



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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October 2, 2012

Via Electronic Mail Only

Russell Norman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
rnorman@waterboards.ca.gov

Re: Comment Letter - Proposed Amendments to the Monitoring and Reporting Program for Sanitary Sewer Systems

Dear Mr. Norman:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit the following comments on the State Water Resources Control Board's (State Water Board) proposed amendments to the Monitoring and Reporting Program (MRP) provisions within the Sanitary Sewer System Waste Discharge Requirements (SSS WDR). CVCWA is a non-profit organization whose membership consists of more than 50 publically-owned wastewater treatment and collection agencies in the Central Valley. We represent our members in regulatory matters affecting surface water discharge and land application with a perspective to balance environmental and economic interests consistent with applicable law. Accordingly, the proposed MRP amendments are of significant interest to CVCWA's members.

CVCWA has reviewed the proposed amendment to the MRP for the SSS WDR. CVCWA appreciates some of the changes proposed, such as the addition of a third category to the reporting requirements. However, in general, CVCWA does not support most of the proposed changes. First, it appears that many of the proposed revisions to the MRP are derived from proposed revisions to the SSS WDR from earlier this year, revisions that were ultimately rejected for various reasons, primarily that they did not further the goal of the SSS WDR which was to

reduce overflows. Considering that many of the proposed revisions were rejected previously, it is inappropriate to now use this process with respect to the MRP to incorporate such changes. Moreover, the amendments appear to be primarily a vehicle to provide data for the State Water Board's enforcement division to perform collection system audits. Based on the few actual audits that have been performed state wide, these changes would seem to require all 1,200 plus sewer agencies in the State of California to begin providing a large amount of data that will never be used unless these agencies are audited. This will put an unacceptable new financial burden on sewer agencies that is contrary to the State Water Board's Resource Realignment initiative to reduce compliance costs for enrollees.

In addition to supporting the line-by-line comments on the proposed amendments submitted by CASA & TriTAC, CVCWA also submits the following general comments on the proposal here.

Provisions Within the MRP Amendments Supported by CVCWA

1. CVCWA supports the addition of a third sanitary sewer overflow (SSO) category to the reporting requirements. (See Finding No. 10 at p. 2 of the MRP Amendments.) This change will better align the resources needed to report and evaluate overflows with the potential impact they may have.
2. CVCWA supports the change from a location based report to an event-based report that is based on the cause of a sanitary sewer overflow (SSO) even if there are multiple overflow location points. (See Finding No. 9 at p. 2 of the MRP Amendments.)
3. CVCWA supports streamlining the existing reporting procedures by requiring only one telephone call to the California Emergency Management Agency rather than calling multiple agencies. (See Finding No. 8 at p. 2 of the MRP Amendments.)
4. CVCWA supports the small number of updates made to the California Integrated Water Quality System (CIWQS) Questionnaire that were developed and approved by the Data Review Committee.

Provisions Within the MRP Amendments Not Supported by CVCWA

As noted above, CVCWA does not support the majority of the proposed changes to the MRP, and believes that the proposed amendments are beyond the scope of changes that should be made by the Executive Director using his delegated authority. Considering the broad scope of the proposed amendments, CVCWA believes that the amendments should be withdrawn and removed from consideration. Or, at the very least, amendments of this scope should be reviewed and approved by the State Water Board members.

Further, the revised MRP does not seem to represent a “consistent statewide approach to reducing SSOs” that is the goal of the SSS WDR. Rather, this revised MRP seeks only to “improve compliance monitoring, enforceability, and data collection.” CVCWA does not support this shift and believes it will be counterproductive to the program. These new prescriptive requirements may assist the State Water Board as it relates to regulatory oversight, but will simultaneously divert resources from planned activities aimed toward reducing SSOs. The proposed revisions also do not recognize that each agency and sewer system is unique, and removes much of the flexibility for an agency to determine the means by which to comply and reduce SSOs. As the State Water Board is aware, the Porter-Cologne Water Quality Act (Water Code) section 13360(a) prohibits the state and regional water boards from specifying the manner in which a discharger must comply with its WDRs, allowing the discharger to comply in any lawful manner. Nonetheless, the proposed amendments to the MRP in the SSS WDR now operate on the premise that all agencies and sewer systems are identical by dictating the prescriptive requirements identified below (and identified more specifically in the detailed joint comments to the proposed amendments). By dictating these types of requirements for all sewer agencies in the state, the proposed amendments do not acknowledge that there are many agencies with excellent performance records.

These new prescriptive requirements could also increase liability for CVCWA’s member agencies. For example, as currently drafted, an enrolled sewer system could have zero SSOs and still be in violation of the SSS WDR (and particularly the new MRP requirements) because the system was not operated in the manner required by the permit.

Some of the specific areas that CVCWA has identified as objectionable are as follows:

1. The proposed amendments convert the SSS WDR into a set of requirements that are purely prescriptive in nature. Instead of establishing guidelines that emphasize an end result the State Water Board wants to achieve through the MRP, the proposed amendments now specifically prescribe how sewer agencies throughout the state should be operated. If these agencies do not follow the requirements promulgated through these MRP amendments precisely, it will result in a violation of the WDR. For example, even if a minor deviation from the requirements were to occur (e.g., if the first employee to arrive at a spill location did not have a camera and take immediate pictures), the result could be an alleged violation of the WDR and the attendant liability that accompanies such a violation.
2. CVCWA does not support the new MRP requirement to produce a technical report for major spills. The requirements for the technical report would require that a specialist be hired to develop the needed data that normal wastewater employees could not produce. (See Appendix 1, Subsection G of the MRP Amendments at pp. 21-22.) Hiring such a specialist could not feasibly be done in the time span required by the

proposed MRP amendments, and by the time that person was available, it would be very difficult to assess impacts due to clean up efforts and thus the requirement would be ineffective. CVCWA may support the approach that has been required by the Central Valley Regional Board for many years, which is the development and submission of a written report stating (1) how the SSO occurred and (2) what is being done to keep such an event from happening again. However, we believe that this process is built into the SSMP Audit reviews and thus a separate report is not required.

3. CVCWA does not support the requirement contained in the MRP amendments, which states that no changes could be made to a report after 90 days. (See Appendix 1, Subsection I of the MRP Amendments at p. 23.) This requirement is contrary to Section I.1 of the SSS WDR which requires: "If an Enrollee becomes aware that it failed to submit any relevant facts in any report required under this Order, the Enrollee shall promptly submit such facts or information by formally amending the report in the Online SSO Database." Although CVCWA understands that the State Water Board staff desires a cut off date to evaluate SSO compliance, CVCWA does not support a absolute cut-off date when valid new data is available. An alternative may be to limit changes to a report after 180 days by requiring access to the report through State Water Board staff after showing what new information is available. But, per the SSS WDR, the State Water Board would be obligated to allow modifications. However as currently proposed, this new requirement is both substantial and objectionable and contrary to the SSS WDR.
4. CVCWA opposes the proposed requirement that requests an impact assessment on receiving waters below a major spill. (See Section E.5 of the MRP Amendments at p. 10.) Such an assessment is beyond the scope of the SSO WDR. The purpose of the WDR is to reduce SSOs statewide in order to protect the waters of the state. An impact assessment will not reduce future SSOs. The imposition of such a requirement should be left up to the regional boards on a case-by-case basis, and does not need to be posted in the CIWQS.
5. CVCWA finds the requirement to develop and implement a Water Quality Monitoring Program and the requirement that all monitoring be consistent with Water Code section 13176 requiring analyses to be performed by an accredited or certified laboratory problematic, especially for some of the smaller agencies. Although we recognize that it is appropriate for some of the constituents such as bacteria evaluated by a certified or accredited laboratory; other constituents listed, such as pH, temperature, and dissolved oxygen, are typically measured by a probe since these constituents can quickly change with time. Adding these specific requirements in the MRP will add to cost and may not produce more robust data and be a compliance issue for some facilities. The SSS WDR currently requires proper maintenance and

calibration. The new monitoring program requirements goes beyond the requirement of the SSS WDR and therefore CVCWA recommends that it be deleted.

In sum, the proposed MRP amendments appear to be an effort by the State Water Board's enforcement division designed to collect pre-audit information from all 1,200 plus affected agencies in the state. This type of change is beyond the scope of the SSS WDR, represents significant amendments that should not be made via the Executive Officer's delegated authority, and at the very least should be subject to approval by the State Water Board members. Moreover, such changes will place an unacceptable new financial burden on sewer agencies. The State Water Board should be requesting specific information only after it identifies an agency that needs to be audited, and even then such an information request should only have bearing on that which is being investigated.

CVCWA requests that the State Water Board return to the approach and goals set forth in the current program and permit, and accompanying MRP, by limiting changes to those supported by CVCWA as described above.

Please feel free to contact me at (530) 268-1338 or at eoofficer@cvcwa.org if you have any questions or wish to discuss our comments.

Sincerely,



Debbie Webster,
Executive Officer

cc (via electronic mail): Pamela Creedon, Central Valley Regional Water Quality Control Board
(pcreedon@waterboards.ca.gov)