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6 Attorneys for Petitioners  
California Association of Sanitation Agencies  
7 and Southern California Alliance of  
Publicly Owned Treatment Works  
8

9 BEFORE THE  
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
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12 In the Matter of the Petition of the ) SWRCB/OCC File \_\_\_\_\_  
California Association of Sanitation )  
13 Agencies and the Southern California ) PETITION FOR REVIEW  
Alliance of Publicly Owned Treatment ) [Wat. Code, § 13320]  
14 Works For Review of Order )  
No. R9-2007-0005 )  
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16 The California Association of Sanitation Agencies (“CASA”) and Southern California  
17 Alliance of Publicly Owned Treatment Works (“SCAP) (collectively, “Petitioners”), in  
18 accordance with Water Code section 13320, hereby petition for review of Order No. R9-2007-  
19 0005 (“Order No. R9-2007-0005” or “Regional WDRs”) of the San Diego Regional Water  
20 Quality Control Board (“Regional Water Board”) and other action or inaction of the Regional  
21 Water Board. As required by California Code of Regulations, title 23, section 2050(a),  
22 Petitioners file a statement of points and authorities in support of this petition concurrently  
23 herewith.

24 Petitioners request the opportunity to file supplemental points and authorities in support of  
25 this Petition for Review once the administrative record and final adopted Regional WDRs become  
26 available. Petitioners also reserve the right to submit additional arguments and evidence  
27 responsive to the Regional Water Board’s or other interested parties’ responses to this Petition  
28 for Review, to be filed in accordance with California Code of Regulations, title 23, section 2050.5.

1. NAME, ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS OF PETITIONERS

The petitioners are CASA and SCAP. CASA is a statewide organization of local public agencies that provides wastewater treatment, collection, and water recycling services to millions of Californians. SCAP is a non-profit mutual benefit corporation organized to help ensure that regulations affecting publicly owned treatment works and collection systems are reasonable and in the public's best interest. The addresses of Petitioners are as follows:

California Association of Sanitation Agencies  
c/o Catherine A. Smith, Executive Director  
1215 K Street, Suite 2290  
Sacramento, CA 95814  
(916) 446-0388  
E-mail: [casmith@casaweb.org](mailto:casmith@casaweb.org)

Southern California Alliance of Publicly Owned Treatment Works  
c/o John Pastore, Executive Director  
30200 Rancho Viejo Road, Suite B  
San Juan Capistrano, CA 92675  
(949) 489-7676  
E-mail: [jpastore@scap1.org](mailto:jpastore@scap1.org)

In addition, all materials in connection with this Petition for Review, and the administrative record, should be provided to the Petitioners' counsel:

Somach, Simmons & Dunn  
c/o Roberta L. Larson  
Cassie N. Aw-yang  
813 Sixth Street, Third Floor  
Sacramento, CA 95814  
(916) 446-7979  
E-mail: [blarson@lawssd.com](mailto:blarson@lawssd.com)  
E-mail: [cawyang@lawssd.com](mailto:cawyang@lawssd.com)

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL WATER BOARD THAT THE STATE WATER RESOURCES CONTROL BOARD IS REQUESTED TO REVIEW

CASA and SCAP petition the State Water Resources Control Board ("State Water Board") to review the Regional Water Board's adoption of Order No. R9-2007-0005, Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region and action or inaction related thereto as more fully described in the accompanying Memorandum of Points

1 and Authorities in Support of Petition for Review. The draft of the Regional WDRs and  
2 accompanying Errata Sheet submitted to the Regional Water Board at the February 14, 2007  
3 hearing are attached hereto as Exhibits A and B, respectively. No final version of the adopted  
4 Regional WDRs being challenged was publicly available at the time of this filing.

5 3. THE DATE ON WHICH THE REGIONAL WATER BOARD ACTED

6 The Regional Water Board adopted Order No. R9-2007-0005 on February 14, 2007.

7 4. STATEMENT OF THE REASONS THE ACTION OR INACTION WAS  
8 INAPPROPRIATE OR IMPROPER

9 The following general allegations and bases for review state the reasons the action or  
10 inaction of the Regional Water Board was inappropriate or improper and support the specific  
11 actions Petitioners request below. Each of these allegations and bases for review are discussed  
12 more fully in the Memorandum of Points and Authorities filed concurrently herewith.

13 GENERAL ALLEGATIONS

14 1. In 1996, the San Diego Regional Water Board adopted Order No. R9-1996-04 to  
15 govern the region's sanitary sewer systems. The order prohibited all sanitary sewer overflows  
16 ("SSOs") and established reporting requirements. (Order No. R9-1996-04.)

17 2. In May 2006, the State Water Board adopted Order No. 2006-0003 ("Statewide  
18 WDRs"), a general WDR to govern all publicly owned sanitary sewer systems in the State  
19 greater than one mile in length that collect and/or convey untreated or partially treated wastewater  
20 to a publicly owned treatment works. The Statewide WDRs include detailed requirements for  
21 reporting SSOs using the State's online database and for developing Sewer System Management  
22 Plans. (Order No. 2006-0003 at p. 5.) All such sewer systems were required to enroll for  
23 coverage under the Statewide WDRs by November 2, 2006. (Order No. 2006-0003 at p.6.)

24 3. On February 14, 2007, the San Diego Regional Water Board adopted Order No.  
25 R9-2007-0005. The Regional WDRs prohibit all SSOs and require the reporting of spills from  
26 private laterals. (Order No. R9-2007-0005.) The Regional WDRs also augment, but do not  
27 entirely supersede, the Statewide WDRs and maintain requirements set forth in Order No. R9-  
28 1996-04 until an uncertain date. (Order No. R9-2007-0005.)



1 Colston Testimony”); Order No. 2006-0003 at pp. 8-9. )<sup>1</sup> Instead, the State Water Board  
2 decided to include a prohibition and provide specific guidance on the exercise of enforcement  
3 discretion when the prohibition was violated. (J. Colston Testimony; Order No. 2006-0003 at pp.  
4 8-9.) Thus, the Regional WDRs impermissibly conflict with the Statewide WDRs.

5 7. Even if the Regional Water Board has the authority to impose “more stringent or  
6 prescriptive requirements” on collection systems in the San Diego region at this time, the board  
7 failed to abide by the requirement set forth in the Statewide WDRs to demonstrate the “need”  
8 for such differing regulation in that region, and to adopt a permit that “will supersede” the  
9 statewide order. (Order No. 2006-0003 at pp. 2-3, Fact Sheet, p. 9.) The Regional WDRs  
10 expressly “serve as additional requirements to” the Statewide WDRs, and collection agencies  
11 must comply with the Regional WDRs “in addition to” the Statewide WDRs. (R9-2007-0005.)

12 8. Although the Regional Water Board may adopt more stringent requirements,  
13 nothing in the Statewide WDRs allows the board to take an action inconsistent with the statewide  
14 order. Because provisions of the Regional and Statewide WDRs conflict, the latter preempts the  
15 former. (See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) That the  
16 State Water Board chose to issue an order rather than guidance, policy, or regulation, which are  
17 not self-implementing, further evinces that the State Water Board did not intend for Regional  
18 Water Boards to continue to regulate collection systems on an ad hoc basis.

19 9. The reporting and notification requirements in the Regional WDRs are  
20 impermissibly inconsistent with the Statewide WDRs, or, at best, unnecessarily duplicative and  
21 thus confusing with regard to implementation and compliance. The Regional WDRs require the  
22 reporting of private lateral discharges where a collection agency becomes aware of such a  
23 discharge. (Order No. R9-2007-0005.) The Statewide WDRs provide that permittees are to  
24 include in SSO reports specified “applicable and known” information related to private lateral  
25 discharges. (Order No. 2006-0003 at Monitoring and Reporting Program (“Reporting  
26 Program”) pp. 2-3.) The statewide reporting requirements ensure that the Regional Water Board  
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28 <sup>1</sup> No transcript of Agenda Item 8 of the February 14, 2007 public hearing, which would include the relevant  
testimony, is available at this time.

1 is timely notified of the discharges. (Order No. 2006-0003 at Reporting Program p. 4.) The  
2 Statewide WDRs also require the notification of local health services and the Office of  
3 Emergency Services pursuant to Health and Safety Code section 5410 et seq. and Water Code  
4 section 13271, respectively. (Order No. 2006-0003 at p. 18, Reporting Program p. 4.)

5 SECOND BASIS FOR REVIEW

6 THE REGIONAL WDRs ARE INCONSISTENT WITH STATE WATER BOARD  
7 GUIDANCE POLICY AND MAY UNDULY HINDER PUBLIC PARTICIPATION  
8 AND COLLABORATION AT THE STATE WATER BOARD LEVEL

9 10. The State Water Board Executive Officer sent to the Regional Water Board  
10 Executive Officer a memorandum dated November 8, 2006, regarding the transition from  
11 regulation under existing WDRs and NPDES permits to the Statewide WDRs. (Transition  
12 Memorandum, filed concurrently herewith as Exh. A of Memorandum on Points and Authorities  
13 in Support of Petition for Review.) The guidance clearly explains that agencies should not be  
14 subject to two different collection system WDRs at the same time and instructs that, generally, the  
15 proper course of action is for Regional Water Boards to rescind permits that regulate solely  
16 collection systems. (Transition Memorandum at p. 3.)

17 11. The Regional Water Board's adoption of the Regional WDRs was wholly  
18 inconsistent with the State Water Board's guidance memorandum and the goal of statewide  
19 consistency. The effect of Regional Water Board's action was to impose upon sanitary sewer  
20 systems in the San Diego Region alone those aspects of the Statewide WDRs the Regional Water  
21 Board favors (e.g., Sewer System Management Plan development) and to override those aspects  
22 with which it did not agree (e.g., SSO prohibition; reporting timeframes). (Order No. 2006-0003  
23 at p. 9; Order No. R9-2007-0005; Order No. R9-1996-04.) The Regional Water Board thus  
24 mandated that collection systems in its region be subject to multiple collection system-only  
25 permits contrary to the State Water Board's guidance.

26 12. Actions such as the adoption of the Regional WDRs undermine the State Water  
27 Board's efforts in adopting the Statewide WDRs, and if allowed to stand, will discourage  
28 stakeholder input and collaboration at the State Water Board level. The development and  
adoption of the Statewide WDRs was a multi-year effort that involved extensive public

1 participation, stakeholder collaboration, and research to address discrete issues now in  
2 controversy. (Order No. 2006-0003 at Fact Sheet pp. 1-2; Agenda Item 7, State Water Board  
3 Meeting Session – Office of Statewide Initiatives, May 3, 2006; J. Colston Testimony.)

4 THIRD BASIS FOR REVIEW

5 THE REGIONAL WATER BOARD FAILED TO COMPLY WITH PROCEDURAL  
6 AND SUBSTANTIVE REQUIREMENTS FOR ADOPTING  
7 A NEW REGULATION, AND THE ERROR IS FATAL

8 13. The Regional Water Board failed to articulate findings in the Regional WDRs to  
9 bridge the analytical gap between the raw evidence and order, thus abusing the board's discretion.  
10 (See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506,  
11 515; *Southern Cal. Edison v. State Water Resources Control Bd.* (1981) 116 Cal.App.3d 751;  
12 State Water Board Order 2004-0013 at p. 13; State Water Board Order 2005-0015 at pp. 82, 85,  
13 88.) The Regional Water Board did not provide support or refer to evidence in the record that  
14 justifies the imposition of more stringent requirements in San Diego than any other region in the  
15 State. That is, the Regional Water Board failed to satisfy the requirement in the Statewide WDRs  
16 to demonstrate a “need to impose more stringent or prescriptive requirements.” (Order No.  
17 2006-0003 at Fact Sheet p. 9, emphasis added.) The Regional Water Board rushed to judgment  
18 that the recently adopted Statewide WDRs are inadequate. This failure to provide supporting  
19 evidence is a fatal flaw.

20 14. In the adopting the Statewide WDRs, the State Water Board recognized past region-  
21 wide efforts of the Regional Water Board under R9-1996-04 and found that the Statewide WDRs  
22 would ensure the reasonable protection of beneficial uses and prevention of nuisance. (Order No.  
23 2006-0003 at Fact Sheet pp. 2-3.)

24 15. The Regional Water Board violated statutory law by failing to act reasonably and  
25 consider certain factors related to the adoption of WDRs and monitoring and reporting  
26 requirements in accordance with Water Code sections 13000, 13263, 13241, 13267(b), and  
27 13225(c).

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1 5. THE MANNER IN WHICH PETITIONERS ARE AGGRIEVED

2 Petitioners' members include local public agencies that own or operate sewage collection  
3 systems or are otherwise affiliated with such systems so as to be interested in and affected by  
4 regulations that affect publicly owned treatment works and collection systems in the San Diego  
5 region. Many, but not all, of Petitioners' members are regulated by Order No. 2006-0003 and  
6 now also must abide by the terms and conditions of Order No. R9-2007-0005. Thus, the  
7 Regional WDRs disproportionately and differently impact Petitioners' members in the San  
8 Diego region and impose additional use and operation restrictions on their collection systems as  
9 described in the Memorandum of Points and Authorities filed concurrently herewith.

10 6. SPECIFIC ACTIONS PETITIONERS REQUEST

11 Petitioners respectfully request that the State Water Board rescind Order No. R9-1996-04,  
12 find Order No. R9-2007-0005 invalid, and direct the Regional Water Board to implement Order  
13 No. 2006-0003.

14 7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES  
15 RAISED IN THIS PETITION FOR REVIEW

16 A Memorandum of Points and Authorities in Support of Petition for Review is filed  
17 concurrently herewith.

18 8. THIS PETITION FOR REVIEW HAS BEEN SENT TO THE REGIONAL WATER  
19 BOARD

20 Pursuant to California Code of Regulations, title 23, section 2050(a)(8), a true and correct  
21 copy of this Petition for Review was mailed by First Class mail on March 16, 2007, to the  
22 Regional Water Board at the following address:

23 John Robertus, Executive Officer  
24 9174 Sky Park Court, Suite 100  
San Diego, CA 92123

25 Petitioners represent and are acting on behalf of many of the dischargers. In addition, Order  
26 No. R9-2007-0005 is a general waste discharge requirement subject to enrollment by individual  
27 agencies, and there are no named dischargers. Therefore, no copy of this Petition for Review was  
28 separately mailed to the dischargers.



1 9. THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED IN THIS PETITION FOR  
2 REVIEW WERE RAISED BEFORE THE REGIONAL WATER BOARD EXCEPT  
3 WHERE PETITIONERS WERE UNABLE TO RAISE THE SUBSTANTIVE ISSUES  
4 OR OBJECTIONS

5 Substantive issues and objections raised in this petition were raised with the Regional Water  
6 Board staff in meetings and/or presented to the Regional Water Board in written comments  
7 during the relevant public comment period by Petitioners and their individual member agencies.  
8 Any substantive issues and objections not raised before the Regional Water Board relate to  
9 changes in Order No. R9-2007-0005 made after the close of the public hearing, and thus  
10 Petitioners were neither required nor able to raise these issues or objections. Further, Petitioners  
11 have not yet had an opportunity to review the final, adopted version of Order No. R9-2007-0005,  
12 as it is not yet publicly available.

12 SOMACH, SIMMONS & DUNN  
13 A Professional Corporation

14 Dated: March 16, 2007

15 By   
16 Roberta L. Larson

17 Attorneys for the Petitioners  
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PROOF OF SERVICE  
(State)

I am employed in the County of Sacramento; my business address is 400 Capitol Mall, Suite 1900, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On March 16, 2007, I served the following document(s):

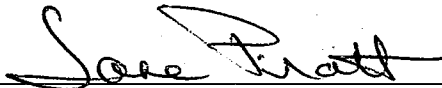
PETITION FOR REVIEW [Wat. Code, § 13320]

(by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below.

(by personal delivery) by personally delivering a true copy thereof to the person and at the address set forth below:

San Diego Regional  
Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 16, 2007, at Sacramento, California.

  
\_\_\_\_\_  
Jane Pratt

**Exhibit A**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
REGION 9, SAN DIEGO REGION

TENTATIVE ORDER R9-2006-0121

WASTE DISCHARGE REQUIREMENTS  
FOR SEWAGE COLLECTION AGENCIES  
IN THE SAN DIEGO REGION

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

- 1. STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS:** State Water Resource Control Board (State Board) Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, adopted by the State Board on May 2 2006, establishes minimum requirements to prevent sanitary sewer overflows (SSOs) from publicly owned/ operated sanitary sewer system. Order No. 2006-0003-DWQ is the primary regulatory mechanism for sanitary sewer systems statewide, but allows each regional board to issue more stringent or more prescriptive Waste Discharge Requirements (WDRs) for sanitary sewer systems within their respective jurisdiction.
- 2. ENROLLMENT UNDER ORDER NO. 2006-0003-DWQ:** In accordance with Order No. 2006-0003-DWQ, all federal and state agencies, municipalities, counties, districts, and other public entities that own, operate, acquire, or assume responsibility for sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California are required to apply for coverage under the general WDRs.
- 3. ORDER No. 96-04:** On May 9, 1996, ~~the~~ this Regional Board adopted Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*, prohibiting the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant. Each Sewage Collection Agency currently regulated ~~enrolled~~ under Order No. 96-04 is required to obtain enrollment under the State Board Order No. 2006-0003-DWQ.
- 4. SAN DIEGO REGION SANITARY SEWER OVERFLOW REGULATIONS:** Order No. 96-04 has been an effective regulatory mechanism in reducing the number and magnitude of sewage spills in the Region. The Order is more stringent and prescriptive than Order No. 2006-0003-DWQ in that Order No. 2006-0003-DWQ may allow some SSOs that are currently prohibited under Order No. 96-04. In order to maintain regulation of Sanitary Sewer Systems in the San Diego Region consistent with the provisions of Order No. 96-04, this Order reaffirms the prohibition on all SSOs upstream of a sewage treatment plant. This strict prohibition implements the requirements contained in the Basin Plan, California Water Code, and Federal Clean Water Act.

**5. CONSISTENT REGIONAL REQUIREMENTS:** The regulation of all Sewage Collection Agencies will be consistent within the San Diego Region by requiring agencies such as California Department of Corrections; California State University, San Marcos; San Diego State University; and University of California, San Diego, which have not been regulated under Order No. 96-04, to comply with Regional Board requirements that augment State Board Order No. 2006-0003-DWQ.

**5.6. BASIN PLAN:** The Regional Water Board adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994. The Basin Plan was subsequently approved by the State Water Resources Control Board (State Water Board) on December 13, 1994. Subsequent revisions to the Basin Plan have also been adopted by the Regional Water Board and approved by the State Water Board. The Basin Plan designates beneficial uses, narrative, and numerical water quality objectives, and prohibitions which are applicable to the discharges prohibited under this Addendum Order.

**6.7. PROHIBITIONS CONTAINED IN BASIN PLAN:** The Basin Plan contains the following prohibitions which are applicable to the discharges prohibited under this Addendum Order:

- a. "The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050, is prohibited."
- b. "The discharge of treated or untreated waste to lakes or reservoirs used for municipal water supply, or to inland surface water tributaries thereto, is prohibited."
- c. "The discharge of waste to inland surface waters, except in cases where the quality of the discharge compiles with applicable receiving water quality objectives, is prohibited. ..."
- d. "The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board."
- e. "The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited."
- f. "The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited."
- g. "The discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the Regional Board."

**7.8. PORTER-COLOGNE WATER QUALITY CONTROL ACT (CALIFORNIA WATER CODE, DIVISION 7):** California Water Code Section 13243 provides that a Regional Board, in establishing waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, is prohibited. California Water Code 13260 prohibits the discharge of waste to land prior to the filing of a required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs.

**8.9. FEDERAL CLEAN WATER ACT:** The Federal Clean Water Act largely prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under an NPDES permit. In general, any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards, at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the Clean Water Act. Furthermore, the Code of Federal Regulation requires proper operation and maintenance of all POTW facilities including collection systems, which results in prevention of SSOs.

**9.10. RESCISSION OF ORDER No. 96-04:** Order No. 96-04 can be rescinded after all of the Sewage Collection Agencies regulated under Order No. 96-04 have obtained coverage under Order No. 2006-0003-DWQ.

**11. PRIVATE LATERAL SEWAGE DISCHARGES PRIVATE SANITARY SEWER OVERFLOW REPORTING:** Order No. 96-04 does not require Sewage Collection Agencies to report Private Lateral Sewage Discharges SSOs from the privately owned portion of the Agency's sanitary sewer system. Over the past several years, however, ~~the~~ this Regional Board has been tracking the number of Private Lateral Sewage Discharges private SSOs based on courtesy reports from the Sewage Collection Agencies. ~~It is not known how many Agencies are currently reporting private SSOs to the Regional Board, since they are not required to do so. It is also not known if the Agencies that are reporting private spills, report all of the private SSOs they become aware of. Even so, during~~ During the period from July 2004 through June 2006, a total of 268 Private Lateral Sewage Discharges private SSOs were reported by the Agencies. ~~In fact, during~~ During some of those months, more Private Lateral Sewage Discharges private SSOs were reported than public SSOs. Because the Agencies are not required to report Private Lateral Sewage Discharges, it is not known if the numbers reported fully represent the number and locations of Private Lateral Sewage Spills in the Region.

Finding Nos. 2, 3, and 4 of State Board Order No. 2006-0003-DWQ pertaining to causes of SSOs and the potential threat to water quality resulting from SSOs are also applicable to Private Lateral Sewage Discharges private SSOs. ~~Since Because Private Lateral Sewage Discharges~~ private SSOs are numerous and ~~may also be are a potential~~ threat to public health and the environment, there is a need to have a reliable reporting system for Private Lateral Sewage Discharges private SSOs for similar reasons as the public SSOs. Although sewage collection agencies are not responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, sewage collection agencies are typically notified and/or are the first responders to Private Lateral Sewage Discharges. Consequently, requiring the sewage collection agencies to report all known Private Lateral Sewage Discharges is reasonable and a first step toward development of a regulatory approach for reducing Private Lateral Sewage Discharges in the San Diego Region. Since it is impractical to regulate private entities and it is typically the sewer collection agencies that are notified and/or are the first responders to private SSOs, the sewer collection agencies are the appropriate representative to report all known private SSOs. This is the first step toward development of a regulatory approach for reducing private SSOs in the San Diego Region.

~~11.12.~~ **Permitting Fees:** This Order will serve as additional requirements to the State Board Order No. 2006-0003-DWQ. Sewage Collection Agencies that are covered and pay the fees under State Board Order No. 2006-0003-DWQ (or orders that supersede 2006-0003-DWQ) will not be required to pay for fees under this Tentative Order No. R9-2006-0121.

~~12.13.~~ **CALIFORNIA ENVIRONMENTAL QUALITY ACT:** This Order involves a prohibition of discharge and as such is exempt from the provisions of the California Environmental Quality Act in accordance with Title 14, California Administrative Code, Chapter 3, Section 15270.

~~13.14.~~ **PUBLIC NOTICE:** The Regional Board has notified all known interested persons and the public of its intent to consider adoption of this Order. Interested persons and the public have had reasonable opportunity to participate in review of the proposed Order.

~~14.15.~~ **PUBLIC HEARING:** The Regional Board has considered all comments pertaining to this Order submitted to the Regional Board in writing, or by oral presentations at the public hearing held on ~~November 8~~ December 13, 2006.

**IT IS HEREBY ORDERED**, that all ~~Sewer~~ Sewage Collection Agencies within the San Diego Region, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, in addition to the State Water Resource Control Board (~~State Board~~) Order No. 2006-0003-DWQ (or orders that supersede ~~SB-2006-0003-DWQ~~) and its ~~addendums~~ saddenda (hereinafter referred to as State Board Order):

## A. Definitions

1. For purposes of this Order, a Sewage Collection Agency shall mean ~~a public agency that owns or operates any portion of a sanitary sewer system within the boundaries of the San Diego Region required to be enrolled under State Board Order No. 2006-0003-DWQ~~ an "enrollee", as defined in the State Board Order, within the boundaries of the San Diego Region.
2. ~~Private Sanitary Sewer Overflow (SSO) — A sanitary sewer overflow that is caused by blockages or other problems within a privately owned lateral connected to a sanitary sewer system owned or operated by a Sewage Collection Agency.~~
3. ~~Public Sanitary Sewer Overflow — An SSO that is caused by blockages or other problems within the portion of a sanitary sewer system owned or operated by a Sewage Collection Agency.~~
- 4.2. Category 1 Private Lateral Sewage Discharges~~Private SSO – All Private Lateral Sewage Discharges~~Private SSOs, as defined in the State Board Order, that:
  - a. Equal or exceed 1,000 gallons, or
  - b. Result in a discharge to a drainage channel and/or surface water; or
  - c. Discharge to a storm drainpipe that was not fully captured and returned to the sanitary sewer system.
- 5.3. Category 2 Private Lateral Sewage Discharges~~Private SSO – All Private Lateral Sewage Discharges~~, as defined in the State Board Order,~~Private SSOs~~ that do not meet the Category 1 Private Lateral Sewage Discharges~~Private SSO~~ definition above.

## B. Prohibition

1. The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.

## C. Monitoring and Reporting Program Requirements

1. Each Sewage Collection Agency shall ~~provide written notification to this Regional Board no later than 14 days after its sanitary sewer overflows can successfully be reported to the State Board Online SSO System in accordance with Order No. 2006-0003-DWQ~~ report all SSOs in accordance with the Monitoring and Reporting Program No. 96-04 until the Sewage Collection Agency notifies the Regional Board that they can successfully report the SSOs to the State Water Resource Control Board Online SSO System.



2. For Category 1 (as defined in State Board ~~Order Monitoring and Reporting Program No. 2006-0003-DWQ~~) SSOs and ~~Category 1 Private SSOs (as defined above)~~, the Sewage Collection Agency shall provide notification of the SSO to the Regional Board by phone, email, or fax within 24 hours after the Sewage Collection Agency becomes aware of the SSO, notification is possible, and notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the Regional Board shall include the name and phone number of the person reporting the SSO, the responsible sewage collection agency ~~or jurisdiction where the private SSO occurred~~, the estimated total sewer overflow volume, the location of the SSO, the receiving water (if any), the start date/time of the SSO (if known), the end date/time of the SSO (or whether or not the sewer overflow is still occurring at the time of the report), and confirmation that the local health services agency was or will be notified as required under the reporting requirements of the local health services agency.
  
3. Category 1 Private Lateral Sewage Discharges (as defined above), the Sewage Collection Agency shall provide notification of the SSO to the Regional Board by phone or fax within 24 hours after the Sewage Collection Agency becomes aware of the SSO, notification is possible, and notification can be provided without substantially impeding cleanup or other emergency measures. The information reported to the Regional Board shall include the name and phone number of the person reporting the SSO, the reporting jurisdiction where the Private Lateral Sewage Discharge occurred, the responsible party (other than the Sewage Collection Agency, if known), the estimated total sewer overflow volume, the location of the SSO, the receiving water (if any), the start date/time of the SSO (if known), the end date/time of the SSO (or whether or not the sewer overflow is still occurring at the time of the report), and confirmation that the local health services agency was or will be notified as required under the reporting requirements of the local health services agency.
  
4. The following requirement supersedes the SSO Reporting Timeframe for Private Lateral Sewage Discharges in the State Board: For Category 1 and 2 Private Lateral Sewage Discharges ~~Private SSOs~~ that occur within a Sewage Collection Agency's jurisdiction and that a Sewage Collection Agency becomes aware of, the Sewage Collection Agency shall report the SSO to the State Board Online SSO Database within 30 days after the end of the calendar month in which the SSO occurs. The Sewage Collection Agency must identify the sewage discharge as occurring and caused by a private lateral, and a responsible party (other than the Sewage Collection Agency) should be identified, if known. The Sewage Collection Agency will not be responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, but only the reporting of those within their jurisdiction and for which they become aware of. ~~System within 30 days after the Sewage Collection Agency becomes aware of the SSO.~~

D. Notification

~~1. All Sewage Collection Agencies shall continue to comply with the Monitoring and Reporting Program No. 96-04 until sanitary sewer overflows can successfully be reported to the State Water Resource Control Board Online Sanitary Sewer Overflow System under Order No. 2006-0003-DWQ.~~

~~2-1.~~ Upon completion with ~~Monitoring and Reporting Program Requirements B.2~~ Monitoring and Reporting Program Requirement C.1, regulation of the Sewage Collection Agency under Order No. 96-04 is terminated.

~~3-2.~~ Order No. 96-04 is rescinded once regulation of all Sewage Collection Agencies under Order No. 96-04 is terminated.

*I, John Robertus, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of ~~Addendum No. 7 to Order No. R9-1996-004~~ 2006-0121 adopted by the California Regional Water Quality Control Board, San Diego Region on ~~November 8~~ December 13, 2006.*

**TENTATIVE**

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JOHN H. ROBERTUS  
Executive Officer

JHR:mpm:rwm:jll

**Exhibit B**

Errata Sheet for  
Tentative Order No. R9-2006-121  
Waste Discharge Requirements  
For Sewage Collection Agencies  
In the San Diego Region

1. Page 5, Definitions, Section A.2 and A.3 have been deleted.
2. Page 6, Monitoring and Reporting Program Requirements, Section C.3 has been modified as follows:

~~For Category 1 Private Lateral Sewage Discharges (as defined above),~~  
~~†The Sewage Collection Agency shall provide notification of all Private~~  
~~Lateral Sewage Discharges (as defined in the State Board Order) that~~  
~~equal or exceed 1,000 gallons; result in a discharge to a drainage channel~~  
~~and/or surface water; and/or discharge to a storm drainpipe that was not~~  
~~fully captured and returned to the sanitary sewer system~~ the SSO to the  
Regional Board by phone or fax within 24 hours after the Sewage  
Collection Agency becomes aware of the SSO, notification is possible,  
and notification can be provided without substantially impeding cleanup or  
other emergency measures. The information reported to the Regional  
Board shall include the name and phone number of the person reporting  
the SSO, the reporting jurisdiction where the Private Lateral Sewage  
Discharge occurred, the responsible party (other than the Sewage  
Collection Agency, if known), the estimated total sewer overflow volume,  
the location of the SSO, the receiving water (if any), the start date/time of  
the SSO (if known), the end date/time of the SSO (or whether or not the  
sewer overflow is still occurring at the time of the report), and confirmation  
that the local health services agency was or will be notified as required  
under the reporting requirements of the local health services agency.

3. Page 6, Monitoring and Reporting Program Requirements, Section C.4 has been modified as follows:

The following requirement supersedes the SSO Reporting Timeframe for Private Lateral Sewage Discharges in the State Board: For ~~Category 1 and 2~~ Private Lateral Sewage Discharges that occur within a Sewage Collection Agency's jurisdiction and that a Sewage Collection Agency becomes aware of, the Sewage Collection Agency shall report the SSO to the State Board Online SSO Database within 30 days after the end of the calendar month in which the SSO occurs. The Sewage Collection Agency must identify the sewage discharge as occurring and caused by a private lateral, and a responsible party (other than the Sewage Collection Agency) should be identified, if known. The Sewage Collection Agency will not be responsible for the cause, cleanup, or repair of Private Lateral Sewage Discharges, but only the reporting of those within their jurisdiction and for which they become aware of.

4. Page 5, Monitoring and Reporting Program Requirements, Section C.1 has been modified as follows:

Each Sewage Collection Agency shall report all SSOs in accordance with the Monitoring and Reporting Program No. 96-04 until the Sewage Collection Agency notifies the Regional Board that they can successfully report the SSOs to the State ~~Water Resource Control~~ Board Online SSO System. The notification shall be a letter signed and certified by a person designated, for a municipality, state, federal or other public agency, as either a principal executive officer or ranking elected official.

5. Page 7, Notification, Section D.1 has been modified as follows:

Upon completion with Monitoring and Reporting Program Requirement C.1, the Regional Board will give written notice to the Sewage Collection Agency stating that regulation of the Sewage Collection Agency under Order No. 96-04 is terminated.

6. Page 2, Finding 6 has been modified as follows:

**BASIN PLAN:** The Regional ~~Water Board~~ adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994. The Basin Plan was subsequently approved by the ~~State Water Resources Control Board (State Water Board)~~ on December 13, 1994. Subsequent revisions to the Basin Plan have also been adopted by the Regional ~~Water Board~~ and approved by the State ~~Water Board~~. The Basin Plan designates beneficial uses, narrative, and numerical water quality objectives, and prohibitions which are applicable to the discharges prohibited under this Order.

7. Page 2, Finding 7.c has been modified as follows:

"The discharge of waste to inland surface waters, except in cases where the quality of the discharge ~~compiles~~ complies with applicable receiving water quality objectives, is prohibited. ..."

8. Page 4, Finding 13 has been replaced as follows:

**13. CALIFORNIA ENVIRONMENTAL QUALITY ACT:** The action to adopt this Order is exempt from the California Environmental Quality Act (Public Resources Code §21000 et seq.) because it is an action taken by a regulatory agency to assure the protection of the environment and the regulatory process involves procedures for protection of the environment. (Cal. Code Regs., tit. 14, §15308). In addition, the action to adopt this Order is exempt from CEQA pursuant to Cal.Code Regs., title 14, §15301 to the extent that it applies to existing sanitary sewer collection systems that constitute "existing facilities" as that term is used in Section 15301, and §15302, to the extent that it results in the repair or replacement of existing systems involving negligible or no expansion of capacity.

9. Page 7, Notifications, Section D.2 has been modified as follows:

2. Order No. 96-04 is rescinded once regulation of all Sewage Collection Agencies under Order No. 96-04 is terminated. The Regional Board will give written notice to all of the Sewage Collection Agencies stating that all Sewage Collection Agencies under Order No. 96-04 was terminated and, thus, Order 96-04 is rescinded.

10. Page 3, Finding 8 has been modified as follows:

**8. PORTER-COLOGNE WATER QUALITY CONTROL ACT  
(CALIFORNIA WATER CODE, DIVISION 7):** California Water Code Section 13243 provides that a Regional Board, in establishing waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, is prohibited. California Water Code 13260 prohibits the discharge of waste to land prior to the filing of a required report of waste discharge and the subsequent issuance of either WDRs or a waiver of WDRs. California Water Code 13264 prohibits discharge of waste absent a report of waste discharge and waste discharge requirements.

11. The Tentative Order No. has been changed from R9-2006-0121 to R9-2007-0005.