# ATTACHMENT D

M. How Could the Watershed Alternative be Integrated into NPDES Permit CMOM Program Requirements?

EPA believes that today's proposed CMOM program requirements should allow for integration of certain aspects of the approach outlined in the 1998 Watershed Alternative along with risk management classifications used by the sewer industry. Industry and EPA guidance recognize prioritizing collection system management activities based on risk. These approaches involve classifying sewers based on the risks to human health or the environment that the sewer presents. Risk-based sewer classifications include the "critical sewer" approach and the "reliability class" approach.[1] These approaches prioritize collection system measures in portions of the collection system whose failure would have a particularly significant impact on public health or the surrounding environment.

In today's proposed rule, EPA is proposing that permittees be made responsible for developing and implementing CMOM programs for their municipal sanitary sewer collection systems. EPA supports the assessment of overall health and environmental risks from SSOs and other urban wet weather sources to inform the development of CMOM programs. CMOM programs can reflect watershed considerations in two general ways: (1) CMOM activities may be prioritized based on risk; and (2) other water quality improvement projects in the permittee's capital improvement plan may be considered when developing schedules for long-term measures. These include addressing deficiencies with treatment plants, combined sewer systems, replacing septic systems with sanitary sewer collection systems; assuming responsibility for inadequate privately owned treatment works and collection systems; storm water control; and restoration or protection of aquatic habitat or flow regimes.

1. Prioritization of CMOM Activities

In general, public health and watershed considerations are expected to play a role in setting system-specific priorities in CMOM programs. Risk-based prioritizing schemes, such as the critical sewer and/or reliability class approaches, can be reflected in various aspects of a CMOM program, such as the extent of backup equipment and power, frequency and type of preventive maintenance activities, procedures to evaluate structural integrity and hydraulic capacity, and in phasing of long-term activities. EPA requests comment on the appropriate relationship of water quality objectives identified in a watershed plan to performance objectives for the municipal sanitary sewer collection system and the phased implementation of those performance objectives. The Agency also requests comment on

[1]For examples, see "Existing Sewer Evaluation & Rehabilitation," WEF Manual of Practice FD-6, ASCE Manual and Report on Engineering Practice no. 62, 1994; Construction Grants 1985, EPA, 1984, EPA/430/9-84/004; "Sewerage Rehabilitation Manual" Water Research Centre, 1994; Combined Sewer Overflow Screening and Ranking Guide, EPA, 1995, EPA/882/B/95/004.

how NPDES authorities should relate water quality objectives to the criteria in today's proposed prohibition standard condition (e.g., exercise of reasonable control, no feasible alternatives), and on whether the proposed prohibition should be modified to accommodate a greater role for water quality and watershed considerations in the SSO planning process.

2. Role of Other Water Quality Improvement Projects in the Permittee's Capital Improvement Plan in Developing Priorities for Long-Term Activities

Under today's proposed CMOM program requirements, permittees would be required to identify long-term actions they have planned to address hydraulic and structural deficiencies and CMOM schedules for the actions (see proposed 122.42(e)(2)(iv)(F) and 122.42(e)(4)(ii)).

Where long-term actions are needed to address SSO problems, EPA would allow municipalities to consider other water quality improvement projects when developing CMOM schedules for long-term capital improvements. General principles that apply to this approach would be that:

1. The operator of the collection system would need to implement a capital improvement plan that would be expected to result in substantial investment in water quality improvements (which may include projects other than sanitary sewer measures) during and after the planning process. The capital improvement plan would need to be developed consistent with EPA's accepted scheduling principles and prioritization schemes, including financial capability, and generally reflect health and environmental risks;[2]
2. The operator of the collection system would need to effectively implement a CMOM program for the collection system, including a process for comprehensive assessment of the management, operation and maintenance of the collection system, and identifying and prioritizing capital needs associated with structural and hydraulic deficiencies;
3. Comprehensive watershed planning that takes into account a variety of pollutant sources should not delay the response to ongoing SSOs that cause or contribute significantly to public health or water quality problems. Whenever public health or water quality problems are clearly attributable to ongoing SSOs and the actions needed to address them are also clear, then remedial actions to address the SSOs should proceed as soon as physically and financially possible. These overflows would not be addressed in the context of watershed plans. Overflows that should not be subject to delays for investment because of other water quality improvements include:
    - o Wastewater backups into buildings;
    - o Overflows to waters of the U.S. that occur in high public use or public access

[2] See Combined Sewer Overflows-Guidance for Financial Capability Assessment and Schedule Development, March 1997. While the guidance was developed to assist permittees in scheduling capacity improvements for combined sewers, the concepts in this guidance are generally applicable for scheduling capital improvements for municipal sanitary sewer collection systems.

areas;

- o Overflows that impact sensitive receiving waters (such as public drinking water supplies and their source waters, swimming beaches and waters where swimming occurs, shellfish beds, designated Outstanding National Resource Waters, National Marine Sanctuaries, waters within Federal, State, or local parks, and water containing threatened or endangered species or their habitat).

- Other SSOs could, upon approval of the NPDES authority and notice to other stakeholders, be prioritized in the context of watershed plans. The watershed planning process can be used to identify and prioritize pollutant sources that are causing or contributing to public health or water quality problems. The watershed planning process should be used to identify priorities for measures to address these problems, including long-term actions. This in turn should result in appropriate modification to capital investment plans. Where possible, investment strategies for water quality improvements should be prioritized in a manner that provides the greatest opportunities for health and environmental improvements as early in the process as possible. A watershed plan does not provide any additional liability protection or change the legal status of discharges to waters of the United States, but could affect the timing of remedies.
- The schedule for long-term actions in the CMOM program for the municipal sanitary sewer collection system should be accompanied by a description of other water quality improvement projects identified in the permittee's capital improvement plan, the costs and schedules for those projects and available information on the relative health risks addressed by the various projects identified in the plan.

This approach is intended to provide municipalities with flexibility to implement comprehensive water quality improvement efforts in the most efficient manner.

As discussed elsewhere in today's proposed rule, the permittee's schedule for long-term activities in its CMOM program would not provide any additional liability protection or change the legal status for SSOs that occur. Rather, the status of a specific discharge would be evaluated according to the permit prohibition language and the circumstances under which the discharge occurred. The purpose of the CMOM schedule would be to provide the NPDES authority and other reviewers with information related to how and when sanitary sewer activities (and possibly other water quality improvement projects) would be implemented. Including additional information regarding other water quality improvement projects would allow the NPDES authority to evaluate the permittee's overall investments in water quality improvement. Enforcement mechanisms such as administrative or judicial orders are more likely to provide the necessary flexibility to implement watershed management concepts.

In individual judicial actions where a municipality is negotiating in good faith, injunctive relief sought should be comprehensive in addressing wet weather CSO, SSO, and storm water problems (and potentially other municipal compliance problems) within the municipality's watershed. These global settlements of wet weather violations may only be

possible if a municipality has a final watershed plan. Enforcement remedies should not be delayed by watershed plan development. Watershed plans can be taken into account when developing enforcement schedules for bringing unauthorized or unpermitted discharges into compliance with the CWA, but watershed plans (including the planning process) are not a bar to enforcement for violations of the CWA.

The Agency requests comment on the role of watershed considerations in CMOM program implementation. In addition, the Agency requests comment on whether specific language supporting these approaches should be incorporated into today's proposed CMOM and prohibition standard permit conditions.