



# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for  
Environmental  
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger  
Governor

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

April 26, 2007

To: Petitioners (see mailing list below)

Subject: Petition of California Association of Sanitation Agencies and Southern California Alliance of Publicly Owned Treatment Works (Waste Discharge Requirements Order No. R9-2007-0005 for Sewage Collection Agencies in the San Diego Region), San Diego Water Board, (SWRCB/OCC File A-1833)

Dear Petitioners:

Attached is a copy of the Response in Opposition to the subject Petition.

If you have any questions regarding the above, please contact Ms. Joann Cofrancesco at (858) 637-5589 or [jcofrancesco@waterboards.ca.gov](mailto:jcofrancesco@waterboards.ca.gov).

Respectfully,

ROBERT W. MORRIS  
SENOIR WRC ENGINEER

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enclosure

CC:

California Association of Sanitation Agencies  
Attn: Catherine A. Smith, Executive Director  
1215 K Street, Suite 2290  
Sacramento, CA 95814

Southern California Alliance of Publicly Owned Treatment Works  
Attn: John Pastore, Executive Director  
30200 Rancho Viejo Road, Suite B  
San Juan Capistrano, CA 92675

Somach, Simmons, & Dunn  
Attn: Roberta L. Larson and Cassie N. Aw-yang  
813 Sixth Street, Third Floor  
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*California Environmental Protection Agency*



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# California Regional Water Quality Control Board

## San Diego Region



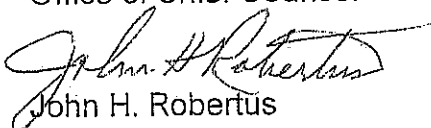
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TO: Elizabeth Miller Jennings  
Staff Counsel IV  
State Water Resources Control Board  
Office of Chief Counsel

FROM:   
John H. Robertus  
Executive Officer

**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

DATE: April 23, 2007

SUBJECT: RESPONSE IN OPPOSITION TO PETITION OF CALIFORNIA  
ASSOCIATION OF SANITATION AGENCIES AND SOUTHERN  
CALIFORNIA ALLIANCE OF PUBLICLY OWNED TREATMENT WORKS  
(WASTE DISCHARGE REQUIREMENTS ORDER NO. R9-2007-0005  
FOR SEWAGE COLLECTION AGENCIES IN THE SAN DIEGO  
REGION), SAN DIEGO WATER BOARD, SWRCB/OCC FILE A-1833

### Factual and Procedural Background

In 1949, the California Assembly Committee on Water Pollution stated

*"Water pollution is largely a local or regional problem....but it also involves conflicting interests of the State and the Nation. Channeling all interests through a single focal point at the local level will provide the missing link necessary to abate, control, and prevent water pollution effectively and equitably."*

Heeding the committee's recommendations, the California Legislature enacted the Dickey Water Pollution Act that took effect October 1, 1949. The Legislature realized that California's water pollution problems were primarily regional and depended on precipitation, topography, and population, as well as recreational, agricultural, and industrial development, all of which vary greatly from region to region. The committee's report noted that the snow-capped mountains of the Sierra Nevada differ from the Mojave Desert as significantly as Vermont differs from Arizona; and the industrialized Los Angeles basin and San Francisco Bay area are as different from the San Joaquin Valley or the North Coast as New York Harbor is from central Texas or Washington state. The Dickey Act established nine regional water pollution control boards located in each of the major California watersheds. The Boards have primary responsibility for overseeing and enforcing the state's pollution abatement program.

California Environmental Protection Agency

The San Diego Regional Water Quality Control Board (San Diego Water Board) in 1996 adopted Order R9-1996-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*.<sup>1</sup> This Order recognized the threat to water quality from the large number and magnitude of Sanitary Sewer Overflows (SSOs) in the small coastal watersheds of the San Diego Region. Prior to adoption, a draft of Tentative Order R9-1996-04, was distributed for review and comment by all interested parties.<sup>2</sup> The findings in Tentative Order R9-1996-04 described the need for the prohibition of the discharge of sewage from a sanitary sewer system at any point up stream of a sewage treatment plant. On April 18, 1996, a staff workshop was held to hear comments on the Tentative Order and no serious opposition was encountered.<sup>3</sup> On May 3, 1996, Tentative Order R9-1996-04 was revised based on comments and distributed again for review and comment by all interested parties.<sup>4</sup> On May 9, 1996, the San Diego Water Board adopted Order No. R9-1996-04<sup>5</sup>. Order No. R9-1996-04 was mailed out to the Sewage Collection Agencies on May 21, 1996.<sup>6</sup>

Order No. R9-1996-04 was an effective regulatory mechanism in reducing the number and magnitude of sewage spills in the Region over the past 10 years. From July 1994 to June 1995, the total number and volume of SSOs were 763 and 50,692,465 gallons. From July 2005 to June 2006, the total number and volume of SSOs were 201 and 552,095 gallons.<sup>7</sup>

On December 5, 2005, State Water Resource Control Board (State Board) sent out the draft of the *Statewide General Waste Discharge Requirements for Sanitary Collection System Agencies*. The San Diego Water Board comment letter (dated January 26, 2006) recommended the Statewide WDRs explicitly prohibit all SSOs to protect all waters of the State, both surface waters and groundwater. The letter also recommended the State Board require a 24-hour report for critical spills to the Regional Boards.<sup>8</sup> The recommendations were not included in the Statewide WDRs.

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<sup>1</sup> Order No. R9-1996-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies* (see pages 96-125 of Record)

<sup>2</sup> April 4, 1996 transmittal letter and draft of Tentative Order No. R9-1996-04 (see pages 1-36 of Record)

<sup>3</sup> April 18, 1996 Meeting Participation Record (see pages 37-38 of Record)

<sup>4</sup> May 3, 1996 transmittal letter and Tentative Order No. R9-1996-04 (see pages 39-75 of Record)

<sup>5</sup> May 9, 1996 Executive Officer Summary Report, Errata Sheet, Response-to-Comments document, and Comment Letters (see pages 76-95 of Record)

<sup>6</sup> Transmittal letter and Order No. R9-2006-04 (see pages 126-133 of Record)

<sup>7</sup> Executive Officer Report on Sanitary Sewer Overflows in December 2006 (see pages 228-231)

<sup>8</sup> Comments on December 5, 2005 Draft of Statewide General Waste Discharge Requirements for Sewage Collection Agencies from San Diego Water Board, dated January 26, 2006 (see pages 134-137 of Record)

On May 2, 2006, State Board adopted Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Statewide WDRs).<sup>9</sup> The Statewide WDRs permit the Regional Boards to issue or reissue more stringent requirement as stated in Finding No. 11:

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

Order No. R9-1996-04 was more stringent and prescriptive than the Statewide WDRs on two significant items: 1) the State Board allows some SSOs that were prohibited by Order No. R9-1996-04, Basin Plan, California Water Code, and Federal Clean Water Act; and, 2) the Statewide WDRs require the first notification for significant spills within three days, while Order No. R9-1996-04 required the first notification for significant spills within 24 hours.

As stated below, the Statewide WDRs do not supersede existing requirements that are more specific or stringent in Order No. R9-1996-04.

(Order No. 2006-0003-DWQ, page 7, Section D.2) *"Nothing in the general WDRs shall be:*

- (i) Interpreted or applied in a manner . . . (to) supersede a more specific or more stringent state . . . requirement in an existing permit, . . . ;*
- (ii) 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; . . .*
- (iv) Interpreted or applied to supersede any more specific or more stringent WDRs or enforcement order issued by a Regional Water Board."*

<sup>9</sup> Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (see pages 138-172 of Record)

Following the directions in Finding No. 11 and Section D.2 of the Statewide WDRs (included above), Tentative Order No. R9-2006-0121, *Waste Discharge Requirements for Sewage Collection Agencies*, was developed to maintain these more stringent and prescriptive requirements identified in Order No. R9-1996-04. As stated in the Findings of Tentative Order No. R9-2006-0121, the more stringent and prescriptive prohibition on all SSOs upstream from a sewage treatment plant implements the requirements of the San Diego Basin Plan California Water Code, and Federal Clean Water Act (Findings No. 4, 6, 7, 8, and 9). Tentative Order No. R9-2006-0121 also removed the requirements of Order No. R9-1996-04 that were less stringent and prescriptive than the Statewide WDRs and recognized the Statewide WDRs as the primary regulatory mechanism for establishing minimum requirements for the prevention of SSOs.

A requirement for reporting of private lateral sewage discharges was also included in the Order No. R9-2006-0121 and was more stringent and prescriptive than the Statewide WDRs. Order No. R9-2006-0121 stated:

*"3. The Sewage Collection Agency shall provide notification of all Private Lateral Sewage Discharges (as defined in the State Board Order), for which they become aware of, 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, to the Regional Board by phone or fax within 24 hours after the Sewage Collection Agency becomes aware of the Private Lateral Sewage Discharge, 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 following information, if known: the name and phone number of the person reporting the Private Lateral Sewage Discharge, the service area where the Private Lateral Sewage Discharge occurred, the responsible party (other than the Sewage Collection Agency, if known), the estimated Private Lateral Sewage Discharge volume, the location of the Private Lateral Sewage Discharge, the receiving water (if any), the start date/time of the Private Lateral Sewage Discharge, the end date/time of the Private Lateral Sewage Discharge (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 Private Lateral Sewage Discharge Reporting Timeframe for Private Lateral Sewage Discharges in the State Board Monitoring and Reporting Program No. 2006-0003-DWQ: For Private Lateral Sewage Discharges that occur within a Sewage Collection Agency's service area and that a Sewage Collection Agency becomes aware of, the Sewage Collection Agency shall report the Private Lateral Sewage Discharge to the State Board Online SSO Database within 30 days after the end of the calendar month in which the Private Lateral Sewage Discharge 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."*

The need for this requirement was stated in Finding No. 11 of Tentative Order No. R9-2006-0121. Finding Nos. 2, 3, and 4 of Statewide WDRs pertaining to causes of SSOs and the potential threat to water quality resulting from SSOs are also applicable to Private Lateral Sewage Discharges. Since the San Diego Region has been collecting data on private lateral sewage discharges for over 10 years, it has become obvious that these types of spills are numerous and are a potential threat to public health and the environment. However, since the reporting of these spills was not required in Order No. 96-04, it is unknown how many private lateral sewage discharges, that the Sewage Collection Agencies were aware of, were not reported. There was a need to obtain a better picture of the number and volume of private lateral sewage discharges in the San Diego Region.

Tentative Order No. R9-2006-0121 also rescinded Order No. R9-1996-04 after all agencies under Order No. R9-1996-04 had coverage under the Statewide WDRs.

On October 4, 2006, the draft of Tentative Order No. R9-2006-0121 was sent to the Sewage Collection Agencies and posted on the San Diego Water Board web site<sup>10</sup>. Tentative Order No. R9-2006-0121 was presented at the October 11, 2006 San Diego Water Board Meeting<sup>11</sup> to determine the direction that the San Diego Water Board wanted to take in response to the Statewide WDRs. The following three options were presented to the San Diego Water Board for consideration: (1) rescind Order No. R9-1996-04 and issue an Order that serves as additional requirements to those contained in the Statewide WDRs; (2) amend Order No. R9-1996-04 with the more stringent requirements identified in the Statewide WDRs; (3) rescind all the San Diego Water Board requirements (including the more stringent and prescriptive requirements) in Order No. R9-1996-04 and implement all the requirements (including the less stringent and prescription requirements) in the Statewide WDRs.

Options 1 and 2 would have resulted in the same set of requirements, but in a different format. In order to maintain the more stringent and prescriptive requirements established in 1996 with Order No. R9-1996-04 and to streamline the process, the San Diego Water Board indicated a preference for option no. 1.<sup>12</sup>

Based on the October 11, 2006 discussion, Tentative Order No. R9-2006-0121 was revised and sent to the Sewage Collection Agencies on November 2, 2006.<sup>13</sup>

On November 8, 2006, the State Board sent out an advice memorandum<sup>14</sup> that stated the following suggestions for Regional Boards with WDRs permits issued solely for the purpose of regulating sanitary sewer systems:

*"In some situations, rescission of existing WDRs or NPDES permits is not appropriate. One such example is when WDRs or NPDES permits contain . . . other more specific or stringent requirements. . . . 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 (of Order No. 2006-0003)."*

<sup>10</sup> October 4, 2006 transmittal letter and Tentative Order No. R9-2006-0121 (see pages 173-182 of Record)

<sup>11</sup> October 11, 2006 Executive Officer Summary Report (see pages 183-185 of Record)

<sup>12</sup> October 11, 2006: Minutes of Meeting (see pages 186 of Record) and audio of meeting

<sup>13</sup> November 2, 2006 transmittal letter and revised Tentative Order No. R9-2006-0121 (see pages 187-198 of Record)

<sup>14</sup> November 8, 2006 advice memorandum from the State Board to the Regional Boards (see pages 199-203 of Record)

The San Diego Water Board received four letters in response to Tentative Order No. R9-2006-0121.<sup>15</sup> A Response-to-Comments document<sup>16</sup> and an errata sheet<sup>17</sup> was created. The revised Tentative Order No. R9-2006-0121 was scheduled for consideration during the December 13, 2006 San Diego Water Board Meeting.

Due to the December 13, 2006 Board Meeting<sup>18</sup> cancellation and time constraints at the January 24, 2007 Board Meeting<sup>19</sup>, consideration of Tentative Order No. R9-2006-0121 was postponed until February 14, 2007.<sup>20</sup> Tentative Order No. R9-2006-0121 was renumbered to Tentative Order No. R9-2007-0005 to reflect consideration in calendar year 2007.

On February 14, 2007, Tentative Order No. R9-2007-0005 was presented to the San Diego Water Board.<sup>21</sup> Errata Sheet No. 2<sup>22</sup> was distributed at the beginning of the presentation and minor changes were made during the presentation<sup>23</sup>. After considering all the written and oral comments, the existing requirements in Order No. R9-1996-04, the Statewide WDRs, the small coastal watersheds in the San Diego Region, the impaired water bodies, and the numerous private lateral sewage discharges, the San Diego Water Board adopted Order No. R9-2007-0005.<sup>24</sup> Order No. R9-2007-0005 was mailed out to the Sewage Collection Agencies on March 15, 2007.<sup>25</sup>

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<sup>15</sup> Comment letters (see pages 204-219 of Record)

<sup>16</sup> Response-to-Comments document and Errata Sheet for Order No. R9-2006-0121 (see pages 241-254 of Record)

<sup>17</sup> Errata Sheet for Tentative Order No. R9-2006-0121 (see pages 255-258 of Record)

<sup>18</sup> December 13, 2006 Executive Officer Summary Report (see pages 220-222 of Record)

<sup>19</sup> January 24, 2007 Executive Officer Summary Report (see pages 227 of Record)

<sup>20</sup> December 21, 2006 and January 29, 2007 letters to Sewage Collection Agencies and Interested Parties (see pages 223-226 and 232-235 of Record)

<sup>21</sup> February 14, 2007 Executive Officer Summary Report (see pages 236-240 of Record)

<sup>22</sup> Errata Sheet No. 2 of Tentative Order No. R9-2007-0005 (see pages 259-260 of Record)

<sup>23</sup> Errata Sheet No. 3 of Tentative Order No. R9-2007-0005 (see pages 261-262 of Record)

<sup>24</sup> February 14, 2007: Minutes of Meeting (see pages 263 of Record) and audio of meeting

<sup>25</sup> Transmittal letter and Order No. R9-2007-0005 (see pages 264-275 of Record)



### San Diego Water Board Responses to Issues Raised by the Petitioners

The SDRWQCB provides the following responses to issues raised by the Petitioners with regard to San Diego Water Board's issuance of Order No. R9-2007-0005:

#### Issue No. 1

The Petitioners contend that Order No. R9-2007-0005 conflicts with and unnecessarily duplicates the Statewide WDRs.

#### San Diego Water Board Response

As stated in the Factual and Procedural Background, Order No. R9-2007-0005 was developed to maintain more stringent and prescriptive requirements established in Order No. R9-1996-04 and to recognize the Statewide WDRs as the primary regulatory mechanism for establishing minimum requirements. Order No. R9-2007-0005 follows the directions given in the Statewide WDRs and advice memorandum by maintaining more stringent and prescriptive requirements in Order No. R9-1996-04, eliminating less stringent requirements in Order No. R9-1996-04, and coordinating its requirements with the State Board.

The requirements in Order No. R9-2007-0005 are more stringent and prescriptive than the Statewide WDRs but do not conflict or duplicate requirements in the Statewide WDRs. Order No. R9-2007-0005 coordinates the more and less stringent requirements as follows:

The prohibition in Order No. R9-2007-0005 prohibits SSOs that are allowed in the Statewide WDRs. This prohibition is more stringent and prescriptive, but does not conflict or duplicate the prohibition in the Statewide WDRs.

For the Category 1 sanitary sewer overflows (SSOs), there was a 24-hour reporting requirement to the San Diego Water Board in Order No. R9-1996-04 and there is a 3-day reporting requirement to the online SSO system in the Statewide WDRs. Since the 24-hour reporting requirement is more stringent than the requirement in the Statewide WDRs, this was retained in Order No. R9-2007-0005.

Also for the Category 1 SSOs, there was a 5-day written report requirement to the San Diego Water Board in Order No. R9-1996-04 and there is a 3-day reporting requirement in the Statewide WDRs to the online SSO system. In this case, the 3-day reporting requirement is more stringent and the 5-day reporting requirement was not included in Order No. R9-2007-0005.

For Category 1 and other types of SSOs, there was a quarterly report requirement to the San Diego Water Board in Order No. R9-1996-04. For the Category 1 sanitary sewer spills, there is a 15-day certified report requirement to the online SSO system in the Statewide WDRs. Again, in this case, since the 15-day certified report requirement and the other reporting requirements (reporting 30 days after the month of the Category 2 spill and the monthly no-spill certificate) in the Statewide WDRs are more stringent, the quarterly report requirement was not included in Order No. R9-2007-0005.

Thus, for the Category 1 SSOs, the reporting requirement for Region 9 are as follows: (1) 24-hour reporting requirement to the San Diego Water Board (Order No. R9-2007-0005), (2) 3-day reporting requirement to the online SSO system (Order No. 2006-0003-DWQ), and (3) 15-day certified report requirement to the online SSO system (Order No. 2006-0003-DWQ). These three reporting requirements do not conflict or duplicate each other.

While the Order No. R9-2007-0005 requires the reporting of private lateral sewage discharges that the Sewage Collection Agencies become aware of, the Statewide WDRs include the reporting of private lateral sewage discharges as optional. Like the prohibition, this requirement is more stringent and prescriptive but does not conflict or duplicate the Statewide WDRs reporting requirement.

## **Issue No. 2**

The Petitioners contend that Order No. R9-2007-0005 is inconsistent with the State Board's advice memorandum and may unduly hinder public participation and collaboration at the State Water Board level.

### **San Diego Water Board Response**

The petitioners do not show any evidence that the Order No. R9-2007-0005 will affect public participation and collaboration at the State Water Board level or undermines the State Water Board's efforts in adopting Statewide WDRs. As stated above, the Statewide WDRs requirement does not supersede existing requirements that are more specific or stringent in Order No. R9-1996-04.

The advice memorandum is a guidance document for the Regional Boards, not an Order. Also, the final version of the advice memorandum was not sent out until November 8, 2006, after the San Diego Water Board indicated their preference to rescind Order No. R9-1996-04 and issue an Order that serves as additional requirements to those contained in the Statewide WDRs (as described in the Factual and Procedural Background) and after the Tentative Order was distributed. Making any

changes at that point would have further delayed the coordination between Order No. R9-2007-0005 and Statewide WDRs. Also, as discussed in the response to Issue No. 1, Option 1 and 2 would have resulted in the same set of requirements.

### **Issue No. 3**

The Petitioners contend that the San Diego Water Board failed to comply with procedural and substantive requirements for adopting a new regulation, and the error is fatal.

### **San Diego Water Board Response**

First of all, according to Chapter 3.5, Administrative Regulation and Rulemaking, of Part 1, Division 3, Title 2 of Government Code, Order No. R9-2007-0005 is not a regulation.

Second, as stated in the Factual and Procedural Background, the prohibition and 24-hour reporting requirement were adopted in 1996 with Order No. R9-1996-04. These are not new waste discharge requirements in the San Diego Region.

Lastly, the basis for the prohibition is presented in Findings No. 5-7 of Order No. R9-1996-04 and Findings No. 4, 6, 7, 8, and 9 of Order No. R9-2007-0005. The basis for the requirement to report private lateral sewage discharges, that the sewage collection agencies become aware of, is presented in Finding No. 11 of Order No. R9-2007-0005.

### **Conclusion**

As detailed in the responses above, the Petitioners contentions are without merit. The Petitioners' appeal for review of Order No. R9-2007-0005 and other action or inaction of the San Diego Water Board should be denied.