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California Association of Sanitation Agencies
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Publicly Owned Treatment Works
8

9 BEFORE THE
10 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
11

12 In the Matter of the Petition of the) SWRCB/OCC File _____
California Association of Sanitation)
13 Agencies and the Southern California) MEMORANDUM OF POINTS AND
Alliance of Publicly Owned Treatment) AUTHORITIES IN SUPPORT OF
14 Works For Review of Order) PETITION FOR REVIEW
No. R9-2007-0005) [Wat. Code, § 13320]
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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 section 13320 of the Water Code, filed concurrently herewith a Petition for
19 Review of Order No. R9-2007-0005, Waste Discharge Requirements for Sewage Collection
20 Agencies in the San Diego Region (“Regional WDRs”), adopted by the San Diego Regional
21 Water Quality Control Board (“Regional Water Board”), and other action or inaction of the
22 Regional Water Board. The following statement of points and authorities in support of the
23 Petition for Review is filed in accordance with California Code of Regulations, title 23, section
24 2050(a). Petitioners request the opportunity to file a supplemental or reply memorandum after
25 receipt of the final adopted WDRs, the administrative record and the Regional Water Board’s
26 response. Petitioners further incorporate by reference all of their comments, evidence, and
27 testimony in the record.
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I. INTRODUCTION

This appeal raises issues of law and policy that the State Water Resources Control Board (“State Water Board”) is uniquely and appropriately positioned to address. The overarching issue is whether the San Diego Regional Water Board acted permissibly when it adopted Order No. R9-2007-0005 to impose region-wide WDRs on sewage collection systems that conflict with and duplicate the requirements of State Water Board Order No. 2006-0003, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (“Statewide WDRs”). For example, the Regional WDRs prohibit all sanitary sewer overflows (“SSOs”), while the Statewide WDRs acknowledge that not all SSOs are preventable and prohibit only those SSOs that reach waters of the United States or create a nuisance. Further, collection system agencies in the San Diego region must comply with both the Regional and Statewide WDRs. The Regional Water Board action subjects these agencies to multiple permits inconsistent with the precept set forth in the Statewide WDRs that any more stringent permit adopted by a Regional Water Board supersede the Statewide WDRs.

The adoption of the Regional WDRs also runs afoul of State Water Board guidance, which explains that the Regional Water Boards should generally transition from regulation under existing WDRs or National Pollutant Discharge Elimination System (“NPDES”) permits to regulation under the Statewide WDRs. Not only does the Regional Water Board require agencies to comply with both the Regional WDRs and Statewide WDRs, but also with other region-wide WDRs, Order No. R9-1996-04, until some unknown date.

When the Regional Water Board adopted the Regional WDRs, the Statewide WDRs had been in effect for less than a year and applicable to enrollees for merely a few months. The monitoring and reporting program requirements began to be implemented by sanitary sewer agencies in the San Diego region on January 2, 2007. As subsequently discussed, the very adoption of the Regional WDRs undermines the process of public participation and stakeholder collaboration in which the State Water Board invested significant time and resources.

Finally, the Regional Water Board violated statutory law by failing to act reasonably or consider certain factors related to the adoption of WDRs and associated monitoring and reporting

1 requirements in accordance with Water Code sections 13000, 13263, 13241, 13267(b), and
2 13225(c).

3 Accordingly, and for the reasons set forth below, Petitioners respectfully request that the
4 State Water Board rescind Order No. R9-1996-04, find the Regional WDRs invalid, and direct
5 the Regional Water Board to implement the Statewide to determine the effectiveness of the
6 Statewide WDRs in the region and throughout the State.

7 **II. FACTUAL BACKGROUND**

8 In 1996, the San Diego Regional Water Board adopted general WDRs to govern sanitary
9 sewer systems in the region. (Order No. R9-1996-04.) The order prohibited all SSOs and
10 established reporting requirements. (Order No. R9-1996-04.)

11 In November, 2004, the State Water Board adopted Resolution 2004-0080, which directed
12 staff to develop a statewide program to reduce SSOs. The State Water Board further directed
13 staff to convene the SSO Guidance Committee, which consisted of representatives of sanitary
14 sewer system agencies, nongovernmental organizations, U.S. EPA and several regional water
15 boards, including Region 9. (Agenda Item 7, State Water Board Meeting Session – Office of
16 Statewide Initiatives (“Agenda Item 7”), May 3, 2006.) At the conclusion of the Guidance
17 Committee process, in May 2006, the State Water Board adopted Order No. 2006-0003 or the
18 “Statewide WDRs.” The Statewide WDRs required all publicly owned sanitary sewer systems
19 greater than one mile in length that collect and/or convey untreated or partially treated wastewater
20 to a publicly owned treatment works (“POTW”) to enroll for coverage under the order by
21 November 2, 2006. (Order No. 2006-0003 at pp. 1, 6.) The Statewide WDRs include detailed
22 requirements for reporting SSOs using the State’s online database and developing Sewer System
23 Management Plans. (Order No. 2006-0003 at pp. 2, 9, 10-18.) On January 2, 2007, sewer
24 system agencies within the San Diego region began reporting using the online database as
25 required by the Statewide WDRs.

26 On February 14, 2007, over the objection of CASA, SCAP, and several individual collection
27 system agencies, the San Diego Regional Water Board adopted Order R9-2007-0005 or the
28 “Regional WDRs.” The Regional WDRs prohibit all SSOs and require the reporting of spills

1 from private laterals. (Order No. R9-2007-0005.) Collection system agencies in the San Diego
2 region subject to the Regional WDRs are also required to enroll for coverage under the Statewide
3 WDRs. (Order No. R9-2007-0005.) Further, the Regional WDRs maintain requirements set
4 forth in Order No. R9-1996-04 until some unknown date. (Order No. R9-2007-0005.)

5 In contrast, the Santa Ana Regional Water Board, which had general WDRs for collection
6 systems in place since 2002, rescinded that region-wide order on December 1, 2006. (Order No.
7 R8-2006-0081.) The express reason for the Santa Ana Regional Water Board's decision to
8 rescind the regional order was that the discharges would now be regulated under the terms and
9 conditions of the Statewide WDRs. (Order No. R8-2006-0081.)

10 In November 2006, the State Water Board issued a memorandum to provide guidance to the
11 Regional Water Boards as to how to address regulation of collection systems subject to existing
12 NPDES permits or WDRs consistent with the Statewide WDRs. (Memorandum from Tom
13 Howard to Regional Water Board Executive Officers, Nov. 8, 2006 ("Transition
14 Memorandum"), attached as Exhibit A.)

15 III. ARGUMENT

16 The State Water Board has made clear its intent that sewer collection systems throughout
17 the State be regulated consistently, and that wide differences in reporting of SSOs be eliminated
18 in favor of uniform reporting using a single Statewide online database. As explained below, the
19 Regional WDRs run afoul of this intent as expressed in the Statewide WDRs. The Regional
20 WDRs also are inconsistent with State Water Board guidance for transitioning from existing
21 regulatory permits, such as general WDRs, to the Statewide WDRs. In addition, the Regional
22 Water Board failed to comply with applicable substantive and procedural requirements when it
23 adopted the Regional WDRs, thus committing an abuse of discretion. Accordingly, the State
24 Water Board should find the Regional WDRs invalid, rescind Order No. R9-1996-04, and
25 require the Regional Water Board to implement the Statewide WDRs.

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1 **A. The Regional WDRs Impermissibly Conflict With And Unnecessarily Duplicate**
2 **The Statewide WDRs.**

3 By imposing requirements that are contrary to and unnecessarily duplicative of the
4 Statewide WDRs, the Regional WDRs fundamentally undermine the State Water Board's intent
5 that collection systems be regulated on a consistent, statewide basis. Of particular concern to
6 CASA and SCAP are provisions of the Regional WDRs that prohibit all SSOs, subject members
7 of the regulated community to multiple permits for their collection systems, and mandate the
8 reporting of discharges from private laterals.

9 1. The Regional WDRs Cannot Be Reconciled With The State Water Board's Intent
10 That Sanitary Sewer Systems Be Consistently Regulated.

11 On May 2, 2006, the State Water Board adopted the Statewide WDRs with the "intent to
12 have one statewide regulatory mechanism that lays out the foundation for consistent collection
13 system management requirements and SSO reporting." (Order No. 2006-0003 at Fact Sheet p.
14 8, emphasis added.) The State Water Board determined: "In order to provide a consistent and
15 effective SSO prevention program, as well as to develop reasonable expectations for collection
16 system management, these [Statewide] WDRs should be the primary regulatory mechanism to
17 regulate public collection systems." (Order No. 2006-0003 at Fact Sheet p. 8, emphasis added.)

18 The fact sheet, which is incorporated by reference into the Statewide WDRs, explains:

19 Although it is the State Water Board's intent that this Order be the primary
20 regulatory mechanism for sanitary sewer systems statewide, there will be some
21 instances when Regional Water Boards will need to impose more stringent or
22 prescriptive requirements. In those cases, more specific or stringent WDRs or an
23 NPDES permit issued by a Regional Water Board will supersede this Order.
(Order No. 2006-0003 at pp. 2-3, 5, Fact Sheet p. 9; emphasis added.)

24 Only a few months after implementation of the Statewide WDRs began, the Regional Water
25 Board adopted new WDRs that prohibit all SSOs at any point upstream of a sewage treatment
26 plant.¹ (Order No. R9-2007-0005.) In contrast, the Statewide WDRs do not prohibit all SSOs.
(Order No. 2006-0003 at p. 7.) Rather, the Statewide WDRs expressly prohibit SSOs that reach

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28 ¹ The Regional Water Board originally scheduled adoption of the proposed Regional WDRs at both its December
and January meetings, but in both cases deferred action. (See Regional Water Board meeting agendas for December
13, 2006; January 24, 2007; and February 14, 2007 (available on the Regional Water Board website).)

1 waters of the United States or create a nuisance as defined in Water Code section 13050(m).
2 (Order No. 2006-0003 at p. 7.) The State Water Board specifically considered whether it should
3 prohibit all SSOs and, after extensive public debate, decided in the negative. (Order No. 2006-
4 0003 at Fact Sheet p. 1.) As it had in launching the effort to develop a statewide Sanitary Sewer
5 Overflow Reduction Program in 2004, the State Water Board acknowledged that not all SSOs are
6 preventable and cited unforeseen vandalism, extreme wet weather, and other acts of God as
7 potential causes of unpreventable SSOs. (Order No. 2006-0003 at pp. 1, 8, Fact Sheet pp. 5-6;
8 State Water Board Res. No. 2004-0080.) The State Water Board also considered and rejected
9 deferring to regional basin plan prohibitions. (Testimony of J. Colston for CASA and SCAP at
10 hearing on proposed Order No. R9-2007-0005, held Feb. 14, 2007 (“J. Colston Testimony”).)²
11 Instead, the State Water Board adopted an SSO prohibition applicable statewide and provided
12 specific provisions to guide the exercise of enforcement discretion. (Order No. 2006-0003 at pp.
13 8-9.)

14 Even if the subject provisions were within the Regional Water Board’s authority to impose,
15 in some cases, more stringent or prescriptive requirements, the Regional WDRs nonetheless
16 impermissibly conflict with the Statewide WDRs. (See Order No. 2006-003 at pp. 2-3, Fact
17 Sheet p. 9.) If the Regional Water Board adequately demonstrates a valid “need to impose more
18 stringent or prescriptive requirements,” it must follow the State Water Board’s directive in the
19 Statewide WDRs and adopt WDRs that “will supersede” the obligation to comply with the
20 Statewide WDRs. (See Order No. 2006-003 at pp. 2-3, Fact Sheet p. 9; emphasis added.) That
21 is, a sewage collection agency may be subject to the Statewide WDRs or a separate, more
22 stringent permit, but not both. (See Transition Memo at p. 3.) Here, the Regional WDRs by
23 their own terms “serve as additional requirements to” the Statewide WDRs, and sewer collection
24 agencies must comply with the Regional WDRs “in addition to” the State WDRs. (Order No.
25 R9-2007-0005.) Thus, the Regional WDRs impermissibly conflict with the requirement in the

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28 ² 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 Statewide WDRs that any subsequent, more stringent permit wholly “supersede” the statewide
2 order.

3 The San Diego Water Board’s action stands in sharp contrast to that of the other Regional
4 Water Board that also had in place regional WDRs governing sewer collection systems at the
5 time of the adoption of the Statewide WDRs. The Santa Ana Regional Water Board adopted
6 general WDRs in 2002 to address collection systems. (Order No. R8-2002-0014.) Shortly after
7 the November 2, 2006 date for enrollment under the Statewide WDRs, the Santa Ana Regional
8 Water Board rescinded its region-wide general order. (Order No. R8-2006-0081.)

9 There is no question that the Statewide WDRs do allow a Regional Water Board to
10 implement more stringent requirements where necessary. However, nothing in the Statewide
11 WDRs allows the Regional Water Board to take an action inconsistent with or contrary to the
12 Statewide WDRs. Indeed, because the Regional WDRs conflict with prohibitions in the
13 Statewide WDRs, the Statewide WDRs preempt the Regional WDRs. (See *Sherwin-Williams*
14 *Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) In addition, if the State Water Board
15 intended Regional Water Boards to continue to regulate sanitary sewer collection systems on an
16 ad hoc basis, it could have issued guidance, policy, or regulation – none of which are self-
17 implementing. Instead, the State Water Board decided, after significant discussion and debate
18 regarding alternative implementation mechanisms, to issue the Statewide WDRs and require every
19 public sanitary sewer system in the State, regardless of existing regional WDRs, to obtain
20 coverage under the Statewide WDRs.

21 2. The Regional Water Board Imposed Requirements Related To Discharges From
22 Private Laterals That, At Best, Unnecessarily Duplicate The Statewide WDRs.

23 The requirements in the Regional WDRs related to reporting SSOs from lateral sewers not
24 owned by the agency either conflict with those in the Statewide WDRs monitoring and reporting
25 program, or, at best, unnecessarily duplicate requirements in the Statewide WDRs. (See Order
26 No. R9-2007-0005; Order No. 2006-0003 at Monitoring and Reporting Program (“Reporting
27 Program”) at pp. 2-3.) This is likely to result in confusion as to implementation of, and
28 compliance with, reporting requirements. The Regional WDRs require the reporting of private

1 lateral discharges where a collection agency becomes aware that such a discharge occurs within
2 its jurisdiction. (Order No. R9-2007-0005.) The Monitoring and Reporting Program of the
3 Statewide WDRs provides that permittees are to include in SSO reports specified “applicable
4 and known” information related to private lateral discharges. Thus, the provisions in the
5 Regional WDRs are not warranted or necessary.

6 The notification requirements related to private lateral discharges also are not warranted and
7 impermissibly inconsistent with the Statewide WDRs. The reporting requirements under the
8 Statewide WDRs will ensure that the Regional Water Board will receive timely notification of
9 such discharges to the extent that collection system agencies are aware of their occurrence.
10 (Order No. 2006-0003 at Reporting Program p. 4.) In addition, the Statewide WDRs require that
11 local health services be notified immediately of discharges of untreated wastewater pursuant to
12 Health and Safety Code section 5410 et seq. (Order No. 2006-0003 at p. 18, Reporting Program
13 p. 4.) The Statewide WDRs also require reporting to the Office of Emergency Services pursuant
14 to Water Code section 13271. (Order No. 2006-0003 at p. 18, Reporting Program p. 4.)

15 **B. The Regional WDRs Are Inconsistent With State Water Board Guidance And**
16 **Policy.**

17 The State Water Board has provided guidance to the Regional Water Boards on the
18 appropriate manner for transitioning from regulation under existing WDRs and NPDES permits
19 to the Statewide WDRs. (Transition Memorandum at p. 1.) The guidance provides that in the
20 majority of cases Regional Water Boards should rescind NPDES permits and WDRs issued
21 solely for the purpose of regulating sanitary sewer systems and require the agencies to enroll for
22 coverage under the Statewide WDR. (Transition Memorandum at p. 3.) If the Regional Water
23 Board determines that rescission is not appropriate, the existing WDRs may be maintained.
24 (Transition Memorandum at p. 3.) In the case where existing WDRs are to be maintained, the
25 collection system agencies are to be notified that they are not subject to coverage under the
26 Statewide WDRs. (Transition Memorandum at p. 3.) The guidance clearly directs that agencies
27 should not be subject to two or more collection system WDRs at the same time.
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1 The action of the San Diego Regional Water Board is directly contrary to the State Water
2 Board guidance. The Regional Water Board simply "cherry picked" those aspects of the
3 Statewide WDRs that it favors (e.g., development of Sewer System Management Plans) and
4 overrode those that did not square with its past preferences (e.g., SSO prohibition; reporting
5 timeframes). (Order No. 2006-0003 at p. 9; Order No. R9-2007-0005; Order No. R9-1996-04.)
6 Further, agency members of CASA and SCAP within the San Diego Region must comply with
7 two different WDRs for their collection systems, and, in some cases, a third permit for their
8 wastewater treatment plant that also contains collection system related provisions. (J. Colston
9 Testimony.) This is unfair, unnecessary, overly burdensome, and potentially confusing, as
10 recognized by the State Water Board in issuing the guidance memorandum.

11 **C. Allowing The Regional WDRs To Stand Will Have A Chilling Effect On Future**
12 **Stakeholder Participation And Collaboration With The State Water Board.**

13 Allowing the Regional WDRs to operate in lieu of, or augment, the Statewide WDRs is
14 likely to deter future public involvement and stakeholder collaboration at the State Water Board
15 level. The Statewide WDRs were a product more than two years of fact-finding, spirited debate,
16 legal analysis, and public and stakeholder participation. In April 2004, the State Water Board
17 began to investigate potential solutions to reduce both the numbers of volume of SSOs
18 throughout the State. (Agenda Item 7.) At that time, a few Regional Water Boards, such as San
19 Diego, had adopted region-wide WDRs regulating publicly owned sanitary sewer systems.
20 (Agenda Item 7.) Other regions implemented specific regulatory mechanisms in individual
21 WDRs or NPDES permits. (Agenda Item 7.) Because of the myriad of different approaches
22 throughout the State, the State Water Board concluded that a statewide approach was necessary.
23 (Agenda Item 7.)

24 To this end, the State Water Board formed the SSO Guidance Committee, a diverse
25 stakeholder group consisting of non-governmental and governmental organizations, to assist in
26 the development of the Statewide WDRs. (Agenda Item 7.) Staff from the San Diego Regional
27 Water Board participated on this committee and had a full opportunity to comment on the scope
28 and content of the Statewide WDRs. (Agenda Item 7.) Indeed, the San Diego Regional Water

1 Board recommended that the Statewide WDRs explicitly prohibit all SSOs. (Letter to S. Potter,
2 State Water Board, from J. Robertus, San Diego Regional Water Board, Jan. 26, 2006.) CASA
3 and SCAP representatives participated in this process and worked with the SSO Guidance
4 Committee. (J. Colston Testimony.) Despite very real concerns about the costs to local agencies
5 to comply with the proposed Statewide WDRs as well as unease about increased liability and
6 exposure to enforcement, CASA and SCAP ultimately supported adoption of the Statewide
7 WDR in order to achieve a level playing field for collection system agencies and ensure
8 consistent and fair regulation throughout the State. (See J. Colston Testimony.)

9 In addition, the scope and wording of the SSO prohibition and enforcement discretion
10 provisions of the Statewide WDR were critical to CASA and SCAP's position. Other issues
11 debated and addressed during the collaborative process included, but were not limited to, whether
12 all SSOs should be reported, appropriate reporting timeframes, and the relationship between
13 existing permits and the new WDRs. (Order No. 2006-0003 at Fact Sheet pp. 1-2.) Inherent in
14 this type of collaborative process is "give and take" among the participants. No one—including
15 the Regional Water Boards—gets everything they want in the final product. The Regional Water
16 Board should not be allowed to undercut the State Water Board's extensive and constructive
17 statewide effort merely because the Regional Water Board, unlike other stakeholders, possesses
18 regulatory authority. If the State Water Board does not stand by its process, and the Regional
19 Water Board's action is not overturned, it is extremely unlikely that stakeholders like CASA and
20 SCAP will be willing to contribute time and resources to future State Water Board collaborative
21 efforts.

22 **D. The Regional Water Board Failed To Comply With Procedural And Substantive**
23 **Requirements For Adopting A New Regulation.**

24 Assuming *arguendo* that all of the provisions of the Regional WDRs are within the
25 Regional Water Board's authority to impose, the State Water Board should find that the Regional
26 WDRs are arbitrary, capricious, and not supported by the evidence or Water Code.

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1 1. The Regional Water Board Failed To Make The Requisite Findings, And The
2 Regional WDRs Are Not Supported By Evidence in the Record.

3 The basis for all WDR requirements must be articulated in the findings of the order or fact
4 sheet and supported by evidence in the record. (*Topanga Assn. for a Scenic Community v.*
5 *County of Los Angeles* (1974) 11 Cal.3d 506, 515; see *Southern Cal. Edison v. State Water*
6 *Resources Control Bd.* (1981) 116 Cal.App.3d 751; State Water Board Order 2004-0013 at p.
7 13 [Regional Water Board “must explain its actions in the findings”]; State Water Board Order
8 2002-0015 at pp. 82, 85, 88.) Here, the Regional Water Board failed to “bridge the analytic gap
9 between the raw evidence and ultimate decision or order” and thus committed an abuse of
10 discretion. (*Topanga*, 11 Cal.3d at p. 515.)

11 The Regional Water Board failed to justify the “need to impose more stringent or
12 prescriptive requirements” in the San Diego Region than any other region in the State, and there
13 is no factual basis in the record for such a decision. (Order No. 2006-0003 at pp. 2-3, 5, Fact
14 Sheet p. 9, emphasis added.) The Regional Water Board has merely asserted the bare allegation
15 that Order No. R9-1996-04 has been effective, particularly with regard to the SSO prohibition
16 and reporting timeframes, and thus it desires to continue to regulate consistent with that order.
17 (Order No. R9-2007-0005.) What this conclusory posture ignores is that now—in contrast to
18 1996, when the original regional order was adopted – Statewide WDRs are in effect that include
19 detailed requirements for sewer system management plans, reporting, legal authority, and so on.
20 The Regional Water Board did not consider that the Statewide WDRs may be as effective, or
21 more so, in achieving the water quality goals that motivated adoption of Order No. R9-1996-04.
22 Instead, the Regional Water Board rushed to judgment that additional or new regulation is
23 warranted.

24 In light of the absence of any real justification for the Regional Water Board’s deviation
25 from the statewide approach, the State Water Board should instruct the Regional Water Board to
26 allow implementation of the Statewide WDRs to proceed. This would facilitate the collection of
27 data to determine the efficacy of the statewide approach, including the prohibitions and reporting
28 requirements, on water quality goals and the number and magnitude of SSOs in the region.

1 Further, in enacting the Statewide WDRs, the State Water Board specifically recognized the
2 regional approach already undertaken by the San Diego Regional Water Board and made no
3 exception applicable to the region. (Order No. 2006-0003 at Fact Sheet p. 2.) Indeed, the State
4 Water Board found that the Statewide WDRs would ensure the reasonable protection of past,
5 present, and probable beneficial uses of water and prevention of nuisance. (Order No. 2006-
6 0003 at p. 3.) As a result of the Regional WDRs, the San Diego region's collection systems will
7 be exposed to greater enforcement and penalties than will systems in other regions throughout the
8 State regulated solely by the Statewide WDRs. The Regional Water Board failed to document
9 any unique or exceptional aspect of the collection systems in the region that would justify the
10 "need" for such a difference in regulatory treatment. (See Order No. 2006-0003 at Fact Sheet
11 p. 9.)

12 2. The Regional Water Board Failed To Comply With The Water Code.

13 In adopting the Regional WDRs, the Regional Water Board also failed to abide by the
14 overarching statutory requirement to act reasonably. Water Code section 13000 specifies that
15 activities "which may affect the quality of the waters of the state shall be regulated to attain the
16 highest water quality which is reasonable, considering all demands being made and to be made on
17 those waters and the total values involved, beneficial and detrimental, economic and social,
18 tangible and intangible." (Emphasis added.) As previously discussed, the State Water Board
19 has recognized that some SSOs are unpreventable regardless of best management and operation
20 practices. Thus, the prohibition of all SSOs in the Regional WDRs is inconsistent with this
21 premise and runs afoul of the Regional Water Board's duty to act reasonably.

22 Finally, the Regional Water Board failed to comply with Water Code sections 13241,
23 13263(a), 13267(b), and 13225(c) before adopting the Regional WDRs. The Regional Water
24 Board must consider the factors set forth in Water Code sections 13263(a) and 13241 before
25 imposing waste discharge requirements based solely on State law. Water Code sections
26 13267(b) and 13225(c) impose consideration of similar factors with regard to monitoring and
27 reporting requirements. Based on the record, the Regional Water Board did not give due
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1 attention to or undertake any analysis of these factors. Further, that the Regional Water Board
2 might have considered any such factors in adopting Order No. R9-1996-04 is insufficient.

3 **IV. CONCLUSION**

4 For the reasons set forth in the Petition for Review, the evidence in the record, and the
5 arguments set forth herein and in the record, Petitioners request that the State Water Board
6 rescind Order No. R9-1996-04, find the Regional WDRs (Order No. 2007-0005) invalid, and
7 direct the Regional Water Board to implement the Statewide WDRs (Order No. 2006-0003).

8 SOMACH, SIMMONS & DUNN
9 A Professional Corporation

10 Dated: March 16, 2007

11 By 
12 Roberta L. Larson

13 Attorneys for the Petitioners
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1 PROOF OF SERVICE

2 (State)

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

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

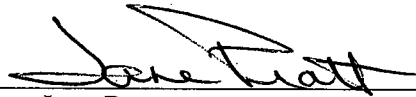
7 MEMORANDUM OF POINTS AND AUTHORITIES IN
8 SUPPORT OF PETITION FOR REVIEW

9 (by mail) on all parties in said action, in accordance with Code of Civil Procedure
10 §1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully
11 paid thereon, in the designated area for outgoing mail, addressed as set forth below.

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

14 San Diego Regional
15 Water Quality Control Board
16 9174 Sky Park Court, Suite 100
17 San Diego, CA 92123

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

20 

21 Jane Pratt

Exhibit A



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Executive Office

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
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Arnold Schwarzenegger
Governor

To: Regional Water Board Executive Officers

From: 
Celeste Cantú, Executive Director
EXECUTIVE OFFICE

Date: NOV 8 2006

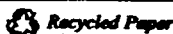
Subject: TRANSITION FROM EXISTING REGULATORY MEASURES TO
STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS
(WDRS) FOR SANITARY SEWER SYSTEMS

The State Water Resources Control Board (State Water Board) issued WDRs for Sanitary Sewer Systems, Water Quality Order No. 2006-0003 (Sanitary Sewer Order) on May 2, 2006, which requires public agencies that own sanitary sewer systems, comprised of more than one mile of pipes or sewer lines, to enroll for coverage under the Sanitary Sewer Order. The Sanitary Sewer Order requires agencies to develop sanitary sewer management plans (SSMPs) and report all sanitary sewer overflows (SSOs). In some cases, the Regional Water Quality Control Boards (Regional Water Boards) have adopted WDRs or National Pollutant Discharge Elimination System (NPDES) permits that differ from the requirements in the newly issued Sanitary Sewer Order. To foster statewide consistency, the State Water Board has prepared this advice memorandum to the Regional Water Boards on how to address dual requirements.

It is the State Water Board's intent that the Sanitary Sewer Order serve as the primary mechanism to regulate sanitary sewer systems statewide. The Sanitary Sewer Order establishes minimum requirements that apply to all regulated systems. One of the primary drivers for the Sanitary Sewer Order was a desire for consistent and comprehensive regulation of publicly owned sanitary sewer systems throughout the state. The State Water Board recognizes, however, that, in some instances, it may be appropriate for the Regional Water Boards to impose more specific or stringent requirements on system owners or operators. In this regard, finding number 11 of the Sanitary Sewer Order states:

- "11. Some Regional Water Boards have issued WDRs or WDRs that serve as National Pollution Discharge Elimination System (NPDES) permits to sanitary sewer system owners/operators within their jurisdictions. This Order establishes minimum requirements to prevent SSOs. Although it is the State Water Board's intent that this Order be the primary regulatory mechanism for sanitary sewer systems statewide, Regional Water Boards may issue more stringent or more

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prescriptive WDRs for sanitary sewer systems. Upon issuance or reissuance of a Regional Water Board's WDRs for a system subject to this Order, the Regional Water Board shall coordinate its requirements with stated requirements within this Order, to identify requirements that are more stringent, to remove requirements that are less stringent than this Order, and to provide consistency in reporting."

Furthermore, provision D. 2. of the Sanitary Sewer Order states:

"2. It is the intent of the State Water Board that sanitary sewer systems be regulated in a manner consistent with the general WDRs. Nothing in the general WDRs shall be:

- (i) Interpreted or applied in a manner inconsistent with the Federal Clean Water Act, or supersede a more specific or more stringent state or federal requirement in an existing permit, regulation, or administrative/judicial order or Consent Decree;

Interpreted or applied to authorize an SSO that is illegal under either the Clean Water Act, an applicable Basin Plan prohibition or water quality standard, or the California Water Code;

Interpreted or applied to prohibit a Regional Water Board from issuing an individual NPDES permit or WDR, superseding this general WDR, for a sanitary sewer system, authorized under the Clean Water Act or California Water Code; or

- (iv) Interpreted or applied to supersede any more specific or more stringent WDRs or enforcement order issued by a Regional Water Board."

To achieve consistent and clear regulatory requirements, State Water Board staff recommends the actions outlined in this memorandum to address the various regulatory scenarios facing the Regional Water Boards and sanitary sewer system agencies. These actions relate to the following regulatory scenarios associated with implementation of the Sanitary Sewer Order:

1. WDRs and NPDES permits issued solely for regulating sanitary sewer systems;
2. WDRs and NPDES permits issued for wastewater treatment facilities that have requirements for their associated sanitary sewer systems;
3. Enforcement orders, administrative/judicial orders, or consent decrees that have sanitary sewer system requirements.



1. WDRs and NPDES permits issued solely for the purpose of regulating sanitary sewer systems

Existing WDRs and NPDES permits:

In most cases, the Regional Water Boards should rescind WDRs and NPDES permits issued solely for regulating sanitary sewer systems and require the sanitary sewer system agency to enroll for coverage under the Sanitary Sewer Order. To ensure that there is no lapse in regulatory coverage between the rescission of the WDRs and NPDES permits and the enrollment under the Sanitary Sewer Order, the Regional Water Boards should coordinate, to the extent feasible, the rescission of existing WDRs and NPDES permits with the agency's enrollment for coverage under the Sanitary Sewer Order. Where a lapse in SSO reporting could result, the Regional Water Board may issue a letter under section 13267 of the California Water Code requiring the sanitary sewer system agency to continue reporting pursuant to the sanitary sewer system's original monitoring and reporting program (MRP), until the reporting requirements of the Sanitary Sewer Order commence.

In some situations, rescission of existing WDRs or NPDES permits is not appropriate. One such example is when WDRs or NPDES permits contain compliance schedules for system improvements or other more specific or stringent requirements. In those cases, a Regional Water Board would retain the existing WDRs or NPDES permits and notify the sanitary sewer system agencies to not enroll under the Sanitary Sewer Order. If the existing WDRs or NPDES permits are retained, the Regional Water Board should amend the MRP for the sanitary sewer system to require reporting to the State Water Board's online SSO database. Upon issuance or reissuance of the WDR or NPDES permit, the Regional Water Board must coordinate its requirements with those in the Sanitary Sewer Order, as stated in finding number 11, cited above.

Future WDRs and NPDES permits:

Regional Water Boards should regulate new sanitary sewer systems, and sanitary sewer systems not previously regulated, under the Sanitary Sewer Order, unless the Regional Water Board determines that more stringent requirements should be imposed

2. WDRs and NPDES permits issued for wastewater treatment facilities that have requirements for their associated sanitary sewer systems

Existing WDRs and NPDES permits:

Agencies with existing WDRs or NPDES permits issued to wastewater treatment facilities that contain requirements for their associated sanitary sewer systems should enroll for coverage under the Sanitary Sewer Order. For these agencies, the Regional Water Board should compare the sanitary sewer system requirements from the existing



WDRs or NPDES permits and the Sanitary Sewer Order to determine the requirements that are controlling (i.e., more specific or stringent). To avoid confusion, the Regional Water Boards should notify enrollees that the Sanitary Sewer Order contains only minimum requirements and, upon request, should specify the controlling requirements between the WDRs or NPDES permits and the Sanitary Sewer Order.

Future WDRs and NPDES permits:

When the WDRs or NPDES permits are revised or reissued, the Regional Water Boards should, in most cases, remove the sanitary sewer system provisions in the existing WDRs or NPDES permits and rely on the Sanitary Sewer Order to regulate the sanitary sewer system. Although there may be some circumstances where it is necessary to retain a sanitary sewer provision, over time, requirements for sanitary sewer systems should be separated from orders concerning wastewater treatment plants. Nevertheless, NPDES permits must, at a minimum, include language clarifying that the sanitary sewer system is subject to three standard permit conditions. These conditions are contained in the NPDES permit template.¹ In the event that a Regional Water Board determines that a site specific approach is needed and that additional or different requirements are justified, the Regional Water Board should regulate the sanitary sewer system by individual WDRs and not require the sanitary sewer system to enroll under the Sanitary Sewer Order. A Regional Water Board may also place additional requirements on a sanitary sewer system agency to respond to violations of the Sanitary Sewer Order. The appropriate mechanism for doing this is a cease and desist or time schedule order.

3. Enforcement orders, administrative/judicial orders, or consent decrees that have sanitary sewer system requirements

Enforcement orders, administrative/judicial orders, and consent decrees covering sanitary sewer systems will generally contain more specific or stringent provisions governing the sanitary sewer systems than those in the Sanitary Sewer Order. Consequently, these orders and decrees would typically stay in effect, and the sanitary sewer system agency should enroll for coverage under the Sanitary Sewer Order. To ensure clear requirements, the Regional Water Boards should notify enrollees that the Sanitary Sewer Order contains only minimum requirements and, if requested, should specify the controlling requirements between existing orders and decrees and the Sanitary Sewer Order. The Regional Water Boards should evaluate these orders and decrees, on a case-by-case basis, to determine the appropriate course of action for each specific situation.

¹ These conditions address the duty to properly operate and maintain the collection system, to report non-compliance and to mitigate any discharge from the collection system in violation of the permit. See 40 C.F.R. §122.41(e), (d), (l)(6) and (l)(7).



WDR and NPDES permit billing

The State Water Board and Regional Water Boards are required to collect annual fees for all WDRs and NPDES permits. Therefore, all sanitary sewer system agencies enrolled for coverage under the Sanitary Sewer Order are required to pay an annual fee. If a sanitary sewer system agency has existing WDRs or an NPDES permit issued to regulate its wastewater treatment facility (including sanitary sewer system), it will also be required to pay a fee for the WDRs or NPDES permit issued for the wastewater treatment facility.

If the Regional Water Board will be rescinding an agency's WDRs or NPDES permit issued solely to regulate a sanitary sewer system because of enrollment into the Sanitary Sewer Order, it should notify the agency that the WDRs or NPDES permit will be rescinded and that its annual fee payment for the WDRs or NPDES permit is not required. Additionally, the Regional Water Board should work with the State Water Board to identify existing WDRs and NPDES permits issued solely to regulate sanitary sewer systems that do not need to be invoiced for the current fiscal year due to planned rescissions.

If you have any questions regarding this memorandum, please contact Eric Maag of the Regulatory Section at (916) 445-9260 (emaag@waterboards.ca.gov).

