map

SANITARY SEWER OVERFLOWS: 01/01/2007 - 09/13/2010

Spill type: [Category 1](#)
[Category 2](#)

Click on a map icon for incident information.

Note: Map does not include spills from sewage treatment plants.



- Show all incidents
- Show only incidents with GPS coordinates

Filter by volume (gallons):
1,000,000 - 1,000,000+ gallons

Minimum:

Maximum:

Filter by date:
01/01/2007 - 09/13/2010

Start:

End:

Filter by Agency:
(All)



PO Box 3156, Fremont, CA 94539
(510) 770 9764 www.cacoastkeeper.org

October 19, 2009

Waste Discharge Requirements Unit
c/o James Fischer
California State Water Resources Control Board
Executive Office
1001 I Street, 15th Floor
Sacramento, CA 95814
VIA electronic mail: SSOcommentletters@waterboards.ca.gov

Re: Comment Letter—"SSO Reduction Program Review and Update"

Dear Mr. Fischer:

The California Coastkeeper Alliance (CCKA) represents 12 Waterkeeper organizations spanning the coast of California from the Oregon border to San Diego. CCKA and its member Waterkeepers have regularly been active statewide in advocating strongly for an end to sewage releases into waters of the state, including through sanitary sewer overflows ("SSOs"). CCKA additionally was active in the process of developing the current Statewide General Waste Discharge Requirements for SSOs. Accordingly, CCKA, as also represented by Environmental Advocates, is pleased to provide these comments on the State Water Resources Control Board ("State Board")'s review of its Sanitary Sewer Overflow Reduction Program ("SSO Reduction Program" or "Program") and Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ) ("the WDR").

We greatly appreciate the State Board's initiative in reviewing the SSO Reduction Program and the WDR. The SSO Reduction Program and the WDR include several important and useful measures and requirements that are helping to address California's very serious SSO problems. Commendable components of the current Program and WDR include: a statewide, consistent SSO reporting requirement, a requirement for all publicly owned treatment works (POTWs) to adopt Sewer System Management Plans (SSMPs) with specific components, and a prohibition on SSOs.

Despite these positive provisions, SSOs nonetheless remain a very daunting statewide problem that continue to cause serious public health risks and harm water quality. The State Board itself acknowledges that 28 million gallons of sewage have been spilled to surface waters in over 1,900 SSOs since the WDR has been in place, causing numerous beach closures and

undocumented human health and wildlife impacts. As such, our first and chief request is that the WDR should be adopted as a National Pollutant Discharge Elimination System (NPDES)/WDR Permit.

The individual provisions of the SSO Reduction Program and the permit program (currently a WDR) also need to be improved to increase the Program's and permit's effectiveness at solving the ongoing SSO problem. Specifically, the California Waterkeepers urge the following changes to the existing specific provisions:

- (1) The WDR's Prohibition on SSOs must be expanded to include SSOs to state waters (including groundwater), storm drains, and land locations.
- (2) The WDR should be amended to regulate privately operated and/or privately owned sewage systems, not just publicly owned systems.
- (3) The WDR should be modified to regulate combined sewer systems.
- (4) The WDR should be amended to regulate and restrict "bypass" discharges of sewage from treatment plant outfalls; *i.e.*, the discharge of sewage that has not been subjected to full secondary treatment.
- (5) The State Board and Regional Boards should improve their SSO enforcement by:
(a) giving the highest enforcement priority to bringing permittees into immediate compliance with the basic information reporting requirements of the WDR; (b) focusing as their next priority on issuing cease and desist orders ("CDOs") or Cleanup and Abatement Orders ("CAOs") to permittees with the most significant SSO problems; (c) in consultation with appropriate experts, setting a benchmark standard for annual SSO rates per 100 miles of sewer lines and annual volume of sewage spilled per 100 miles of sewer equal to well-performing systems, and targeting enforcement toward permittees not meeting these requirements; (d) issuing administrative civil liability orders (ACLs) *in conjunction with* CDOs or CAOs in appropriate cases, rather than issuing ACLs as the sole enforcement response; and (e) bringing judicial actions against recalcitrant violators.
- (6) The SSO response provisions of the WDR should be amended to add more specificity on response measures and to clarify that all SSOs should be responded to promptly and appropriately (*i.e.*, at a level commensurate with the public health risks they pose).
- (7) The existing online SSO reporting fields/WDR reporting requirements should be improved by: (a) mandating reporting of private lateral line SSOs; (b) adding specific information on spill volume calculation methodology; (c) clarifying for reporting purposes what constitutes a "surface water" or "a drainage channel"; (d) requiring more specificity in reporting what waters have been affected by SSOs; and (e) mandating that SSO reporting identify whether SSOs have reached any waters used for water contact/recreation.
- (8) In addition to measures discussed above, the State Board should amend existing Sewer System Management Plan (SSMP) elements by adding requirements for: (a) development of a private lateral sewer line inspection and replacement program; (b) development of specific measures to address SSO risks associated with force main sewer lines; (c) development by satellite sewer collection systems, and the main systems to which they discharge, of joint plans for

managing peak wet weather flows; (d) inclusion in capital improvement plans (CIPs) of analysis of the expected useful life of system assets and a schedule for replacing assets before the end of their expected useful life; (e) specific, separate design and performance standards for the rehabilitation and repair of gravity sewer lines (including both main lines and lateral lines), force main sewer lines, and pump stations; (f) more specific provisions as to the nature of the system capacity design, evaluation and planning that must be performed; and (g) financial planning that compares the annual budget needed to implement the SSMP versus the resources available to the permittee, and that ensures that adequate financial resources are available to fund the SSMPs.

- (10) The WDR should be amended to mandate sanitary sewer system operator certification.
- (11) The State Water Board's online sewage spill incident maps should be amended to include additional categories of large spills. The maps should include an overlay of local water bodies, public parks, and schools. The maps' date filter also should default to the beginning of the WDR database rather than just the last few months.
- (12) The WDR should improve its SSO definition to specify that any SSO from a location other than a sewage treatment plant constitutes an SSO.

We discuss these recommendations in more detail below.

I. The State Has a Serious SSO Problem That Significantly Threatens Public Health.

The magnitude of the statewide SSO problem clearly mandates adjustments and improvements to the SSO Reduction Program and the WDR.

The State Board's own recent SSO report indicates that 28 million gallons of sewage have been spilled to surface waters in over 1900 SSOs since the WDR has been in place.¹ SSOs have repeatedly caused closures of state waters that are heavily used for water contact recreation such as swimming, surfing, wading, kayaking, diving and other sports. For example, a recent survey by the environmental group Heal the Bay revealed 364 days of beach closures in Los Angeles, Orange and San Diego Counties from April 2008 to April 2009 from 95 separate SSOs, including the following beaches:

Los Angeles County: Dockweiler Beach, Venice Beach, and several stretches of Long Beach's City Beach.

Orange County: Bayshore Beach in Newport Bay, Baby Beach in Dana Point Harbor, San Clemente, several of Laguna Beach beaches such as Crescent Bay Beach, Laguna Main Beach, Victoria Beach, and Aliso Creek Beach.

¹ See State Board, Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report at 14 (figure 9) (May 2009) ("Annual SSO Report"), available at: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf.

San Diego County: Coronado's Silver Strand, Mission Bay Beach, Imperial Beach, and Tijuana Sloughs (a popular surfing area).²

The State's newspapers have repeatedly published stories of the public's waters being contaminated by SSOs.³ Several cities are chronic SSO violators. A small sample of violators includes:

- City of Laguna Beach: from Jan 2005 to August 09, Laguna Beach spilled 733,430 gallons of raw sewage, most of which reached surface waters.
- City of Santa Barbara: Santa Barbara Channelkeeper informed the Central Coast Regional Board in October 2008 that the City of Santa Barbara had 59 SSOs in a 22 month period in 2007 and 2008. The Regional Board wrote to Channelkeeper acknowledging that Santa Barbara had more SSOs per 100 miles of sewer than any other similarly sized collection system in the Central Coast region. Many of these spills flowed into local waterways.
- City of Oakland: has had 524 SSOs over the past five years.
- City of San Jose: has had 518 SSOs since the inception of the WDR SSO database.
- City of Palo Alto: has had 455 SSOs since the inception of the WDR SSO database.
- City of Fairfield: has had 163 SSOs since the inception of the WDR SSO database.

Regional Board enforcement against these chronic violators has either been completely absent or grossly inadequate to curtail their SSOs.

Illicit sewage discharges from illegal connections also remain an unaddressed problem. For example, in March 2008, Santa Barbara Channelkeeper discovered raw sewage flowing into a local creek. Further investigation revealed that the sewage came from a medical clinic bathroom that was plumbed to discharge directly to the creek. In May 2009, Santa Barbara

² See <http://www.healthebay.org/brc/closures.asp>.

³ A small sample of examples includes these several articles in the *Orange County Register* and the *Los Angeles Times* concerning beach closures in Laguna Beach and San Clemente:

- "Laguna Shoreline Remains Closed Today After Sewage Spill," 9-29-08, <http://www.ocregister.com/articles/city-officials-station-2209966-sewage-beach>
- "Laguna Sewage Spill Still Snarls Traffic on Coast Highway," 4-18-08, <http://www.ocregister.com/articles/beach-laguna-coast-2020629-south-through>
- Some OC beaches to stay closed through Friday because of sewage spill, 10-31-08, <http://articles.latimes.com/2008/oct/31/local/me-sewage31>
- "Laguna Beach Ordered To Pay \$70,000 for Massive Sewage Spill," 8-26-09, <http://www.ocregister.com/articles/city-sewer-spill-2541708-october-state>
- "San Clemente Beach Opens After Monday Closure," 2-15-06, http://www.ocregister.com/ocregister/homepage/abox/article_1001345.php.

This sample further includes several articles in the *Los Angeles Times* concerning beach closures in Long Beach:

- "Another Long Beach Sewage Spill Forces Beach Closures." Byline: "The 20,000-gallon sewage flow affects beaches from Alamitos Avenue to 72nd Place. It is the fourth spill this year to close beaches."

<http://articles.latimes.com/2008/aug/14/local/me-sewage14>

- "Long Beach Sewage Spill Keeps Swimmers Out of the Water," 07-27-2009, <http://latimesblogs.latimes.com/lanow/2009/07/long-beach-sewage-spill-keeps-swimmers-out-of-water.html>.

Channelkeeper again discovered raw sewage flowing in a local stream. Further investigation revealed that an office building toilet was directly plumbed to discharge into the stream.

II. The WDR Must Be Revised to Be Issued as an NPDES/WDR Permit.

The most serious shortcoming of the WDR is that has not also been issued as an NPDES Permit under the federal Clean Water Act (CWA). The issuance of a WDR that is not also an NPDES permit renders the WDR's requirements unenforceable by the U.S. Environmental Protection Agency ("EPA") and citizens via the CWA's citizen suit provision. By blocking citizen suit enforcement of the WDR, the State Board effectively ignores "Congress' clear intention . . . that citizen plaintiffs are not to be treated as 'nuisances or troublemakers' but rather as 'welcomed participants in the vindication of environmental interests.'" *Proffitt v. Municipal Auth. of the Borough of Morrisville*, 716 F. Supp. 837, 844 (E.D. Pa. 1989) (quoting *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2d Cir. 1976)). The right of access to the courts allows citizens the opportunity for meaningful participation in societal decisions concerning whether raw sewage is kept out of the public's waters. Citizen suits provide citizens the opportunity to bring their views, backed by legal and technical experts, before a neutral body whose only obligation is to enforce the law. From the public interest group perspective, preservation of this public participation right is paramount—which requires that the WDR also be made an NPDES permit.

The CWA requires the Regional Water Quality Control Boards and/or the State Board to issue NPDES permits to all POTWs that have SSOs that reach waters of the United States in California. As the State Board itself acknowledges, many millions of gallons of sewage flow each year into surface waters within the purview of the CWA. By issuing a WDR only, the State Board is ignoring this duty under federal law.

CWA section 301(a) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of an NPDES permit. 33 U.S.C. §1311(a). The CWA further defines the discharge of a pollutant as the discharge from a point source to a navigable water, which the CWA further defines as "waters of the United States." 33 U.S.C. § 1362(12), (7). The Pacific Ocean, all tidal water bodies; lakes, rivers, streams, and wetlands that flow to the ocean or are used in interstate commerce, any tributaries to those waters, or wetlands adjacent to such waters are all "waters of the United States." See 33 C.F.R. § 328(a); 40 C.F.R. § 230.3(s). The sewer lines, manholes, and pump stations from which SSOs originate are all point sources within the meaning of the CWA. See 33 U.S.C. § 1362(14). Accordingly, any POTWs, including "satellite collection systems" that route sanitary sewage to regional treatment facilities but do not directly discharge treated sewage to waters, are all "persons" within the meaning of the CWA that have discharged pollutants to waters of the United States.

40 C.F.R. section 122.21(a) provides that "Any person who discharges pollutants ... and does not have an effective permit . . . must submit a complete application" for an NPDES permit.⁴ Under this U.S. EPA CWA regulation, all POTWs have a mandatory duty to apply for

⁴ Except in a few narrow specific circumstances not applicable here.

and obtain an NPDES permit regulating the discharge of pollutants to waters of the United States, including but not limited to SSOs from their collection systems.

Indeed, in remarks to the National Association of Clean Water Agencies on May 2, 2005, U.S. EPA confirmed that all POTWs with SSOs that reach waters of the United States have a duty to apply for NPDES permits (see attached article published in BNA-Environment Reporter on May 6, 2005). As this BNA article indicates, U.S. EPA has circulated a draft guidance document so stating. To retain its EPA authorization to administer an NPDES Program for the State of California, the State Board must “exercise control over activities required to be regulated” by the CWA and EPA regulations and issue NPDES permits to facilities requiring such permits. 40 C.F.R. § 123.64(a)(2)(I); 123.25(a)(4). Thus, the State Board *cannot*, consistent with its status as a state agency authorized by EPA to administer an NPDES Permit Program, decline to regulate SSO discharges from POTWs to waters of the United States via the issuance of one or more properly framed NPDES Permit(s).

Again, the primary motivation for not issuing the WDR as an NPDES permit appears to be to insulate POTWs from EPA and citizen enforcement of the WDR under the CWA’s enforcement provisions. In fact, however, the State Board is doing a disservice to POTWs and subjecting them to added CWA liability for failure to meet the duty to apply and obtain NPDES permit authorization imposed by 40 C.F.R. § 122.21(a). For example, in 2008 San Francisco Baykeeper pursued citizen suit claims against the city of Hillsborough for failure to apply for and obtain NPDES permit coverage for their collection systems.

The California Waterkeepers are mindful of past contentions by permittees that the decision in *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 504-06 (2nd Cir. 2005) has called into question the State Board’s ability to require NPDES permit coverage for facilities without proof that they have actually discharged pollutants to waters of the United States, as opposed to merely having the potential to do so. The California Waterkeepers disagree that the *Waterkeepers* decision properly supports not making the WDR an NPDES Permit. At a minimum, nothing in *Waterkeepers* implies that it is improper to require NPDES permit authorization for any POTW that has actually had an SSO that has reached waters of the United States. The State Board now has two and a half years of SSO reporting from over 1,000 sewage system authorities. The State Board’s California Integrated Water Quality System (“CIWQS”) database indicates that *nearly all* sewage collection systems reporting to the State Board have had SSOs that have reached surface waters.⁵

If there are rare and exceptional cases of sewage collection systems that have not had SSOs to surface waters, this does not justify declining to issue the WDR as an NPDES permit. The simple solution is for the State Board to make the WDR both a Porter-Cologne Act permit *and* an NPDES permit, with the NPDES permit authorization extending to the subset of sewage collection system authorities that self-identify themselves as having discharged pollutants to waters of the United States. The State Board could specify a two-tier approach to the requirement to submit Notices of Intent (NOIs) to be covered by the WDR. First, the State Board could require POTWs that either discharge treated effluent directly to waters of the United

⁵ See http://www.swrcb.ca.gov/water_issues/programs/ciwqs/publicreports.shtml.

States or that have had SSOs that have reached waters of the United States to identify these facts in their NOI, together with a request for NPDES permit coverage. Second, the State Board could require that POTWs that do not discharge their treated effluents directly to waters of the United States, or that have never had an SSO that has reached waters of the United States, to identify these facts in their NOI, together with a request that they be given WDR rather than NPDES permit coverage.

* * *

The following comments relate to the existing provisions of the current WDR, which – with the recommended changes – could be effective in preventing SSOs under the required combined NPDES/WDR permit that we ask the State Board to adopt.

III. The WDR’s Prohibition Must Be Expanded.

The WDR currently only prohibits SSOs that reach waters of the United States and SSOs that cause public nuisance.⁶ State Board SSO WDR, Prohibitions ¶ C. The State Board SSO WDR’s prohibition provision should be expanded to further expressly prohibit: (a) all SSOs to waters of the State, including groundwater, and (b) all SSOs from the permittees’ sewage collection systems.

Many NPDES permits currently issued by Regional Boards include such prohibitions, and the State Board should not backslide from this approach. Indeed, two premier Regional Board SSO enforcement actions against the City of Los Angeles and City of San Diego relied on such permit conditions to bring successful enforcement and secure extensive SSO remedial measures. It is creating an unduly complicated and inconsistent regulatory regime for some individual NPDES permits and WDRs issued by some Regional Boards to include prohibitions on all sewage spills while the State Board’s SSO WDR omits a similar prohibition. It is further unfair and inimical to environmental protection to impose such restrictions on some POTWs while exempting others that lacked such specific individual permits. This is contrary to the stated purpose of the WDR which is, as it should be, to promote consistent statewide SSO regulation.

The State Board has authority for a broad SSO prohibition. The permittees’ sewage collection systems all constitute Publicly Owned Treatment Works (“POTWs”) as that term is defined by the CWA and accompanying EPA regulations. CWA § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. § 403.3. Specifically, a POTW includes all sewers, pipes and other conveyances that convey wastewater to a POTW’s WWTP. EPA regulations require that POTWs subject to CWA regulation be properly operated and maintained. 40 C.F.R. § 122.41(e). As sewage collection systems are part of the system/appurtenances used to collect and treat

⁶ The State Board has apparently taken the position that only SSOs that “affect an entire community or neighborhood” constitute nuisances, however. Annual SSO Report at 13 (May 2009), published at: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf. This unduly restrictive interpretation of when sewage releases constitute a “nuisance,” which as a separate matter needs to be revisited, makes it all the more important for the WDR to include a blanket prohibition on all SSOs, as discussed in this section.

sewage to meet CWA requirements, and as proper operation and maintenance of such systems would preclude SSOs, NPDES permits must prohibit SSOs. Furthermore, SSOs that do not directly reach waters, but overflow into public streets and other public places and back up into people's homes and businesses, *necessarily* pose nuisance public health threats that the State Board properly must regulate and seek to curtail.

Notably, past NPDES permits issued by various Regional Boards and permits issued by EPA have included such blanket prohibitions on SSOs.⁷ To protect the public health and welfare from the grave health risks and frequent potential property damage caused by SSOs to public streets, parks, residences and businesses, the State Board SSO WDR must be amended to follow the example of these permits and include a blanket prohibition on all SSOs. The State Board *cannot* continue to condone the spilling of raw sewage into people's homes, places of business, public streets, and other areas accessible to the public.

In addition, the WDR must include a separate and express prohibition on SSOs to all waters of the State, including groundwater as well as surface waters, to comply with the Porter-Cologne Water Quality Control Act in the California Water Code. The California Water Code precludes the discharge of raw sewage to waters of the State, and the WDR must reflect this. (California Water Code § 13264.)

In addition to not complying with applicable law, the existing narrow SSO prohibition in the State Board SSO WDR detracts from effective SSO enforcement. The SSO reporting

⁷ An example is NPDES Permit No. CA010991 issued by the Los Angeles Regional Board to the City of Los Angeles' Hyperion wastewater treatment plant and appurtenant collection system. Regional Board Order No. 94-021 ("the Hyperion Permit"). Condition IV.2 of the Hyperion Permit provides "Any discharge of wastes at any point other than specifically described in this order and permit is prohibited, and constitutes a violation thereof." The Hyperion NPDES permit describes the discharge of treated sewage from the ocean outfall downstream of the Hyperion treatment plant. Standard Provision B.7. further provides that "[a]ny "overflow" or "bypass" of facilities, including the "waste" collection system, is prohibited. . . ." The Hyperion Permit further defines an "overflow" to mean "the intentional or unintentional diversion of flow from the collection and transport systems, including pumping facilities." Hyperion Permit Standard Provision A.31. Together, these provisions made it clear that *all* SSOs from the Hyperion system are prohibited.

Additionally, Regional Board 2's existing NPDES permits to several East Bay sewage facilities provide contain the following SSO prohibition that is broader than the WDR's prohibition: "The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited." (City of Oakland, Sanitary Sewer Collection System, NPDES Permit No. CA0038512, Order No. R2-2004-0012, § A. Prohibitions, ¶ 1; City of Albany, Sanitary Sewer Collection System, NPDES Permit No. CA0038471, Order No. R2-2004-0009, § A. Prohibitions, ¶ 1; City of Alameda, Sanitary Sewer Collection System, NPDES Permit No. CA0038474, Order No. R2-2004-0008, § A. Prohibitions, ¶ 1; City of Berkeley, Sanitary Sewer Collection System, NPDES Permit No. CA0038466, Order No. R2-2004-0010, § A. Prohibitions, ¶ 1; City of Emeryville, Sanitary Sewer Collection System, NPDES Permit No. CA0038792, Order No. R2-2004-0011, § A. Prohibitions, ¶ 1; City of Piedmont, Sanitary Sewer Collection System, NPDES Permit No. CA0038504, Order No. R2-2004-0013, § A. Prohibitions, ¶ 1; Stege Sanitary District, NPDES Permit No. CA0038482, Order No. R2-2004-0014, § A. Prohibitions, ¶ 1).

Another example is the EPA-issued NPDES Permit (NPDES Permit No. HI0020877) to the City and County of Honolulu for the Honouliuli WWTP and related collection system. The Honouliuli NPDES permit contains express provisions prohibiting all unauthorized overflows of sewage, regardless of whether the spills reach waters of the United States. *See* Honouliuli Permit, Standard Provisions and Reporting Requirements ¶¶ B.7, C.2, and C.4.

information in the CIWQS database posted on the State Board’s website makes obvious that there is an endemic problem with accurate reporting of SSOs. Many spill reports from sewage system operators indicate large volume SSOs (hundreds of thousands to millions of gallons), with little to no of the spilled sewage recovered, and yet the reports still indicate that none of the spills reached waters. It is extremely unlikely that large volume SSOs that are not recovered have not flowed into waters. The SSO prohibition as drafted gives sewage systems incentive to slant their reporting to avoid showing that spills reached waters, given the faulty assumption that they may escape from liability if spills are not reported as reaching waters of the United States.

An additional problem with the prohibition is the lack of clear definition in current case law of the term “waters of the United States.” The U.S. Supreme Court’s recent fractured decision in *Rapanos v. United States*, 547 U.S. 715 (2006) leaves highly uncertain in some cases as to what is a water of the United States.⁸ The State Board’s current Water Quality Enforcement Policy aptly observes that “fair, firm and consistent enforcement depends on a foundation of solid requirements in law, regulations, policies, and the adequacy of enforceable orders. . . . The extent to which enforceable orders include *well-defined requirements* . . . affects the consistency of compliance and enforcement” (emphasis added).⁹ Given the current uncertainty as to what constitutes a water of the United States under the governing case law, the WDR is inconsistent with the State Board’s Enforcement Policy’s directive that enforceable orders should specify well-defined requirements. To rectify this inconsistency, *the State Board SSO WDR must include a clear, unambiguous and thus enforceable prohibition on all SSOs.*

Notably, California Water Code sections 13260(a)(1) and 13263 provide the State Board with authority to regulate all SSOs, not just those that reach waters of the United States or waters of the State. Section 13260(a)(1) mandates that “Any person discharging waste, or proposing to discharge waste, within any region that “*could affect the quality of the waters of the state*” must file a report of waste discharge with the appropriate Regional Board (emphasis added). The WDR’s findings expressly acknowledged:

the California Water Code generally prohibits the discharge of waste to land prior to the filing of any required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs.

WDR, Findings ¶ 16.

Any SSO has the potential to adversely affect quality of waters of the State. As the SSO reports in the CIWQS database show, many SSOs flow directly into State waters. Even when SSOs do not flow directly into waters, SSOs tend to leave sewage scum on streets or in storm drains that is eventually flushed into waters when it rains or when residents hose down the residue. Accordingly, sewage system operators must report all SSOs to the Regional Board to

⁸ Justice Kennedy’s concurring opinion provided the fifth justice needed for a majority in *Rapanos*. With respect to wetlands, Justice Kennedy opined that only wetlands with a “significant nexus” to a navigable-in-fact water body constitute waters of the United States. As the case dealt only with wetlands, whether Justice Kennedy’s test extends to other surface waters, such as streams, arroyos, and artificial channels is not clear. Moreover, Justice Kennedy’s test itself is highly ambiguous and subject to varying interpretation.

⁹ The State Board’s current enforcement policy (adopted in February 2002) is published at a link set forth on the State Board’s website at: http://www.swrcb.ca.gov/water_issues/programs/enforcement/.

comply with California Water Code section 13260(a)(1). Section 13263, in turn, provides the State Board with broad authority to impose conditions regulating reported waste discharges, including conditions necessary to avoid public nuisance or indirect harm to waters.

IV. The WDR Should Regulate Private Sewage Systems.

The WDR currently provides that only publicly owned or operated sewage collection systems are covered by the WDR and further only imposes obligations on public entities that own or operate such systems. *See* WDR, Findings ¶ 1, Definitions ¶ A.3, (defining a WDR-regulated “enrollee” to mean “A federal or state agency, municipality, county, district, and other public entity that owns or operates a sanitary sewer system . . .”), Application Requirements § B (only imposing a duty to apply for WDR coverage on public entities), Provisions §§ D.7-11 (imposing obligations only on “enrollees” to remediate SSOs, maintain collection systems, secure sufficient collection system capacity to avoid wet weather-related SSOs, and adopt and implement Sewer System Management Plans).

This fails to protect the public from SSOs from private systems, a problem that could worsen over time due to movement nationwide to privatize the operation of sewage collection systems. Veolia Water North America Operating Services, LLC, (Veolia), for example, is one private company interested in assuming control of sewage systems. Veolia has contracted with the City of Richmond to operate Richmond’s POTW. EPA regulations make it the duty of the person/entity *who operates* a facility to apply for NPDES permit coverage. 40 C.F.R. § 121.21(b). In keeping with this regulation, the WDR should be amended to require private contractors that own or operate sewage collection systems to apply for coverage under the WDR, *along with* the relevant public agency if the latter still owns the sewage collection system in issue.

V. The WDR Should Regulate Combined Sewer Systems.

The WDR should be modified to regulate combined sewer systems (“CSSs”) and require CSSs to provide appropriate public notification, reporting, and sewer system management planning. San Francisco and Sacramento’s CSSs discharge large volumes of inadequately treated sewage to public streets and waterways during large rain events (“combined sewer overflows,” or “CSOs”). San Francisco in particular has a severe problem—which, to its credit, it has publicized extensively in public meetings and mailers. San Francisco’s CSOs regularly send sewage mixed with urban storm water runoff into San Francisco Bay and the ocean and/or public streets, businesses and homes. This poses significant health risks given the highly concentrated population of San Francisco and high use of San Francisco’s waters for water contact recreation for surfing, windsurfing, swimming and other recreational activities.

Information concerning the extent and location of wet weather sewage discharges from San Francisco and Sacramento is currently hard for the public to access. The State Board should rectify this problem by extending the WDR to require CSO reporting to CIWQS; the public’s being informed about raw sewage flowing into publicly accessible areas is no less important when the discharge is a CSO rather than an SSO. Similarly, the WDR’s SSMP and other substantive requirements should be extended to CSSs. These requirements are no less important

for a CSS than a separate sanitary sewer system to meet, given the equivalent risks posed by CSOs and SSOs.

VI. The WDR Should Regulate Treatment Plant Bypasses.

Bypasses or “blending”¹⁰ events involve routing large volumes of sewage past the secondary treatment facilities of wastewater treatment plants and discharging this inadequately treated sewage to surface waters. From a public health and environmental risk perspective, such bypasses and blended discharges can pose many of the risks associated with collection system raw sewage spills. The WDR currently does not address bypasses or blending. Given the health and environmental risks involved, the WDR should be amended to include provisions requiring:

- (1) Reporting of bypasses/blending events, with all the fields required for Category 1 SSOs.
- (2) Enhanced sampling of bypassed/blended sewage for levels of pollutants in such discharges, for all pollutants regulated by the POTW’s NPDES Permit.
- (3) For all permittees having bypasses/blending discharges following storms less than a five-year, 24-hours storm event, the WDR should require that the permittee’s capacity assessment that must be performed as part of an SSMP will include assessment of capacity shortfalls that lead to wet weather bypass/blending events. The WDR should specify that the assessment will include prediction of the frequency of bypass/blending events, the site-specific sources of excessive rainfall derived infiltration and inflow (“RDI/I”) that is causing bypasses/blending events, and identification of the measures needed to address system capacity shortfall.
- (4) The WDR should specify that permittees’ capital improvement plans must include provision for capital projects needed to eliminate bypasses/blending events following storms less than the permittee’s design storm.

VII. The State Board Should Adjust its Enforcement Program.

The State Board and Regional Boards’ SSO enforcement effort has fallen far short of the enforcement needed to address the magnitude of the statewide SSO problem. As the State Board’s own report indicates, the Regional Boards took only *six* formal SSO enforcement actions in FY2008-09, meaning the overwhelming majority of SSOs were not addressed by any formal State Board/Regional Board enforcement response.¹¹

While the State Board and Regional Boards can and should improve their enforcement programs in several respects, the fact remains that the State Board and Regional Boards will continue to lack the resources needed to bring all the needed SSO enforcement actions statewide. The only viable solution is for the State Board to issue the WDR as a (required) NPDES permit,

¹⁰ “Blending” involves mixing sewage that has received only primary or less treatment with sewage that has received secondary treatment and then discharging this blended effluent to surface waters. Several sewage systems employ blending during peak wet weather storm events due to their inadequate secondary treatment capacity.

¹¹ State Board, Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report at 10 (May 2009) (“SSO Annual Compliance Report”), *available at*: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf.

thus facilitating supplemental enforcement of the WDR by the EPA and citizen groups—as the CWA intended.

With respect to their own future enforcement, the State and Regional Board's highest priority should be addressing the unacceptably high rate of permittees' noncompliance with basic WDR reporting requirements: since September 2007, an average of 39% of permittees have not complied with the WDR's basic reporting requirement either to submit SSO reports or monthly certifications that they had no SSOs. In January 2009, 42% of permittees did not comply with this reporting requirement. An average of 15% of enrollees has not submitted the annual collection system questionnaires designed to inform the State and Regional Boards and the public of basic information concerning sewage collection systems. (SSO Annual Compliance Report at 11-12.) As was presented by SWRCB staff to Oakland SSO workshop attendees in September, an average 50% of enrollees have not complied with the WDR's requirement to report compliance with the WDR's SSMP adoption requirements.

If the enrollees do not meet these basic requirements, it is impossible to tell accurately the extent of the SSO problem statewide, where particular problems exist, and whether failure to adopt SSMPs is likely contributing to SSO problems—all of which are the fundamental building blocks of a successful compliance and enforcement program.

The State Board or Regional Boards should issue CDOs or CAOs as soon as possible to all permittees who have not complied with these basic WDR requirements. The CDOs or CAOs should set short deadlines for the permittees to comply. The State Board and Regional Boards should follow up on these orders with administrative civil liability complaints (“ACLs”) against any permittee not meeting the CDOs or CAOs' deadlines.

Next, the State Board or Regional Boards should work systematically on issuing CDOs or CAOs to permittees in order of priority reflecting their evaluation of which permittees are the most significant SSO violators.

To assist in setting enforcement priorities and to provide regulators and the regulated with some objective performance standards useful in evaluating whether SSMPs are being adequately designed and implemented, the State Board should, in consultation with appropriate experts, set a benchmark standard for SSO rates and SSO volume per 100 miles of sewer line to provide regulators and the regulated with some objective performance standard in setting enforcement and compliance priorities. The State Board and/or the Regional Boards should weigh exceedence of these benchmarks as one significant factor in prioritizing their enforcement actions. The State Board and/or Regional Boards should further at least annually require permittees exceeding these benchmarks to explain: (1) whether they have reviewed their SSMPs and SSMP implementation to determine whether either could be improved to reduce their SSO rates, and (2) whether they have evaluated the cause of their large SSO(s) to waters and the measures they could implement to avoid repeats of such large SSOs. The State Board and/or Regional Boards should further require these sewage authorities to submit their most recent audit performed as specified by the WDR.

The Regional Boards should only issue ACLs in conjunction with CDOs or CAOs, rather than as a stand-alone enforcement response--many Regional Boards have historically done the latter. Simply fining enrollees for SSOs tends to become simply a “pay to pollute fee” that does not prompt needed remedial measures.

If it appears unlikely that a permittee will comply, or if the permittee has not complied with a previous CDO or CAO, then the State Board and/or Regional Board should pursue judicial enforcement.

VIII. The WDR’s Spill Response Provisions Should Be Amended.

The WDR only includes a very general, vague directive concerning SSO contingency planning. The WDR only requires that sewer system management plans include:

A program to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to waters of the United States and to minimize or correct any adverse impact on the environment resulting from the SSOs.

Provisions § 13(vi)(f). The term “waters of the United States” should be deleted here as both unnecessarily vague and too narrow; the WDR should aim to protect *all* waters of the state and other areas accessible to the public in equal measure. This accordingly should be further amended to provide greater clarity and direction. Specifically, the WDR should mandate that SSMPs include:

Spill contingency plans for minimizing the volume of sewage released to any waterway, storm drain, or land area outside of the permittee’s collection system by rapidly implementing at the site where SSOs are occurring one or more of the following measures, as necessary and appropriate, to pump sewage around sewer line blockages or collapses or past failed pump stations and/or contain sewage flows in storage facilities: (i) employing temporary pumping equipment or (ii) hauling sewage in tanker trucks, (iii) routing sewage flow into either temporary or permanently installed storage facilities or into underutilized portions of the collection system, and (iv) employing sewage flow reduction measures (such as temporarily turning off water mains or taking other steps to restrict wastewater inputs into the sewer system).

IX. The WDR’s Reporting Requirements Should Be Improved.

The existing reporting requirements in the WDR need several improvements. First, the WDR allows, but does not require, permittees to report sewage spills that are caused by blockages or other problems within a privately owned lateral line. (Monitoring and Reporting Program, § A.3, 6.) The WDR should be amended to require permittees to track and report all information concerning private lateral spills that they become aware of. The WDR should further be amended to require permittees to develop appropriate authority to require the reporting of private lateral spills and appropriate implementation of this authority. Private lateral spill information provides valuable insight into the extent of the private lateral problem and what

measures are needed to address this problem, which, as discussed below, is highly related to the SSO problems in public sewage collection systems.

The WDR requires permittees to report the volume of sewage spilled from their collection systems and the volume of sewage reaching a surface water or drainage channel, or reaching but not recovered from a storm drain. (Monitoring and Reporting Program, § A.9, 11.) There appears, however, to be wide variability in how permittees' calculate these sewage volume estimates, and in the accuracy of these estimates. The WDR should be amended to require permittees to specify in their SSMPs the methodologies that they will employ to calculate the volumes of sewage spilled and their commitment to train response personnel in these methodologies. Sewage spill reports should then indicate which methodology the responding field personnel used for calculating the following: (a) estimates of volume of sewage spilled from the collection system; (b) volume reaching a surface water, drainage channel, or storm drain and, as applicable; and (c) the volume of sewage spilled from the collection system but recovered and returned to the collection system.

The WDR requires permittees to report whether an SSO reached "surface water" or "a drainage channel." (Monitoring and Reporting Program, § A.1.B., A.11.) These are undefined and vague terms. To provide more clarity as to what constitutes a "surface water" or "drainage channel," the WDR should be amended to require reporting whether spills reached *any* "surface water body or water conduit, including the ocean, tidal waters, natural streams, wetlands or marshes, artificial water channels, or drainage ditches or canals." The WDR should be amended to require permittees to report the name of the water body or water conduit whenever this information is available or give other information providing the location of the water bodies or conduits (such as address or geographic coordinates).

The WDR requires permittees to report whether an SSO reached "Beaches." (Monitoring and Reporting Program, § A.11.H.) This reporting requirement is vague, however, as to what constitutes a "Beach," and would appear to risk exclusion of reports of SSOs to all water contact recreation areas (many rocky coastline areas are heavily used for various types of water contact recreation or commerce). The WDR should be amended to require reports to indicate whether SSOs reached "beaches or other points of water contact recreation, such as waters used for swimming, surfing, windsurfing and kite boarding, diving, kayaking, fishing or shellfish harvesting, or other recreational or commercial activity where water contact is likely."

X. The WDR's SSMP Requirements Should Be Amended in Several Ways.

The existing SSMP elements specified in the WDR, while helpful in many respects, need amendment to improve SSO reduction performance.

A. Addition of a Private Lateral Sewer Line Inspection and Replacement Program

Defective private lateral lines are a source of root intrusion and debris loading into public sewer lines, as well as excessive rainfall-derived infiltration and inflow (RDI/I). Improper lateral line connections to public sewers interfere with public sewer line maintenance and performance

(for example, lateral lines that protrude into main lines catch fats, oil and grease, roots and debris, causing line blockages. Such protruding laterals also can prevent Closed Circuit Television (“CCTV”) inspection of sewer lines). Many POTWs are recognizing that they cannot effectively reduce SSOs from their systems without addressing defective private laterals. Thus, it is critical that such private lateral inspection and maintenance be made part of effective SSMPs.

Accordingly, the WDR should be amended to require permittees, as appropriate for their systems, to develop and implement private lateral sewer line inspection and replacement programs. The programs should include the following elements:

- (i) A requirement for permittees to demonstrate their legal authority to require third-party reporting of SSOs from private lateral sewer lines (such as from the commercial vendors that respond to private lateral sewer line SSOs).
- (ii) Inspections of private lateral sewer lines and the authority to require maintenance, repair, or replacement of such lines to the extent necessary to prevent problems with SSOs in public sewer lines.
- (iii) The adoption of code standards that all private lateral lines must meet and a requirement for permittees to demonstrate their legal authority to require these standards to be met.

In addition, sewage authorities should consider incentives for private lateral owners to inspect and repair their defective lateral lines, such as a partial subsidy for owners who do so voluntarily.

B. Addition of Force Main Specific Requirements

The WDR should be amended to include specific provisions aimed at the unique problems posed by force main sewer lines (sometimes called “pressure pipes”), *i.e.*, the sewer lines that carry sewage pumped under pressure from pump stations. Force main sewer lines face very different management issues from gravity sewer lines given that the latter only carry sewage flow via gravity and their downward slope. Gravity sewer lines can usually be inspected with CCTV, whereas CCTV inspection of force mains is often difficult or infeasible--necessitating specialized methodologies adapted to the specific placement and setting of the force mains. Most sewer line grading systems are currently adapted for gravity sewer lines; a different evaluation methodology is needed for force main lines. Force main lines, being under pressure, face different failure scenarios than gravity sewer lines and the response needed to address a ruptured sewer force main is different than the response needed for a collapsed gravity main line. The WDR fails to recognize and address these unique force main sewer line problems.

Accordingly, the WDR should be amended as follows:

- (1) The WDR should be amended to add specific mandates that SSMPs include evaluation of measures to avoid uncontrolled, large scale SSOs from ruptured force mains, including: (a) construction of redundant force mains to serve as backup should a force main fail, or (b) rapid implementation of measures to capture the flow from a

ruptured force main and divert the flow to avoid raw sewage overflows outside of the collection system, such as installation of temporary pumping facilities, routing of flows into storage facilities, using tanker trucks to transport flows to other points in the collection system, and flow reduction measures (such as temporarily turning off water mains or taking other steps to restrict wastewater inputs into the sewer system).

(2) The WDR mandates that SSMPs include a program of visual and TV inspections of “sewer pipes,” and a system for ranking the condition of “sewer pipes,” without differentiating between gravity sewer lines and force main lines. (Provisions § D.13(iv)(c).) This provision should be amended to provide for: (a) regular visual and CCTV inspection of gravity sewer lines, (b) regular condition assessment of force main sewer lines utilizing the best methodology available for the force main sewer lines in issue, (c) a system for ranking the condition of gravity sewer lines, and (d) a system for ranking the condition of force main sewer lines.

(3) The WDR mandates that SSMPs include procedures and standards for inspecting and testing “new sewers,” again without differentiating between gravity sewer lines and force main lines. (Provisions § D.13(v)(b).) This provision should be amended to mandate that SSMPs include procedures and standards for inspecting and testing “new gravity sewer lines” and “new force main sewer lines.”

C. Satellite Collection Systems

Many sewage collection and treatment systems (“main systems”) accept flow from “satellite systems” that lack their own treatment facilities. Currently, many main systems lack the ability to regulate or jointly plan for managing the flow from their satellite systems. This can be highly problematic, as satellite systems have no incentive to reduce their RDI/I driven peak flows that can overwhelm the capacity of the main systems. In turn, the main systems cannot reduce peak flows from satellite systems, leading to chronic, unremedied, wet weather capacity-driven SSOs from main systems.

To address this problem, the WDR should be amended to require satellites and main systems to develop and implement joint plans for managing peak wet weather flows, including monitoring and modeling such flows, and planning and implementing measures needed to reduce peak wet weather flows as needed to avoid wet weather capacity-driven SSOs (such as RDI/I reduction, system storage, and flow equalization).

D. Improved CIP Provisions

The rehabilitation and replacement plan requirements of the WDR’s Provisions § 13(iv)(c) should specify that permittees’ capital improvement plans must, *inter alia*, include analysis of the expected useful life of system assets and a schedule for replacing assets before the end of their expected useful life (the existing language that the CIP must address “proper management and protection of the infrastructure assets” is unduly vague in this respect).

E. More Specificity in Design and Performance Standards

Currently, the WDR does not expressly mandate that separate design and performance standards “for the rehabilitation and repair of existing sanitary sewer systems” should be established for the very different components of a sewage collection system. (WDR, Provisions § 13(v).) To clarify that such standards must be adopted, the WDR should specify that standards must include separate specific standards for gravity sewer lines, force main sewer lines, and pump stations.

F. Improvements in the WDR’s System Evaluation and Capacity Assurance Plan Requirements

The WDR’s System Evaluation and Capacity Assurance Plan (“SECAP”) requirements lack any specificity, leaving unclear what sewage authorities must consider in designing their SECAPs. (WDR, Provisions § 13(viii).) The SECAP provision should be made more specific as follows:

(1) Permittees should be required to include in their capacity evaluations an accurate and reasonably detailed assessment of collection system flow correlated with rainfall events for any system that has had capacity-driven SSOs. Sewage authorities owning or operating any such larger or more complex systems should be required to include the following methodologies in their capacity evaluations: (a) gathering of sufficiently robust flow meter data over several storm events, (b) gathering of contemporaneous rainfall data from rain gauges and, where available, Doppler radar, (c) development of hydrographs correlating collection system flow with rainfall data, and (d) system-wide flow modeling predicting system flow under varying rainfall scenarios and identifying areas of predicted surcharge or SSOs under various rainfall scenarios.

(2) Permittees must develop a design storm that is at least as stringent as a 24-hour, five-year storm event unless they can develop specific justification why a more lenient design storm is still protective of public health and the environment. Permittees should develop more stringent design storms as needed to protect public health and the environment.

G. Improvements in Information Management

A key task in ensuring a well-run and efficient sewage collection system and in reducing SSOs is for sewage authorities to collect information concerning system performance and use this information to adjust system operations. The requirements in the WDR’s Provisions § 13(ix) concerning the collection and analysis of important collection system performance information are vague and should be improved. The WDR should itemize the information that should be collected and kept current, unless a permittee has explained in its SSMP why gathering that type of information is unnecessary for its system. The “default” list of required information should include:

(1) the locations of gravity sewer main lines, interceptor sewer lines, public lateral sewer lines, and force main sewer lines, flow equalization temporary storage basins or facilities,

- upstream treatment works, headworks, overflow structures/flapgates, final treatment works, and outfall pipes;
- (2) the length of gravity sewer main lines, public lateral sewer lines, and force main sewer lines;
 - (3) the age and material composition of all sewer lines (force mains and gravity lines);
 - (4) the diameter of sewer lines (force mains and gravity lines);
 - (5) the location of maintenance holes;
 - (6) the location of pump stations;
 - (7) the dates and locations of CCTV inspections of sewer lines or other condition assessments of sewer lines (including smoke testing)—for both force mains and gravity lines;
 - (8) grading or other determination of the condition of sewer lines (force mains and gravity lines) based on condition assessments or other information;
 - (9) schedules for performance of sewer line spot repairs, sewer line segment repair, rehabilitation or replacement, and construction of new sewer lines, (including relief sewers)—including when such work was completed and whether the work met design standards;
 - (10) the dates and findings of pump station condition assessments;
 - (11) the date, location, volume, cause of, and response to SSOs;
 - (12) locations of sewer line “hot spots,” *i.e.*, locations of repeated blockage-caused SSOs or otherwise known risk of line blockages;
 - (13) locations and dates of sewer line cleaning (along with the method of cleaning employed, such as hydrojetting, de-rooting, etc.);
 - (14) the location of food service establishments (“FSEs”) and the dates and results of inspections of FSEs for compliance with fats, oil and grease management/discharge requirements;
 - (15) the location of any sewer line flow meters and rain gauges and data collected from such meters and gauges;
 - (16) the location of any sewer system surcharges or other indications of lack of system capacity, and
 - (17) the location of defective private lateral sewer lines, including lateral lines protruding into sewer main lines, and the nature of the defect.

The WDR should specify that this information be recorded and tracked via a computerized data management system tied to GIS, unless the SSMP explains why an alternative information recording and tracking system will suffice for a permittee’s individual setting.

H. Financial Planning

A critical task in ensuring effectiveness of the WDR and its SSMP requirements is for permittees to engage in sound financial planning and management. Permittees must evaluate comprehensively the long-term costs of implementing their SSMPs and then ensure that they obtain the financial resources to implement their SSMPs. Without such financial planning, adoption of even the best-designed SSMP can be of limited value when a permittee finds it lacks the resources to implement its SSMP. The WDR lacks, and should be amended to include, such a financial planning requirement.

XI. The WDR Should Mandate Sewer System Operator Certification.

The WDR should be amended to mandate sanitary sewer system operator certification. As several representatives from the permittee community testified during the State Board's September 29, 2009 workshop in Oakland, such mandatory certification is needed to ensure competent and trained operators are in charge of key aspects of collection system operation and maintenance. As part of certification, operators should be required to show training in the requirements of the SSMP and effective sewer system asset management. This will ensure that those in charge of operating sewer systems are aware of current industry standards for avoiding SSOs.

XII. The State Board's Online Sewage Incident Maps Should Be Improved.

The State Water Board's online sewage spill incident maps are an excellent and valuable tool for better informing the public concerning the locations of SSO problems. These maps can be improved, however, by including more categories of larger-sized SSOs (*i.e.*, by not ending at one category of "SSOs over 1 million gallons," but instead having several categories of SSOs over 1 million gallons, such as SSOs of 1-2 million gallons, SSOs of 2 to 5 million gallons, SSOs of 5-10 million gallons, and SSOs exceeding 10 million gallons). The map should include an overlay of local water bodies (particularly those with recreational uses), public parks, and schools to better inform the public of the location of these spills in conjunction to such important features. Finally, the maps' date filter should default to the beginning of the WDR database rather than just the last few months, so that viewers will not accidentally miss the full context of SSOs reported during the life of the permit.

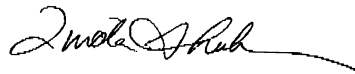
XIII. The WDR's SSO Definition Should Be Improved.

The WDR currently defines an SSO as any release of sewage from a Sanitary Sewer System (SSS) and further defines SSS as "any system of pipes, pump stations, sewer lines . . . upstream of the headworks." This definition scheme is potentially problematic in any situation where there are multiple treatment plants in train, as is the case with the City of Los Angeles. There are many miles of sewer line in Los Angeles downstream of the headworks for the Glendale treatment plant that eventually flow to the City's Hyperion Treatment Plant. Read literally, this definition could be interpreted as excluding these many miles of sewer line from the Los Angeles SSS. Similarly, treated sewage flows from the City of Richmond and the West County Wastewater District (WCWD) are both sent to a combined treatment structure operated by a third entity, West County Agency (WCA). An SSO downstream of the Richmond or WCWD plants but before the WCA treatment structure would arguably not be from an SSO from an SSS. This definition should be amended to address these types of situations by defining an SSO as *any* release of sewage other than from a wastewater treatment plant.

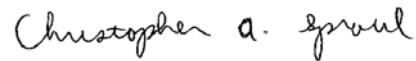
* * *

Again, we commend the State Board for evaluating the SSO Program WDR at this time, and we thank you for consideration of our comments. If you have any questions, please do not hesitate to contact us.

Best regards,



Linda Sheehan
Executive Director
California Coastkeeper Alliance
lsheehan@cacoastkeeper.org



Chris Sproul
Attorney on behalf of CCKA
Environmental Advocates
csproul@enviroadvocates.com

Attachment: BNA, Environment Reporter, "EPA Says Permits Needed for Communities that Send Wastewater for Outside Treatment," Vol. 36, No, 18, pp, 927-28 (May 6, 2005)

ATTACHMENT

BNA, *Environment Reporter*, “EPA Says Permits Needed for Communities that Send Wastewater for Outside Treatment”

Drinking Water

Byproducts, Atrazine, Perchlorate Likely To Get Scrutinized as Endocrine Disruptors

As new information emerges on the reproductive and developmental effects of pharmaceuticals in drinking water, three contaminants in particular could be subject to new federal review, a water utility representative said May 4.

Those contaminants are disinfection byproducts, atrazine, and perchlorate, which either are regulated by the Environmental Protection Agency or are under consideration for regulation, according to Alan Roberson, director of security and regulatory affairs for the American Water Works Association.

Roberson made his remarks during a Webcast sponsored by AWWA, which considered pharmaceuticals, such as prescription and nonprescription drugs, and other contaminants such as personal care products, including shampoo and fragrances.

EPA set a standard for disinfection byproducts in 1998, and is scheduled to issue the Stage 2 Disinfection Byproducts Rule at the end of 2005, he said (40 C.F.R. § 141.64).

Disinfection byproducts, which are formed when organic material reacts with a disinfectant such as chlorine, may be linked to miscarriages and other health problems.

Atrazine Standard Set in 1991. A standard for the herbicide atrazine was set in 1991 at 3 parts per billion for atrazine in drinking water, Roberson said (40 C.F.R. § 141.61). Although a 2002 EPA risk review found atrazine probably is not a human carcinogen, it was shown to be a possible endocrine disruptor.

Although perchlorate is not yet regulated, new information could spur EPA action on that contaminant, he said. Perchlorate is linked to thyroid disease.

Pharmaceuticals traditionally have not been considered contaminants and have not been monitored.

Although research on the health effects of these newly recognized contaminants is in the early stages, some studies are showing they might disrupt the endocrine system in wildlife, according to the U.S. Geological Survey.

Roberson said EPA's regulatory schedule for screening and testing the three contaminants is not yet clear. If further review is warranted, he said, it would probably lead to more frequent monitoring, at a higher cost, for drinking water utilities.

Geological Survey Investigation. To better understand the effects of pharmaceuticals in the environment, the USGS is studying the source, occurrence, and movement of the compounds, and their effect on the ecology, according to Dana Kolpin, a research hydrologist at USGS.

Kolpin said USGS has detected 158 compounds in water with a wide variety of uses, including prescription and nonprescription drugs, caffeine, and DEET.

USGS has said that most endocrine disruptors have been found at low concentrations in water and that some can survive drinking water and wastewater treatment. Kolpin said USGS has developed ways to measure small concentrations of pharmaceuticals and most have been found at low levels.

"Our ability to measure contaminants currently exceeds our understanding of their environmental effects," he said.

Rapid Evolution Predicted. On May 2, Ed Furlong, a research chemist with USGS, told BNA that the organization's research was probably just touching on a small fraction of the total number of pharmaceuticals in the environment.

To date, there is little data to determine whether there are human and ecosystem effects, he said.

"We're in the beginning stages of trying to understand transport, fate, and effect of pharmaceuticals," Furlong said.

However, "understanding will probably evolve fairly rapidly because people have done similar kinds of work for pesticides, and many of the compounds we are looking at have some chemical relationship to pesticides," he said.

BY PATRICIA WARE

Discharge Permits

EPA Says Permits Needed for Communities That Send Wastewater for Outside Treatment

Communities that send their wastewater to a centralized location outside their jurisdiction for treatment should apply for a Clean Water Act permit to ensure their discharges are covered in the event of a sewer spill, Environmental Protection Agency officials said May 2.

Officials from EPA's Office of Wastewater Management addressed a meeting of the National Association of Clean Water Agencies about a draft "fact sheet" on sanitary sewer overflows (SSOs) that was distributed for review to state regulators in March.

The Clean Water Act prohibits discharges to rivers, lakes, and streams in the absence of a National Pollutant Discharge Elimination System (NPDES) permit.

"We want to get the message out that if they have an SSO that discharges to waters of the United States, or [has] the potential to discharge to waters of the U.S., that they have a duty to submit a permit application and be subject to the NPDES permit program," said Kevin Weiss, the SSO program manager at EPA.

Members of NACWA, formerly called the Association of Metropolitan Sewerage Agencies, questioned how the document would apply to "satellite collection systems." These generally are small communities that do not own or operate their own wastewater treatment plants, but collect stormwater and wastewater and send it to a neighboring community or regional sewer district for treatment.

Operators of the centralized facilities that treat this imported wastewater have maintained they should not be liable for sewer overflows and other potential Clean Water Act violations in satellite communities because they have no legal authority to address the underlying issues of infrastructure or management outside their jurisdiction.

States Reluctant to Issue Permits. Some states have been reluctant to issue permits to satellite systems because it would significantly increase the number of permits and state resources are already limited. In some

cases, a regional sewer authority may have dozens of satellite communities as customers, many of which are small and have limited resources, one official said.

"Who are you going to come after in an overflow?" Ray Orvin, executive director of the Western Carolina Regional Sewer Authority, asked the agency officials. His system operates 12 treatment plants that serve 400,000 people in four counties in the Greenville, S.C., area.

Some states do not think they have the legal authority to issue permits to satellite systems, said Lisa Hollander, assistant general counsel for the Northeast Ohio Regional Sewer District.

Weiss said EPA would make case-by-case determinations of whether the operator of the publicly owned treatment works or the satellite community would be liable in the event of a sewer overflow.

Steve Sweeney, an attorney in the EPA Office of General Counsel, said that if enforcement officials think "satellite communities need to do something to effectuate the remedy, these communities would be brought in as indispensable parties."

The draft fact sheet clarifies permit conditions. Specifically, facilities with permits must:

- notify the permitting authority in the event of a sewer overflow;
- provide a written report within five days of learning of an overflow;
- establish a process for notifying third parties of overflows that could endanger health because of the likelihood of human exposure;
- maintain records of overflows; and
- properly operate and maintain their facilities in accordance with a specified program, such as the capacity, management, operation, and maintenance.

Satellite Communities Said to Lack Incentive. One municipal official said satellite communities do not have an incentive to apply for a permit. If they obtain permit coverage and have an overflow, they would be subject to an enforcement action for violating the permit, including penalties.

If there is an overflow without a permit, the satellite community most likely would be part of a larger consent order negotiated after an enforcement action against the system as a whole. Such a negotiation could take 10 years, but the cost may be spread more broadly.

Clyde Wilbur, an engineering consultant, asked whether satellite communities that obtain permits would be allowed to participate in negotiations to resolve enforcement actions resulting from an overflow.

He has done work for the Allegheny County Sanitation Authority (ALCOSAN), which serves about 800,000 people in 82 communities in the Pittsburgh area.

"We don't interpret the fact sheet to mean that during enforcement cases, you should invite municipal satellites to discuss the remedy for the permittee," Weiss said, adding that EPA officials recognize the complexity of dealing with satellite systems.

Linda Boornazian, director of the permits division in the EPA Office of Wastewater Management, said the draft fact sheet was only intended to pull out and clarify issues involving SSOs that do not need to be addressed through a formal rulemaking.

"In the fact sheet, we didn't take on the whole satellite issue," she said. "We just want to reiterate that you can't discharge without a permit."

Treatment Officials Need to Be Involved. Several NACWA officials said EPA should have treatment officials involved in the discussions with states over the fact sheet.

"If permits are required, a POTW owner absolutely has to be at the table," said Donnie Wheeler, general manager of the Hampton Roads (Va.) Sanitation District. "There is the very tortured issue of liability involved with SSOs. Hampton Roads is incurring liability because we think it is in the best interest of the communities we serve."

Hollander said the standards are the primary issue with permitting satellite communities.

"Unless you have a consistent standard, you can't explain to the satellite community what is expected of it," she said.

Gordon Garner, an engineering consultant with CH2M Hill in Kentucky, said the fact sheet is merely taking away from what he said is the real issue, which is the lack of a consistent, national policy for dealing with sewer overflows.

BY SUSAN BRUNINGA

Enforcement

Former Delaware Official Sentenced For Wastewater Discharges Into Wetlands

PHILADELPHIA—A federal court in Wilmington, Del., sentenced a former manager in Delaware's natural resources agency to six months in prison and two years probation for illegally discharging polluted wastewater into wetlands, the Environmental Protection Agency announced April 28 (*United States v. Daisey*, D. Del., No. 04-CR-134, 4/28/05).

William Daisey, the former chief of operations for the Delaware Department of Natural Resources and Environmental Control (DNREC) dredging facility in Lewes, Del., was sentenced in U.S. District Court for the District of Delaware after pleading guilty in January to a criminal violation of the Clean Water Act (36 ER 178, 01/28/05).

Daisey admitted that from January 2000 until April 2001, he regularly directed a DNREC employee to discharge wastewater contaminated with hydrocarbons and other chemicals associated with used oil and anti-freeze into a sump pit, from which the water was pumped through an underground pipe into nearby wetlands, according to EPA.

Daisey was charged with knowingly discharging pollutants without a required Clean Water Act permit.

The DNREC facility in Lewes is used for docking and maintaining dredge boats operated by the state and for warehousing supplies, chemicals, and equipment used by beach replenishment crews.

After an EPA search of the facility in July 2003, DNREC conducted an EPA-supervised cleanup at a cost of about \$325,000, removing two tons of hazardous and nonhazardous waste that had been stored or disposed on the site, EPA said.



PO Box 3156, Fremont, CA 94539
(510) 770 9764 www.cacoastkeeper.org

October 19, 2009

Waste Discharge Requirements Unit
c/o James Fischer
California State Water Resources Control Board
Executive Office
1001 I Street, 15th Floor
Sacramento, CA 95814
VIA electronic mail: SSOcommentletters@waterboards.ca.gov

Re: Comment Letter—"SSO Reduction Program Review and Update"

Dear Mr. Fischer:

The California Coastkeeper Alliance (CCKA) represents 12 Waterkeeper organizations spanning the coast of California from the Oregon border to San Diego. CCKA and its member Waterkeepers have regularly been active statewide in advocating strongly for an end to sewage releases into waters of the state, including through sanitary sewer overflows ("SSOs"). CCKA additionally was active in the process of developing the current Statewide General Waste Discharge Requirements for SSOs. Accordingly, CCKA, as also represented by Environmental Advocates, is pleased to provide these comments on the State Water Resources Control Board ("State Board")'s review of its Sanitary Sewer Overflow Reduction Program ("SSO Reduction Program" or "Program") and Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ) ("the WDR").

We greatly appreciate the State Board's initiative in reviewing the SSO Reduction Program and the WDR. The SSO Reduction Program and the WDR include several important and useful measures and requirements that are helping to address California's very serious SSO problems. Commendable components of the current Program and WDR include: a statewide, consistent SSO reporting requirement, a requirement for all publicly owned treatment works (POTWs) to adopt Sewer System Management Plans (SSMPs) with specific components, and a prohibition on SSOs.

Despite these positive provisions, SSOs nonetheless remain a very daunting statewide problem that continue to cause serious public health risks and harm water quality. The State Board itself acknowledges that 28 million gallons of sewage have been spilled to surface waters in over 1,900 SSOs since the WDR has been in place, causing numerous beach closures and

undocumented human health and wildlife impacts. As such, our first and chief request is that the WDR should be adopted as a National Pollutant Discharge Elimination System (NPDES)/WDR Permit.

The individual provisions of the SSO Reduction Program and the permit program (currently a WDR) also need to be improved to increase the Program's and permit's effectiveness at solving the ongoing SSO problem. Specifically, the California Waterkeepers urge the following changes to the existing specific provisions:

- (1) The WDR's Prohibition on SSOs must be expanded to include SSOs to state waters (including groundwater), storm drains, and land locations.
- (2) The WDR should be amended to regulate privately operated and/or privately owned sewage systems, not just publicly owned systems.
- (3) The WDR should be modified to regulate combined sewer systems.
- (4) The WDR should be amended to regulate and restrict "bypass" discharges of sewage from treatment plant outfalls; *i.e.*, the discharge of sewage that has not been subjected to full secondary treatment.
- (5) The State Board and Regional Boards should improve their SSO enforcement by:
 - (a) giving the highest enforcement priority to bringing permittees into immediate compliance with the basic information reporting requirements of the WDR;
 - (b) focusing as their next priority on issuing cease and desist orders ("CDOs") or Cleanup and Abatement Orders ("CAOs") to permittees with the most significant SSO problems;
 - (c) in consultation with appropriate experts, setting a benchmark standard for annual SSO rates per 100 miles of sewer lines and annual volume of sewage spilled per 100 miles of sewer equal to well-performing systems, and targeting enforcement toward permittees not meeting these requirements;
 - (d) issuing administrative civil liability orders (ACLs) *in conjunction with* CDOs or CAOs in appropriate cases, rather than issuing ACLs as the sole enforcement response; and
 - (e) bringing judicial actions against recalcitrant violators.
- (6) The SSO response provisions of the WDR should be amended to add more specificity on response measures and to clarify that all SSOs should be responded to promptly and appropriately (*i.e.*, at a level commensurate with the public health risks they pose).
- (7) The existing online SSO reporting fields/WDR reporting requirements should be improved by:
 - (a) mandating reporting of private lateral line SSOs;
 - (b) adding specific information on spill volume calculation methodology;
 - (c) clarifying for reporting purposes what constitutes a "surface water" or "a drainage channel";
 - (d) requiring more specificity in reporting what waters have been affected by SSOs; and
 - (e) mandating that SSO reporting identify whether SSOs have reached any waters used for water contact/recreation.
- (8) In addition to measures discussed above, the State Board should amend existing Sewer System Management Plan (SSMP) elements by adding requirements for:
 - (a) development of a private lateral sewer line inspection and replacement program;
 - (b) development of specific measures to address SSO risks associated with force main sewer lines;
 - (c) development by satellite sewer collection systems, and the main systems to which they discharge, of joint plans for

managing peak wet weather flows; (d) inclusion in capital improvement plans (CIPs) of analysis of the expected useful life of system assets and a schedule for replacing assets before the end of their expected useful life; (e) specific, separate design and performance standards for the rehabilitation and repair of gravity sewer lines (including both main lines and lateral lines), force main sewer lines, and pump stations; (f) more specific provisions as to the nature of the system capacity design, evaluation and planning that must be performed; and (g) financial planning that compares the annual budget needed to implement the SSMP versus the resources available to the permittee, and that ensures that adequate financial resources are available to fund the SSMPs.

- (10) The WDR should be amended to mandate sanitary sewer system operator certification.
- (11) The State Water Board's online sewage spill incident maps should be amended to include additional categories of large spills. The maps should include an overlay of local water bodies, public parks, and schools. The maps' date filter also should default to the beginning of the WDR database rather than just the last few months.
- (12) The WDR should improve its SSO definition to specify that any SSO from a location other than a sewage treatment plant constitutes an SSO.

We discuss these recommendations in more detail below.

I. The State Has a Serious SSO Problem That Significantly Threatens Public Health.

The magnitude of the statewide SSO problem clearly mandates adjustments and improvements to the SSO Reduction Program and the WDR.

The State Board's own recent SSO report indicates that 28 million gallons of sewage have been spilled to surface waters in over 1900 SSOs since the WDR has been in place.¹ SSOs have repeatedly caused closures of state waters that are heavily used for water contact recreation such as swimming, surfing, wading, kayaking, diving and other sports. For example, a recent survey by the environmental group Heal the Bay revealed 364 days of beach closures in Los Angeles, Orange and San Diego Counties from April 2008 to April 2009 from 95 separate SSOs, including the following beaches:

Los Angeles County: Dockweiler Beach, Venice Beach, and several stretches of Long Beach's City Beach.

Orange County: Bayshore Beach in Newport Bay, Baby Beach in Dana Point Harbor, San Clemente, several of Laguna Beach beaches such as Crescent Bay Beach, Laguna Main Beach, Victoria Beach, and Aliso Creek Beach.

¹ See State Board, Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report at 14 (figure 9) (May 2009) ("Annual SSO Report"), available at: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf.

San Diego County: Coronado's Silver Strand, Mission Bay Beach, Imperial Beach, and Tijuana Sloughs (a popular surfing area).²

The State's newspapers have repeatedly published stories of the public's waters being contaminated by SSOs.³ Several cities are chronic SSO violators. A small sample of violators includes:

- City of Laguna Beach: from Jan 2005 to August 09, Laguna Beach spilled 733,430 gallons of raw sewage, most of which reached surface waters.
- City of Santa Barbara: Santa Barbara Channelkeeper informed the Central Coast Regional Board in October 2008 that the City of Santa Barbara had 59 SSOs in a 22 month period in 2007 and 2008. The Regional Board wrote to Channelkeeper acknowledging that Santa Barbara had more SSOs per 100 miles of sewer than any other similarly sized collection system in the Central Coast region. Many of these spills flowed into local waterways.
- City of Oakland: has had 524 SSOs over the past five years.
- City of San Jose: has had 518 SSOs since the inception of the WDR SSO database.
- City of Palo Alto: has had 455 SSOs since the inception of the WDR SSO database.
- City of Fairfield: has had 163 SSOs since the inception of the WDR SSO database.

Regional Board enforcement against these chronic violators has either been completely absent or grossly inadequate to curtail their SSOs.

Illicit sewage discharges from illegal connections also remain an unaddressed problem. For example, in March 2008, Santa Barbara Channelkeeper discovered raw sewage flowing into a local creek. Further investigation revealed that the sewage came from a medical clinic bathroom that was plumbed to discharge directly to the creek. In May 2009, Santa Barbara

² See <http://www.healthebay.org/brc/closures.asp>.

³ A small sample of examples includes these several articles in the *Orange County Register* and the *Los Angeles Times* concerning beach closures in Laguna Beach and San Clemente:

- “Laguna Shoreline Remains Closed Today After Sewage Spill,” 9-29-08, <http://www.ocregister.com/articles/city-officials-station-2209966-sewage-beach>
- “Laguna Sewage Spill Still Snarls Traffic on Coast Highway,” 4-18-08, <http://www.ocregister.com/articles/beach-laguna-coast-2020629-south-through>
- Some OC beaches to stay closed through Friday because of sewage spill, 10-31-08, <http://articles.latimes.com/2008/oct/31/local/me-sewage31>
- “Laguna Beach Ordered To Pay \$70,000 for Massive Sewage Spill,” 8-26-09, <http://www.ocregister.com/articles/city-sewer-spill-2541708-october-state>
- “San Clemente Beach Opens After Monday Closure,” 2-15-06, http://www.ocregister.com/ocregister/homepage/abox/article_1001345.php.

This sample further includes several articles in the *Los Angeles Times* concerning beach closures in Long Beach:

- “Another Long Beach Sewage Spill Forces Beach Closures.” Byline: “The 20,000-gallon sewage flow affects beaches from Alamitos Avenue to 72nd Place. It is the fourth spill this year to close beaches.” <http://articles.latimes.com/2008/aug/14/local/me-sewage14>
- “Long Beach Sewage Spill Keeps Swimmers Out of the Water,” 07-27-2009, <http://latimesblogs.latimes.com/lanow/2009/07/long-beach-sewage-spill-keeps-swimmers-out-of-water.html>.

Channelkeeper again discovered raw sewage flowing in a local stream. Further investigation revealed that an office building toilet was directly plumbed to discharge into the stream.

II. The WDR Must Be Revised to Be Issued as an NPDES/WDR Permit.

The most serious shortcoming of the WDR is that has not also been issued as an NPDES Permit under the federal Clean Water Act (CWA). The issuance of a WDR that is not also an NPDES permit renders the WDR's requirements unenforceable by the U.S. Environmental Protection Agency ("EPA") and citizens via the CWA's citizen suit provision. By blocking citizen suit enforcement of the WDR, the State Board effectively ignores "Congress' clear intention . . . that citizen plaintiffs are not to be treated as 'nuisances or troublemakers' but rather as 'welcomed participants in the vindication of environmental interests.'" *Proffitt v. Municipal Auth. of the Borough of Morrisville*, 716 F. Supp. 837, 844 (E.D. Pa. 1989) (quoting *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2d Cir. 1976)). The right of access to the courts allows citizens the opportunity for meaningful participation in societal decisions concerning whether raw sewage is kept out of the public's waters. Citizen suits provide citizens the opportunity to bring their views, backed by legal and technical experts, before a neutral body whose only obligation is to enforce the law. From the public interest group perspective, preservation of this public participation right is paramount—which requires that the WDR also be made an NPDES permit.

The CWA requires the Regional Water Quality Control Boards and/or the State Board to issue NPDES permits to all POTWs that have SSOs that reach waters of the United States in California. As the State Board itself acknowledges, many millions of gallons of sewage flow each year into surface waters within the purview of the CWA. By issuing a WDR only, the State Board is ignoring this duty under federal law.

CWA section 301(a) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of an NPDES permit. 33 U.S.C. §1311(a). The CWA further defines the discharge of a pollutant as the discharge from a point source to a navigable water, which the CWA further defines as "waters of the United States." 33 U.S.C. § 1362(12), (7). The Pacific Ocean, all tidal water bodies; lakes, rivers, streams, and wetlands that flow to the ocean or are used in interstate commerce, any tributaries to those waters, or wetlands adjacent to such waters are all "waters of the United States." See 33 C.F.R. § 328(a); 40 C.F.R. § 230.3(s). The sewer lines, manholes, and pump stations from which SSOs originate are all point sources within the meaning of the CWA. See 33 U.S.C. § 1362(14). Accordingly, any POTWs, including "satellite collection systems" that route sanitary sewage to regional treatment facilities but do not directly discharge treated sewage to waters, are all "persons" within the meaning of the CWA that have discharged pollutants to waters of the United States.

40 C.F.R. section 122.21(a) provides that "Any person who discharges pollutants ... and does not have an effective permit . . . must submit a complete application" for an NPDES permit.⁴ Under this U.S. EPA CWA regulation, all POTWs have a mandatory duty to apply for

⁴ Except in a few narrow specific circumstances not applicable here.

and obtain an NPDES permit regulating the discharge of pollutants to waters of the United States, including but not limited to SSOs from their collection systems.

Indeed, in remarks to the National Association of Clean Water Agencies on May 2, 2005, U.S. EPA confirmed that all POTWs with SSOs that reach waters of the United States have a duty to apply for NPDES permits (see attached article published in BNA-Environment Reporter on May 6, 2005). As this BNA article indicates, U.S. EPA has circulated a draft guidance document so stating. To retain its EPA authorization to administer an NPDES Program for the State of California, the State Board must “exercise control over activities required to be regulated” by the CWA and EPA regulations and issue NPDES permits to facilities requiring such permits. 40 C.F.R. § 123.64(a)(2)(I); 123.25(a)(4). Thus, the State Board *cannot*, consistent with its status as a state agency authorized by EPA to administer an NPDES Permit Program, decline to regulate SSO discharges from POTWs to waters of the United States via the issuance of one or more properly framed NPDES Permit(s).

Again, the primary motivation for not issuing the WDR as an NPDES permit appears to be to insulate POTWs from EPA and citizen enforcement of the WDR under the CWA’s enforcement provisions. In fact, however, the State Board is doing a disservice to POTWs and subjecting them to added CWA liability for failure to meet the duty to apply and obtain NPDES permit authorization imposed by 40 C.F.R. § 122.21(a). For example, in 2008 San Francisco Baykeeper pursued citizen suit claims against the city of Hillsborough for failure to apply for and obtain NPDES permit coverage for their collection systems.

The California Waterkeepers are mindful of past contentions by permittees that the decision in *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 504-06 (2nd Cir. 2005) has called into question the State Board’s ability to require NPDES permit coverage for facilities without proof that they have actually discharged pollutants to waters of the United States, as opposed to merely having the potential to do so. The California Waterkeepers disagree that the *Waterkeepers* decision properly supports not making the WDR an NPDES Permit. At a minimum, nothing in *Waterkeepers* implies that it is improper to require NPDES permit authorization for any POTW that has actually had an SSO that has reached waters of the United States. The State Board now has two and a half years of SSO reporting from over 1,000 sewage system authorities. The State Board’s California Integrated Water Quality System (“CIWQS”) database indicates that *nearly all* sewage collection systems reporting to the State Board have had SSOs that have reached surface waters.⁵

If there are rare and exceptional cases of sewage collection systems that have not had SSOs to surface waters, this does not justify declining to issue the WDR as an NPDES permit. The simple solution is for the State Board to make the WDR both a Porter-Cologne Act permit *and* an NPDES permit, with the NPDES permit authorization extending to the subset of sewage collection system authorities that self-identify themselves as having discharged pollutants to waters of the United States. The State Board could specify a two-tier approach to the requirement to submit Notices of Intent (NOIs) to be covered by the WDR. First, the State Board could require POTWs that either discharge treated effluent directly to waters of the United

⁵ See http://www.swrcb.ca.gov/water_issues/programs/ciwqs/publicreports.shtml.

States or that have had SSOs that have reached waters of the United States to identify these facts in their NOI, together with a request for NPDES permit coverage. Second, the State Board could require that POTWs that do not discharge their treated effluents directly to waters of the United States, or that have never had an SSO that has reached waters of the United States, to identify these facts in their NOI, together with a request that they be given WDR rather than NPDES permit coverage.

* * *

The following comments relate to the existing provisions of the current WDR, which – with the recommended changes – could be effective in preventing SSOs under the required combined NPDES/WDR permit that we ask the State Board to adopt.

III. The WDR’s Prohibition Must Be Expanded.

The WDR currently only prohibits SSOs that reach waters of the United States and SSOs that cause public nuisance.⁶ State Board SSO WDR, Prohibitions ¶ C. The State Board SSO WDR’s prohibition provision should be expanded to further expressly prohibit: (a) all SSOs to waters of the State, including groundwater, and (b) all SSOs from the permittees’ sewage collection systems.

Many NPDES permits currently issued by Regional Boards include such prohibitions, and the State Board should not backslide from this approach. Indeed, two premier Regional Board SSO enforcement actions against the City of Los Angeles and City of San Diego relied on such permit conditions to bring successful enforcement and secure extensive SSO remedial measures. It is creating an unduly complicated and inconsistent regulatory regime for some individual NPDES permits and WDRs issued by some Regional Boards to include prohibitions on all sewage spills while the State Board’s SSO WDR omits a similar prohibition. It is further unfair and inimical to environmental protection to impose such restrictions on some POTWs while exempting others that lacked such specific individual permits. This is contrary to the stated purpose of the WDR which is, as it should be, to promote consistent statewide SSO regulation.

The State Board has authority for a broad SSO prohibition. The permittees’ sewage collection systems all constitute Publicly Owned Treatment Works (“POTWs”) as that term is defined by the CWA and accompanying EPA regulations. CWA § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. § 403.3. Specifically, a POTW includes all sewers, pipes and other conveyances that convey wastewater to a POTW’s WWTP. EPA regulations require that POTWs subject to CWA regulation be properly operated and maintained. 40 C.F.R. § 122.41(e). As sewage collection systems are part of the system/appurtenances used to collect and treat

⁶ The State Board has apparently taken the position that only SSOs that “affect an entire community or neighborhood” constitute nuisances, however. Annual SSO Report at 13 (May 2009), published at: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf. This unduly restrictive interpretation of when sewage releases constitute a “nuisance,” which as a separate matter needs to be revisited, makes it all the more important for the WDR to include a blanket prohibition on all SSOs, as discussed in this section.

sewage to meet CWA requirements, and as proper operation and maintenance of such systems would preclude SSOs, NPDES permits must prohibit SSOs. Furthermore, SSOs that do not directly reach waters, but overflow into public streets and other public places and back up into people's homes and businesses, *necessarily* pose nuisance public health threats that the State Board properly must regulate and seek to curtail.

Notably, past NPDES permits issued by various Regional Boards and permits issued by EPA have included such blanket prohibitions on SSOs.⁷ To protect the public health and welfare from the grave health risks and frequent potential property damage caused by SSOs to public streets, parks, residences and businesses, the State Board SSO WDR must be amended to follow the example of these permits and include a blanket prohibition on all SSOs. The State Board *cannot* continue to condone the spilling of raw sewage into people's homes, places of business, public streets, and other areas accessible to the public.

In addition, the WDR must include a separate and express prohibition on SSOs to all waters of the State, including groundwater as well as surface waters, to comply with the Porter-Cologne Water Quality Control Act in the California Water Code. The California Water Code precludes the discharge of raw sewage to waters of the State, and the WDR must reflect this. (California Water Code § 13264.)

In addition to not complying with applicable law, the existing narrow SSO prohibition in the State Board SSO WDR detracts from effective SSO enforcement. The SSO reporting

⁷ An example is NPDES Permit No. CA010991 issued by the Los Angeles Regional Board to the City of Los Angeles' Hyperion wastewater treatment plant and appurtenant collection system. Regional Board Order No. 94-021 ("the Hyperion Permit"). Condition IV.2 of the Hyperion Permit provides "Any discharge of wastes at any point other than specifically described in this order and permit is prohibited, and constitutes a violation thereof." The Hyperion NPDES permit describes the discharge of treated sewage from the ocean outfall downstream of the Hyperion treatment plant. Standard Provision B.7. further provides that "[a]ny "overflow" or "bypass" of facilities, including the "waste" collection system, is prohibited. . . ." The Hyperion Permit further defines an "overflow" to mean "the intentional or unintentional diversion of flow from the collection and transport systems, including pumping facilities." Hyperion Permit Standard Provision A.31. Together, these provisions made it clear that *all* SSOs from the Hyperion system are prohibited.

Additionally, Regional Board 2's existing NPDES permits to several East Bay sewage facilities provide contain the following SSO prohibition that is broader than the WDR's prohibition: "The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited." (City of Oakland, Sanitary Sewer Collection System, NPDES Permit No. CA0038512, Order No. R2-2004-0012, § A. Prohibitions, ¶ 1; City of Albany, Sanitary Sewer Collection System, NPDES Permit No. CA0038471, Order No. R2-2004-0009, § A. Prohibitions, ¶ 1; City of Alameda, Sanitary Sewer Collection System, NPDES Permit No. CA0038474, Order No. R2-2004-0008, § A. Prohibitions, ¶ 1; City of Berkeley, Sanitary Sewer Collection System, NPDES Permit No. CA0038466, Order No. R2-2004-0010, § A. Prohibitions, ¶ 1; City of Emeryville, Sanitary Sewer Collection System, NPDES Permit No. CA0038792, Order No. R2-2004-0011, § A. Prohibitions, ¶ 1; City of Piedmont, Sanitary Sewer Collection System, NPDES Permit No. CA0038504, Order No. R2-2004-0013, § A. Prohibitions, ¶ 1; Stege Sanitary District, NPDES Permit No. CA0038482, Order No. R2-2004-0014, § A. Prohibitions, ¶ 1).

Another example is the EPA-issued NPDES Permit (NPDES Permit No. HI0020877) to the City and County of Honolulu for the Honouliuli WWTP and related collection system. The Honouliuli NPDES permit contains express provisions prohibiting all unauthorized overflows of sewage, regardless of whether the spills reach waters of the United States. *See* Honouliuli Permit, Standard Provisions and Reporting Requirements ¶¶ B.7, C.2, and C.4.

information in the CIWQS database posted on the State Board’s website makes obvious that there is an endemic problem with accurate reporting of SSOs. Many spill reports from sewage system operators indicate large volume SSOs (hundreds of thousands to millions of gallons), with little to no of the spilled sewage recovered, and yet the reports still indicate that none of the spills reached waters. It is extremely unlikely that large volume SSOs that are not recovered have not flowed into waters. The SSO prohibition as drafted gives sewage systems incentive to slant their reporting to avoid showing that spills reached waters, given the faulty assumption that they may escape from liability if spills are not reported as reaching waters of the United States.

An additional problem with the prohibition is the lack of clear definition in current case law of the term “waters of the United States.” The U.S. Supreme Court’s recent fractured decision in *Rapanos v. United States*, 547 U.S. 715 (2006) leaves highly uncertain in some cases as to what is a water of the United States.⁸ The State Board’s current Water Quality Enforcement Policy aptly observes that “fair, firm and consistent enforcement depends on a foundation of solid requirements in law, regulations, policies, and the adequacy of enforceable orders. . . . The extent to which enforceable orders include *well-defined requirements* . . . affects the consistency of compliance and enforcement” (emphasis added).⁹ Given the current uncertainty as to what constitutes a water of the United States under the governing case law, the WDR is inconsistent with the State Board’s Enforcement Policy’s directive that enforceable orders should specify well-defined requirements. To rectify this inconsistency, *the State Board SSO WDR must include a clear, unambiguous and thus enforceable prohibition on all SSOs.*

Notably, California Water Code sections 13260(a)(1) and 13263 provide the State Board with authority to regulate all SSOs, not just those that reach waters of the United States or waters of the State. Section 13260(a)(1) mandates that “Any person discharging waste, or proposing to discharge waste, within any region that “*could affect the quality of the waters of the state*” must file a report of waste discharge with the appropriate Regional Board (emphasis added). The WDR’s findings expressly acknowledged:

the California Water Code generally prohibits the discharge of waste to land prior to the filing of any required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs.

WDR, Findings ¶ 16.

Any SSO has the potential to adversely affect quality of waters of the State. As the SSO reports in the CIWQS database show, many SSOs flow directly into State waters. Even when SSOs do not flow directly into waters, SSOs tend to leave sewage scum on streets or in storm drains that is eventually flushed into waters when it rains or when residents hose down the residue. Accordingly, sewage system operators must report all SSOs to the Regional Board to

⁸ Justice Kennedy’s concurring opinion provided the fifth justice needed for a majority in *Rapanos*. With respect to wetlands, Justice Kennedy opined that only wetlands with a “significant nexus” to a navigable-in-fact water body constitute waters of the United States. As the case dealt only with wetlands, whether Justice Kennedy’s test extends to other surface waters, such as streams, arroyos, and artificial channels is not clear. Moreover, Justice Kennedy’s test itself is highly ambiguous and subject to varying interpretation.

⁹ The State Board’s current enforcement policy (adopted in February 2002) is published at a link set forth on the State Board’s website at: http://www.swrcb.ca.gov/water_issues/programs/enforcement/.

comply with California Water Code section 13260(a)(1). Section 13263, in turn, provides the State Board with broad authority to impose conditions regulating reported waste discharges, including conditions necessary to avoid public nuisance or indirect harm to waters.

IV. The WDR Should Regulate Private Sewage Systems.

The WDR currently provides that only publicly owned or operated sewage collection systems are covered by the WDR and further only imposes obligations on public entities that own or operate such systems. *See* WDR, Findings ¶ 1, Definitions ¶ A.3, (defining a WDR-regulated “enrollee” to mean “A federal or state agency, municipality, county, district, and other public entity that owns or operates a sanitary sewer system . . .”), Application Requirements § B (only imposing a duty to apply for WDR coverage on public entities), Provisions §§ D.7-11 (imposing obligations only on “enrollees” to remediate SSOs, maintain collection systems, secure sufficient collection system capacity to avoid wet weather-related SSOs, and adopt and implement Sewer System Management Plans).

This fails to protect the public from SSOs from private systems, a problem that could worsen over time due to movement nationwide to privatize the operation of sewage collection systems. Veolia Water North America Operating Services, LLC, (Veolia), for example, is one private company interested in assuming control of sewage systems. Veolia has contracted with the City of Richmond to operate Richmond’s POTW. EPA regulations make it the duty of the person/entity *who operates* a facility to apply for NPDES permit coverage. 40 C.F.R. § 121.21(b). In keeping with this regulation, the WDR should be amended to require private contractors that own or operate sewage collection systems to apply for coverage under the WDR, *along with* the relevant public agency if the latter still owns the sewage collection system in issue.

V. The WDR Should Regulate Combined Sewer Systems.

The WDR should be modified to regulate combined sewer systems (“CSSs”) and require CSSs to provide appropriate public notification, reporting, and sewer system management planning. San Francisco and Sacramento’s CSSs discharge large volumes of inadequately treated sewage to public streets and waterways during large rain events (“combined sewer overflows,” or “CSOs”). San Francisco in particular has a severe problem—which, to its credit, it has publicized extensively in public meetings and mailers. San Francisco’s CSOs regularly send sewage mixed with urban storm water runoff into San Francisco Bay and the ocean and/or public streets, businesses and homes. This poses significant health risks given the highly concentrated population of San Francisco and high use of San Francisco’s waters for water contact recreation for surfing, windsurfing, swimming and other recreational activities.

Information concerning the extent and location of wet weather sewage discharges from San Francisco and Sacramento is currently hard for the public to access. The State Board should rectify this problem by extending the WDR to require CSO reporting to CIWQS; the public’s being informed about raw sewage flowing into publicly accessible areas is no less important when the discharge is a CSO rather than an SSO. Similarly, the WDR’s SSMP and other substantive requirements should be extended to CSSs. These requirements are no less important

for a CSS than a separate sanitary sewer system to meet, given the equivalent risks posed by CSOs and SSOs.

VI. The WDR Should Regulate Treatment Plant Bypasses.

Bypasses or “blending”¹⁰ events involve routing large volumes of sewage past the secondary treatment facilities of wastewater treatment plants and discharging this inadequately treated sewage to surface waters. From a public health and environmental risk perspective, such bypasses and blended discharges can pose many of the risks associated with collection system raw sewage spills. The WDR currently does not address bypasses or blending. Given the health and environmental risks involved, the WDR should be amended to include provisions requiring:

- (1) Reporting of bypasses/blending events, with all the fields required for Category 1 SSOs.
- (2) Enhanced sampling of bypassed/blended sewage for levels of pollutants in such discharges, for all pollutants regulated by the POTW’s NPDES Permit.
- (3) For all permittees having bypasses/blending discharges following storms less than a five-year, 24-hours storm event, the WDR should require that the permittee’s capacity assessment that must be performed as part of an SSMP will include assessment of capacity shortfalls that lead to wet weather bypass/blending events. The WDR should specify that the assessment will include prediction of the frequency of bypass/blending events, the site-specific sources of excessive rainfall derived infiltration and inflow (“RDI/I”) that is causing bypasses/blending events, and identification of the measures needed to address system capacity shortfall.
- (4) The WDR should specify that permittees’ capital improvement plans must include provision for capital projects needed to eliminate bypasses/blending events following storms less than the permittee’s design storm.

VII. The State Board Should Adjust its Enforcement Program.

The State Board and Regional Boards’ SSO enforcement effort has fallen far short of the enforcement needed to address the magnitude of the statewide SSO problem. As the State Board’s own report indicates, the Regional Boards took only *six* formal SSO enforcement actions in FY2008-09, meaning the overwhelming majority of SSOs were not addressed by any formal State Board/Regional Board enforcement response.¹¹

While the State Board and Regional Boards can and should improve their enforcement programs in several respects, the fact remains that the State Board and Regional Boards will continue to lack the resources needed to bring all the needed SSO enforcement actions statewide. The only viable solution is for the State Board to issue the WDR as a (required) NPDES permit,

¹⁰ “Blending” involves mixing sewage that has received only primary or less treatment with sewage that has received secondary treatment and then discharging this blended effluent to surface waters. Several sewage systems employ blending during peak wet weather storm events due to their inadequate secondary treatment capacity.

¹¹ State Board, Statewide Sanitary Sewer Overflow Reduction Program Annual Compliance Report at 10 (May 2009) (“SSO Annual Compliance Report”), *available at*: http://www.waterboards.ca.gov/water_issues/programs/sso/docs/compliance_report2009.pdf.

thus facilitating supplemental enforcement of the WDR by the EPA and citizen groups—as the CWA intended.

With respect to their own future enforcement, the State and Regional Board's highest priority should be addressing the unacceptably high rate of permittees' noncompliance with basic WDR reporting requirements: since September 2007, an average of 39% of permittees have not complied with the WDR's basic reporting requirement either to submit SSO reports or monthly certifications that they had no SSOs. In January 2009, 42% of permittees did not comply with this reporting requirement. An average of 15% of enrollees has not submitted the annual collection system questionnaires designed to inform the State and Regional Boards and the public of basic information concerning sewage collection systems. (SSO Annual Compliance Report at 11-12.) As was presented by SWRCB staff to Oakland SSO workshop attendees in September, an average 50% of enrollees have not complied with the WDR's requirement to report compliance with the WDR's SSMP adoption requirements.

If the enrollees do not meet these basic requirements, it is impossible to tell accurately the extent of the SSO problem statewide, where particular problems exist, and whether failure to adopt SSMPs is likely contributing to SSO problems—all of which are the fundamental building blocks of a successful compliance and enforcement program.

The State Board or Regional Boards should issue CDOs or CAOs as soon as possible to all permittees who have not complied with these basic WDR requirements. The CDOs or CAOs should set short deadlines for the permittees to comply. The State Board and Regional Boards should follow up on these orders with administrative civil liability complaints (“ACLs”) against any permittee not meeting the CDOs or CAOs' deadlines.

Next, the State Board or Regional Boards should work systematically on issuing CDOs or CAOs to permittees in order of priority reflecting their evaluation of which permittees are the most significant SSO violators.

To assist in setting enforcement priorities and to provide regulators and the regulated with some objective performance standards useful in evaluating whether SSMPs are being adequately designed and implemented, the State Board should, in consultation with appropriate experts, set a benchmark standard for SSO rates and SSO volume per 100 miles of sewer line to provide regulators and the regulated with some objective performance standard in setting enforcement and compliance priorities. The State Board and/or the Regional Boards should weigh exceedence of these benchmarks as one significant factor in prioritizing their enforcement actions. The State Board and/or Regional Boards should further at least annually require permittees exceeding these benchmarks to explain: (1) whether they have reviewed their SSMPs and SSMP implementation to determine whether either could be improved to reduce their SSO rates, and (2) whether they have evaluated the cause of their large SSO(s) to waters and the measures they could implement to avoid repeats of such large SSOs. The State Board and/or Regional Boards should further require these sewage authorities to submit their most recent audit performed as specified by the WDR.

The Regional Boards should only issue ACLs in conjunction with CDOs or CAOs, rather than as a stand-alone enforcement response--many Regional Boards have historically done the latter. Simply fining enrollees for SSOs tends to become simply a “pay to pollute fee” that does not prompt needed remedial measures.

If it appears unlikely that a permittee will comply, or if the permittee has not complied with a previous CDO or CAO, then the State Board and/or Regional Board should pursue judicial enforcement.

VIII. The WDR’s Spill Response Provisions Should Be Amended.

The WDR only includes a very general, vague directive concerning SSO contingency planning. The WDR only requires that sewer system management plans include:

A program to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to waters of the United States and to minimize or correct any adverse impact on the environment resulting from the SSOs.

Provisions § 13(vi)(f). The term “waters of the United States” should be deleted here as both unnecessarily vague and too narrow; the WDR should aim to protect *all* waters of the state and other areas accessible to the public in equal measure. This accordingly should be further amended to provide greater clarity and direction. Specifically, the WDR should mandate that SSMPs include:

Spill contingency plans for minimizing the volume of sewage released to any waterway, storm drain, or land area outside of the permittee’s collection system by rapidly implementing at the site where SSOs are occurring one or more of the following measures, as necessary and appropriate, to pump sewage around sewer line blockages or collapses or past failed pump stations and/or contain sewage flows in storage facilities: (i) employing temporary pumping equipment or (ii) hauling sewage in tanker trucks, (iii) routing sewage flow into either temporary or permanently installed storage facilities or into underutilized portions of the collection system, and (iv) employing sewage flow reduction measures (such as temporarily turning off water mains or taking other steps to restrict wastewater inputs into the sewer system).

IX. The WDR’s Reporting Requirements Should Be Improved.

The existing reporting requirements in the WDR need several improvements. First, the WDR allows, but does not require, permittees to report sewage spills that are caused by blockages or other problems within a privately owned lateral line. (Monitoring and Reporting Program, § A.3, 6.) The WDR should be amended to require permittees to track and report all information concerning private lateral spills that they become aware of. The WDR should further be amended to require permittees to develop appropriate authority to require the reporting of private lateral spills and appropriate implementation of this authority. Private lateral spill information provides valuable insight into the extent of the private lateral problem and what

measures are needed to address this problem, which, as discussed below, is highly related to the SSO problems in public sewage collection systems.

The WDR requires permittees to report the volume of sewage spilled from their collection systems and the volume of sewage reaching a surface water or drainage channel, or reaching but not recovered from a storm drain. (Monitoring and Reporting Program, § A.9, 11.) There appears, however, to be wide variability in how permittees' calculate these sewage volume estimates, and in the accuracy of these estimates. The WDR should be amended to require permittees to specify in their SSMPs the methodologies that they will employ to calculate the volumes of sewage spilled and their commitment to train response personnel in these methodologies. Sewage spill reports should then indicate which methodology the responding field personnel used for calculating the following: (a) estimates of volume of sewage spilled from the collection system; (b) volume reaching a surface water, drainage channel, or storm drain and, as applicable; and (c) the volume of sewage spilled from the collection system but recovered and returned to the collection system.

The WDR requires permittees to report whether an SSO reached "surface water" or "a drainage channel." (Monitoring and Reporting Program, § A.1.B., A.11.) These are undefined and vague terms. To provide more clarity as to what constitutes a "surface water" or "drainage channel," the WDR should be amended to require reporting whether spills reached *any* "surface water body or water conduit, including the ocean, tidal waters, natural streams, wetlands or marshes, artificial water channels, or drainage ditches or canals." The WDR should be amended to require permittees to report the name of the water body or water conduit whenever this information is available or give other information providing the location of the water bodies or conduits (such as address or geographic coordinates).

The WDR requires permittees to report whether an SSO reached "Beaches." (Monitoring and Reporting Program, § A.11.H.) This reporting requirement is vague, however, as to what constitutes a "Beach," and would appear to risk exclusion of reports of SSOs to all water contact recreation areas (many rocky coastline areas are heavily used for various types of water contact recreation or commerce). The WDR should be amended to require reports to indicate whether SSOs reached "beaches or other points of water contact recreation, such as waters used for swimming, surfing, windsurfing and kite boarding, diving, kayaking, fishing or shellfish harvesting, or other recreational or commercial activity where water contact is likely."

X. The WDR's SSMP Requirements Should Be Amended in Several Ways.

The existing SSMP elements specified in the WDR, while helpful in many respects, need amendment to improve SSO reduction performance.

A. Addition of a Private Lateral Sewer Line Inspection and Replacement Program

Defective private lateral lines are a source of root intrusion and debris loading into public sewer lines, as well as excessive rainfall-derived infiltration and inflow (RDI/I). Improper lateral line connections to public sewers interfere with public sewer line maintenance and performance

(for example, lateral lines that protrude into main lines catch fats, oil and grease, roots and debris, causing line blockages. Such protruding laterals also can prevent Closed Circuit Television (“CCTV”) inspection of sewer lines). Many POTWs are recognizing that they cannot effectively reduce SSOs from their systems without addressing defective private laterals. Thus, it is critical that such private lateral inspection and maintenance be made part of effective SSMPs.

Accordingly, the WDR should be amended to require permittees, as appropriate for their systems, to develop and implement private lateral sewer line inspection and replacement programs. The programs should include the following elements:

- (i) A requirement for permittees to demonstrate their legal authority to require third-party reporting of SSOs from private lateral sewer lines (such as from the commercial vendors that respond to private lateral sewer line SSOs).
- (ii) Inspections of private lateral sewer lines and the authority to require maintenance, repair, or replacement of such lines to the extent necessary to prevent problems with SSOs in public sewer lines.
- (iii) The adoption of code standards that all private lateral lines must meet and a requirement for permittees to demonstrate their legal authority to require these standards to be met.

In addition, sewage authorities should consider incentives for private lateral owners to inspect and repair their defective lateral lines, such as a partial subsidy for owners who do so voluntarily.

B. Addition of Force Main Specific Requirements

The WDR should be amended to include specific provisions aimed at the unique problems posed by force main sewer lines (sometimes called “pressure pipes”), *i.e.*, the sewer lines that carry sewage pumped under pressure from pump stations. Force main sewer lines face very different management issues from gravity sewer lines given that the latter only carry sewage flow via gravity and their downward slope. Gravity sewer lines can usually be inspected with CCTV, whereas CCTV inspection of force mains is often difficult or infeasible--necessitating specialized methodologies adapted to the specific placement and setting of the force mains. Most sewer line grading systems are currently adapted for gravity sewer lines; a different evaluation methodology is needed for force main lines. Force main lines, being under pressure, face different failure scenarios than gravity sewer lines and the response needed to address a ruptured sewer force main is different than the response needed for a collapsed gravity main line. The WDR fails to recognize and address these unique force main sewer line problems.

Accordingly, the WDR should be amended as follows:

- (1) The WDR should be amended to add specific mandates that SSMPs include evaluation of measures to avoid uncontrolled, large scale SSOs from ruptured force mains, including: (a) construction of redundant force mains to serve as backup should a force main fail, or (b) rapid implementation of measures to capture the flow from a

ruptured force main and divert the flow to avoid raw sewage overflows outside of the collection system, such as installation of temporary pumping facilities, routing of flows into storage facilities, using tanker trucks to transport flows to other points in the collection system, and flow reduction measures (such as temporarily turning off water mains or taking other steps to restrict wastewater inputs into the sewer system).

(2) The WDR mandates that SSMPs include a program of visual and TV inspections of “sewer pipes,” and a system for ranking the condition of “sewer pipes,” without differentiating between gravity sewer lines and force main lines. (Provisions § D.13(iv)(c).) This provision should be amended to provide for: (a) regular visual and CCTV inspection of gravity sewer lines, (b) regular condition assessment of force main sewer lines utilizing the best methodology available for the force main sewer lines in issue, (c) a system for ranking the condition of gravity sewer lines, and (d) a system for ranking the condition of force main sewer lines.

(3) The WDR mandates that SSMPs include procedures and standards for inspecting and testing “new sewers,” again without differentiating between gravity sewer lines and force main lines. (Provisions § D.13(v)(b).) This provision should be amended to mandate that SSMPs include procedures and standards for inspecting and testing “new gravity sewer lines” and “new force main sewer lines.”

C. Satellite Collection Systems

Many sewage collection and treatment systems (“main systems”) accept flow from “satellite systems” that lack their own treatment facilities. Currently, many main systems lack the ability to regulate or jointly plan for managing the flow from their satellite systems. This can be highly problematic, as satellite systems have no incentive to reduce their RDI/I driven peak flows that can overwhelm the capacity of the main systems. In turn, the main systems cannot reduce peak flows from satellite systems, leading to chronic, unremedied, wet weather capacity-driven SSOs from main systems.

To address this problem, the WDR should be amended to require satellites and main systems to develop and implement joint plans for managing peak wet weather flows, including monitoring and modeling such flows, and planning and implementing measures needed to reduce peak wet weather flows as needed to avoid wet weather capacity-driven SSOs (such as RDI/I reduction, system storage, and flow equalization).

D. Improved CIP Provisions

The rehabilitation and replacement plan requirements of the WDR’s Provisions § 13(iv)(c) should specify that permittees’ capital improvement plans must, *inter alia*, include analysis of the expected useful life of system assets and a schedule for replacing assets before the end of their expected useful life (the existing language that the CIP must address “proper management and protection of the infrastructure assets” is unduly vague in this respect).

E. More Specificity in Design and Performance Standards

Currently, the WDR does not expressly mandate that separate design and performance standards “for the rehabilitation and repair of existing sanitary sewer systems” should be established for the very different components of a sewage collection system. (WDR, Provisions § 13(v).) To clarify that such standards must be adopted, the WDR should specify that standards must include separate specific standards for gravity sewer lines, force main sewer lines, and pump stations.

F. Improvements in the WDR’s System Evaluation and Capacity Assurance Plan Requirements

The WDR’s System Evaluation and Capacity Assurance Plan (“SECAP”) requirements lack any specificity, leaving unclear what sewage authorities must consider in designing their SECAPs. (WDR, Provisions § 13(viii).) The SECAP provision should be made more specific as follows:

(1) Permittees should be required to include in their capacity evaluations an accurate and reasonably detailed assessment of collection system flow correlated with rainfall events for any system that has had capacity-driven SSOs. Sewage authorities owning or operating any such larger or more complex systems should be required to include the following methodologies in their capacity evaluations: (a) gathering of sufficiently robust flow meter data over several storm events, (b) gathering of contemporaneous rainfall data from rain gauges and, where available, Doppler radar, (c) development of hydrographs correlating collection system flow with rainfall data, and (d) system-wide flow modeling predicting system flow under varying rainfall scenarios and identifying areas of predicted surcharge or SSOs under various rainfall scenarios.

(2) Permittees must develop a design storm that is at least as stringent as a 24-hour, five-year storm event unless they can develop specific justification why a more lenient design storm is still protective of public health and the environment. Permittees should develop more stringent design storms as needed to protect public health and the environment.

G. Improvements in Information Management

A key task in ensuring a well-run and efficient sewage collection system and in reducing SSOs is for sewage authorities to collect information concerning system performance and use this information to adjust system operations. The requirements in the WDR’s Provisions § 13(ix) concerning the collection and analysis of important collection system performance information are vague and should be improved. The WDR should itemize the information that should be collected and kept current, unless a permittee has explained in its SSMP why gathering that type of information is unnecessary for its system. The “default” list of required information should include:

(1) the locations of gravity sewer main lines, interceptor sewer lines, public lateral sewer lines, and force main sewer lines, flow equalization temporary storage basins or facilities,

- upstream treatment works, headworks, overflow structures/flapgates, final treatment works, and outfall pipes;
- (2) the length of gravity sewer main lines, public lateral sewer lines, and force main sewer lines;
 - (3) the age and material composition of all sewer lines (force mains and gravity lines);
 - (4) the diameter of sewer lines (force mains and gravity lines);
 - (5) the location of maintenance holes;
 - (6) the location of pump stations;
 - (7) the dates and locations of CCTV inspections of sewer lines or other condition assessments of sewer lines (including smoke testing)—for both force mains and gravity lines;
 - (8) grading or other determination of the condition of sewer lines (force mains and gravity lines) based on condition assessments or other information;
 - (9) schedules for performance of sewer line spot repairs, sewer line segment repair, rehabilitation or replacement, and construction of new sewer lines, (including relief sewers)—including when such work was completed and whether the work met design standards;
 - (10) the dates and findings of pump station condition assessments;
 - (11) the date, location, volume, cause of, and response to SSOs;
 - (12) locations of sewer line “hot spots,” *i.e.*, locations of repeated blockage-caused SSOs or otherwise known risk of line blockages;
 - (13) locations and dates of sewer line cleaning (along with the method of cleaning employed, such as hydrojetting, de-rooting, etc.);
 - (14) the location of food service establishments (“FSEs”) and the dates and results of inspections of FSEs for compliance with fats, oil and grease management/discharge requirements;
 - (15) the location of any sewer line flow meters and rain gauges and data collected from such meters and gauges;
 - (16) the location of any sewer system surcharges or other indications of lack of system capacity, and
 - (17) the location of defective private lateral sewer lines, including lateral lines protruding into sewer main lines, and the nature of the defect.

The WDR should specify that this information be recorded and tracked via a computerized data management system tied to GIS, unless the SSMP explains why an alternative information recording and tracking system will suffice for a permittee’s individual setting.

H. Financial Planning

A critical task in ensuring effectiveness of the WDR and its SSMP requirements is for permittees to engage in sound financial planning and management. Permittees must evaluate comprehensively the long-term costs of implementing their SSMPs and then ensure that they obtain the financial resources to implement their SSMPs. Without such financial planning, adoption of even the best-designed SSMP can be of limited value when a permittee finds it lacks the resources to implement its SSMP. The WDR lacks, and should be amended to include, such a financial planning requirement.

XI. The WDR Should Mandate Sewer System Operator Certification.

The WDR should be amended to mandate sanitary sewer system operator certification. As several representatives from the permittee community testified during the State Board's September 29, 2009 workshop in Oakland, such mandatory certification is needed to ensure competent and trained operators are in charge of key aspects of collection system operation and maintenance. As part of certification, operators should be required to show training in the requirements of the SSMP and effective sewer system asset management. This will ensure that those in charge of operating sewer systems are aware of current industry standards for avoiding SSOs.

XII. The State Board's Online Sewage Incident Maps Should Be Improved.

The State Water Board's online sewage spill incident maps are an excellent and valuable tool for better informing the public concerning the locations of SSO problems. These maps can be improved, however, by including more categories of larger-sized SSOs (*i.e.*, by not ending at one category of "SSOs over 1 million gallons," but instead having several categories of SSOs over 1 million gallons, such as SSOs of 1-2 million gallons, SSOs of 2 to 5 million gallons, SSOs of 5-10 million gallons, and SSOs exceeding 10 million gallons). The map should include an overlay of local water bodies (particularly those with recreational uses), public parks, and schools to better inform the public of the location of these spills in conjunction to such important features. Finally, the maps' date filter should default to the beginning of the WDR database rather than just the last few months, so that viewers will not accidentally miss the full context of SSOs reported during the life of the permit.

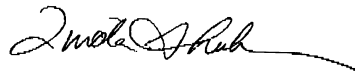
XIII. The WDR's SSO Definition Should Be Improved.

The WDR currently defines an SSO as any release of sewage from a Sanitary Sewer System (SSS) and further defines SSS as "any system of pipes, pump stations, sewer lines . . . upstream of the headworks." This definition scheme is potentially problematic in any situation where there are multiple treatment plants in train, as is the case with the City of Los Angeles. There are many miles of sewer line in Los Angeles downstream of the headworks for the Glendale treatment plant that eventually flow to the City's Hyperion Treatment Plant. Read literally, this definition could be interpreted as excluding these many miles of sewer line from the Los Angeles SSS. Similarly, treated sewage flows from the City of Richmond and the West County Wastewater District (WCWD) are both sent to a combined treatment structure operated by a third entity, West County Agency (WCA). An SSO downstream of the Richmond or WCWD plants but before the WCA treatment structure would arguably not be from an SSO from an SSS. This definition should be amended to address these types of situations by defining an SSO as *any* release of sewage other than from a wastewater treatment plant.

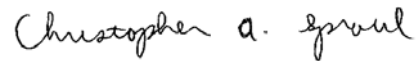
* * *

Again, we commend the State Board for evaluating the SSO Program WDR at this time, and we thank you for consideration of our comments. If you have any questions, please do not hesitate to contact us.

Best regards,



Linda Sheehan
Executive Director
California Coastkeeper Alliance
lsheehan@cacoastkeeper.org



Chris Sproul
Attorney on behalf of CCKA
Environmental Advocates
csproul@enviroadvocates.com

Attachment: BNA, Environment Reporter, "EPA Says Permits Needed for Communities that Send Wastewater for Outside Treatment," Vol. 36, No, 18, pp, 927-28 (May 6, 2005)

ATTACHMENT

BNA, *Environment Reporter*, “EPA Says Permits Needed for Communities that Send Wastewater for Outside Treatment”

Drinking Water

Byproducts, Atrazine, Perchlorate Likely To Get Scrutinized as Endocrine Disruptors

As new information emerges on the reproductive and developmental effects of pharmaceuticals in drinking water, three contaminants in particular could be subject to new federal review, a water utility representative said May 4.

Those contaminants are disinfection byproducts, atrazine, and perchlorate, which either are regulated by the Environmental Protection Agency or are under consideration for regulation, according to Alan Roberson, director of security and regulatory affairs for the American Water Works Association.

Roberson made his remarks during a Webcast sponsored by AWWA, which considered pharmaceuticals, such as prescription and nonprescription drugs, and other contaminants such as personal care products, including shampoo and fragrances.

EPA set a standard for disinfection byproducts in 1998, and is scheduled to issue the Stage 2 Disinfection Byproducts Rule at the end of 2005, he said (40 C.F.R. § 141.64).

Disinfection byproducts, which are formed when organic material reacts with a disinfectant such as chlorine, may be linked to miscarriages and other health problems.

Atrazine Standard Set in 1991. A standard for the herbicide atrazine was set in 1991 at 3 parts per billion for atrazine in drinking water, Roberson said (40 C.F.R. § 141.61). Although a 2002 EPA risk review found atrazine probably is not a human carcinogen, it was shown to be a possible endocrine disruptor.

Although perchlorate is not yet regulated, new information could spur EPA action on that contaminant, he said. Perchlorate is linked to thyroid disease.

Pharmaceuticals traditionally have not been considered contaminants and have not been monitored.

Although research on the health effects of these newly recognized contaminants is in the early stages, some studies are showing they might disrupt the endocrine system in wildlife, according to the U.S. Geological Survey.

Roberson said EPA's regulatory schedule for screening and testing the three contaminants is not yet clear. If further review is warranted, he said, it would probably lead to more frequent monitoring, at a higher cost, for drinking water utilities.

Geological Survey Investigation. To better understand the effects of pharmaceuticals in the environment, the USGS is studying the source, occurrence, and movement of the compounds, and their effect on the ecology, according to Dana Kolpin, a research hydrologist at USGS.

Kolpin said USGS has detected 158 compounds in water with a wide variety of uses, including prescription and nonprescription drugs, caffeine, and DEET.

USGS has said that most endocrine disruptors have been found at low concentrations in water and that some can survive drinking water and wastewater treatment. Kolpin said USGS has developed ways to measure small concentrations of pharmaceuticals and most have been found at low levels.

"Our ability to measure contaminants currently exceeds our understanding of their environmental effects," he said.

Rapid Evolution Predicted. On May 2, Ed Furlong, a research chemist with USGS, told BNA that the organization's research was probably just touching on a small fraction of the total number of pharmaceuticals in the environment.

To date, there is little data to determine whether there are human and ecosystem effects, he said.

"We're in the beginning stages of trying to understand transport, fate, and effect of pharmaceuticals," Furlong said.

However, "understanding will probably evolve fairly rapidly because people have done similar kinds of work for pesticides, and many of the compounds we are looking at have some chemical relationship to pesticides," he said.

BY PATRICIA WARE

Discharge Permits

EPA Says Permits Needed for Communities That Send Wastewater for Outside Treatment

Communities that send their wastewater to a centralized location outside their jurisdiction for treatment should apply for a Clean Water Act permit to ensure their discharges are covered in the event of a sewer spill, Environmental Protection Agency officials said May 2.

Officials from EPA's Office of Wastewater Management addressed a meeting of the National Association of Clean Water Agencies about a draft "fact sheet" on sanitary sewer overflows (SSOs) that was distributed for review to state regulators in March.

The Clean Water Act prohibits discharges to rivers, lakes, and streams in the absence of a National Pollutant Discharge Elimination System (NPDES) permit.

"We want to get the message out that if they have an SSO that discharges to waters of the United States, or [has] the potential to discharge to waters of the U.S., that they have a duty to submit a permit application and be subject to the NPDES permit program," said Kevin Weiss, the SSO program manager at EPA.

Members of NACWA, formerly called the Association of Metropolitan Sewerage Agencies, questioned how the document would apply to "satellite collection systems." These generally are small communities that do not own or operate their own wastewater treatment plants, but collect stormwater and wastewater and send it to a neighboring community or regional sewer district for treatment.

Operators of the centralized facilities that treat this imported wastewater have maintained they should not be liable for sewer overflows and other potential Clean Water Act violations in satellite communities because they have no legal authority to address the underlying issues of infrastructure or management outside their jurisdiction.

States Reluctant to Issue Permits. Some states have been reluctant to issue permits to satellite systems because it would significantly increase the number of permits and state resources are already limited. In some

cases, a regional sewer authority may have dozens of satellite communities as customers, many of which are small and have limited resources, one official said.

"Who are you going to come after in an overflow?" Ray Orvin, executive director of the Western Carolina Regional Sewer Authority, asked the agency officials. His system operates 12 treatment plants that serve 400,000 people in four counties in the Greenville, S.C., area.

Some states do not think they have the legal authority to issue permits to satellite systems, said Lisa Hollander, assistant general counsel for the Northeast Ohio Regional Sewer District.

Weiss said EPA would make case-by-case determinations of whether the operator of the publicly owned treatment works or the satellite community would be liable in the event of a sewer overflow.

Steve Sweeney, an attorney in the EPA Office of General Counsel, said that if enforcement officials think "satellite communities need to do something to effectuate the remedy, these communities would be brought in as indispensable parties."

The draft fact sheet clarifies permit conditions. Specifically, facilities with permits must:

- notify the permitting authority in the event of a sewer overflow;
- provide a written report within five days of learning of an overflow;
- establish a process for notifying third parties of overflows that could endanger health because of the likelihood of human exposure;
- maintain records of overflows; and
- properly operate and maintain their facilities in accordance with a specified program, such as the capacity, management, operation, and maintenance.

Satellite Communities Said to Lack Incentive. One municipal official said satellite communities do not have an incentive to apply for a permit. If they obtain permit coverage and have an overflow, they would be subject to an enforcement action for violating the permit, including penalties.

If there is an overflow without a permit, the satellite community most likely would be part of a larger consent order negotiated after an enforcement action against the system as a whole. Such a negotiation could take 10 years, but the cost may be spread more broadly.

Clyde Wilbur, an engineering consultant, asked whether satellite communities that obtain permits would be allowed to participate in negotiations to resolve enforcement actions resulting from an overflow.

He has done work for the Allegheny County Sanitation Authority (ALCOSAN), which serves about 800,000 people in 82 communities in the Pittsburgh area.

"We don't interpret the fact sheet to mean that during enforcement cases, you should invite municipal satellites to discuss the remedy for the permittee," Weiss said, adding that EPA officials recognize the complexity of dealing with satellite systems.

Linda Boornazian, director of the permits division in the EPA Office of Wastewater Management, said the draft fact sheet was only intended to pull out and clarify issues involving SSOs that do not need to be addressed through a formal rulemaking.

"In the fact sheet, we didn't take on the whole satellite issue," she said. "We just want to reiterate that you can't discharge without a permit."

Treatment Officials Need to Be Involved. Several NACWA officials said EPA should have treatment officials involved in the discussions with states over the fact sheet.

"If permits are required, a POTW owner absolutely has to be at the table," said Donnie Wheeler, general manager of the Hampton Roads (Va.) Sanitation District. "There is the very tortured issue of liability involved with SSOs. Hampton Roads is incurring liability because we think it is in the best interest of the communities we serve."

Hollander said the standards are the primary issue with permitting satellite communities.

"Unless you have a consistent standard, you can't explain to the satellite community what is expected of it," she said.

Gordon Garner, an engineering consultant with CH2M Hill in Kentucky, said the fact sheet is merely taking away from what he said is the real issue, which is the lack of a consistent, national policy for dealing with sewer overflows.

BY SUSAN BRUNINGA

Enforcement

Former Delaware Official Sentenced For Wastewater Discharges Into Wetlands

PHILADELPHIA—A federal court in Wilmington, Del., sentenced a former manager in Delaware's natural resources agency to six months in prison and two years probation for illegally discharging polluted wastewater into wetlands, the Environmental Protection Agency announced April 28 (*United States v. Daisey*, D. Del., No. 04-CR-134, 4/28/05).

William Daisey, the former chief of operations for the Delaware Department of Natural Resources and Environmental Control (DNREC) dredging facility in Lewes, Del., was sentenced in U.S. District Court for the District of Delaware after pleading guilty in January to a criminal violation of the Clean Water Act (36 ER 178, 01/28/05).

Daisey admitted that from January 2000 until April 2001, he regularly directed a DNREC employee to discharge wastewater contaminated with hydrocarbons and other chemicals associated with used oil and anti-freeze into a sump pit, from which the water was pumped through an underground pipe into nearby wetlands, according to EPA.

Daisey was charged with knowingly discharging pollutants without a required Clean Water Act permit.

The DNREC facility in Lewes is used for docking and maintaining dredge boats operated by the state and for warehousing supplies, chemicals, and equipment used by beach replenishment crews.

After an EPA search of the facility in July 2003, DNREC conducted an EPA-supervised cleanup at a cost of about \$325,000, removing two tons of hazardous and nonhazardous waste that had been stored or disposed on the site, EPA said.