



August 2, 2010

Via Electronic Mail

Water Docket,
U.S. Environmental Protection Agency
OW-Docket@epa.gov

Attention: Docket ID No. EPA-HQ-OW-2010-0464.

SUBJECT: NPDES Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows and Peak Wet Weather Discharges

Sir/Madam:

The above listed California clean water associations appreciate the opportunity to provide comments on possible modifications to the National Pollutant Discharge Elimination System (NPDES) regulations as they apply to municipal sanitary sewer collection systems and sanitary sewer overflows (SSOs). Our associations represent publicly-owned treatment works and locally owned satellite collection systems throughout California that collect, treat, and reclaim more than two billion gallons of wastewater each day and serve most of the sewered population of California. Each year, the agencies we represent successfully convey more than 99.999% of the wastewater generated by the residents and businesses they serve to treatment plants.

While our agencies are also interested in the rules by which blending at publicly-owned treatment works (POTWs) will be regulated and permitted, the focus of these initial comments is on the proposed approach to regulating SSOs. We have a unique perspective on the advisability and effectiveness of a new federal regulatory program for SSOs, because for the past four years, our locally-owned systems have been operating under a comprehensive statewide program that requires permitting, planning and online reporting of SSOs. As discussed further below, we have a strong interest in ensuring that any new federal program is compatible with the California requirements and that the significant investments already made in collection system infrastructure, planning and reporting are not undermined.

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For this reason, we believe that a national EPA-administered NPDES program for SSOs would best be conducted by the states through delegated authority, in the same manner as NPDES permitting for POTWs is currently implemented. This approach would allow for the incorporation of local concerns and the ability to tailor programs to regional conditions. For example, SSO issues are clearly different in areas receiving significant rainfall, such as Florida or the north coast of California, from those in arid climates, such as Arizona or Los Angeles. In addition, a delegated program would accommodate the reality that some states have implemented aggressive programs in the absence of specific federal requirements while others are just in the beginning stages of addressing SSO issues.

Despite the regulatory attention paid to SSOs in California, collection system agencies are increasingly challenged by a very active campaign of third party litigation filed by non-governmental organizations pursuant to the Clean Water Act (CWA). These cases have created a body of settlements that establish *de facto* standards and benchmarks that are, in essence, displacing the State's regulatory judgments. The citizen suit activity is fueled by an interpretation of the CWA that each and every SSO, regardless of the size or water quality impact, is a violation of federal law and subject to civil penalties, supplemental environmental projects, injunctive relief, and an award of attorneys fees. Yet, even the best maintained, operated and managed collection system will occasionally have overflows, so the premise that the law requires zero overflows places collection systems agencies in the position of striving toward an unattainable standard. Meanwhile, millions of dollars of scarce public resources are being siphoned away from collection system improvements toward attorneys fees and "mitigation payments" in lieu of penalties.

Regulation of collection systems should focus on the integrity of sewer systems and the adequacy of infrastructure and other programmatic actions, not on chasing an impossible target. To be effective and yield real benefits for the environment and public health, any new federal program must alter the unattainable zero overflow mindset and establish a structure where collection system compliance is defined and measured by the implementation of best management practices and maintenance, management and operation (MOM) programs. Such an approach is consistent with federal regulations (40 C.F.R. § 122.44(k)), and with other water quality programs, such as the Trash TMDLs in southern California, where zero trash is the goal, but compliance can be attained by the installation or operation of structural improvements such as trash separation devices.

Just as structural engineers must design buildings for an earthquake event, it is necessary to design collection systems for a defined size of storm event. It is not in the public's interest to spend staggering sums of money to attempt to design and operate

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systems that would achieve zero SSOs even when associated with extreme storm events. Indeed, building larger and larger sewers is typically not in the public's interest; not only due to the high cost, but also because the slow flows that would be carried in all but the largest storm events allow debris to settle, thereby promoting generation of odorous sulfides that in turn cause corrosion of concrete sewers and structures – leading to their need for repair.

In the event that EPA decides to require permits for satellite collection systems, we do not advocate the inclusion of independent satellite systems in permits issued to the owners/ operators of the POTWs. These entities are separate governmental units with their own governing boards, budgets, fee authority and capital programs. Regional treatment agencies do not control the actions or budgets of satellite systems. Thus, if satellites are to be brought within the NPDES permit framework, the mechanism for doing so should be permits issued directly to the satellite by the states.

Spill notification requirements should be carefully considered. Reporting requirements should be tailored to the need for the information and the manner in which the information is to be used by regulatory agencies. For spills with potential health or environmental impacts, reporting and notification are important but the first priority for the sewer agency must be to respond to, contain and clean up the spill. Some SSOs must be recognized as *de minimis*, (e.g., less than 10, 50, or 100 gallons) and should not require notification. This is one area where some consistency would be welcomed. Various California regulators and first responders currently require multiple reports and notifications within what are in some cases unworkable timeframes. In addition, collection system agencies in California have received complaints from the California Office of Emergency Services (OES), to whom collection system agencies are now required to report relatively small SSOs, because OES staff recognizes that small SSOs are not emergencies.

As noted above, any new federal program must strive to be consistent with state programs previously established. Many successes are attributed to California's state-wide program that was imposed by general permit (known as “waste discharge requirements” under California law) in 2006, including significant decreases in both the number and volume of SSOs. The requirements of that general permit include components of the previously withdrawn draft federal Capacity, Management, Operation, and Maintenance (CMOM) program, such as the need to address capacity issues and to appropriately maintain the collection system infrastructure. The California SSO permit also includes a level of defined enforcement discretion to recognize the inability of any agency to completely control all spills.

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There are many lessons to be learned from the results of California's program. Among the most critical is that any federal program provide for compliance schedules and that there must be focused and intensive training. Tens of thousands of new entities that have never before been subject to a federal permitting scheme would be affected by a satellite collection system permit program. California's wastewater community worked in partnership with the state to provide training for managers and operators of collection system agencies, many of whom work for small, rural systems. Sewer system management plan models were developed, graphical information systems (GIS) or sewer mapping systems developed or augmented, operating manuals assembled, and strategies shared.

As a final point, we do not believe EPA has articulated a valid legal basis for extending regulatory jurisdiction to SSOs that do not reach waters of the United States. SSOs into basements or other buildings or properties are indeed a matter for concern, and can raise public health issues. Such matters are properly within the purview of state and local public health or environmental agencies, however, and are not within the scope of EPA's regulatory authority.

We appreciate the opportunity to share our preliminary comments regarding the contemplated federal rulemaking. We will continue our efforts to implement California's collection system order and anticipate additional successes as sewer system management plans are fully implemented and refined. Should EPA decide to proceed with a regulatory process, our associations plan to be active participants to ensure that we do not lose the ground already gained and that our member agencies do not face unwarranted demands on their already strained resources.

Sincerely,

A handwritten signature in black ink, appearing to read "David Tucker".

David Tucker, BACWA

A handwritten signature in black ink, appearing to read "Roberta Larson".

Roberta Larson, CASA

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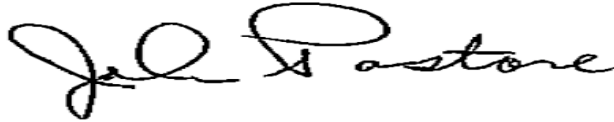
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Debbie Webster, CVCWA



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