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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).

