



March 6, 2023

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**Subject: Comments on Tentative Order NPDES Permit No. CA0038628 for Central Marin Sanitation Agency, San Rafael Sanitation District, Ross Valley Sanitary District, and Sanitary District No. 2 of Marin County**

Dear Kerry O'Connor:

The Bay Area Clean Water Agencies (BACWA) and California Association of Sanitation Agencies (CASA), jointly referred to as the Associations, appreciate the opportunity to provide comments on Tentative Order NPDES Permit No. CA0038628 (Tentative Order) for Central Marin Sanitation Agency (CMSA), which also includes the “collection system agencies” of San Rafael Sanitation District, Ross Valley Sanitary District, and Sanitary District No. 2 of Marin County (Tentative Order). With the exception of CMSA, the agencies included in the Tentative Order are referred to in this letter as the “satellite collection systems.”

BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

CASA represents more than 130 local public agencies engaged in the collection, treatment and recycling of wastewater and biosolids to protect public health and the environment. Our mission is to provide trusted information and advocacy on behalf of California clean water agencies, and to be a leader in sustainability and utilization of renewable resources. The Associations are concerned about the inclusion of the satellite collection systems in CMSA's NPDES permit.

The Associations support addressing inflow and infiltration (I/I) as the primary means to reduce blending, where needed to protect receiving water quality. Compared to wastewater treatment plant upgrades and expansion, work to improve collection systems, and to enhance repair and replacement programs, is a more sustainable means to manage problematic wet weather flows.

We appreciate that Regional Water Board staff worked with the satellite collection system agencies to develop the list of projects to reduce I/I that are included in Table 3 of the Tentative Order. However, it is not appropriate to include this list as enforceable provisions within CMSA's NPDES permit. (*See* Cal. Wat. Code §13360(a)(prohibiting regional boards from mandating the manner of compliance.)

**REQUEST:** The Associations recommend that satellite collection systems be removed from the list of “Dischargers” in the Tentative Order. If the projects listed in Table 3 need to be documented, they could be listed in the Fact Sheet, where it is common to note planned changes for the upcoming permit term. Alternatively, as suggested in the comment letter submitted by Ross Valley Sanitary District and San Rafael Sanitation District, CMSA could annually report on these activities.

The satellite collection systems are already subject to the Statewide General Order for Sanitary Sewer Systems (SSS-WDR), which includes provisions for controlling I/I in general. In December 2022, the SSS-WDR was reissued by the State Water Board as Order WQ 2022-0103-DWQ<sup>1</sup>, providing an opportunity for the State Water Board to consider anew the idea of reissuing the SSS-WDR as an NPDES permit. The State Water Board considered, and soundly rejected, this idea. As described in the *Staff Response To Public Comments To Draft Statewide Sanitary Sewer Systems General Order*<sup>2</sup>:

“Waste discharge requirements are the appropriate regulatory mechanism to implement statewide prohibitions of sewage spills, and to require local sewer system management, operations, and repairs. The draft Order is not a permit to discharge; therefore, implementing an NPDES permit that permits a discharge of waste to waters of the United States, is not applicable” (pg. 18).

While it is reasonable that collection systems be encouraged to reduce excessive I/I that results in sewer spills or other adverse environmental impacts, the NPDES permit is not an appropriate vehicle to control these actions. The satellite collection systems do not routinely discharge to Waters of the United States, and therefore as regulated entities, should not be subject to federal jurisdiction. Moreover, including satellite agencies in NPDES permits opens them up to the potential for third party lawsuits under the Clean Water Act as well as USEPA enforcement, without providing any demonstrated water quality benefit to balance this increased liability. This is particularly true given that there are other apparatuses under which they can be regulated, such as California's Porter-Cologne Water Quality Control Act, which is the route that the State Water Board ultimately selected for the SSS-WDR.

The Associations urge the Regional Water Board to explore other mechanisms to regulate the

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<sup>1</sup> Available online at

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2022/wqo\\_2022-0103-dwq.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf). Accessed March 2, 2023.

<sup>2</sup> Available online at [https://www.waterboards.ca.gov/water\\_issues/programs/sso/docs/2022/response-to-comments-draft-sanitary-sewer-systems-order.pdf](https://www.waterboards.ca.gov/water_issues/programs/sso/docs/2022/response-to-comments-draft-sanitary-sewer-systems-order.pdf). Accessed March 2, 2023.

satellites' activities pertaining to I/I reduction, including those already required under the SSS-WDR. Under the SSS-WDR, collection systems are highly regulated and infractions can be enforced by the regional boards. The SSS-WDR requires collection systems to adopt and implement Sewer System Management Plans and Capital Improvement Programs, to keep these documents updated as conditions change, and to provide annual reports on their maintenance activities. The reissued SSS-WDR (WQ Order 2022-0103-DWQ, effective June 5, 2023) enhances the requirements found in the 2006 SSS-WDR, requiring that enrollees begin to:

- Implement capital improvements to provide adequate hydraulic capacity to prevent adverse impacts to the treatment efficiency of downstream wastewater treatment facilities (Section 5.10);
- Prioritize the condition assessment of system areas that hold a high level of environmental consequences if vulnerable to collapse, failure, blockage, capacity issues, or other system deficiencies (Attachment D, Section 8.1); and
- Use the findings of the condition assessments and capacity assessments to prioritize corrective actions (Attachment D, Section 8.3);

The new requirements listed above render the Tentative Order even more duplicative with the SSS-WDR than when CMSA's 2018 NPDES permit was first issued with the satellite collection systems listed as co-permittees. Furthermore, by mandating particular projects, particularly where resources are limited, the Tentative Order restricts the satellite collection systems in their ability to quickly respond to new operational issues as they arise, and fails to allow for schedules to be easily or quickly modified in the case of strike, emergency, pandemic, or other unanticipated situations.

The Tentative Order also arguably incorporates the SSS-WDR by reference, which exposes the permittees to federal liability for requirements to which they are already subject, regardless of this Order. If, contrary to the Associations recommendation, the satellite collection system agencies remain as co-permittees in the Final Order, the Associations recommend modifying language in Section 6.3.4.3 on page 14 as follows:

**6.3.4.3. Collection System Management.** The San Rafael Sanitation District, Ross Valley Sanitary District (previously Sanitary District No. 1 of Marin County), and Sanitary District No. 2 of Marin County shall [comply with only the applicable portions of Attachments D and G to](#) properly operate and maintain their respective collection systems (see Attachments D and G, section 1.4), report any noncompliance with respect to their respective collection systems (see Attachment D, section 5.5.1, and Attachment G, sections 5.5.1 and 5.5.2), and mitigate any discharges in violation of this Order associated with their respective systems (see Attachments D and G, section 1.3).

State Water Board Order 2006-0003-DWQ (Statewide General Waste Discharge Requirements for Sanitary Sewer Systems), as amended by Order WQ 2013-0058-EXEC, and superseded by State Water Board Order WQ 2022-0103-DWQ (Statewide Waste Discharge Requirements General Order for Sanitary Sewer

Systems, effective June 5, 2023) (statewide WDRs), contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows. While the San Rafael Sanitation District, Ross Valley Sanitary District, and Sanitary District No. 2 of Marin County must separately comply with both the statewide WDRs and this Order, the statewide WDRs clearly and specifically stipulate requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows, and the same programs satisfy the requirements specified in Attachments D and G cited above. ~~Implementing the requirements for operation and maintenance and mitigation of sanitary sewer overflows set forth in the statewide WDRs (and any subsequent order updating these requirements) shall satisfy the corresponding federal NPDES requirements specified in Attachments D and G of this Order for the collection systems. Following the reporting requirements set forth in the statewide WDRs (and any subsequent order updating those requirements) shall satisfy the NPDES reporting requirements for sanitary sewer overflows specified in Attachments D and G.~~

We appreciate your attention to our comments. Please do not hesitate to contact us with any questions or concerns.

Respectfully Submitted,



Adam D. Link  
Executive Director  
California Association of Sanitation Agencies



Lorien Fono, Ph.D., P.E.  
Executive Director  
Bay Area Clean Water Agencies

cc: BACWA Executive Board  
Jason Dow, General Manager, Central Marin Sanitation Agency  
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